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

Date of decision: 28th July, 2021.

+ **W.P.(C) 3040/2021 & CM APPLs. 9208/2021, 9210/2021,
16339/2021 & 20844/2021**

ABDUL MAJID AND ORS Petitioner

Through: Ms. Ritu Jain, Advocate.

versus

EMPLOYEES STATE INSURANCE

CORPORATION AND ORS. Respondents

Through: Mr. Yakesh Anand, Ms. Deepshikha
Sansanwal and Mr. Akshay Thakur,
Advocates for R-1 to 3.
(M:9810005393)

Mr. Pankaj Kumar, Advocate for R-4.

Mr. Parveen Kumar Mehdiratta,
Advocate for R-7.

Mr. Simran Mulchandani, Advocate
for R-8.

Mr. Neeraj, Mr. Sahaj Garg, Mr.
Rudra Paliwal and Mr. Vedansh
Anand, Advocates for R-9/Ministry of
Labour.

Mr. Anil Soni, CGSC for UOI.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The present petition has been filed by 33 Petitioners, who were working as maintenance staff in the ESI hospital.
3. The grievance of the Petitioners is that they had been working for several years with the ESI Hospital, however, sometime in the month of February, 2021, the Petitioners were informed that the new contractor M/s.

Hindustan Prefab Limited- Respondent No.7 was engaged by the Hospital management. The said company has further sub-contracted the work of providing contractual labour to Respondent No.8 – M/s. Global Enterprises. The new contractor having been awarded the said contract for providing maintenance staff, the Petitioners were terminated from their services on 16th February, 2021.

4. It is the case of the Petitioners that since they have been working for several years, their services ought not to have been terminated, and they ought to have been considered for appointment by the fresh contractor. Reliance has been placed by the Petitioners on the judgment of the Supreme Court in *State of Haryana v. Piara Singh, (1992) 4 SCC 118*.

5. The Petitioners had made a representation on this issue, before the Respondent- Ministry of Labour, and the matter was also referred to the Central Government Industrial Tribunal (*hereinafter referred as "CGIT"*) for adjudication. However, the matter continues to remain pending before the CGIT. Accordingly, the writ jurisdiction of this Court has been invoked by the Petitioners on the ground that there are exceptional circumstances considering the COVID-19 pandemic, and that all the 33 Petitioners have been terminated from their employment, which has adversely affected their livelihood.

6. During the course of hearing, this Court was informed by Id. Counsels for the Respondents, on 17th May, 2021, that a reference in this case has already been made by the Ministry of Labour and Employment to the CGIT and the matter is now pending before the CGIT. Accordingly a submission was made to the effect that the present writ petition would not be maintainable. However, Ms. Ritu Jain, Id. Counsel appearing for the

Petitioners, thereafter, moved an application stating that hearings are not being conducted before the CGIT at all, and hence the said remedy is not an efficacious alternate remedy at all.

7. On 16th July, 2021, this court perused the office orders issued by the CGIT-cum- Labour court-I, which showed that *en bloc* dates have been given till October and November 2021 for matters which were listed in June and July 2021. Accordingly, on the said date, notice was issued to the relevant ministry of the Union of India, through Mr. Anil Soni, Id. CGSC, who was requested to take instructions and file a status report as to whether the matters in the CGIT-cum Labour Court, are being heard, and if so in what manner.

8. Status report has been filed by the Id. CGSC and is on record. The said status report has answered the queries raised by the Court and reads as under:

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<i>S. N.</i>	<i>Question put up by Hon'ble Delhi High Court in para No.5 of order dated 16.7.2021</i>	<i>Reply</i>
<i>1</i>	<i>Whether CGIT-I and II Delhi Bench are holding regular hearings in all the matter and if so, which are the categories of matters, which are being taken up?</i>	<i>Yes, regular conduct of hearing in respect of matters pending for final argument in the Industrial Disputes cases after due consent of the parties along with Admission and Final arguments in EPF Appeal.</i>

2	<p>Whether CGIT-I and II of Delhi Bench have sufficient infrastructure for holding the hearings through video conferencing/online mode?</p>	<p>Hearings are being conducting through free version of webex meeting, having time limit of 50 minutes schedule. In addition a committee has been set up in the Ministry to implement e-courts/virtual hearing. The matter is being taken up with NIC to provide solutions for implementation of e-courts/virtual hearing.</p>
3	<p>Whether any infrastructure is required for the purpose of holding hearing through</p>	<p>Yes, the following infrastructure is required for the purpose through video conferencing/online:</p> <ol style="list-style-type: none"> a. A Licenced version of online hearing platform. b. High speed internet connection along with others peripherals necessary for online hearing. c. In terms of man power, support staff containing clerical as well as stenographical assistance. d. Technical assistance for web updation.
4	<p>What are the total number of matters which have been dealt with from 1st July, 2021 and 15th July, 2021 and the total number of orders that have been passed by CGIT-I and CGIT-II</p>	<p>The total no. of matters which have been dealt by CGIT-I and II Delhi during the period 1st July to 15th July 2021 are 15 in 11 working days. During this period, final orders have been passed in 7 No. of Industrial Disputes cases and</p>

	<i>Delhi Bench</i>	<i>1 No. of EPF Appeal. Be its's stated that during the lockdown period this Tribunal has conducted 160 virtual hearing of different matters on different dates and orders both interim and final were passed</i>
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9. There are accordingly two dimensions to be considered by this court:
- i) In respect of the conduct of hearings before the benches of the CGIT in Delhi,
 - ii) In respect of the specific case of the Petitioners.

i) Conduct of hearings before the benches of the CGIT in Delhi

10. A perusal of the status report filed by Mr. Anil Soni, Id. CGSC, on behalf of the Union of India, makes it clear that the CGIT does not possess adequate infrastructure to conduct video conferencing/online hearings. Mr. Soni, has also submitted that the CGIT only uses the free version of Cisco Webex, which has a limited use for only 50 minutes per day. Accordingly, hearings are not being able to be conducted for the whole day. Various other counsels who have appeared today and are regular practitioners before the CGIT, submit that proper internet facilities are not fully available at the CGIT, and the staff of the CGIT use *personal hotspot* facility from their own mobile phones, for conducting online hearings of the cases which are listed.

11. The CGIT is an important tribunal, dealing with claims relating to Workmen, who have been deeply affected during the COVID-19 pandemic. In the opinion of this court, for the expeditious and timely adjudication of

the claims of Workmen, proceedings at the CGIT ought not to be adversely effected merely due to lack of proper infrastructure, as is seen from a perusal of the status report.

12. Considering these facts, until it is fit to hold physical hearings, the CGIT ought to be equipped with necessary facilities for the conduct of video conferencing hearings, through an online platform. Accordingly, in order to make the online functioning of the CGIT efficient, the following directions are issued:

- (i) The CGIT would procure the required number of Cisco Webex license/s, in order to enable it to conduct hearings throughout the working hours of the day, on a daily basis.
- (ii) High speed internet shall be immediately installed in the CGIT, through any of the established players, for the conduct of hearings through video conferencing on an online platform, so that issues or disruptions due to non-availability/improper internet connection, do not take place during the hearings.
- (iii) For any other assistance that would be required in terms of manpower, including stenographical assistance, the Presiding Officer, CGIT is permitted to take steps in accordance with the established procedure, and the Ministry of Labour and Employment shall provide all necessary cooperation in this regard.
- (iv) The Ministry of Labour and Employment has undertaken to make the necessary funds available urgently for provision of the infrastructure in the CGIT including procurement of Cisco WebeX licences, broadband highspeed internet as also other

facilities which are necessary to conduct online hearings at the CGIT.

- (v) Mr. Sarsij Kumar (M:965000723) and Mr. Zameem Ahmad Khan (M:9650006732) from the IT department of the Delhi High Court, are requested to visit the CGIT office on 30th July 2021, at 2:00 PM, and coordinate with Mr. Rishabh Dev (M:8168278201), Secretary to the Presiding Officer, in order to set out the steps to be taken for efficient conduct of proceedings through video conferencing within the next two weeks itself. The concerned officer of the Ministry of Labour and Employment, under whom the CGIT works, shall be deputed at the site in order to ensure that there is proper coordination in timely implementation of the necessary steps.
- (vi) It is informed that a Committee is already functioning in the Ministry for dealing with these issues. If so, the Committee shall give effect to the order passed today by this Court, and shall cooperate with the officers of IT Department of the Delhi High Court.

13. This Court has also been informed that there are two benches of the CGIT which normally function in Delhi, i.e., CGIT-I and CGIT-II. However, only one Presiding Officer, Ms. Pranita Mahanti, has been working and the said Presiding Officer is holding hearings *qua* both these Benches.

14. There is no reason as to why the position of another Presiding Officer of the CGIT is being kept vacant, and the appointment of a Presiding Officer for the second Bench is being delayed. Accordingly, the Ministry of Labour

and Employment, or the relevant appointing authority, is directed to take expeditious steps to fill the vacancy of the said Presiding Officer for second Bench of CGIT.

15. Let a status report in respect thereof be put up before this court within six weeks by Mr. Soni Id. CGSC.

ii) The case of the Petitioners

16. Insofar as the case of the present 33 petitioners are concerned, the status report filed by Mr. Anil Soni, CGSC, on behalf of the Union of India, reads as under:

“2. *Regarding para No.9 of the order:*

*The ID case No.79/2021 titled as Shri Abdul Majid and others Vs. ESIC and others registered in CGIT-I on 18.6.2021 invoking the provision of section 2A of the Industrial Dispute Act. Along with the claim petition through a photocopy of a reference made by the Appropriate Government i.e. Ministry of Labour and Employment, by order dated 18.6.2021 notices to the respondent along with the copy of the claim petition have sent via email. **No written Statement has been filed and the matter stands posted on 18.10.2021.** After filing of Written Statement appropriate steps shall be taken for expeditious disposal of the matter. Be its stated that the claimants in this case never appeared on the dates of adjournment nor moved any early hearing petition though and application for urgent hearing of the industrial dispute was filed wherein the date is mentioned as 28.5.2021 i.e. prior to the date of filing of the claim petition on 18.6.2021.”*

17. The submission made today is that the reference to the CGIT was made on 12th May, 2021, which clearly records that the award has to be

passed by the Tribunal within three months. Since the reference has been made, as per the status report, it is clear that written statement has not been filed by the Respondents.

18. It is noted that on the one hand, the Respondents have terminated the services of the Petitioners-Workmen, and on the other hand, they have chosen not to file a written statement in the matter before the CGIT till date. Even the application, which is stated to have been moved by the Petitioner, appears to have not been taken on board, although on this issue, the CGIT has stated that no application was filed.

19. At this stage, Mr. Mehdiratta, Id. Counsel submits that the services of the Petitioners have not been terminated, rather the contract with the earlier contractor itself has come to an end.

20. Without going into the merits of these issues, it is clear that the case of the Petitioners deserves to be heard expeditiously as they are currently stated to be without a job. Accordingly, the following directions are issued in the matter:

- (i) Last and final opportunity is granted to the Respondents to file their written statement before the CGIT, on or before 10th August, 2021.
- (ii) Immediately upon receiving the written statement, the matter shall proceed in accordance with law. Since all counsels have also agreed for physical hearing in this matter, the CGIT would take up the matter through physical hearing/ VC hearing in consultation with the counsels, as per its convenience. However, the holding of VC hearings ought not to result in any impediment in expeditious disposal.

- (iii) Interim applications, if any, moved by the Petitioners, shall be taken up for hearing on priority.
- (iv) The matter shall be adjudicated by the CGIT in an expediated basis and the final award shall be passed on or before 30th September, 2021.
- (v) No unnecessary or unjustified adjournments shall be granted by the CGIT.

21. List the case of the Petitioners before the CGIT on 13th August 2021.

22. With these observations, the writ petition, along with all pending applications itself, is disposed of. List on 20th September, 2021 for receiving the status report in respect of the upgradation of video conferencing facilities, as also in respect of the appointment of the second Presiding Officer in the CGIT bench.

23. Let a copy of this order be sent to Mr. Sarsij Kumar (M:965000723) and Mr. Zameem Ahmad Khan (M:9650006732) from the IT department of the Delhi High Court and to Mr. Rishabh Dev (M:8168278201), Secretary to the Presiding Officer.

24. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

PRAITHIBA M. SINGH
JUDGE

JULY 28, 2021/dk/Ak