
(2019) 04 CAL CK 0096

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 26347 (W) Of 2018 With Civil Application No. 2985 Of 2019

Dew Nath Tiwari & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 30-04-2019

Acts Referred:

Citation : (2019) 04 CAL CK 0096

Hon'ble Judges : Samapti Chatterjee, J

Bench : Single Bench

Advocate : Aloke Dutta

Judgement

Let affidavit of service and supplementary affidavit filed by the petitioners in Court today be kept on record.

Despite service of notice no one appears on behalf of the respondents. No adjournment is sought for.

The petitioners' case is that the petitioners have been working as security staff under the contractor.

It is submitted by Mr. Aloke Dutta, petitioner (in person), that initially the petitioners have filed a writ petition being W.P. 26347(W) of 2018 assailing the attempt made by the respondent authority particularly, the HPCL to float new tender for appointment of new security staff at Ramnagar Terminal, Kolkata thus violating the agreement dated 4th March, 2003. In the said matter on 14th January, 2019 this Court passed the following order:-

"Mr. Bhattacharyya, learned senior advocate moves this writ Petition, on behalf of petitioners who are working as Security Guards under contractors. He demonstrates from annexure P-2 to the writ petition that Hindustan Petroleum Corporation Limited (HPCL) had protected engagement of 82 Security Guards who are petitioners in W.P. 2795 of 2001 (Paschim Banga Security and Co.

Workmen's Union & Anr. Vs. Union of India & Ors.). Petitioners are of the 82 Security Guards who had been engaged by existing Director General of Resettlement (DGR) at different locations. Mr. Bhattacharyya submits, his clients have been removed from DumDum ASF. He files supplementary affidavit upon leave obtained and copy served. Mr. Mukherjee, learned senior advocate appears on behalf of the Oil Company and submits, some persons have been removed from the facility. He seeks adjournment to obtain instructions regarding whether the persons removed are of the 82 in said writ petition and are petitioners herein. He seeks directions for filing affidavit.

Affidavit-in-opposition to be used by the Oil Company must be served upon petitioners by 22nd January, 2019. Petitioners will be entitled to use reply on copy served. Affidavits will be accepted on adjourned date.

List on 28th January, 2019 under heading "for orders". It is made clear that short directions have been given since prayer for interim order is being opposed on ground of bringing materials on record on affidavit. Omission to file affidavit will result either in interim measure directed or disposal of writ petition with it."

Since during the pendency of the said writ petition the HPCL tried to appoint a new contractor thereby violating clause 3 of the agreement dated 4th March, 2013, therefore, the petitioners filed a CAN application but unfortunately that matter was not taken up due to change of determination. Taking advantage of this, Soumitra Mukherje, the Security Agency, proprietor of the said agency, issued a letter on 1st April, 2019, a copy of which was also given to the Terminal Manager, HPCL, Ramnagar. The contents of the said letter is quoted below:-

"1. Ref P.O. NO-16000314-OP-14001/HK Dated:21.10.2016. Revision Date: 27.03.2019

2. The management has extended the work period by one month till 30 April and we had intimated the same verbally to all the Security Staff and yourself.

3. We will not be Responsible for payment to Security Personnel after 30 April 2019.

4. The above is for your information and the same may be communicated all Security Personnel."

Mr. Dutta further contends that as per agreement dated 4th March, 2003 the Agency Contractor may be changed but the petitioners should have been absorbed as security staff under the new contractor and their service will be continuing without terminating their appointments. But unfortunately, till date the petitioners have not been informed whether their existing services have been confirmed under the new contractor or not. On the contrary the erstwhile contractor has issued the above referred letter thus violating the agreement dated 4th March, 2003. Considering the urgency of this matter and considering the plight of the petitioners that the petitioners' services would be terminated from 30th April, 2019 and after being prima facie satisfied, the respondent

authorities, the HPCL as well as any new security agency, who has been appointed through tender, are restrained from giving any employment and/or engagement to other security staff barring the petitioners who are the existing security staff serving for the HPCL on the basis of the agreement dated 4th March, 2003 till 10th May, 2019.

Let the matter appear in the list on 7th May, 2019 under the heading "To Be Mentioned".

Liberty is also given to the respondent authorities to apply for vacation and/or variation and/or alteration of the order upon notice to the petitioners.

Let photostat plain copy of this order, duly countersigned by the Assistant Registrar (Court), be given to the petitioners on usual undertakings.