



2024:DHC:6198



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of Order: 12.08.2024**+ **W.P.(C) 10967/2024****ARUN KUMAR AND ANR**

.....Petitioners

Through: Mr. Rajiv Agarwal, Ms. Meghna De,
Ms. L. Gangmei and Ms. Sayanidey,
Advocates

versus

GOVT. OF NCT OF DELHI AND ORS.

.....Respondents

Through: Mrs. Mrs. Avnish Ahlawat, Standing
Counsel for GNCTD (Services) with
Mr. Nitesh Kumar Singh, Ms.
Laavanya Kaushik and Mr. Mohnish
Sehrawat, Advocates**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (ORAL)****CM APPL. 45245/2024** [*Exemption from filing original/certified/typed/
translated documents*]

1. Allowed, subject to the Petitioners filing original/certified/typed/
translated copies of the documents within a period of four weeks.
2. The Application stands disposed of.

W.P.(C) 10967/2024 & CM APPL. 45244/2024 [*Interim relief*]

3. The prayers in the present Petition reads as follows:

"a. Issue an appropriate writ, order or direction, thereby directing the Respondents no. 1, 2 and 3 to comply with the Notice ALC-111/0L/8(121)/2024 dated 15.07.2024 issued by the Conciliation Officer/Respondent No. 4 regarding not changing service condition during the pendency of the dispute in violation of Section 33 of the Industrial Disputes Act; and/or

b. Issue an appropriate writ, order or direction, thereby directing the



Respondent No. 1, 2 and 3 to maintain status quo in the service condition of the Petitioners and not to terminate their services during the pendency of the industrial dispute and not to create third party rights in the posts on which the petitioners working.”

4. Issue Notice.

4.1 Learned Counsel for the Respondents accepts notice.

5. With the consent of parties, this Petition is taken up for hearing and final disposal today.

6. At the outset, learned Counsel appearing on behalf of the Petitioners confines that the prayer in the present Petition to a direction to the Respondents to continue with the services of the Petitioners, who have been working with the Respondent No. 1, until the adjudication of the Industrial Dispute as raised by the Petitioners before the Assistant Labour Commissioner.

7. Learned Counsel for the Petitioners submits that pursuant to a complaint made by the Petitioners, the Petitioners raised an industrial dispute by filing a claim before the Conciliation Officer for a declaration that the contract between Respondent No.1 and Respondent No.3 is a sham contract and for regularisation of their services. The said dispute is pending adjudication and at present the matter is seized before the Industrial Tribunal in terms of notice dated 15.07.2024.

8. It is further contended that the Petitioners apprehend that the Respondent No. 1 may terminate their services, despite the fact that a dispute is pending adjudication. He seeks to rely upon Section 33 of the Industrial Disputes Act, 1947 [hereinafter referred as “the Act”], to submit that the service condition(s) of the workmen cannot be disturbed during the pendency of an industrial dispute.



9. It is not in dispute that the Petitioners have already approached the Assistant Labour Commissioner for the adjudication of dispute, which is pending adjudication. The Statement of Claim dated 06.07.2024 filed before Deputy Labour Commissioner (Central), 4th floor, Jeevan Deep Building, Parliament Street, New Delhi by the Petitioners is filed along with the Petition.

10. Section 33(1)(a) of the Act specifically provides that no employer shall alter the conditions of service applicable to the workmen to the prejudice of the workmen during the pendency of proceedings before the Conciliation Officer or a Board or any proceeding before an Arbitrator or a Labour Court or Tribunal. Section 33 (1) (a) reads as follows:

“33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings —

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before 2 [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall —

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding.....”

11. A review of this provision shows that if a matter is pending before the Industrial Tribunal, the conditions of the services of the workman who is part of such proceedings, shall remain unchanged during the pendency of such industrial dispute.

12. In these circumstances, it is directed that the services of the Petitioners shall not be disturbed during the pendency of the before the Labour Commissioner/Labour Court, in terms of the Statement of Claim/Application dated 06.07.2024 filed under the Act.

13. The Petition and pending Application stands disposed of in the



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aforegoing terms.

14. It is, however, made clear that this Court has not examined the matter on merits. All the rights and contentions of both the parties are left open in this regard.

TARA VITASTA GANJU, J

AUGUST 12, 2024/pa

Click here to check corrigendum, if any