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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 6th January, 2022

+ **W.P.(C) 705/2020 & CM APPL. 30064/2021**
SH. HANSRAJ AND ORS. Petitioner
Through: Mr. F.K. Jha, Advocate.
versus
EMPLOYEES STATE INSURANCE CORPORATION AND
ORS. Respondent
Through: Mr. Sanjay Jain, ASG with Mr.
Manish Kumar Saran, Mr. Abhik,
Advocates along with Mr. Mukhmeet
Singh Bhatia, DG (ESIC) & Ms.
Deepika Govil, Medical
Superintendent, ESIC Model
Hospital, Basaidarapur.
Mr. Nishant Kumar, Advocate for R-
4.
Mr. Shashwat Singh Gaur, Advocate
for R-5 (M-9810300323)

(11) AND
+ **W.P.(C) 5691/2021 & CM APPLs. 17784/2021, 30065/2021**

PRAVEEN KUMAR AND ORS. Petitioners
Through: Mr. F.K. Jha, Advocate.
versus
EMPLOYEES STATE INSURANCE CORPORATION AND
ORS. Respondents
Through: Mr. Sanjay Jain, ASG with Mr.
Manish Kumar Saran, Mr. Abhik,
Advocates along with Mr. Mukhmeet
Singh Bhatia, DG (ESIC) & Ms.
Deepika Govil, Medical
Superintendent, ESIC Model
Hospital, Basaidarapur.
Mr. Nishant Kumar, Advocate for R-4
(M-8287288224)

Mr. Shashwat Singh Gaur, Advocate
for R-5.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The present petitions have been filed by Petitioners/Workmen (hereinafter “Workmen”) who were contractually employed with the Employees’ State Insurance Corporation Hospital, Basai Darapur, Delhi. The grievance of the Workmen is that their services were illegally terminated by the Respondent Authorities, under the pretext of changing the contractor. Accordingly, the Workmen have approached this Court praying for reinstatement in service as also for a direction to the Respondent Authorities to give preference to the them over fresh contractual employees.
3. Notice was issued in this matter on 22nd January, 2020. On 27th November, 2020, the Court was informed that a new Contractor, namely M/s. WAPCOS Limited, had been appointed by the Respondent Authorities. The new Contractor was, therefore, sought to be impleaded in the matter. Further, the previous Contractor, namely, M/s. UP Rajkiya Nirman Nigam Ltd. and the sub-contractor namely M/s. HST Enterprises were deleted from the array of parties.
4. On 20th May, 2021, the Respondent Nos. 1 and 2 - ESIC, had taken the position that they have no objection if the Workmen are accommodated by the new Contractor, M/s. WAPCOS Ltd., subject to them fulfilling the eligibility criteria. On 25th May, 2021, Id. Counsel for M/s. WAPCOS Ltd., submitted that the new Contractor is only a consultancy agency, and M/s.WAPCOS had sub-contracted the employment of contractual

employees to one, M/s. Shri Krishna & Co., w.e.f. 15th May, 2021.

5. On 7th October, 2021, this Court was informed that a Committee has been constituted for suggesting a draft policy in respect of the contractual employees, and a report by the said Committee was stated to be placed before the Standing Committee of the ESIC. The said Report was also directed to be placed before this Court, in a sealed cover. The ESIC was further directed to place on record the contracts entered into by it with the previous contractors, sub-contractors as also the new contractors. Last and final opportunity was also granted to the ESIC to decide the representation made on behalf of the Workmen, within four weeks therefrom. However, from the events that unfolded thereafter, it appears that no decision was taken by the said Committee.

6. Insofar as the list of old and new contractual workers who were being employed by the ESIC are concerned, the Court had repeatedly directed the ESIC to place on record an affidavit. On the last date, in view of the fact that the explanation of the ESIC for non-filing of the affidavit had been found to be unacceptable, the following directions were issued:

“11. Moreover, in the present case, the Court has noticed that the contractors are being changed from time to time, Further, old employees, who have worked with the ESIC for 10 to 15 years, have been discontinued without any reason. In this respect, the stand of the ESIC is that the ESIC tries to accommodate the old employees as much as possible. On the other hand, Ld. Counsel for the Petitioners/Workmen, submits that in the ESI Hospital, Okhla as also ESI Hospital, Jhilmil, new contractual employees have been taken into service, after the filing of the present petitions.

12. Under these circumstances, it is necessary to

ascertain as to what is ESIC's policy in respect of contractual employees. The list of employees in terms of the last order also is directed to be placed on record. All the previous orders of this Court shall be complied with by the next date. Let an affidavit be placed on record giving the information sought by the previous orders."

13. Considering that there has been repeated non-compliance of the previous orders passed by this Court, as also the fact that a clear policy in respect of the contractual employees has not been placed on record, Mr. Mukhmeet S. Bhatia (IAS), Director General, ESIC and Dr. Deepak Kumar Sharma, Medical Commissioner, ESIC to join the virtual proceedings on the next date.

7. Today, Mr. Sanjay Jain, Id. ASG appears on behalf of the ESIC. Mr. Mukhmeet Singh Bhatia, Director General, ESIC has also joined the virtual proceedings, in terms of the last order.

8. On the basis of the submissions made before this Court, it is learnt that the ESIC intends to frame a proper policy in respect of contractual workers and to put in place a mechanism to exercise supervision over contractors who are supplying the manpower for the various ESIC establishments. Time is sought for constituting a committee to draft a proper policy which would have applicability on a pan-India basis for all ESIC establishments, in respect of engagement of contractual workers, their working conditions, preferences, if any, to be given to long serving contractual workers even when new contractors are engaged, safeguards to be employed in the agreements to protect the interest of the contractual workmen, as also the terms and conditions of the contracts to be entered into with contractors.

9. Accordingly, the following directions are issued:

- i. ESIC shall constitute a committee in order to frame a broad policy for all its establishments in respect of contractual workers. Let the details of the said Committee be placed on record by the next date of hearing.
- ii. The said Committee shall consist of at least two experts, two representatives from the Workmen and two representatives from the Contractors, as also other officials, as the ESIC deems appropriate, in order to frame the proposed policy.
- iii. The proposed policy would take into account all the requisite measures that need to be employed to ensure that the interests of the contractual workers is not adversely affected in any manner.
- iv. The said committee shall also look at the terms and conditions that should be incorporated in agreements which would be entered into by the ESIC with the contractors.
- v. The issue relating to engagement of PSUs, which in-turn, engage third parties as sub-contractors and whether the same ought to be permitted, would also be considered by the said committee.

10. Insofar as the present Petitioners/Workmen are concerned, since the earlier contractor's term is stated to be expiring in March, 2022, the ESIC shall consider accommodating the Petitioners/Workmen who have been

serving the ESIC for the last 10 to 15 years, in case a new contractor is being engaged or if the earlier contractor is being granted an extension. The same shall, however, be without prejudice to the remedies that the Petitioners/Workmen may avail of, in accordance with the law, in respect of their employment and their alleged termination by the contractor.

11. List on 14th February, 2022.

12. The officials of ESIC are exempted from appearance on the next date.

PRATHIBA M. SINGH
JUDGE

JANUARY 6, 2022

Rahul/AD