

IN THE HON'BLE HIGH COURT OF DELHI AT NEW DELHI

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 4834 OF 2020

Under Article 226 of the Constitution of India

IN THE MATTER OF:

All India General Kamgar Union ... Petitioner

VERSUS

Union of India & Ors. ... Respondents

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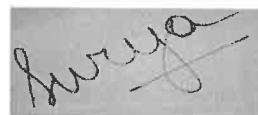
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New Delhi

29.07.2020

Filed By:

All India General Kamgar Union



Through



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Notice of Motion

Sir,

Kindly find the enclosed copy of the Writ Petition being filed in the Hon'ble High Court of Delhi that is likely to be listed before the Hon'ble Court on 31.07.2020. This is for your information and record. Please take notice accordingly.

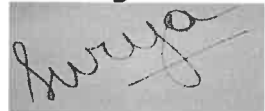
Thanking you

New Delhi

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Urgent Application

To,

The Registrar,
Delhi High Court
New Delhi

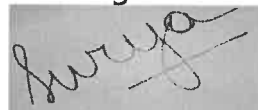
Sir,

Kindly treat the accompanying writ petition on an urgent basis as per the High Court rules. The ground of urgency is as per the prayer clause of the Writ Petition. Therefore, an urgent hearing has been prayed for. Hence the urgency

Filed by:

New Delhi
29.07.2020

All India General Kamgar Union



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IN THE MATTER OF:

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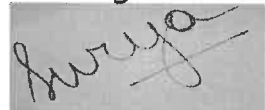
Union of India & Ors. ... Respondents

Court Fees

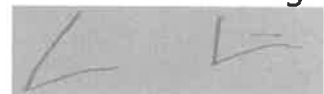
New Delhi

29.07.2020

All India General Kamgar Union



Through



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Synopsis

1. This Writ Petition is filed in extreme urgency under Article 226 of the Constitution of India for a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the Respondents to not terminate the services of 35 members of the petitioner union, who are to be illegally terminated from their services by the respondent hospital Lady Hardinge Medical College (LHMC) (Respondent No.2 herein) w.e.f 31.07.2020.
2. The respondent no. 2 is trying to hire fresh contract workers and replace them with the existing ones. There are about 300 MTS engaged in respondent no. 2, the hospital, but only few workers are being terminated and replaced by fresh contract workers. Such an act of the respondent hospital is not only illegal but harsh, considering the prevailing Corona crisis. It is not the case of the respondent hospital that they do not require workers as MTS. In fact, MTS are the backbone of the hospital in the sense that they not only perform their normal duties as office assistants but are also performing jobs of skilled staff. Petitioner workmen were also asked to pay money in case they wanted to continue in the services. The action of the respondent no.2 in collusion with respondent no. 3 is an unfair labour practice and aimed at victimising workers for their affiliation to the petitioner union.

3. The petitioner workmen have been working as Multi-Tasking Staffs (MTS) since 2015 in Lady Hardinge Medical College (LHMC). They earlier in 2015 were issued identity cards of some other contractor- G.A Digital Web, but later in 2016, they were issued identity cards of another contractor Jai Balaji Security Services (Respondent No.3 herein). Since then they are working continuously without any break in their service with the respondents.
4. In March, 2020 few workers were threatened for termination and their services were temporarily suspended for a few days, however later they joined again. Again in July, 2020, petitioner workmen are being threatened for termination w.e.f 31.07.2020.
5. Hence this Writ Petition.

List of Dates and Events

Date	Particulars
2015	The petitioner workmen Joined as Multi-Tasking Staffs (MTS) in LHMC through so called contractor G.A Digital Web.
Apr 2016	The petitioner workmen were later issued identity card of a different contractor "Jai Balaji Security Services".
Aug 2019	The petitioner workmen diligently worked under the direct supervision of staff of LHMC. One Sanjay Gujar,

	<p>who is the permanent employee of the LHMC, used to take attendance of the petitioners. A few Petitioners worked in only one department throughout their service. However, few petitioners were transferred from one department to another. Such transfer order is directly made by the respondent no. 2 hospitals permanent employees. Such a transfer was made by the staff of the Labour Cell.</p>
March 2020	<p>During the Covid crisis, petitioner workmen and few other employees, about 70 were threatened for termination from their services.</p>
April 2020	<p>Meanwhile, services of a few employees were actually suspended, however their services got resumed in the month of April.</p>
24.07.2020	<p>The petitioner workmen were told by Sanjay Gujar that their services will be terminated w.e.f 01.08.2020.</p> <p>Also, the petitioner workmen were asked to pay bribes for continuing in their services with the new contract.</p>
24.07.2020	<p>The Petitioner Union filed a representation as a complaint letter dated 24.7.2020 to The Secretary, Ministry of Health and Family Welfare regarding such malpractices and requested for fair investigation in the matter. However no reply was received by the petitioner union.</p>

26.07.2020	The Petitioner Union sent a letter dated 26.7.2020 to the Deputy Chief Labour Commissioner, requesting for intervening in the matter and to protect the services of the petitioners. This letter was also copied to the Office of The Director, Lady Hardy Medical College and associated hospitals, New Delhi.
26.07.2020	The Petitioner Union also sent a Demand Notice dated 26.7.2002 with respect to workers employed by Lady Hardinge Medical College and Associated Hospitals through the Jai Balaji Security Services, 102, Shiv Lok House, Commercial Complex, Karampura, Delhi – 110015.
29.07.2020	Hence this Writ Petition

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CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. _____ OF 2020
Under Article 226 of the Constitution of India

IN THE MATTER OF:

All India General Kamgar Union ... Petitioner

VERSUS

Union of India & Ors. ... Respondents

Writ Petition under Article 226 of the Constitution of India
seeking Writ of mandamus to Respondents to not terminate the
services of the members of the Petitioner Union

To

The Hon'ble Chief Justice and her Companion Judges
Hon'ble Delhi High Court
New Delhi

The Humble Petition of the
Petitioner above named

MOST RESPECTFULLY SHOWETH:

1. This Writ Petition is filed in extreme urgency under Article 226 of the Constitution of India for a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus

directing the Respondents to not terminate the services of 35 members of the petitioner union, who are to be illegally terminated from their services by the respondent hospital Lady Hardinge Medical College (LHMC) (Respondent No.2 herein) w.e.f 31.07.2020.

2. The Petitioner Union (All India General Kamgar Union) is a registered union and actively works for the rights of the workers in different sectors, including health. It is an affiliate union of All India Central Council of Trade Unions, a registered central union. Petitioner Union has wide membership among workers in the respondent Hospital. This Petition is being filed on behalf of 35 workers (list is in the Authority Letter) employed as MTS in the Respondent Hospital.

BRIEF FACTS:

3. The respondent no. 2 is trying to hire fresh contract workers and replace them with the existing ones. There are about 300 MTS engaged in respondent no. 2, the hospital, but only few workers are being terminated and replaced by fresh contract workers. Such an act of the respondent hospital is not only illegal but harsh, considering the prevailing Corona crisis. It is not the case of the respondent hospital that they do not require workers as MTS. In fact, MTS are the backbone of the hospital in the sense that they not only perform their normal duties as office assistants but are

also performing jobs of skilled staff. Petitioner workmen were also asked to pay money in case they wanted to continue in the services. The action of the respondent no.2 in collusion with respondent no. 3 is an unfair labour practice and aimed at victimising workers for their affiliation to the petitioner union.

4. The petitioner workmen have been working as Multi-Tasking Staffs (MTS) since 2015 in Lady Hardinge Medical College (LHMC). They were earlier in 2015 issued identity cards of some other contractor- G.A Digital Web, but later in 2016, they were issued identity cards of other contractor Jai Balaji Security Services (Respondent No.3 herein). Since then they are working continuously without any break in their service with the respondents. (A true copy of the identity card issued by contractor "Jai Balaji Security Services" is annexed as **Annexure P-1 at page 25.**

5. While reporting for the duty every day, petitioners mark their attendance at the Labour Cell. In this cell, only permanent employees of the respondent no.2 are present. Petitioner workmen work under the direct supervision and control of the respondent no.2. However, their salary is paid by respondent no. 3. The petitioner workmen were paid salary regularly through the contractor. This is done to camouflage the direct employer-employee relationship between the so called contract workers and the respondent no.2, the hospital.

6. In every department, petitioners are directly supervised by sisters (Nurses). Though petitioners were appointed as MTS but were made to work in different capacities. Petitioners were engaged in dusting, cleaning of sinks, collecting store, changing bed sheets, cleaning of instruments, carrying files, carrying dead bodies, transferring patients from one ward to another and carrying files from one department to another. In addition to these works, they are also asked to perform duties of skilled workers, who are the permanent employees of respondent no. 2- Dressing, stitching, doing x-ray, ECG, changing oxygen cylinders of patients, applying and removing catheters, casting and removing plasters etc.
7. A few Petitioners worked in only one department throughout their service. However, few petitioners were transferred from one department to another. Such transfer order is directly made by the respondent no. 2 hospitals permanent employees. (A true copy of the "A true copy of the Office order dated 23.8.2019 vide No:F.Admn.III/Transfer/2019/7180 issued by Lady Hardinge Medical College & SMT S.K Hospital, New Delhi for one of the petitioners is annexed as **Annexure P-2 at page 26 to 27.**
8. In March, 2020 few workers were threatened for termination and their services were temporarily suspended for a few days, however later they were taken back on duty. But again in July 2020,

respondent no. 2, the hospital started threatening the petitioner workmen and said that their services will be discontinued w.e.f 31.07.2020. And if they want to continue they must pay money to the new contractor, who is being hired. The Petitioner union apprehends that the respondent no. 2 has entered into an illegal arrangement with the new so called contractor and the act of termination of the present employees is an attempt to extort money from the poor staff, who are working on a meagre salary. Petitioner union also believes that the Respondent no. 2 in collusion with respondent no. 3 has violated the statutory norms relating to payment of wages, Provident Fund, Gratuity etc. of the so called contract workers engaged by respondent no. 3 through respondent no.2. The Petitioner Union, made a representation as a complaint to the Secretary, Ministry of Health and Family Welfare Complaint under the Public Interest Disclosure against officers in Directorate General of Health Services, Government of India and Lady Hardinge Medical College and associated hospitals regarding unholy nexus with Jai Balaji Security Services, 102, Shiv Lok House, Commercial Complex , Karampura, Delhi – 110015 for extortion and not giving even statutory Minimum wages, Employees Provident Fund, Employees State Insurance, Bonus, Establishment of Gratuity fund and other benefits in lieu of their unjust enrichment on the cost of statutory rights of the poor workmen. A true copy of the "Complaint letter under The Public Interest Disclosure dated 24.7.2020 vide No. AICCTU/DEL/MOHFW -

LHMC/MTS/2020.” sent to the The Secretary, Ministry of Health and Family Welfare is annexed as **Annexure P-3 at page 28 to 30.**

9. Petitioner union also raised the issue of termination of workers by the respondent no.2 and respondent no.3 before the Deputy Chief Labour Commissioner. The petitioner union sent a letter dated 26.7.2020 to the Deputy Chief Labour Commissioner with respect to Not disengage the services of contract workmen, working as Multi Tasking Staffs(MTS) through Jai Balaji Security Services,102, Shiv Lok House, Commercial Complex, Karampura, Delhi – 110015 in Lady Hardinge Medical College , by another set of contract workers on change of contractor ,as per the ratio laid down by Hon’ble Apex court in State of Haryana and ors. Etc Vs. Piara Singh and others. Etc. (1992) , 4 SCC 118 , Mohd. Abdul Kadir and Anr. Vs. Director General of police, Assam and ors. (2009) 6 SCC 611 and of Hon’ble Delhi High Court judgement dated 20.01.2015 in WPC No- 3512/2014 titled Abhinav Chaudhry & others Vs. Delhi Technological University & others .However, the petitioner union received no reply from the authorities in this regard. A true copy of the “Letter to not disengage the services of contract workmen, working as Multi Tasking Staffs (MTS) in LHMC dated 26.7.2020 vide No. AICCTU/DEL/DyCLC -LHMC/MTS/2020” sent to the Deputy Chief Labour Commissioner is annexed as **Annexure P-4 at page 31 to 33.**

10. On 26.07.2020, Petitioner union also sent a demand notice to the respondent no.2 and respondent no.3, seeking payment of wages according to statutory provisions, compliance of- Employment Provident Fund Act, Employment State Insurance Corporation Act, Contract Labour (Regulation and Abolition), Act 1970, Inter State Migrant Workers (Regulation of Employment and Conditions of Services) Act 1979, payment of bonus, parity in wages with permanent workers employed by respondent no.2, issuance of identity cards by respondent no.2, granting of statutory leaves, payment of- conveyance allowance, House rent allowance and other statutory allowances and regularisation in services of the so called contract workers employed by respondent no.2. A true copy of the "Demand Notice dated 26.7.2002 with respect to workers employed by Lady Hardinge Medical College and Associated Hospitals through the Jai Balaji Security Services , 102, Shiv Lok House, Commercial Complex , Karampura, Delhi – 110015" is annexed as **Annexure P-5 at page 34 to 46.**
11. That the list of workers who are being terminated alongwith the authorisation is annexed hereto as **Annexure P-6 at page 47 to 49.**

GROUNDNS

- A. Because the decision of the respondent hospital to terminate the services of few so called contract workers and to retain others is an unfair labour practice.
- B. Because the petitioner workmen have diligently performed their duties for the last 5 years. There was no complaint against any of the petitioner workmen regarding their work. However, respondent no. 2 with the sole intention of victimising the petitioner workmen has decided to terminate the services of a few selected staff that are actively associated with the petitioner Union. This is an Unfair Labour Practice. Respondent No. 2 in collusion with respondent no. 3 have identified the members of the petitioner union and have decided to terminate their services. It is pertinent to note that the respondent no. 2 has not decided to terminate the services of all the employees who were appointed through so called contractor (respondent no. 3). The petitioner workmen have worked for more than 5 years and possess necessary skills and experience to perform their job. There is no rationale behind terminating the services of the petitioner workmen and hiring fresh contract workers when the experienced workers are already available.
- C. Because petitioner workmen have worked for more than 5 years and are equipped to perform their duties, considering their experience. As a matter of fact they have not limited their services

to only the duties of an office assistant but have been engaged in dusting, cleaning of sinks, collecting store, changing bed sheets, cleaning of instruments, carrying files, carrying dead bodies, transferring patients from one ward to another and carrying files from one department to another. In addition to these works, they also perform duties of skilled workers, who are the permanent employees of respondent no. 2- Dressing, stitching, doing x-ray, ECG, changing oxygen cylinders of patients, applying and removing catheters, casting and removing plasters etc.

- D. Because amidst the outbreak of the covid pandemic, the petitioner workmen did not stop performing their services despite the constant prevailing fear of the virus. The petitioner workmen meticulously performed their services and continued working even during the lockdown, however neither they were treated as Corona Warriors nor was any benefit given to them.
- E. Because the petitioner workmen are being replaced by a new set of contract workers, who are willing to pay bribes. The replacement of contract workers through another set of contract workers is not permissible. This has been held by the Hon'ble Supreme Court in catena of judgments.
- F. Hon'ble Supreme Court in **State of Haryana & Ors. V Piara Singh & Ors. (1992) 4 SCC 118**, held as under:

"45. The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

46. Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority."

- G. The decision of 3 judges the Hon'ble Supreme Court in Piara Singh (supra) was later affirmed by the Hon'ble Supreme Court in **Secretary, State of Karnataka v UmaDevi (2006) 4 SCC 1**, where 5 judges of the Hon'ble Supreme Court affirmed the view in

Piara Singh (supra) that one set of ad-hoc employees cannot be replaced by another set of ad-hoc employees.

- H. Hon'ble High Court of Delhi in **Abhinav Chaudhary & Ors. V Delhi Technical University & Ors. 2015 SCC OnLine Del 6780** held as under:

"5. In view of the above, the case of the petitioners clearly falls within the ratios of the judgments of the Supreme Court in the cases of *Piara Singh, Umadevi* and *Mohd. Abdul Kadir* (all Supra) and since one contractual employee cannot be replaced by other contractual employee, and which action will show gross arbitrariness on the part of the respondent no. 1, the present writ petition is allowed and respondents are restrained from in any manner terminating the services of the petitioners from the contractual posts of Assistant Professors at which they are working with the respondent no. 1/employer. Of course, this will not disentitle the respondent no. 1 to appoint any additional Assistant Professors with the respondent no. 1 in accordance with its applicable rules or issue fresh advertisements having contractually substantially different terms than what the petitioners are presently working at."

- I. Because this This Hon'ble Court in **Ram Chander v Union of India, W.P (C) No. 4642 of 2014**, granted interim protection to the petitioners, whose services were being terminated. The

petitioners therein were data operators working with Union of India but allegedly appointed through a contractor. Hon'ble High Court granted interim protection to the petitioners from termination vide order dated 25.07.2014. The interim protection continued till 23.01.2020 till the final disposal of the Writ Petition.

12. Because there is no other similar Petition filed before this Hon'ble Court or before any other Court for similar reliefs prayed by the Petitioner herein.

13. That as the Petitioner Union and its members are residents of Delhi, therefore this Hon'ble Court has jurisdiction to hear the matter and pass necessary orders in the interest of justice.

PRAYERS

In the facts and circumstances stated herein above, it is most respectfully prayed that this Hon'ble Court graciously be pleased to pass an order:

- a) For a Writ of Mandamus 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 petitioner workmen and to continue them into the services with all the statutory benefits.
- b) For a 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.

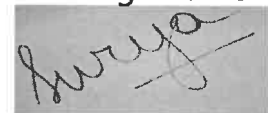
- c) For a Writ of Mandamus any other appropriate writ, order or direction to the respondent no.2 and respondent no.3 to pay all the pending arrears/wages to the petitioner workmen employed in Respondent No.2 through Respondent no.3.
- d) Pass any other order/direction in the interest of justice that this Hon'ble Court may deem fit and proper.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY

Filed by:

New Delhi
29.07.2020

All India General Kamgar Union



Through



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