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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CONT.CAS(C) 368/2023& CM APPL. 21025/2024**

INDIAN NATIONAL MIGRANT WORKERS UNION

.....Petitioner

Through: Mr. Biswambar Nayak, Advocate.

versus

SUNITA CHOUDHARY, MEDICAL SUPERINTENDENT & ORS.

.....Respondent

Through: Mr. Manu Prabhakar, Advocates for
R-1 and 2.
Mr. Kumar Bhaskar, Advocate for R-
3(through VC).

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

ORDER
15.01.2025

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1. The present contempt petition has been filed by Indian National Migrant Workers Union.
2. The above Union is aggrieved by action of the respondents whereby services of one workman i.e. Saurav Kumar has been terminated vide letter dated 27.02.2023, without complying Section 33 of Industrial Disputes Act, 1947 and contrary to the specific directions passed by this Court.
3. The above Union had, earlier, filed a writ petition i.e. W.P.(C) No. 15225/2022 and when the above said writ petition was taken up by the Coordinate Bench of this Court on 05.12.2022, while issuing notice, the



following relief was granted to 31 workmen who had been, allegedly, terminated: -

“2. Till the next date, the respondents will ensure that provisions of Section 33 of the Industrial Disputes act, 1947 are scrupulously followed.”

4. During course of arguments, it also came to fore that the above said writ petition has already been disposed of by this Court on 08.04.2024, observing as under:-

“4. Heard learned counsel for the parties and perused the record.

5. After perusal of the record, contentions made in the petition as well as the innocuous prayer made on behalf of the petitioner and no objection from the respondents, this Court is inclined to allow the prayer of the petitioner.

6. The petitioner is at liberty to file an appropriate application seeking interim relief alongwith certified copy of this order before the CGIT within two weeks from today. After receiving the said application, the CGIT is directed to decide the said application without giving unnecessary adjournments to either of the party, and thereafter, pass a speaking order in accordance with law, expeditiously, preferably within six weeks.

7. It is made clear that till the disposal of the application to be filed by the petitioner seeking interim relief in I.D. No.292/2023 pending before the CGIT, the interim order granted by the Predecessor Bench of this Court vide order dated 5th December, 2022 shall continue.

8. With the aforesaid directions, the petition alongwith pending application stands disposed of.”

5. When asked, Mr. Nayak, learned counsel for petitioner Union, submitted that an application has already been moved before the learned CGIT which is yet to be decided. He, however, submits that in view of the specific directions contained in order dated 05.12.2022, respondents were under obligation to comply with the order and could not have terminated the services of one such employee i.e. Mr. Saurav Kumar.



6. Mr. Saurav Kumar was employed as *Fire Technician on contractual basis* by M/s Rudra Enterprises for ESIC Hospital situated at Okhla.
7. M/s Rudra Enterprises is a sub-contractor of Uttar Pradesh Rajkiya Nirman Nigam Ltd. (UPRNNL).
8. As per the counter affidavit filed by M/s Rudra Enterprises, Mr. Saurav Kumar was suspended but it was under exceptional circumstances. It is submitted that they had received one e-mail dated 27.02.2023 from ESIC Hospital, Okhla whereby UPRNNL was directed not to send Mr. Saurav Kumar for duty during the pendency of inquiry as there were serious allegations of *sexual harassment* against him which had been made by one female contractual housekeeping staff of same hospital. It was also requested that he be rather transferred to some other location.
9. In view of the above said communication, M/s Rudra Enterprises had to issue a letter to Mr. Saurav Kumar terminating his services as they did not have any other ongoing work other than that of supplying man-power to ESIC Hospital, Okhla and, therefore, they could not have deputed said person to any work.
10. During course of arguments, learned counsel for respondent No.3 submitted that the expression 'termination' would not be appropriate as by virtue of communication which was sent to Mr. Saurav Kumar, he was merely 'suspended' with immediate effect and was also directed to cooperate in the inquiry proceedings for the above said misconduct of sexual harassment.



11. Fact remains, there is another dimension of the matter.

12. M/s Rudra Enterprises is no longer in contractual relationship with UPRNNL or ESI Hospital w.e.f. 30.06.2024 and they have already discharged its obligation towards UPRNNL and, therefore, even otherwise, as on date, when the above said workman stood exonerated in the inquiry proceedings conducted by the Internal Complaints Committee (ICC), it is no longer possible for them to do anything in the matter since the above said contract has already come to an end and they are not sub-contractor.

13. Mr. Nayak, learned counsel for petitioner submits that the above said complaint of *sexual harassment* was a bogus one which, eventually, came to an end in terms of the proceedings conducted by ICC on 26.05.2023 as the concerned complainant also did not want any action. The Committee i.e. ICC also observed that the appropriate steps should be taken by the employers of both the employees i.e. complainant and said Mr. Saurav Kumar so that the dignity of the workplace was maintained and there was no hindrance to the hospital work.

14. The above said complainant was contractual staff-Housekeeping of a different entity i.e. M/s S N Enterprises.

15. During course of arguments, it was informed that the name of new contractor is M/s S K Construction Co.

16. Mr. Nayak, learned counsel for petitioner submits at the Bar that the other 30 workmen continue to be on the roll of the above said sub-contractor in view of directions of this Court. He, therefore, submits that in view of the



specific directions given by this Court as extracted above, and since no decision has yet been taken by learned CGIT, he is also to be treated at par, particularly, in view of the exoneration by ICC.

17. It has also been apprised that the Union has submitted before learned CGIT that though the contractor had changed, the new contractor had taken all the other 30 workmen in employment.

18. Learned counsel for respondent No.1-ESIC Hospital, Okhla also does not dispute the above said fact of retention of 30 other similarly situated workmen by new contractor.

19. Mr. Prabhakar, learned counsel for respondent No.1-ESIC Hospital further submits that, while reserving all their rights and contentions which they have and which they would agitate before the learned CGIT, in view of the above said peculiar factual matrix and the fact that the contractual staff Mr. Saurav Kumar has been exonerated by ICC, they would direct the concerned sub-contractor to take him back within a period of 10 days from today as has been done with respect to the other similarly situated 30 contractual employee.

20. On the basis of the above said assurance given by the leaned counsel for respondent No.1, Mr. Nayak, at the moment, does not press the present petition. He, however, reserves his right to take appropriate step for denying him the financial benefits which would have accrued to him, had he been retained in service, the moment he was exonerated by ICC.

21. The petition stands disposed of as not pressed.



22. Liberty as prayed is granted.

23. It is, however, clarified that merely because there is a protection order by virtue of which Mr. Saurav Kumar is being taken back by the above said sub-contractor would not mean that any further misconduct committed by him would not invite any consequence. The concerned sub-contractor is always at liberty to take whatever action, albeit as permissible under law, for any misconduct of any such workman.

MANOJ JAIN, J

JANUARY 15, 2025/sw