



2023:DHC:9465



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 11th December, 2023**

+ **W.P.(C) 15870/2023**

KOMAL BANSAL AND ORS Petitioners

Through: Appearance not given

versus

UNION OF INDIA AND ORS Respondents

Through: Mr. Farman Ali, Ms. Vidhi Gupta and
Ms. Usha Jamnal, Advocates for R-1
and R-2

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

- a) *For issuance of writ of mandamus or any other appropriate writ, order or direction to the respondent no. 1 to immediately direct respondent no. 2 to not terminate the services of the petitioners' workmen and to continue them into the services with all the statutory benefits.*
- b) *For issuance of writ of mandamus or any other appropriate writ, order or direction to the respondent no. 2 and respondent no. 3 to not terminate the services of the petitioner workmen employed in respondent no. 2 through respondent no. 3 and allow them to continue in their services.*



c) For writ of mandamus or any other appropriate writ order or direction to the respondent no. 2 and respondent no. 3 to pay all the pending arrears/wages to the petitioner workmen employed in respondent no. 2 through respondent no. 3.”

2. Ram Manohar Lohia Hospital i.e., the respondent no. 2 sought permission from respondent no.1 to fill up vacancies on an outsourcing basis for the post of Junior Lab Technologist (hereinafter referred to as JMLT) vide letters dated 31st March, 2022 and 1st November, 2022.

3. The respondent no. 1 in its response dated 6th December, 2022 conveyed its approval for outsourcing the 30 number of posts of JMLT from respondent no. 3 contractor-employer for a period of six months or till the recruitment of regular incumbents, whichever is earlier.

4. The petitioners were appointed at the post of JMLT at respondent no. 2 hospital, i.e., Dr. Ram Manohar Lohia Hospital on a contractual basis through respondent no. 3 contractor-employer, i.e., M/s Raider Security Services Pvt. Ltd. vide appointment letter dated 8th December, 2022.

5. On 8th June, 2023, the respondent no. 2 again addressed a letter to the respondent no. 1 mentioning that contract of respondent no. 3 is going to expire on 9th June, 2023 and sought permission to outsource 30 additional posts of JMLT from respondent no. 4, the new tender allottee, i.e., M/s Shivalik Security Services Pvt. Ltd.

6. Further, vide letter dated 14th June, 2023 the respondent no.1 sent a proposal for extension of outsourcing of 30 number of JMLT from existing agency in the respondent no.2.



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7. Thereafter, the respondent no.2 sent multiple reminders to the respondent no.1 for filling up 30 positions of JMLT on outsourcing basis from the new recruitment agency i.e., the respondent no.4.

8. Subsequently, vide letter dated 16th September, 2023 the Deputy Director (Admin) proposed for an extension of outsourcing 30 numbers of JMLT from the respondent no.4.

9. Further, the petitioners had paid a lump-sum amount to the respondent no.3 before joining of service on the pretext of security deposit ranging from Rs.50,000/- to Rs. 1,00,000/- however, the recruiting agency is now demanding more money from the petitioners if they want to continue their services with the respondent no.2.

10. Moreover, it is alleged by the petitioners that the respondents are withholding of salary of the petitioners.

11. Aggrieved by the attempt of respondent no. 3 to hire fresh contractual workers from a new agency, i.e., the respondent no.4, and the non-payment of salary, the petitioners have preferred the instant petition.

12. Learned counsel appearing on behalf of the petitioners submitted that the respondent no. 2's act of allotting the tender to respondent no. 4 and affectively removing the petitioners from service is an illegal act and violative of their right to livelihood guaranteed under Article 21 of the Constitution of India.

13. Learned counsel for the petitioner relied heavily on the judgment of ***All India General Kamgar Union Vs. Union of India, W.P.(C) 4834/2020, dated 27th October, 2021***, thereby, submitting to the effect that the



respondent nos. 2 and 4 have acted contrary to the guidelines laid down in the aforementioned judgment for recruiting the contractual workers through contractors and ensure that the contractual workers are not abused or misused, and adequate as well as timely payment of their salaries in accordance with the amount being released by the hospitals are being made by the contractors.

14. It is submitted that the respondent no.2 in collusion with respondent no.3, are withholding of salary of the petitioners is thereby, violating the statutory norms relating to payment of wages, provident fund, gratuity etc.,of the petitioners and is in violation of Article 21 of the Constitution of India.

15. It is submitted that non-payment of salaries is in violation of Section 21 of the Contract Labour (Regulations and Abolition) Act, 1970

16. It is submitted that the action of the respondent no. 2 hospital in collusion with the respondent no. 4 of new recruiting agency is an unfair labour practice and aimed at victimizing the petitioners.

17. It is submitted that the respondentno. 2 and 3 are in violation of Article 300-A of the Constitution of India since they failed to respondto several representations made by the petitioners with regards to payment of their salaries.

18. In view of the foregoing submissions, it is prayed that the instant petition may be allowed, and the reliefs may be granted as prayed.

19. *Per contra*, learned counsel appearing on behalf of the respondents vehemently opposed the instant petition submitting to the effect that the



present petition is devoid of any merits since the petitioners have not approached this Court with clean hands.

20. It is submitted that the act of appointing a new agency is not in violation of any fundamental rights of the petitioners since the same has been done in compliance with the statutory guidelines.

21. It is further submitted that the respondents are not withholding the salary of the petitioners and will make the payment in due course of time.

22. It is submitted that the respondent no.2 chose to not continue the contract with respondent no.3 due to reasons best suitable for the working of the respondent no.2 hospital and the same has been done after the contract of the respondent no.3 had expired due to efflux of time.

23. In view of the foregoing submissions, it is prayed that instant petition may be dismissed being devoid of any merits.

24. Heard the parties and perused the record.

25. It is the case of the petitioners that the respondent no. 2 hospital is violating their right to life guaranteed under Article 21 of Constitution of India by withholding salaries of the petitioners who were associated with the petitioners' workmen union. It is contended by the petitioners that the respondent no. 2 hospital failed to discharge its legally mandated duty by not facilitating the disbursement of wages by the contractor-employer respondent no. 3 in terms of Section 21 of the Contract Labour (Regulations and Abolition) Act, 1970. It is also contended that the respondent no. 1 failed to reply despite repeated representation and the respondent nos. 2 and 3 acting in arbitrary manner and violating the right of the petitioner workmen



under Article 300-A of the Constitution of India.

26. In rival contentions it was submitted that the respondents only sought for another tender only due to the lapse of time of the tender allotted to respondent no. 3 contractor and the decision of allotment of subsequent tender to respondent no. 4 suffers no illegality. It is further submitted that the petitioner workmen were contractual employees of the contractor-employer respondent no. 3 and as per the tender approved by the concerned ministry of respondent no. 1, the petitioners were hired for a contractual period of 6 months or till the recruitment of regular incumbents, whichever is earlier. It is further contented that the employment of petitioners' workmen with respondent no. 3 was contractual in nature limited for a period of 6 months and though they have a right to be considered for extension of their role, they don't have a right for extension of employment per se.

27. Keeping in view the arguments advanced by the parties, the only question that falls for consideration is whether a writ/order/direction in the nature of mandamus may be issued by this Court, directing the respondents to not terminate the services of the petitioners' workmen and to continue them into the services with all the statutory benefits.

28. Before delving into the merits of the case, this Court deems fit to enunciate the principle governing grant of writ of mandamus under Article 226 of the Constitution of India.

29. This Court has in a catena of judgments held that the writ of mandamus is a prerogative writ and is to be exercised to render an extraordinary remedy and it is to be invoked only upon special occasions



and in exceptional circumstances. In the case at hand, the petitioners are apprehending termination, which is an instance that has not yet arrived.

30. The principle governing mandamus has been further reiterated by Hon'ble Supreme Court in the judgment of ***Hero Motocorp Ltd. v. Union of India***, (2023) 1 SCC 386 as follows:

“75. It can thus be seen that unless the appellants show any statutory duty cast upon the respondent Union of India to grant them 100% refund, a writ of mandamus as sought could not be issued. The position is reiterated by this Court in K.S. Jagannathan [Comptroller & Auditor General of India v. K.S. Jagannathan, (1986) 2 SCC 679 : 1986 SCC (L&S) 345] as under : (SCC pp. 692-93, para 20)

“20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the parties concerned, the



court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.”

76. It could thus be seen that this Court holds that a writ of mandamus can be issued where the Authority has failed to exercise the discretion vested in it or has exercised such a discretion mala fide or on an irrelevant consideration.

77. This position was again reiterated by this Court recently in Bharat Forge [Union of India v. Bharat Forge Ltd., (2022) 17 SCC 188 : 2022 SCC OnLine SC 1018] as follows : (SCC paras 18-19)

“18. Therefore, it is clear that a writ of mandamus or a direction, in the nature of a writ of mandamus, is not to be withheld, in the exercise of powers of Article 226 on any technicalities. This is subject only to the indispensable requirements being fulfilled. There must be a public duty. While the duty may, indeed, arise from a statute ordinarily, the duty can be imposed by common charter, common law, custom or even contract. The fact that a duty may have to be unravelled and the mist around it cleared before its shape is unfolded may not relieve the Court of its duty to cull out a public duty in a statute or otherwise, if in substance, it exists. Equally, Mandamus would lie if the Authority, which had a discretion, fails to exercise it and prefers to act under dictation of another Authority.

19. A writ of mandamus or a direction in the nature thereof had been given a very wide scope in the conditions prevailing in this country and it is to be issued wherever there is a public duty and there is a failure to perform and the courts will not be bound by technicalities and its chief concern should be to reach justice to the wronged. We are not dilating on or diluting other requirements, which would ordinarily include the need for



*making a demand unless a demand is found to be futile in circumstances, which have already been catalogued in the earlier decisions of this Court.
(emphasis supplied)”*

31. This Court shall now delve upon the fact whether a Court by a way of writ of mandamus under Article 226 can direct the respondent no. 2 hospital to continue to engage the services of the contractual workmen petitioners which has lapsed due to efflux of time. It is well settled by this Court and the Hon'ble Supreme Court of India that the contractual employees cannot demand extension of service/regularization as a matter of right. It is well settled that contractual workers have a right to be considered for the said extension, however, there lies no vested right with regard to guaranteed extension of the said contract. The Courts intervention is only warranted in cases where there exists an apparent act of arbitrariness or *malafides*.

32. The abovesaid principle has been enunciated by the Hon'ble Supreme Court in the judgment of **Yogesh Mahajan v. Professor R.C. Deka, All India Institute of Medical Sciences, (2018) 3 SCC 218:**

“6. It is settled law that no contract employee has a right to have his or her contract renewed from time to time. That being so, we are in agreement with the Central Administrative Tribunal and the High Court that the petitioner was unable to show any statutory or other right to have his contract extended beyond 30th June, 2010. At best, the petitioner could claim that the concerned authorities should consider extending his contract. We find that in fact due consideration was given to this and in spite of a favourable recommendation having been made, the All India Institute of Medical Sciences did not find it



appropriate or necessary to continue with his services on a contractual basis. We do not find any arbitrariness in the view taken by the concerned authorities and therefore reject this contention of the petitioner.

7. We are also in agreement with the view expressed by the Central Administrative Tribunal and the High Court that the petitioner is not entitled to the benefit of the decision of this Court in Uma Devi. There is nothing on record to indicate that the appointment of the petitioner on a contractual basis or on an ad hoc basis was made in accordance with any regular procedure or by following the necessary rules. That being so, no right accrues in favour of the petitioner for regularisation of his services. The decision in Uma Devi does not advance the case of the petitioner.

8. Insofar as the final submission of the petitioner to the effect that some persons were appointed as Technical Assistant (ENT) in May 2016 is concerned, we are of the view that the events of 2016 cannot relate back to the events of 2010 when a decision was taken by the All India Institute of Medical Sciences not to extend the contract of the petitioner. The situation appears to have changed over the last six years and the petitioner cannot take any advantage of the changed situation. There is no material on record to indicate what caused the change in circumstances, and merely because there was a change in circumstances, does not mean that the petitioner is entitled to any benefit. On the other hand, it might have been more appropriate for the petitioner to have participated in the walk-in interview so that he could also be considered for appointment as Technical Assistant (ENT), but he chose not to do so.”

33. Adverting back to the facts of the instant petition, it is clear that the petitioners were aware of the fact that their jobs were contractual in nature and as such they could not have reasonably drawn an inference that their



services could have been extended by the respondent no. 2 hospital as a matter of right. Moreover, a bare perusal of the appointment letter of the petitioners it was clearly mentioned that they were being hired by the contractor-employer respondent no. 3 on probation basis for a period of 3 months. The relevant portion of the appointment letter has been reproduced herein-below:

“This appointment is effective from date 8.12.2022 on your joining at RML Hospital New Delhi, and as per the norms of the company you will be on probation period for three months after which if company on its internal evaluation found you fit for the position, then it may be extended to further contract period.

Whilst welcoming you to the Raider Security Services Pvt Ltd. we wish you good luck and a very bright career with us.”

34. Even in ***All India General Kamgar Union (Supra)*** this Court had cautioned that continuation shall always be in accordance with law and moreover, it does not grant any right of permanency to the contractual employees. The relevant portion is being reproduced as under:

“15. It is made clear that continuation of contractual workers shall always be in accordance with law. The present order shall not be construed as giving any permanency to the contractual employees.”

35. Therefore, judgment relied upon by the petitioners does not support their case since the petitioners were initially appointed on a probationary basis and were never guaranteed an extension of their contract.

36. The terms of employment contract cannot be surpassed by a court in a



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writ of mandamus except for the circumstances where arbitrariness is apparent on the face of it and the facts of the present case do not warrant issuance of such a writ.

37. As to the submission of the petitioners that the respondent no. 2 and 3 have indulged into an illegal arrangement and are trying to victimize the petitioners, the same has not been substantiated by any documentary evidence and as such this Court is not inclined accept the submission due to lack of documentary evidence. Moreover, the petitioners were well aware of the fact that their appointment was on a contractual basis to begin with and there was no stipulation in their contract that guaranteed extension of the said contract. The petitioners were appointed on a probationary basis of 3 months as the same is evident from the appointment letter issued to the petitioners. It appears as though by way of the instant petition the petitioners are seeking regularization of their contractual post which is impermissible in law.

38. In view of the given facts and scenarios, this Court finds no merit in the present petition.

39. Accordingly, the instant petition, being devoid of any merits, stands dismissed along with pending applications, if any.

40. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

DECEMBER 18, 2023

gs/ds/db

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed
By: DAMINI YADAV
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