$~J-1 & 2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgement reserved on **25.03.2021**
Judgement pronounced on **17.05.2021**

\+ **CM APPL. No.742/2021** in

W.P.(C) 4114/2008

CENTRAL WAREHOUSING CORPORATION .....Petitioner

Through: Mr. Vikas Singh, Sr. Advocate with Mr. K.K. Tyagi and Mr. Iftekhar Ahmad, Advocates.

versus

GOVT. OF INDIA AND ORS. .....Respondents

Through: Mr. R.V. Singha, Sr. Central Government Counsel with Mr. Amit Sinha and Ms. Sharanya Sinha, Advocates for Government of India/R-1.
Mr. S.B. Upadhyay, Sr. Advocate with Mr. Neeraj Shekhar and Mr. Rohit K. Singh, Advocates for M/s. Rahul Roadways/R-227.
Ms. Asha Jain Madan, Adv. for R-2 to 225.
Mr. Tungesh for SFPL/R-226.

CM APPL. No.2812/2021 and CM APPL. No.1291/2021 in

W.P.(C) 482/2021

VIJAY BAHADUR PAL AND ORS. .....Petitioners

Through: Mr. Ashok Agarwal with Mr. Anuj Aggarwal, Advocates.

versus

CENTRAL WAREHOUSING CORPORATION & ORS.

.....Respondents

Through: Mr. Vikas Singh, Sr. Advocate with Mr. K.K. Tyagi and Mr. Iftekhar Ahmad, Advocates for R-1.
Mr. S.B. Upadhyay, Sr. Advocate with Mr. Neeraj Shekhar and Mr. Rohit K. Singh, Advocates for R-3.
Mr. Tungesh for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.:

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Preface: -

1. I have before me three applications for consideration. Two applications, i.e., CM No. 1291/2021 and CM No. 2812/2021 have been filed in W.P. (C) 482/2021 while the third application i.e. CM No. 742/2021 has been filed in W.P. (C) 4114/2008. Although, while reserving the judgement, on 25.03.2021, inadvertently, reference was made only to CM No. 742/2021, filed in W.P. (C) 4114/2008 and CM No. 2812/2021, filed in W.P. (C) 482/2021, the third application, i.e., CM No. 1291/2021 would also get disposed of, as CM No. 2812/2021 filed in W.P. (C) 482/2021 only seeks clarification of the status quo order dated 13.01.2021, passed in CM No. 1291/2021, in that very writ petition.

2. The issues, which arise for consideration, in these three applications, being similar, in my view, can be disposed of by a common order. Keeping this in mind, I, thus, intend to advert to the facts and circumstances, which have led to the institution of the aforementioned actions, with a plea for grant of interlocutory directions. As would be evident, from the cause title and the number of the interlocutory applications, CM No. 742/2021 has been filed in a pending writ petition while the remaining two applications i.e. CM No. 1291/2021 and 2812/2021 have been filed in a fresh writ petition. CM No. 742/2021 has been filed by the workmen, who are arrayed as respondent nos. 2 to 225, while CM No. 1291/2021 and CM No. 2812/2021 have been filed in a substantive action preferred by 105 workmen. Thus, for the sake of convenience, the contesting parties will be referred to as follows.

i. The applicants in the aforementioned interlocutory applications would be collectively referred to as workmen.

ii. The petitioner in W.P. (C) 4114/2008 and respondent no. 1 in W.P. (C) 482/2021, i.e., Central Warehousing Corporation would be referred to as "CWC".

iii. The two handling and transportation contractors i.e. Suman Forwarding Agency Private Limited and M/s Rahul Roadways would be referred to as "SFPL" and "RR" respectively.

Background facts: -

3. The record is suggestive of the fact that, in and about January 2000, a writ petition came to be instituted by some workmen, principally, for seeking regularization of their services with CWC, and for issuance of a notification for the abolition of contract labour. This writ petition came to be numbered as W.P. (C) 48/2000. Thereafter, another set of workmen filed a writ petition i.e. W.P. (C) 4407/2000, wherein similar reliefs were sought.

3.1. On 06.01.2000, notice was issued in W.P. (C) 48/2000. While issuing notice, this Court had directed that the services of the workmen (petitioners in W.P. (C) 48/2000) should not be substituted with contract workers.

3.2. The said writ petition was disposed of, on 17.10.2000, based on a common submission, advanced on behalf of the counsels for the parties, that the dispute raised in the said writ petition should be settled by the Central

Advisory Contract Labour Board [in short "Board"]. Accordingly, the Court, *via* its order dated 17.10.2000, referred the parties to the Board for enabling the Board to make appropriate recommendations in the matter i.e. as to whether or not contract labour was required to be abolished qua the work-functions in which the said workmen were deployed. Pertinently, the said order directed continuation of the operation of the interim order dated 06.01.2000, till such time, the reference made to the Board was disposed of. The Court, explicitly, clarified, by the very same order, that the services of the workmen would not be substituted by any other contract labour. This direction, however, was accompanied by a caveat, which was, that it would not give liberty to the workmen to "flout any legal and valid orders passed" by the opposite parties, concerning their duties as also the shifts to which they would possibly have to be deployed. Furthermore, the Court observed that the workmen, if entitled, would be paid overtime allowance.

3.3. The Board in its 53rd meeting held between 11.03.2003 and 12.03.2003 considered the issue, and returned the following findings vide report dated 23.04.2003:

> "(a) The work of storage of handling of import and export container/cargo, loading and unloading of import and export cargo from road vehicle, their stuffing/destuffing in containers is being carried out in the establishment of ICD at Patparganj, CWC since 1985 through contract labour. Contractors have changed but the workers engaged by them remain the same.
>
> (b) The workers are paid minimum wages as prescribed by the Government of NCT of Delhi which is approximately Rs.2700/- to Rs.3000/- per month and quite low in comparison to the wages paid to the lowest category of regular employees which comes to about Rs.5500/- to Rs.7500/-. No leave, enhancement of wages on an yearly

basis medical facilities, bonus etc. are available to the workmen engaged through contractors though welfare amenities to be provided under the Act have been adhered to.

(c) The processes/operations carried out are perennial in nature and of sufficient duration which has been established by the fact that these workmen are working in the establishment since its inception that is 1985.

(d) There is sufficient work to employ considerable number of whole time workmen because though there has been gradual mechanization of the operations as endenced by the decline in the manpower deployed in the year 2002 as against the year 2001, the fact remains that even the mechanical operations cannot be run without the help of manual labour, however, less the number may be.

(e) Reduction in business due to coming up of a Mega Container Terminal at Dadri and withdrawal of licence by the customs authorities are only assumptions which cannot be taken into account. Even if the licence is withdrawn, similar treatment as would be applicable to regular workmen can be accorded to existing contract labour, if they are regularized.

(f) The work is ordinarily done through regular workmen in the similar establishment of Container Corporation of India."

3.4. Based on the aforesaid findings, the Board recommended to the Government of India, that contract labour in CWC should be prohibited *qua* operations involving loading and unloading of imported goods and those meant for export from road vehicles, and likewise, in respect of work involving stuffing goods into containers or de-stuffing goods from containers.

3.5. This recommendation was accepted by the Government of India and, accordingly, a notification was issued on 17.11.2006.

3.6. Being aggrieved, the CWC filed a writ petition, under Article 226 of the Constitution, which was numbered as W.P. (C) 2849/2007. This writ was disposed of, on 24.04.2007, with a direction to CWC, to approach, in the first instance, the High Powered Committee i.e., committee on disputes for seeking

clearance to institute an action, in consonance with the observations of the Supreme Court in ***ONGC vs. Collector of Central Excise***, (2004) 6 SCC 437.

3.7. It appears, clearance was given, by the committee on disputes, which was communicated to the CWC on 01.05.2008. It is after this clearance that, CWC filed W.P. (C) 4114/2008. The singular prayer made, in the said writ petition, is that the notification dated 17.11.2006 should be quashed. The record shows that, *vide* order dated 28.05.2008, passed in W.P. (C) 4114/2008, the operation of the notification dated 17.11.2006, was stayed. The order, dated 28.05.2008, was made absolute, on 26.04.2010.

3.8. It is relevant to note that, the workmen were not, in the first instance, arrayed as parties in W.P. (C) 4114/2008. This led to an application being filed, in the said writ petition, by 224 workmen, wherein, apart from seeking intervention, the following three directions were sought:

i. They should be directly engaged by CWC and not through the contractor.

ii. CWC should regularize their services.

iii. CWC should give them preference, in case, any vacancy arises or requirement occurs for engaging workers in future.

3.9. This application was numbered as CM No. 11335/2008. The application was, however, dismissed, *vide* order dated 21.07.2009. The workmen filed an appeal, against the said order, i.e. L.P.A. No.554/2009, which was allowed *vide*

order dated 03.12.2009, and the workmen were impleaded, as respondent nos. 2 to 224 in W.P. (C) 4114/2008.

4. The record shows that CWC filed a rejoinder, dated 27.01.2012, in W.P. (C) 4114/2008, wherein, it, *inter alia,* took the stand that the quantum of work available (at that point in time), could be handled by 242 workmen as against 319 workmen, that had been deployed. The attempt was to show that, there was a reduction of work in CWC, which required the intervention of a human hand. This propelled the workmen, to file an interlocutory application i.e. CM No. 8289/2012, wherein, *inter alia*, the assertion made was, that the contract, between the workmen and the CWC, was a sham arrangement, and therefore, a direction ought to be issued to CWC to absorb 242 workmen. This application was, however, withdrawn, on 10.05.2013 (upon resistance by CWC), with liberty to the workmen, to file an appropriate action before the concerned forum, *albeit*, as per law

4.1. Accordingly, the workmen, qua the relief of absorption, approached the Central Government Industrial Tribunal cum Labour Court [in short "Tribunal"]. On being approached, the Tribunal registered the said industrial dispute/action as I.D. No.57/2015. It appears that pleadings in I.D. No. 57/2015 are complete and the matter is ripe for final hearing.

4.2. Furthermore, the workmen, it appears, had moved the Deputy Chief Labour Commissioner [in short "CLC"] for wage parity. The Deputy CLC awarded the workmen the lowest pay scale (Rs. 8400 – Rs. 22950 with 119%

Industrial Dearness Allowance), as applicable to the group 'D' employees of CWC. This order of the Deputy CLC has been assailed by the CWC and the contractor, engaged at that point in time by CWC, via two separate writ petitions. The writ petition filed by CWC is numbered as W.P. (C) 10665/2017 and that which has been filed by the contractor is numbered as W.P. (C) 10165/2017. These writ petitions are also pending disposal before this Court.

4.3. It is also relevant to note that, pending the adjudication in W.P. (C) 4114/2008, while the contractors were changed from time to time by CWC, the concerned contractors were directed by CWC to discharge their obligations without disturbing the workmen who were on the rolls of the previous contractor. In other words, while the contractors changed, the workmen already on the rolls rendered service on behalf of the new contractor. It is this arrangement that continued when SFPL was engaged by CWC on 03.01.2013. The CWC, brought to an end, its arrangement with SFPL, apparently, on 05.01.2021, by supplanting SFPL with RR on 06.01.2021.

4.4. This time around, CWC chose, not to direct the new contractor i.e. RR to continue with the workmen who were on the rolls of SFPL. It is this circumstance that has forced the hand of the workmen to approach this Court *via* CM No. 742/2021. The said application was filed on 06.01.2021 and was listed before me on 08.01.2021. On that date, CWC was represented by counsel who informed the Court that SFPL had been replaced with RR. Counsel for CWC submitted, before me, that both, SFPL and RR need to be arrayed as parties. Accordingly, a direction to that effect was issued. Counsel for CWC

was directed to file an amended memo of parties, and time was granted to its counsel to file a reply. A similar opportunity was also granted to the newly arrayed entities i.e. SFPL and RR. The application i.e. CM No. 742/2021 was listed for further hearing on 11.02.2021.

4.5. In the interregnum, another writ petition, comprising 105 workmen was filed. In this writ petition, not only CWC but SFPL and RR were also arrayed as parties. The said writ petition was numbered as W.P. (C) 482/2021.

4.6. The broad facts and/or assertions made in W.P. (C) 482/2021 are as follows:

a) That most of them have been with CWC since 1985, although, several contractors have changed hands. It is important to note that, they have referred to more than four (4) contractors, to which CWC has referred to their written submissions, filed in W.P.(C) 4114/2008. [See paragraph 2.4 of W.P. (C) 482/2021]

b) The dispute, concerning their regularization, is pending before the Tribunal and has been registered as I.D. No.142/2015, post a reference made by the Government of India on 04.06.2015. [See: paragraphs 2.5 and 2.6 of W.P. (C) 482/2021]

> "Whether the action of the management of CWC in not regularizing the employment of Sh. Damar Bahadur and 115 others (List of Enclosed) form the date of their respective appointment is legal and justified? If not, to what relief the workers are entitled to?"

c) Although the aforementioned reference concerns 116 persons, the writ petition has been filed by 105 persons.

d) Between 27.12.2020 and 29.12.2020, the officials of RR meted out threats to the workmen that their services would be terminated in January 2021. This propelled the workmen to make representations *via* their union, to the Depot Manager, CWC, the Regional Labour Commissioner, and the Delhi Police on 30.12.2020 and 31.12.2020. No response was received qua the said representations.

4.7. This writ petition came up for hearing, for the first time, on 13.01.2021, when, after hearing the counsel for the petitioner and the CWC, while issuing notice in the writ petition [i.e. W.P. (C) 482/2021] and the interlocutory application i.e. CM No. 1291/2021, directions were issued to RR to maintain status quo, as obtaining on that date, with regard to the workmen till further orders of the Court. It is in this background that, on 20.01.2021, the workmen moved an application i.e. CM No. 2812/2021 for clarification of order dated 13.01.2021 passed in W.P. (C) 482/2021. In the alternative, a direction was sought that RR should permit the workmen to resume their duty. Accordingly, notice was issued in CM No. 2812/2021, which was made returnable on 11.02.2021, when CM No. 742/2021, filed in W. P. (C) 4114/2008, was listed for hearing.

4.8. Thus, on 11.02.2021, after hearing counsel for the parties at some length, a direction was issued for filing written submissions in the matter. The

judgement, in the interlocutory applications, filed in the captioned matters, was reserved on 25.03.2021.

Submissions on behalf of the parties: -

5. Arguments on behalf of the workmen were advanced by Ms. Asha Jain Madan and Mr. Anuj Aggarwal while CWC was led by Mr. Vikas Singh, learned senior counsel, assisted by Mr. KK Tyagi. SFPL was represented by Mr. Tungesh while submissions on behalf of RR were advanced by Mr. S.B. Upadhyay, learned senior counsel, assisted by Mr. Neeraj Shekhar and Mr. Rohit K. Singh. Broadly, the submissions advanced by the counsels can be paraphrased as follows.

Workmen represented by Ms. Asha Jain Madan: -

i. The workmen have remained engaged with the CWC, for more than three decades. Although contractors were changed from time to time, most of the workmen were retained on the rolls of the concerned contractor.

ii. The workmen had approached this Court, by way of W.P. (C) 4407/2000 and W.P. (C) 48/2000, for regularization of their services. W.P. (C) 48/2000 was disposed of on 17.10.2000 with a direction to the Board, to adjudicate the dispute between the parties as to whether or not CWC could engage contract labour in respect of the work performed by the workmen. Crucially, while disposing of the said writ petition, the Court had directed continuation of the interim order dated 06.01.2000, passed

in W.P. (C) 48/2000, which restrained CWC from substituting other contract labour in place of the workmen.

iii. Upon the Board making a favourable recommendation, *vide* its report dated 23.04.2003, the Government of India issued a notification, dated 17.11.2006, prohibiting CWC from engaging contractual labour in respect of the work for which workmen were deployed with CWC. The effect of such notification, is that, there is statutory recognition, that the workmen who were deployed by CWC performed work that was perennial.

iv. In 2003, even according to CWC, the number of workmen deployed by CWC was 322, and likewise, when the notification was issued in 2006, the number of workmen deployed was 327. This aspect emerges upon a perusal of the written submissions, filed on behalf of the CWC.

v. Pertinently, when CWC filed its rejoinder in W.P. (C) 4114/2008, on 27.01.2012, it admitted that there was a requirement for deployment of 242 workmen. Furthermore, just before the engagement of RR, which occurred in and about 06.01.2021, CWC admits that it had engaged, in 2020, 289 workmen.

vi. Once the Board found that, the work for which the workmen were deployed, was perennial and the appropriate government [i.e. the Government of India] had issued a notification, prohibiting employment of contract labour, CWC could not have taken advantage of the interim

order, passed on 28.05.2008, staying the operation of the notification dated 17.11.2006.

vii. The entire action of CWC, in replacing the workmen with the personnel of RR, is legally flawed, as provisions of Section 7 and 12 of the Contract Labour (Regulation and Abolition) Act, 1970 [in short '1970 Act'] have not been complied with. Section 7 of the said Act casts an obligation on every principal employer running an establishment to apply and have his establishment registered with the appropriate government. Likewise, Section 12 requires a contractor to whom the 1970 Act applies, and who wishes to undertake or execute any work, through contract labour, to obtain a license from the concerned licensing officer. It is relevant to note that, though SFPL was awarded the contract by CWC on 03.01.2013, it obtained a license only on 09.04.2014; something which should have been insisted upon before awarding the contract. Insofar as RR is concerned, although, it is claimed by CWC that, it was awarded the contract on 06.01.2021, RR has neither obtained a license, nor a separate Employees' State Insurance and Employees' Provident Fund registration numbers. The haste with which the contract has been awarded unveils the malafide intentions of CWC.

viii. The consequences of the directions issued by the Supreme Court in its judgement rendered in ***Steel Authority of India Ltd. and Ors. vs.***

National Union Waterfront Workers and Ors., (2001) 7 SCC 1[1] is that, once a notification under Section 10 of the 1970 Act is issued, the employer cannot engage, contract labour. However, if there is work and the management intends to appoint workmen on regular basis, as per the sixth direction contained in paragraph 125 of the judgement rendered in the ***SAIL*** case, the management is bound to give preference to the erstwhile contract labour, if they are otherwise found suitable. The management is required to relax, appropriately, the condition stipulated concerning maximum age, after taking into account the age of the workmen at the time of initial employment with the contractor. Furthermore, the management is also required to accord relaxation with regard to academic qualifications, except those which concern technical qualifications. In other words, if work is available, CWC can engage the workmen on a regular basis till the time the notification, dated 17.11.2006, subsists, and that need can only have been fulfilled, by giving preference to the workmen who were deployed through SFPL.

ix. Since the dispute between the workmen and CWC is pending adjudication before the Tribunal, CWC was required by law, as per the provisions of Section 33 of the Industrial Disputes Act, 1947 [in short "1947 Act"], to maintain the status quo as regards services of the workmen covered under the 1947 Act. In support of this plea, reliance was placed on the following judgements:

[1] [in short "***SAIL*** Case"].

a) ***Bhavnagar Municipality v. Alibhai Karimbhai and Ors.,*** (1977) 2 SCC 350[2].

b) ***T.N. State Transport Corporation v. Neethivilangan, Kumbakonam*** (2001) 9 SCC 99[3].

c) ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma and Ors***, (2002) 2 SCC 244[4]

x. In the event, the Tribunal were to return a finding, that the deployment of the workmen in CWC's establishment was based on a sham arrangement, then, CWC, in terms of the fifth (5) direction contained in paragraph 125 of the ***SAIL*** case, has to absorb the workmen. Since CWC, as far back as in 2012, had admitted that it required 242 workmen, it would have to, in the very least, regularize the services of that many workmen, in case the Tribunal were to find, that the deployment of the workmen in the CWC's establishment was based on a sham arrangement.

xi. The judgement of the Supreme Court rendered in ***Secretary, State of Karnataka and Others v. Umadevi and Others***, (2006) 4 SCC 1[5] has no relevance to the instant case, as it did not deal with contract labour. The only judgement, which governs the issue, is the judgement in ***the SAIL*** case.

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[2] [in short "***Bhavnagar*** Case"]
[3] [in short "***T.N. State Transport Corporation*** Case"]
[4] [in short "***Jaipur Zila Sahakari*** Case"]
[5] [in short "***Umadevi*** Case"]

xii. Without prejudice to this contention, it is submitted that there are observations made in paragraph 53 of the decision rendered in ***the Umadevi*** Case, which point in the direction that if a workman has worked for over 10 years, *albeit*, without the aid of protective orders, he/she would be entitled to regularization. In the instant case, the workmen have been engaged for a continuous period of over 18 years, and that too without the aid of protective order passed by the Court.

xiii. Likewise, the judgment rendered in ***International Airport Authority of India vs. International Air Cargo Workers' Union & Anr.,*** (2009) 13 SCC 374[6] would have no applicability to the facts obtaining in the instant case.

Workmen represented by Mr. Anuj Aggarwal: -

6. In addition to what Ms. Madan has said, the following submissions have been made by Mr. Anuj Aggarwal, representing the workmen i.e. the petitioners, in W.P. (C) 482/2021.

a) Since the dispute between the workmen and CWC concerning their regularization, is pending before the Tribunal, their services could not have been terminated without the permission of the Tribunal. Thus, even though the petitioners could have preferred a complaint, in terms of Section 10 read with Section 33A of the 1947 Act, they had no option

[6] [in short "***International Airport Authority*** Case"]

but to approach the Court as, at present, there is no Presiding Officer in position to adjudicate disputes between the parties.

b) The duties performed by the workmen are perennial which most of them have performed since 1985, and thus, termination of their services in violation of Section 33 of the 1947 Act is *void ab initio*.

c) The fact that, although several contractors have changed, the workmen continued to render their services to CWC is a good enough reason for them to be regularized in service.

d) The actions of the respondents i.e. CWC, SFPL and RR violate Article 14, 16, and 21 of the Constitution of India.

e) In support of these assertions, reliance is placed on the following judgements.

   i. ***Jaipur Zila Sahakari*** Case.

   ii. ***Bhilwara Dugdh Utpadak Sahakari Samiti Ltd. v. Vinod Kumar Sharma Dead by L.R.s and Ors.***, (2011) 15 SCC 209.

   iii. ***Indian Oil Corporation Ltd. v. Petroleum Workers Union***, 2018 SCC OnLine Del 8383.

   iv. ***A. K. Doshi v. Dy. Director, Dist. Census Hand - Book Unit***, MANU/GJ/0368/2004.

CWC: -

7. As against this, on behalf of CWC, the following submissions were broadly made:

i. There is no employer-employee relationship between the CWC and the workmen. Therefore, the workmen cannot seek a stay on the termination of their services.

ii. The workmen were employees of SFPL, up until 05.01.2021. On 06.01.2021, RR was awarded the contract for deploying labour at CWC's establishment. RR has deployed 107 workmen at the concerned establishment of CWC. Therefore, since CWC has no privity of contract with the workmen, no relief can be granted against it. The relief, if any, which is available to the workmen, would lie only against the concerned contractor.

iii. The engagement of contract labour through a contractor is carried out in a fair and transparent manner, as per the Central Vigilance Commission [in short "CVC"] guidelines. The tenders issued, in that regard, and payments made to contractors, are subject to both internal and statutory audit as well as an audit conducted by the CAG's office.

iv. The work, for which the contract labour is engaged by CWC, is not being performed by any regular employee in any of its Container Freight Station [in short 'CFS'] or Inland Container Depot [in short 'ICD'],

which are spread all over of the country. A similar position obtains *qua* CFSs and ICDs, operated by other public sector and private entities.

v. The work, which is undertaken at ICDs, is not perennial, and therefore, the contention advanced that contract labour ought not to be engaged, is incorrect.

vi. The CWC has obtained, from the appropriate authority, registration, under Section 7(2) of the 1970 Act, for the concerned establishment i.e. ICD Patparganj. The contractors, engaged by CWC, in the past had, in their possession, a contract labour license as required under the 1970 Act, and has also, contrary to the submission advanced, obtained separate ESI and EPF registration numbers. Likewise, SFPL, which was awarded the contract on 03.01.2013, which came to an end on 05.01.2021, had obtained a license on 09.04.2014, which was duly renewed from time to time by the concerned licensing officer. Insofar as RR is concerned, it was awarded the contract concerning ICD Patparganj, which became operational with effect from 06.01.2021. RR has applied for issuance of a license under the 1970 Act and is also in the process of obtaining separate ESI and EPF registration numbers.

vii. Over the years, the work of CWC has reduced, considerably. While in 2001, CWC was handling 47496 TEUs (i.e., twenty-foot-long containers), in 2020, the number of TEUs dropped to 17183. In this context, my attention is drawn to paragraph 4 of the written submission.

viii. Furthermore, it was emphasized that CWC has brought about several SVR Schemes, which are akin to the golden handshake scheme, *albeit*, with the approval of the Government of India- only to drastically reduce its workforce. In support of this plea, it was stated that the total number of staff employed with CWC in 2000-2001 was 8579, which, in 2019-2020, was pared down to almost 1/4th of the said number i.e. 2880. The submission was that, while CWC was trimming down the number of employees on its regular rolls, it would cause disruption, if the workmen involved in the instant action were directed to be employed as regular workmen, and hence, in a sense, defeat the very purpose for which the SVR Schemes were brought into play by CWC. In support of the submissions made on behalf of the CWC, reliance was placed on the judgements rendered by the Supreme Court in ***the SAIL*** case**,** ***the Umadevi*** Case, and the ***International Airport Authority*** Case.

ix. Furthermore, it was submitted that the judgement rendered by the Supreme Court in ***State of Haryana v. Piara Singh***, (1992) 4 SCC 118[7] was no longer good law.

SFPL: -

8. Mr. Tungesh, who appeared on behalf of SFPL, simply argued that SFPL had no subsisting interest in the matter, as its contract with CWC had come to

[7] [in short "***Piara Singh*** Case"]

an end on 05.01.2021. Mr. Tungesh submitted, that SFPL should be deleted from the array of parties.

RR: -

9. Mr. Upadhyay, learned senior counsel, who appeared on behalf of RR, made the following broad submissions:

i. CWC had invited tenders, *via* a public notice dated 29.09.2020, whereby it called upon interested parties, to bid for being appointed as contractors, for handling & transportation of ISO containers and allied services at ICD Patparganj, Delhi.

ii. Pursuant to the said notice inviting tender, RR submitted its bid and was awarded a contract on 11.12.2020.

iii. Accordingly, on 05.01.2021, RR submitted a list of 120 names of its authorized employees for deployment at ICD Patparganj, Delhi, from 06.01.2021. Notice in CM No. 742/2021, filed in W.P. (C) 4114/2008, seeking stay on termination of the services of the workmen during the pendency of the writ petition, was issued only on 08.01.2021. Although RR was arrayed as a party, on 08.01.2021, no interim order was passed on that date.

iv. On 13.01.2021, this Court directed maintenance of status quo by RR as obtaining on that date in respect of workmen i.e. petitioners in W.P. (C) 482/2021. This order was passed in CM No. 1291/2021.

v. It is only thereafter that, an application for clarification of the order dated 13.01.2021 i.e. CM No. 2821/2021 was moved in W.P. (C) 482/2021. The ground given in the application for seeking clarification was, that RR was not allowing the workmen i.e. petitioners in the said writ petition to resume their duty.

vi. RR has applied for obtaining a contract labour license under the 1970 Act.

vii. Since RR is a private organization and not a State within the meaning of Article 12 of the Constitution, no writ action would lie against it. The workmen in W.P. (C) 482/2021 have no legal right, based on which, they can seek employment with RR.

viii. Given the ratio of the judgement of the Supreme Court rendered in ***SAIL*** Case, which is, that upon notification being issued prohibiting engagement of contract labour, the workers, so engaged through the contractor, do not get automatically absorbed as the employees of the principal employer- the claim of workmen in W.P. (C) 482/2021, that they are employees of CWC, is contrary to law. The stay on the operation of the notification issued by the Government of India [i.e. the appropriate authority] under Section 10 of the 1970 Act, dated 17.11.2006, was made absolute by the Court, *vide* order dated 26.04.2010, passed in CM No.8013/2008, filed in W.P. (C) 4114/2008,

and therefore, the workmen cannot claim, as a matter of right, that they were employees either of CWC or RR.

ix. As to whether the workmen in W.P. (C) 482/2021 are the direct employees of CWC or not, the twin test provided in ***BHEL vs. Mahendra Prasad Jakhmola***, (2019) 13 SCC 82[8] would have to be applied. If the said test are employed, it would emerge that the workmen in W.P. (C) 482/2021 are not the employees of CWC.

x. Since proceedings are pending before the Tribunal, at this stage, no relief can be granted. The petition raises disputed questions of fact, which cannot be adjudicated upon by this Court in the exercise of its powers under Article 226 of the Constitution. The workmen in W.P. (C) 482/2021 have never been engaged or paid salaries by RR. The 120 workmen employed, and paid salaries, by RR are not parties before this Court. Therefore, the instant writ petition is not maintainable on the ground of failure to array the necessary parties.

Analysis and Reasons: -

10. I have heard the learned counsel for the parties. The broad facts, set out above, which led to the workmen approaching the Court are not in dispute. It is not in dispute that, upon workmen approaching this Court for being granted the relief of regularization, and for issuance of prohibitory directions against the engagement of contract labour – this Court referred the matter to the Board *vide*

[8] [in short "***BHEL*** Case"]

order dated 17.10.2000 for ascertaining as to whether the work (for which the workmen were deployed with CWC) was perennial, and fulfilled other requirements, as stipulated in Section 10 of the 1970 Act.

10.1. The Court rendered findings to that effect, which became the subject matter of the report of Board, dated 23.04.2003. The appropriate government i.e. the Government of India accepted the recommendation of the Board and issued a notification, dated 17.11.2006, prohibiting deployment of contract labour. It is this notification, which is assailed in W.P. (C) 4114/2008. It is not in dispute that, *via* an interim order dated 28.05.2008, the operation of the aforementioned notification was stayed, which was made absolute, on 26.04.2010.

10.2. Although, a notification under Section 10 of the 1970 Act stands issued prohibiting employment of contract labour in the concerned establishment of CWC i.e. ICD Patparganj, the workmen i.e. respondent nos. 2 to 225 in W.P. (C) 4114/2008 cannot claim automatic absorption.

10.3. That being said, the workmen i.e. respondent nos. 2 to 225 in W.P. (C) 4114/2008 are entitled in law to seek a declaration from the Tribunal, that their deployment with CWC, ostensibly, under the aegis of a contract, was a sham arrangement between CWC and the contractor engaged, at the relevant point in time.

10.4. It has emerged from the record, as indicated above, something which is not disputed by CWC, that such a petition i.e. I.D. No. 57/2015 is pending

adjudication with the Tribunal. What is also not in dispute is that, although, as many as 4 contractors have been changed by CWC between 2001 and 05.01.2021[9], a substantial number of workmen have remained on the rolls of one contractor or the other.

10.5. It is also not disputed by CWC that the reference (ID No. 142/2015) filed by 116 workmen (out of which 105 are those who are part of W.P. (C) 482/2021) concerning their regularization, of service, is pending adjudication before the Tribunal as well.

10.6. It appears that both sets of workmen [i.e. those that have filed CM No. 742/2021 in W.P. (C) 4114/2008, and those who have filed W.P. (C) 482/2021] have continued in service (with CWC) for long years.

10.7. The record is indicative of the fact that CWC maintained a continuum concerning the arrangement, which was put in place by it, whereby, workmen were deployed at the concerned establishment, up until 05.01.2021. This arrangement was disrupted by CWC, for reasons best known to it, *albeit*, without taking express permission of the Tribunal under Section 33(1) of the 1947 Act or after taking the workmen into confidence. CWC, while engaging a new contractor [i.e. RR], did not, it seems, deliberately, insist on the contractor/RR continuing with the workmen who, according to it, were

[9] C.T.A. Movers Pvt. Ltd. (01.01.2001 to 01.03.2001);
O.M.M.C. Pvt. Ltd. (01.03.2001 to 20.12.2006);
Aqdas Maritime Pvt. Ltd. (21.12.2006 to 02.01.2013); and
Suman Forwarding Agency Pvt. Ltd. (03.01.2013 to 05.01.2021).

employees of the previous contractor i.e. SFPL; something which CWC had not done in the past.

11. Thus, given this background, according to me, two issues arise for consideration.

i. First, could the CWC have changed the status quo which had lasted for nearly two decades, if not more, without seeking the approval of the Tribunal and taking the workmen into confidence?

ii. Second, what is the scope and import of the interim order issued by this Court vis-à-vis the notification dated 17.11.2006?

12. Insofar as the first issue is concerned, one would have to examine whether the conditions prescribed under Section 33(1)(a) of the 1947 Act were fulfilled.

i. Was there a proceeding in respect of an industrial dispute pending before the Tribunal?

ii. Whether the conditions of service of workmen, which prevailed just before the commencement of proceedings before the Tribunal, were altered?

iii. Does the alteration of the condition of service have a connection with the matter in dispute pending adjudication before the Tribunal?

iv. Are the workmen, whose conditions of service are altered, concerned with the dispute pending adjudication before the Tribunal, and does the alteration, of the condition of service, work to their prejudice? [See: Section 33(1)(a) of the 1947 Act and ***Bhavnagar*** Case]

13. In my view, the aforesaid prerequisites, which are necessary to trigger the provision of Section 33(1) (a) of the 1947 Act, are present in the instant matter. There can be no dispute that not one but two references are pending before the Tribunal.

13.1. The first reference i.e. I.D. No. 57/2015 requires the Tribunal to determine as to whether the agreement between CWC and its contractor(s) under which the workmen were deployed at ICD Patparganj, Delhi was a sham arrangement.

13.2. The second reference i.e. ID No. 142/2015 requires the Tribunal to determine whether the workmen who are concerned with this reference should be regularized.

13.3. If in the first reference, the Tribunal were to conclude, that the agreement between CWC and its contractor(s) was a sham arrangement then, *ipso facto*, the workmen would have to be absorbed as regular employees by CWC. [See: Observations made in paragraph 125(5) and 125(6)[10] of the ***SAIL*** Case].

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[10] "**125.***The upshot of the above discussion is outlined thus*:

xxx **xxx** **xxx**

13.4. Likewise, if the second reference is answered in favour of the workmen, their services would have to be regularized. Therefore, I have no doubt in my mind that the first prerequisite is fulfilled, which concerns the pendency of a dispute before the Tribunal.

13.5. Insofar as the second prerequisite is concerned, notice will have to be taken of the following facts.

i. A reference was made to the Board by this Court, for the first time, on 17.10.2000. Although between 2000 and 2020, CWC changed four contractors, the workmen continued on the rolls of the concerned contractor.

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(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

ii. Even after the issuance of a Section 10 notification on 17.11.2006 and the subsequent direction of this Court staying its operation, the arrangement put in place by CWC of deploying workmen at its establishment *albeit*, *via* the contractor, was not disrupted up until 05.01.2021.

iii. The disruption was brought in by CWC by taking recourse to a dubious stratagem. The stratagem was to not only replace the contractor but also ask the contractor to deploy workmen other than those, who were already discharging their duties at ICD Patparganj, Delhi.

13.6. This, rather ungainly move of CWC, undoubtedly, resulted in the alteration of conditions of service of the workmen, which prevailed prior to the commencement of proceedings before the Tribunal.

13.7. The third prerequisite, to my mind, also stands fulfilled, since the disruption brought about by CWC, *via* its foretasted move, qua the services of the workmen, is an alteration of conditions of service concerning the matter connected with the dispute pending in the Tribunal. As indicated above, the Tribunal, *inter alia*, is required to determine as to whether or not the deployment of the workmen at CWC's establishment under an agreement executed between CWC and its contractor was a sham arrangement. The Tribunal is also required to determine whether the services of the other set of workmen are required to be regularized.

14. By engaging RR, without placing an obligation on RR, that it would have to deploy only those workmen, who were already engaged with CWC, the CWC has not only completely denuded the workmen of their right to stake a claim for absorption/ regularization and/or engagement. Therefore, the alteration of the present status of the workmen is, to my mind, connected with the dispute pending before the Tribunal.

14.1. The fourth and fifth prerequisites also stand fulfilled, as the workmen, whose conditions of service i.e. the alteration of status is brought about, are the ones who are concerned with the two references pending before the Tribunal. As indicated above, the alteration of their present status [i.e. the conditions of service] has been prejudicial to the interest of the workmen.

14.2. Since CWC did not even attempt to seek approval of the Tribunal, the disruption brought about by CWC by bringing on board, RR, cannot be countenanced in law. In this context, the following observations of the Supreme Court, in the decision rendered in ***Bhavnagar*** Case, are extracted hereafter.

> "12. Before we proceed further we should direct our attention to the subject-matter of the industrial dispute pending before the Tribunal. It is sufficient to take note of the principal item of the dispute, namely, the demand of the respondents for conversion of the temporary status of their employment into permanent. To recapitulate briefly the appellant employed daily rated workers to do the work of boring and hand pumps in its Water Works Section. These workers have been in employment for over a year. They claimed permanency in their employment on their putting in more than 90 days' service. They also demanded two pairs of uniform every year, cycle allowance at the rate of Rs 10 per month, Provident Fund benefit and National Holidays and other holidays allowed to the other workers. While this particular dispute was pending before the Tribunal, the appellant decided to entrust the work, which had till then been performed by these workers in the Water Works Section, to a contractor. On the employment of the contractor by the Municipality for the self-same work, the

services of the respondent became unnecessary and the appellant passed the orders of retrenchment. It is, therefore, clear that by retrenchment of the respondents even the temporary employment of the workers ceased while their dispute before the Tribunal was pending in order to improve that temporary and insecure status.

13. Retrenchment may not, ordinarily, under all circumstances, amount to alteration of the conditions of service. For instance, when a wage dispute is pending before a Tribunal and on account of the abolition of a particular department the workers therein have to be retrenched by the employer, such a retrenchment cannot amount to alteration of the conditions of service. In this particular case, however, the subject-matter being directly connected with the conversion of the temporary employment into permanent, tampering with the status quo ante of these workers is a clear alteration of the conditions of their service. They were entitled during the pendency of the proceeding before the Tribunal to continue as temporary employees hoping for a better dispensation in the pending adjudication. And if the appellant wanted to effect a change of their system in getting the work done through a contractor instead of by these temporary workers, it was incumbent upon the appellant to obtain prior permission of the Tribunal to change the conditions of their employment leading to retrenchment of their services. The alteration of the method of work culminating in termination of the services by way of retrenchment in this case has a direct impact on the adjudication proceeding. The alteration effected in the temporary employment of the respondents which was their condition of service immediately before the commencement of the proceeding before the Tribunal, is in regard to a matter connected with the pending industrial dispute.

14. The character of the temporary employment of the respondents being a direct issue before the Tribunal, that condition of employment, however, insecure, must subsist during the pendency of the dispute before the Tribunal and cannot be altered to their prejudice by putting an end to that temporary condition. This could have been done only with the express permission of the Tribunal. It goes without saying that the respondents were directly concerned in the pending industrial dispute. No one can also deny that snapping of the temporary employment of the respondents is not to their prejudice. All the five features adverted to above are present in the instant case. To permit rupture in employment, in this case, without the prior sanction of the Tribunal will be to set at naught the avowed object of Section 33 which is principally directed to preserve the status quo under specified circumstances in the interest of industrial peace during the adjudication. We are, therefore, clearly of opinion that the appellant has contravened the provisions of Section 33(1)(a) of the Act and the complaint under Section 33-A, at the instance of the respondents, is maintainable. The submission of Mr Parekh to the contrary cannot be accepted."

14.3. It is important to emphasize that Section 33 of the 1947 Act plays an important role in the maintenance of the status quo between disputants, while adjudication is pending before the relevant forum. It prevents degradation of the workmen's rights and at the same time, allows industrial peace to prevail till such time the disputes are adjudicated upon by the relevant forum. [See ***T.N. State Transport Corporation*** Case[11]].

14.4. Since, in this case, if the workmen were to succeed, in the two references pending before the Tribunal, they would have to be absorbed and their services regularized, it was incumbent on CWC to approach the Tribunal by way of an application under Section 33(2)(b) of the 1947 Act if it wanted to change the status quo. Concededly, no such application was moved by CWC. CWC's stand that the workmen were not its employees is an aspect which is pending examination by the Tribunal, [i.e., whether the arrangement between the CWC and its contractors was a sham arrangement] and therefore, to my mind, CWC

[11] "11. The purpose of the prohibitions contained in Section 33 is twofold. On the one hand, they are designed to protect the workmen concerned during the course of industrial conciliation, arbitration and adjudication, against the employer's harassment and victimisation on account of their having raised the industrial dispute or their continuing the "pending proceedings", on the other, they seek to maintain status quo by prescribing management conduct which may give rise to "fresh disputes which further exacerbate the already strained relations between the employer and the workmen". However, the section recognises the right of the employer to take necessary action like discharge or dismissal on justified grounds. To achieve this object, a ban has been imposed upon the employer exercising his common law, statutory or contractual right to terminate the services of his employees according to the contract or the provisions of law governing such service. The ordinary right of the employer to alter the terms of his employees' services to their prejudice or to terminate their services under the general law governing the contract of employment has been barred subject to certain conditions."

ought to have moved an application under the aforesaid provision of the 1947 Act. Failure to move such an application would only mean that, in law, the status quo vis-à-vis the workmen would continue to operate till such time the issue is settled. Any other view, would gravely prejudice the interest of the workmen, which is, not the purpose and the object of Section 33 of the 1947 Act. [See: ***Jaipur Zila Sahakari*** Case[12]]

14.5. Besides this, there is another aspect of the matter, which, although general in nature, would apply to industrial relations as well in the context of the fact that the workmen have been engaged with CWC for nearly three

[12] "14. … In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint under Section 33-A challenging the order granting approval on any of the grounds available to him. Section 33-A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. In this view, it is not correct to say that even though where the order of discharge or dismissal is inoperative for contravention of the mandatory conditions contained in the proviso or where the approval is refused, a workman should still make a complaint under Section 33-A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 33-A and that till such time he should suffer misery of unemployment in spite of the statutory protection given to him by the proviso to Section 33(2)(b). It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to Section 33(2)(b), Section 33-A would be meaningless and futile. The said section has a definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted."

decades. The CWC, according to me, before taking recourse to the aforestated disruptive measure should have taken the workmen and/or their union into confidence. That such a principle has been recognized by the constitutional courts is evident from the following observations of the Supreme Court rendered in the judgement of ***Mahabir Auto Stores v. Indian Oil Corpn.***, (1990) 3 SCC 752[13].

> "18. Having considered the facts and circumstances of the case and the nature of the contentions and the dealing between the parties and in view of the present state of law, we are of the opinion that decision of the State/public authority under Article 298 of the Constitution, is an administrative decision and can be impeached on the ground that the decision is arbitrary or violative of Article 14 of the Constitution of India on any of the grounds available in public law field. It appears to us that in respect of corporation like IOC when without informing the parties concerned, as in the case of the appellant-firm herein on alleged change of policy and on that basis action to seek to bring to an end to course of transaction over 18 years involving large amounts of money is not fair action, especially in view of the monopolistic nature of the power of the respondent in this field. Therefore, it is necessary to reiterate that even in the field of public law, the relevant persons concerned or to be affected, should be taken into confidence. Whether and in what circumstances that confidence should be taken into consideration cannot be laid down on any strait-jacket basis. It depends on the nature of the right involved and nature of the power sought to be exercised in a particular situation. It is true that there is discrimination between power and right but whether the State or the instrumentality of a State has the right to function in public field or private field is a matter which, in our opinion, depends upon the facts and circumstances of the situation, but such exercise of power cannot be dealt with by the State or the instrumentality of the State without informing and taking into confidence, the party whose rights and powers are affected or sought to be affected, into confidence. In such situations most often people feel aggrieved by exclusion of knowledge if not taken into confidence.
>
> 19. Such transaction should continue as an administrative decision with the organ of the State. It may be contractual or statutory but in a situation of transaction between the parties for nearly two decades, such procedure should be followed which will be reasonable, fair and just, that is, the process which normally be accepted (sic is

[13] [in short "***Mahabir Auto*** Case"]

expected) to be followed by an organ of the State and that process must be conscious and all those affected should be taken into confidence.

20. Having regard to the nature of the transaction, we are of the opinion that it would be appropriate to state that in cases where the instrumentality of the state enters the contractual field, it should be governed by the incidence of the contract. It is true that it may not be necessary to give reasons but, in our opinion, in the field of this nature fairness must be there to the parties concerned, and having regard to the large number or the long period and the nature of the dealings between the parties, the appellant should have been taken into confidence. Equality and fairness at least demands this much from an instrumentality of the State dealing with a right of the State not to treat the contract as subsisting. We must, however, evolve such process which will work.

21. Therefore, we direct that the case of the appellants be put to the respondents and let the respondent authorities consider afresh the submissions made by the appellant-firm, namely, that the existing arrangement amounts to a contract by which the distributorship was continued in case of the appellant-firm without any formal contract and further that the new policy of the government introduced in December 1982 would not cover the appellant firm and as such the appellant should continue. It will be sufficient, having regard to the nature of the claims, for the respondent authority to consider this aspect after taking the appellant-firm into confidence on this aspect. Nothing further need be stated or required to be done and we give no directions as to whether reasons should be recorded or hereinafter should be given. In the facts and circumstances, it is not necessary to give oral hearing or record the reasons as such for the decision. The decision should be based on fair play, equity and consideration by an institution like IOC. It must act fairly.

22. We direct accordingly that the present arrangement to continue until the respondent company gives the consideration on the lines indicated above and makes the decision.

23. It is not our decision which is important but a decision on the above basis should be arrived at which should be fair, just and reasonable — and consistent with good government — which will be arrived at fairly and should be taken after taking the persons concerned whose rights/obligations are affected, into confidence. Fairness in such action should be perceptible, if not transparent."

15. The entire defence of CWC, it appears, revolves around the fact that it had obtained a stay on the operation of the notification dated 17.11.2006.

16. According to me, this stand of CWC is untenable in law. The reason being, all that the interim order passed by this Court on 28.05.2008 (which was made absolute on 26.04.2010) did was to place a question mark on the findings arrived at by the Board, *inter alia,* to the effect that the work performed by the concerned workmen was perennial. The interim order, to my mind, did not efface either findings of the Board or the notification issued by the Government of India, which was based on these findings.

16.1. Therefore, the CWC, in my opinion, is wrong in contending that, while adjudication qua these aspects is pending before this Court, it could have replaced the workmen, who are already deployed with CWC, with another set of workers. In other words, according to it, it could replace one set of contractual labour with another set, *albeit*, *via* a new contractor i.e. RR. This move has gone beyond the scope and purport of the interim order issued by this Court.

16.2. The interim order could not have given a carte blanche to CWC to trigger such a disruptive measure as it would be in the teeth of the provision of Section 33(1) of the 1947 Act. In this context, [i.e. as to what is the impact of an interim order] it would be helpful to advert to the following observations of the Supreme Court in ***Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn.***, (1992) 3 SCC 1[14].

[14] [in short "***Shree Chamundi Mopeds*** Case"]

"10. In the instant case, the proceedings before the Board under Sections 15 and 16 of the Act had been terminated by order of the Board dated April 26, 1990 whereby the Board, upon consideration of the facts and material before it, found that the appellant-company had become economically and commercially non-viable due to its huge accumulated losses and liabilities and should be wound up. The appeal filed by the appellant-company under Section 25 of the Act against said order of the Board was dismissed by the Appellate Authority by order dated January 7, 1991. As a result of these orders, no proceedings under the Act were pending either before the Board or before the Appellate Authority on February 21, 1991 when the Delhi High Court passed the interim order staying the operation of the order of the Appellate Authority dated January 7, 1991. The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. **While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence**. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate Authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the Appellate Authority. In that view of the matter, it cannot be said that any proceedings under the Act were pending before the Board or the Appellate Authority on the date of the passing of the order dated August 14, 1991 by the learned Single Judge of the Karnataka High Court for winding up of the company or on November 6, 1991 when the Division Bench passed the order dismissing O.S.A. No. 16 of 1991 filed by the appellant-company against the order of the learned Single Judge dated August 14, 1991. Section 22(1) of the Act could not, therefore, be invoked and there was no

> impediment in the High Court dealing with the winding up petition filed by the respondents. This is the only question that has been canvassed in Civil Appeal No. 126 of 1992, directed against the order for winding up of the appellant-company. The said appeal, therefore, fails and is liable to be dismissed."
>
> [Emphasis is mine]

16.3. The argument advanced on behalf of RR, that being a new contractor, it had no privity of contract with the workmen, who were deployed under the aegis of SFPL, can have, in my view, no impact on the reliefs sought for by the workmen before me both in CM No. 742/2021 filed in W.P. (C) 4114/2008 and W.P. (C) 482/2021. The 120 workmen, that RR says it has deployed, are even according to RR, its employees, and therefore, if CWC takes a stand adverse to its interest, it would be open to RR to take recourse to a legal remedy but that, by itself, cannot determine the fate, as indicated above, of the workmen who were deployed with CWC till 05.01.2021.

16.4. Therefore, the other submissions advanced on behalf of RR, that no writ would lie against it, as it is not an instrumentality of the State or that the writ petition must fail as 120 workmen deployed by it have not been arrayed as parties, to my mind, are completely untenable. CWC, perhaps, could not have awarded the contract to RR, as it did not have on the date when the contract was awarded to it or even on the date when it deployed its personnel, a license, under Section 12 of the 1970 Act.

16.5. The CWC, it appears, to preempt any order being secured by the workmen, gave the green signal to RR, to deploy its personnel, even before it

obtained a license from the concerned authority under Section 12 of the 1970 Act.

16.6. I must also deal with the argument advanced on behalf of CWC, that the judgement rendered by the Supreme Court in ***Piara Singh*** Case is no longer good law, given the Constitution Bench judgement in ***Umadevi*** Case. To my mind, this argument is fallacious for the following reason. In ***Umadevi***'s case, the Supreme Court, while discussing the judgement rendered in ***Piara Singh***'s Case, tried to explain what it thought was an inconsistency in the ***Piara Singh*** Case. This is clear if one were to peruse the observations made in paragraphs 23 to 26 of the ***Umadevi*** case.[15] It is, therefore, important to note that, the

[15] "23. We may now consider State of Haryana v. Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : (1992) 3 SCR 826] . There, the Court was considering the sustainability of certain directions issued by the High Court in the light of various orders passed by the State for the absorption of its ad hoc or temporary employees and daily-wagers or casual labour. This Court started by saying: (SCC p. 134, para 21)

> "21. Ordinarily speaking, the creation and abolition of a post is the prerogative of the executive. It is the executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making rules under the proviso to Article 309 of the Constitution or (in the absence of such rules) by issuing rules/instructions in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, rules and other instructions, if any, governing the conditions of service."

24. This Court then referred to some of the earlier decisions of this Court while stating: (SCC p. 134, para 21)

> "The main concern of the court in such matters is to ensure the rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said,

the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long the court presumes that there is need and warrant for a regular post and accordingly directs regularisation. While all the situations in which the court may act to ensure fairness cannot be detailed here, it is sufficient to indicate that the guiding principles are the ones stated above."

25. This Court then concluded in paras 45 to 49: (SCC p. 152)

"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.

47. Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.

48. An unqualified person ought to be appointed only when qualified persons are not available through the above processes.

49. If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State."

Constitution Bench in ***Umadevi*** Case did not overrule the following observations made in paragraph 46 of ***Piara Singh*** Case.

> "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."

16.7. A similar view has also been taken by a coordinate Bench of this Court in ***Abhinav Chaudhary v. Delhi Technological University***[16], (2015) SCC

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26. With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent—the distinction between regularisation and making permanent, was not emphasised here—can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in para 50 (of SCC) of Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : (1992) 3 SCR 826] is to some extent inconsistent with the conclusion in para 45 (of SCC) therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognised in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent."

[16] "2. The only grievance of the petitioners is that a contractual appointee cannot be replaced by any other contractual appointee. Petitioners claim that no doubt petitioners cannot seek regularization, however, it is argued that one contractual employee cannot be replaced by another contractual employee on more or less the same terms. Reliance is placed upon the judgment of the Supreme Court in the case of State of Haryana v. Piara Singh (1992) 4 SCC 118 which holds that one work charged/casual employee/daily worker cannot be replaced by any worker of same category. It is argued that the ratio of the judgment of the Supreme Court in the case of Piara Singh (supra) has been approved by the Supreme Court in the Constitution Bench judgment of the Supreme Court in the case of Secretary, State of Karnataka v. Umadevi (2006) 4 SCC 1. The judgment in the case of Piara Singh (supra) is referred to in paras 23 to 25 of the judgment in the case of Umadevi (supra). In para 26, the Constitution Bench in the case of Umadevi (supra) only disagreed with that direction of Piara Singh's case (supra) which requires regularization of ad hoc or temporary or casual

employee. In para 25 of the judgment in the case of Umadevi (supra) para 46 of the Piara Singh's case (supra) is referred to and which para 46 states that an ad hoc or temporary employee should not be replaced by any other ad hoc or temporary employee and such an employee can only be replaced by a regularly selected employee and which is to avoid any arbitrary action on the part of the appointing authority.

3. The ratio and spirit of the judgments of the Supreme Court in the cases of Piara Singh (supra) and Umadevi (supra) has been applied and reiterated by the Supreme Court in the judgment in the case of Mohd. Abdul Kadir v. Director General of Police, Assam (2009) 6 SCC 611 and which states that a person who is employed under the scheme has to continue in the employment till the continuation of the scheme and such a person's services cannot come to an end/terminated before the expiry of the scheme except of course on disciplinary grounds or unsatisfactory services or medical grounds or attaining the normal age of retirement. Paras 17 and 18 of the judgment in the case of Mohd. Abdul Kadir (supra) are relevant and the same read as under:-

> "17. When the ad hoc appointment is under a scheme and is in accordance with the selection process prescribed by the scheme, there is no reason why those appointed under the scheme should not be continued as long as the scheme continues. Ad-hoc appointments under schemes are normally co-terminus with the scheme (subject of course to earlier termination either on medical or disciplinary grounds, or for unsatisfactory service or on attainment of normal age of retirement). Irrespective of the length of their ad hoc service or the scheme, they will not be entitled to regularization nor to the security of tenure and service benefits available to the regular employees. In this background, particularly in view of the continuing Scheme, the ex-serviceman employed after undergoing selection process, need not be subjected to the agony, anxiety, humiliation and vicissitudes of annual termination and re-engagement, merely because their appointment is termed as ad hoc appointments.
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> 18. We are therefore of the view that the learned Single Judge was justified in observing that the process of termination and re-appointment every year should be avoided and the appellants should be continued as long as the Scheme continues, but purely on ad hoc and temporary basis, co-terminus with the Scheme. The Circular dated 17-3-1995 directing artificial breaks by annual terminations followed by fresh appointment, being contrary to the PIF Additional Scheme and contrary to the principles of service jurisprudence, is liable to be is quashed." (underlining added)

4 (i) A reference to the new advertisement which has now been issued by the respondent no. 1 for appointment to the posts of Assistant Professors for contractual period, shows that the persons to be appointed in terms of the impugned advertisement are Assistant

OnLine Del 6780. This apart, one would have to bear in mind, that the judgement of the Constitution Bench in ***Umadevi*** Case did not relate to workmen who are governed, inter alia, by the provisions of the 1947 Act.

Professors and they are to be employed on the same monetary emoluments on which the present petitioners-Assistant Professors are working i.e there is no change in the monetary emoluments with respect to new Assistant Professors who are sought to be appointed on contractual terms by the respondent no. 1. The only difference is that the new appointments are for 11 months instead of 9 months and which difference according to counsel for respondent no. 1 is a new term and therefore it is argued that the present is not a case where one contractual employee is sought to be replaced by another contractual employee in view of the difference of the term of 9 months and 11 months.

(ii) In my opinion, the difference of two months i.e between 9 months and 11 months and salary with respect to the additional period of two months in the new contractual post is not such a substantial difference for the respondent no. 1 to contend that one contractual employee can be replaced by other contractual employee. For the sake of argument let us take that the case was a case of replacing a contractual employee of 11 months with a contractual employee for a substantially large period of lets say three years or more, then, may be in such a case depending on facts of such a case, the employer could contend that terms and conditions are substantially different and consequently it would not be a case where a contractual employee is sought to be replaced by a similar other contractual employee. In my opinion, arguing that two months difference makes the petitioners' employment different with the persons who have been selected pursuant to the impugned advertisement dated 28.4.2014/1.5.2014, is an argument really one of gross arbitrariness on the part of the employer/respondent no. 1 and which needs to be adversely commented upon by this Court.

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."

Conclusion: -

17. Thus, having regard to the foregoing discussion, I am of the view that since CWC is responsible for disrupting the status quo, which prevailed before 06.01.2021, it would have to continue the services of the workmen who were on the rolls of SFPL on 05.01.2021. It is ordered accordingly.

18. Resultantly, the interim order dated 13.01.2021, passed in CM No. 1291/2021 filed in W.P. (C) 482/2021, is modified to the extent that CWC would have to bear the burden of ensuring that the workmen who were on the rolls of SFPL up until 05.01.2021, continue to be deployed at its concerned establishment, i.e., ICD Patparganj, Delhi, through a contractor of its choice, on the same terms and conditions, till such time, a final decision is reached in pending proceedings which would include W.P. (C) 4114/2008, and the two references i.e. I.D. No. 142/2015 and I.D. No. 57/2015.

19. Insofar as W.P. (C) 482/2021 is concerned, since it has been filed, as a stop-gap measure, on account of non-availability of the presiding officer, in the Tribunal, suitable orders may have to be passed *qua* the same, once the Tribunal commences its functions.

20. The captioned applications are disposed of in the aforesaid terms.

W.P. (C) 4114/2008 and W.P. (C) 482/2021

21. List before the Roster Bench on 02.08.2021.

RAJIV SHAKDHER, J

MAY 17, 2021 *Click here to check the corrigendum, if any*