

Delhi Prashasan Vikas Vibhag ... vs Chief Electoral Officer & Ors on 26 July, 2021

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 6055/2021 & CM APPL. 19172/2021
DELHI PRASHASAN VIKAS VIBHAG INDUSTRIAL
EMPLOYEES UNION Petitioner
Through: Ms. Meghna De, Advocate.
versus

CHIEF ELECTORAL OFFICER & ORS. Respondents
Through: Mr. Archit Krishna, Advocate for Mr.
Jawahar Raja, ASC for R-1 and 2.
Mr. Neeraj, Mr. Vedansh Anand, Mr.
Himanshu Pathak, Mr. Ankit Raj and
Mr. Rudra Paliwal, Advocates for R-3
& 4.

10 WITH
+ W.P.(C) 5986/2021 & CM APPL. 18923/2021
DELHI PRASHASAN VIKAS VIBHAG INDUSTRIAL
EMPLOYEES UNION Petitioner
Through: Ms. Meghna De, Advocate.
versus

CHIEF ELECTORAL OFFICER & ORS. Respondents
Through: Mr. Rishikesh Kumar, ASC with Mr.
Premasagar Pal, Advocate for R-1 and
2 (M: 9643006230).
Mr. Tanveer Ahmed Ansari, Sr. Panel
Counsel for R-4 (M: 9717736267).

11 AND
+ W.P.(C) 6019/2021 & CM APPL. 19041/2021
DELHI PRASHASAN VIKAS VIBHAG INDUSTRIAL
EMPLOYEES UNION Petitioner
Through: Ms. Meghna De, Advocate.
versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondent

Through: Mr. Naushad Ahmed Khan,
Additional Standing Counsel with Mr
Zahid and Ms. Manisha Chauhan,

W.P.(C) 6055/2021, 5986/2021 & 6019/2021

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Advocates for GNCTD.
Mr. Sanjeev Sabharwal, Sr. Panel
Counsel with Mr. Hem Kumar,
Advocate for R-3.

CORAM:
JUSTICE PRATHIBA M. SINGH
ORDER

% 26.07.2021

1. This hearing has been done through video conferencing.
2. The present three writ petitions have been filed by a union whose members are Data Entry Operators (hereinafter "DEOs") working with Respondent No.1. The said DEOs were engaged on a contractual basis by Intelligent Communication Systems India Limited (hereinafter, "ICSIL") and National Institute of Electronics and Information Technology (hereinafter, "NIELIT"), who are Respondents, in these writ petitions.
3. The grievance of the Petitioners in these petitions is that they were employed and have rendered their services for varying periods of time, within the range of 2 to 14 years. Earlier this year, there was an apprehension of the said DEOs that their services were likely to be terminated owing to the end of the contract with the contractors and hence they filed claims under Section 33 of the Industrial Disputes Act, 1947, seeking regularisation, as also a relief that service conditions ought not to be changed during the pendency of the proceedings. It is not in dispute that the Regional Labour Commissioner is currently conducting conciliation proceedings.
4. Insofar as pleadings are concerned, in W.P.(C) 5986/2021 counter affidavit has been filed by the Respondent No.1. However, the pleadings are yet to be completed in all these three matters. Ld. Counsel Mr. Khan submits that the same is, in principle, adopted in the other two matters.
5. The case of the DEOs is that owing to the long tenure of services which they have provided in Respondent No.1's office, they are entitled to regularisation and that their conditions of service ought not to be changed during the pendency of the proceedings before the Id. Labour Commissioner and the Labour Court, if the dispute is referred.

6. On the other hand, on behalf of the GNCTD, it is submitted by Mr. Rishikesh Kumar and Mr. Khan Id. counsels, that due to the policy and various directions issued by the Government of India as captured in Rule 149 of the General Finance Rules, Respondent No. 1 is now obliged to obtain all goods and services through the GeM portal. In view thereof, Respondent No. 1 is to take steps even qua recruitment of Data Entry Operators. It is further submitted that once the contract with NIELIT and ICSIL comes to an end, the Respondent No. 1 cannot be prevented from procuring Data Entry Operators through the GeM portal, which may also be financially advantageous for the Respondent No.1, as there would be competitive bidding amongst various service providers.

7. Ms. Meghna De, Id. counsel for the Petitioners submits that since the Petitioners have already filed their claims before the Id. Labour Court, the members whose names have been provided in the three writ petitions ought not be disturbed during the pendency of the proceedings. She further submits that under Section 33 of the Industrial Dispute Act, protection is extended to Workmen who are covered by the said provision.

8. It is noticed that from time to time, various disputes have been brought before this Court in respect of employees engaged through contractors. The said employees usually have various grievances against the contractors, including non-payment of complete salaries/minimum wages etc., as also the contractors trying to use their position qua the employees.

9. In the present case, however, the question that remains is whether the Petitioner Union's members are entitled to regularisation or any other relief, for which the Petitioners have already approached the appropriate forum.

10. This Court has, vide orders dated 21st June, 2021 and 30 June 2021, already granted protection to the Petitioners-DEOs by granting status quo in respect of their service conditions. Since the matter is now pending before the appropriate Labour Commissioner under the Industrial Disputes Act, 1947, this Court is of the opinion that no useful purpose would be served keeping these petitions pending before this Court.

11. Accordingly, considering the nature of the matter, the Labour Commissioner shall take steps to expeditiously dispose of the conciliation proceedings pending. If the conciliation proceedings do not result in the amicable closure of the dispute, the claims of the Petitioners shall be proceeded with in accordance with law. Needless to add, if the claims are referred to the concerned Labour Court, the same shall be adjudicated on or before 31st December, 2021. This would, however, not create any equities in favour of the two contractors namely, NIELIT and ICSIL. The Respondent No. 1 would be free to proceed, in accordance with law, to obtain services for DEOs from the GeM portal.

12. Further, insofar as Petitioners whose names are attached with the present order as ANNEXURE A, B and C are concerned, since they have already filed the claims before the Labour Court, their service conditions would not be changed without compliance of Section 33 of the Act. This order shall be subject to the outcome of the proceedings before the Labour Commissioner or the Labour Court, if so referred.

13. It is made clear that this Court has not examined the merits and contentions of either of the parties.

14. With these observations, all these petitions with all pending applications are disposed of. No further orders are called for. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

PRATHIBA M. SINGH, J.

JULY 26, 2021 MR/AK W.P.(C) 6055/2021 ANNEXURE A DATE: 26th July, 2021 W.P.(C) 5986/2021 Annexure B Date: 26th July, 2021 W.P.(C) 6019/2021 ANNEXURE C Date: 26th July, 2021