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

Date of Decision: 06th August, 2026

CNR No. DLHC010339562021

+ **W.P.(C) 12384/2021, CM APPL. 38926/2021**

MANOJ KUMAR

.....Petitioner

Through: Mr. Sanjoy Ghose, Senior Advocate
with Mr. Chirayu Jain, Mr. Rohan
Mandal and Mr. Onaizha Habeeb,
Advocates.

versus

**DELHI BUILDING AND OTHER CONSTRUCTION WORKERS
WELFARE BOARD & ORS.**

.....Respondents

Through: Mr. Abhay Dixit and Ms. Risha Dixit,
Advocates for R-1.
Mr. Deepak Rai, Advocate for R-5.
Mr V. Balaji, Advocate for R-4.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The Petitioner worked as a Manager (Operations) in the district offices of the Delhi Building and Other Construction Workers Welfare Board¹. His engagement, however, was routed through Intelligent Communication Systems India Limited², which supplied contractual manpower to the Board. Following an inspection of the North West District

¹“the Board”



office on 12th January, 2021, the Board informed ICSIL that the Petitioner had been “surrendered” and sought his replacement. ICSIL subsequently issued a communication dated 22nd June, 2022 recording that his services stood terminated with effect from 12th January, 2021.

2. The Petitioner challenges both communications, as well as the action that preceded them. His case rests on two related premises: first, that ICSIL was merely an intermediary and the Board was his true employer; and secondly, that his services were brought to an end on allegations of corruption without notice or inquiry. On this basis, he seeks reinstatement with the Board, continuity of service, back wages, consequential benefits and interest.

3. The threshold issue is not, as the Petitioner frames it, whether the termination was stigmatic. That question can arise only after the Court identifies the employment relationship on which the claim rests. The enquiry must therefore begin with three antecedent questions: who employed the Petitioner; on what terms he was engaged; and whether those terms conferred any enforceable right to continue in service. Only if those questions are answered in the Petitioner’s favour can the Court examine the legality of the termination and the relief of reinstatement.

Nature of the Petitioner’s Engagement

4. The Petitioner commenced working as Manager (Operations) in 2016. By order dated 27th June, 2016, the Board placed him in the North-West District and directed him to report to the concerned Joint Labour Commissioner or Deputy Labour Commissioner. The said order also allocated six other persons to different districts. It did not specify any tenure,

²“ICSIL”



remuneration, probationary period, notice period, disciplinary authority or other terms and conditions of service.

5. The Petitioner worked in different establishments of the Board. The Board assigned his duties, marked his attendance, transferred him between districts and supervised his work. On 12th January, 2021, its Chairperson inspected the North West District office. Irregularities in certain registration records and allegations concerning demands for money were raised during that visit. The Petitioner was questioned in the presence of officials, and the proceedings were recorded on camera.

6. On the same day, the Board addressed a communication to ICSIL recording that the Petitioner had been “surrendered” and requesting that another Manager be provided on an urgent basis. The communication did not purport to terminate any employment relationship between the Petitioner and the Board. Its language proceeded on the footing that the Petitioner was personnel supplied by ICSIL and was therefore being returned to that agency.

7. ICSIL thereafter issued a letter dated 22nd June, 2022 recording that the Petitioner’s services were no longer required by the Board with effect from 12th January, 2021. That letter described him as an outsourced contractual employee of ICSIL and stated that his services stood terminated from the same date.

Contentions by the parties

8. The Petitioner contests this description. He says that ICSIL was no more than an intermediary, introduced because recruitment rules for the Board had not been framed. He relies on the work performed by him, the perennial nature of that work, the Board’s control over attendance, transfers,



equipment and day-to-day functioning, and the Board's decision to remove him from its establishment. On that basis, he asks the Court to hold that the arrangement with ICSIL was a sham and that the Board was his true employer.

9. The Respondents take the contrary position. The Board maintains that the Petitioner was never appointed to its service. ICSIL states that it recruited the Petitioner on contractual terms, deployed him as per the Board's requirements, paid his salary and statutory benefits, and received reimbursement from the Board on a back-to-back basis. ICSIL also refers to a deployment letter allegedly accepted by the Petitioner and an engagement letter said to prescribe limited contractual periods. Neither document has been placed on record.

Lack of material terms and documents

10. During the hearing, the Petitioner was repeatedly asked to produce material showing: (i) the identity of his employer; (ii) the terms and duration of his engagement; and (iii) the conditions governing its termination. However, no engagement letter, contract of employment, salary slips, bank statements, or other relevant document was produced.

11. This omission goes to the root of the Petitioner's claim. A person seeking reinstatement or continuity of service must first establish the legal relationship sought to be enforced and the terms from which the asserted right to continue is said to arise. That burden cannot be discharged merely by showing that he worked at the Board's establishment or was subject to its day-to-day supervision. Those facts may be relevant indicia, but they do not, by themselves, prove appointment by the Board or create a right to reinstatement in its service. In the absence of the engagement letter, contract



of employment, salary records or other contemporaneous material, the Court has no reliable basis to determine whether the engagement was for a fixed term, periodically renewed, co-terminus with any work order, terminable by notice, or otherwise subsisting on 12th January, 2021. The missing documents are therefore not a mere evidentiary lapse; they are the foundation on which the claimed employment relationship, its duration, and the relief of reinstatement would have to rest.

12. The amended petition itself acknowledges that no appointment letter setting out the terms of the Petitioner's engagement was issued to him. ICSIL has referred to a deployment letter and an engagement letter, but has not placed either document on record. That omission may lead to an adverse inference against them and weaken its reliance on those asserted terms; it would not supply affirmative proof of a direct employment relationship with the Board. The Petitioner must still establish, by independent material, that the Board appointed him, assumed the obligations of an employer, and conferred on him a right to continue in its service. No such material is before the Court.

13. The office order dated 27th June, 2016, also does not bridge this evidentiary gap. It merely records the placement of candidates in different districts and directs them to report to the concerned officers. It does not appoint the Petitioner to any post under the Board, prescribe service terms, create a civil post, or place him in a sanctioned cadre. Its legal effect is limited: it is an order of deployment, not appointment.

Nature of the Employment Relationship

14. The record however, does disclose the institutional arrangement between the Board and ICSIL. The Government circular dated 29th March,



2016 empanelled ICSIL to provide contractual manpower to departments of the Government of NCT of Delhi. Under that arrangement, ICSIL was to provide manpower, maintain employment records, disburse remuneration and comply with statutory obligations relating to provident fund and employee insurance. The user department was to certify attendance and remit to ICSIL the salary component, service charges and statutory contributions.

15. This arrangement does not, by itself, make the Board the Petitioner's employer. A distinction must be maintained between reimbursement of wages and the legal obligation to employ and pay. On the material before the Court, the Board reimbursed the salary component and statutory contributions to ICSIL; ICSIL, in turn, disbursed remuneration to the Petitioner and attended to the statutory incidents of his engagement.

16. The agreement dated 4th January, 2021 between the Board and ICSIL reinforces this distinction. The Board could assign work, assess performance, reject unsuitable personnel and seek replacement. In cases of alleged misconduct, it could report the matter to ICSIL and require substitution. These are rights of a user department over deployed manpower. They do not amount to the power to appoint, discipline or terminate the contractual employment itself.

17. Clauses 9 and 15 of aforementioned agreement do not advance the Petitioner's case. They regulate the inter se arrangement between the Board and ICSIL, not the Petitioner's individual terms of engagement. At the highest, they enabled the Board to discontinue a deployment and seek replacement. They did not confer on the Board the status of employer or the authority to terminate the Petitioner's employment with ICSIL.



18. The distinction is decisive. The Board could discontinue the Petitioner's deployment at its establishment and call for a replacement through ICSIL. Whether that discontinuation also ended his contractual employment depended on the terms of his individual engagement with ICSIL. Those terms are not before the Court. The Petitioner's case therefore conflates two different matters: withdrawal from deployment at the Board and termination of the underlying employment.

19. The Board's transfers, attendance control and day-to-day supervision must be viewed in that light. A person deployed at another establishment ordinarily works under its operational directions, uses its systems and performs duties assigned by its officers. Such supervision may show control over the work performed; it does not, without more, prove control over the employment relationship. On the present record, it is insufficient to establish that the Board was the Petitioner's employer.

20. In *International Airport Authority of India v. International Air Cargo Workers' Union*³, the Supreme Court considered the question whether contract labour could be treated as employees of the principal employer. The Court recognised that supervision and control by the principal employer, by themselves, do not establish an employer-employee relationship. The enquiry depends on several factors, including the terms of contract, recruitment, payment of wages, nature of work, and the power of supervision, discipline and dismissal. Where the contractor is alleged to be a sham or camouflage, the issue is essentially factual and must ordinarily be determined on evidence before the appropriate industrial forum.

21. Tested on that principle, the Petitioner's reliance on the Board's

³(2009) 13 SCC 374



control over attendance, postings, equipment and daily work is insufficient. These circumstances show operational control over the place and manner of work; they do not establish legal control over appointment, tenure, remuneration, discipline or termination. The available material instead shows that the engagement was routed through ICSIL, which disbursed remuneration and dealt with statutory benefits, while the Board's role was confined to deployment, supervision and replacement of outsourced personnel. The present record therefore does not permit a finding that the Board was the Petitioner's employer.

Claim of Direct Employment

22. The Petitioner relies upon ***Ram Singh & Ors. v. Union Territory, Chandigarh & Ors***⁴, to contend that the formal arrangement with ICSIL is not determinative and that the actual relationship between the parties must be examined having regard to the various indicia of employment. He relies upon ***Balwant Rai Saluja v. Air India Ltd.***⁵, to contend that the extent of control and supervision exercised by the Board over his work supports a finding of direct employment. He also relies on ***Union Bank of India v. Mujahid Qasim***⁶, to contend that the cumulative factors of appointment, payment, disciplinary control, continuity of service, integration and control over the manner of work establish the Board as his real employer. These authorities, however, do not carry the Petitioner's case that far.

23. In ***Ram Singh***, the workers had been engaged through contractors for work relating to the maintenance of an electrical substation of the Chandigarh Administration. They contended that the Administration

⁴(2004) 1 SCC 126

⁵(2014) 9 SCC 407



exercised complete control over their work and that the contractors had been interposed merely to deny them the benefits of regular employment. The Supreme Court held that “control” is an important test, but not the sole test. The Court further held that whether the contractor is genuine or a “camouflage” or “subterfuge” is essentially a question of fact, to be determined having regard to the features of the relationship, the written terms of employment, if any, and the actual nature of employment. Such a question, the Court held, ought to be raised and proved before the industrial adjudicator. Since the necessary factual enquiry had not taken place in the writ proceedings, the Court declined to grant relief and left the workers to pursue industrial adjudication. Far from permitting this Court to decide the issue on affidavits, this case counsels against that course.

24. In **Balwant Rai Saluja**, the workers were engaged in statutory canteens through Hotel Corporation of India⁷, a wholly owned subsidiary of Air India. The Supreme Court rejected the contention that Air India’s statutory obligation to maintain the canteens and its supervision over their functioning were sufficient to establish a direct employer-employee relationship. It considered, *inter alia*, who appoints the employees, who pays their salary, who has the power to dismiss, who can take disciplinary action, whether there is continuity of service, and the extent of control and supervision. The Court emphasised that, in the circumstances of that case, the control exercised by the principal establishment would have to be effective and absolute, rather than merely supervisory control over the work performed. Since appointment, payment of salary, disciplinary action and

⁶2020 SCC OnLine Del 1960

⁷“HCI”



dismissal remained with HCI, the workers were not held to be employees of Air India for all purposes.

25. In *Mujahid Qasim*, this Court was considering awards rendered by the Central Government Industrial Tribunal in proceedings where evidence had been led on the existence of an employer-employee relationship. The workmen had produced appointment-related correspondence, salary and overtime vouchers, travel allowance records, logbooks, certificates issued by the Bank and other contemporaneous documents, and the management witness had also been examined. The Court considered, *inter alia*, who was the appointing authority, who was the paymaster, who could select and dismiss, the duration of service, the extent of control and supervision, who could take disciplinary action, whether there was continuity of service, the degree of integration into the establishment, who organised the work, and who controlled when and how the work was performed. On that evidence, the Tribunal found, and the High Court affirmed, that the Bank was the real employer.

26. These decisions prescribe a fact-sensitive enquiry; they do not dispense with proof of the relationship asserted. The Petitioner relies mainly on the Board's control over attendance, postings, equipment and daily work. Those are relevant circumstances, but not conclusive. They must be weighed with the more decisive indicia of legal employment: appointment, pay, tenure, discipline, dismissal and the terms of engagement. The documents and evidence bearing on those indicia are absent. On this record, operational supervision by the Board cannot be elevated into proof that it was the Petitioner's employer.

Appropriate forum



27. This brings the Court to the appropriate forum. The Petitioner does not merely challenge the termination communicated by ICSIL; he seeks to impeach the outsourcing arrangement itself and establish that the Board was, in substance, his employer. That enquiry turns on facts relating to recruitment, payment, discipline, control over the employment relationship, and the terms of engagement. It is not suited to summary adjudication on affidavits.

28. During the hearing, the Court enquired why the Petitioner had not invoked industrial adjudication. Mr. Sanjoy Ghose, Senior Counsel submitted that the Petitioner was employed as a Manager and therefore did not fall within the definition of “workman”. The answer is not conclusive. Whether a person is a “workman” depends not on designation, but on the principal nature of duties actually performed.

29. In *S.K. Maini v. Carona Sahu Co. Ltd.*⁸, the Supreme Court held that designation is “not of much importance”; what matters is the substance of the duties, the authority exercised, and the extent of managerial or administrative functions. That enquiry too is factual. It cannot be resolved merely because the Petitioner therein bore the title of Manager.

30. The same approach informs the decision in *M/s Premium Transmission Private Limited v. State of Maharashtra*⁹. Referring to *Cipla Ltd. v. Maharashtra General Kamgar Union*¹⁰ and *Steel Authority of India Ltd. v. National Union Waterfront Workers*¹¹, the Supreme Court held that where workmen seek to discard the contract with the contractor and assert a

⁸(1994) 3 SCC 510

⁹2026 INSC 87

¹⁰(2001) 3 SCC 101

¹¹(2001) 7 SCC 1



direct relationship with the principal employer, the issue must be tried before the appropriate industrial forum. Such a claim requires evidence on whether the contractor is genuine or a sham, and cannot be decided in summary proceedings.

31. That principle applies here. If the Petitioner is a “workman”, the questions whether ICSIL was a genuine contractor, whether the arrangement was a camouflage, and whether the Board was the real employer, would lie before the industrial forum. That forum can also decide, as a threshold jurisdictional issue, whether the Petitioner’s principal duties bring him within the statutory definition.

32. If, however, the Petitioner’s principal duties were managerial or administrative, and he therefore falls outside the definition of “workman”, Article 226 does not become a substitute forum for enforcing a disputed contract of personal service. In that event, his rights would have to be worked out under the terms of his contractual engagement and the remedies otherwise available in law. A claim for wrongful termination of such a contract would ordinarily invite award of damages, subject to the contract and the applicable law.

33. The Petitioner cannot use his designation as Manager to avoid industrial adjudication, and at the same time ask this Court to decide disputed facts as to whether ICSIL was only an intermediary and the Board his true employer. The possibility that he may fall outside the definition of “workman” does not enlarge the scope of Article 226.

34. It is therefore unnecessary to return a final finding on whether the Petitioner is a “workman”. That issue has not been tested on evidence and cannot be conclusively decided on the present record. It is enough to hold



that, whichever side of the statutory line he may ultimately fall, the disputed employment relationship and the consequential claim for reinstatement cannot be adjudicated in this writ petition.

Question of Reinstatement

35. Even if the termination of the Petitioner's engagement were assumed to be wrongful, reinstatement would not follow as a matter of course. A contract of personal service is not ordinarily specifically enforceable. The settled exceptions are limited: removal of a public servant in breach of Article 311; reinstatement under industrial law; and termination by a statutory body in violation of a mandatory statutory provision governing the employment. The principle is settled by ***Executive Committee of Vaish Degree College v. Lakshmi Narain***¹².

36. The first exception is plainly inapplicable. The Petitioner was not appointed to a civil post under the Union or a State. His deployment through ICSIL in an establishment performing statutory functions does not attract Article 311.

37. The second exception also cannot be invoked in this writ petition. If the Petitioner claims the protection of industrial law, the questions whether he is a "workman", whether ICSIL was a genuine contractor, and whether reinstatement is warranted must be decided by the competent industrial forum on evidence.

38. The third exception is not made out either. It applies where a statutory body terminates employment in breach of a mandatory statutory provision regulating that employment, thereby rendering the action void. The Petitioner has not identified any such provision governing his individual



engagement or prescribing the procedure for its termination.

39. Section 19 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 does not supply that foundation. It empowers the Board to appoint a Secretary and such other officers and employees as it considers necessary, on prescribed terms. It does not deem outsourced personnel supplied by an agency to be employees of the Board. Nor does the absence of recruitment rules convert an outsourced deployment into a statutory appointment.

Allegation of misconduct

40. The circumstances in which the Petitioner's deployment came to an end on 12th January, 2021, also require consideration. The Petitioner contends that allegations of corruption and financial misconduct were levelled against him without notice or inquiry. The Board states that such allegations had arisen and that, for that reason, he was surrendered to ICSIL. The question is whether those allegations formed the foundation of the subsequent termination.

41. The authorities relied upon by the Petitioner have to be understood in their factual and legal settings. In *Union of India v. H.C. Goel*¹³, the Supreme Court was concerned with the dismissal of a government servant following disciplinary proceedings. It held that, in proceedings under Article 226, the High Court could examine whether the finding of misconduct rested on any evidence at all. That decision arose under the applicable service rules and does not address the anterior issue here: who employed the Petitioner and what terms governed his engagement.

¹²(1976) 2 SCC 58

¹³AIR 1964 SC 364



42. In *Hari Ram Maurya v. Union of India*¹⁴, the termination order referred to a show-cause notice containing a charge of bribery. The Supreme Court held that, if the employee was being removed on the ground that he was guilty of that charge, an inquiry was necessary and the respondents had to act in accordance with law. The principle is that where misconduct is the foundation of termination, the process required by law cannot be bypassed. It does not mean that reinstatement follows in every case where a contractual engagement ends against the background of an allegation.

43. *Rajasthan State Roadways Transport Corporation v. Paramjeet Singh*¹⁵ also shows why *Hari Ram Maurya* cannot be applied without regard to the nature and terms of the engagement. The respondent there was appointed purely on contract for a limited tenure, and the contract expressly authorised termination at any time without notice. The Supreme Court upheld the termination on that basis and distinguished *Hari Ram Maurya*, observing that the latter concerned removal founded upon a charge of bribery. *Paramjeet Singh* must, however, be read in that setting. Its relevance here is limited to the proposition that the legality and consequences of termination in contractual employment cannot be considered divorced from the terms governing the engagement. In the present case, no contractual stipulation has been shown which secures a fixed tenure, requires a particular period of notice, or otherwise confers upon the Petitioner an enforceable right to continue in service. The decision therefore does not advance the Petitioner's claim to reinstatement.

¹⁴(2006) 9 SCC 167

¹⁵(2019) 6 SCC 250



44. *Union of India v. Hem Raj*¹⁶ also arose in a distinct circumstance. The employee had acquired temporary status and was later appointed as a casual worker against a Group 'D' post in the Central Government. His services were terminated under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965, after suspension and implication in a criminal case. The High Court upheld the Tribunal's finding that the alleged serious misconduct was the foundation of the termination, having regard to the surrounding circumstances. The present case does not arise under that statutory framework, nor does the Petitioner claim any comparable status. The material presently before the Court also does not establish, in the same manner, that misconduct was the foundation of termination.

45. These decisions establish that, in the statutory settings in which they arose, misconduct could not be made the foundation of punitive action without observance of the procedure prescribed by law. The enquiry, however, cannot stop at the allegation itself. It must also ask whether the alleged misconduct was in truth the foundation of the termination and, equally, what legal regime governed the employment. In the present case, while the contractual character of the engagement is evident, the terms governing its tenure and termination have not been established. The Court is therefore not in a position to apply those decisions as though the Petitioner stood on the same statutory footing as the employees concerned in them.

46. The two impugned communications must be viewed in this context. The Board's communication dated 12th January, 2021, records the Petitioner's surrender to ICSIL and seeks a replacement. It records no finding of corruption, financial misconduct or other delinquency. The

¹⁶2010 SCC OnLine Del 515



communication dated 22nd June, 2022, states that the Petitioner's services were no longer required by the Board and that his contractual engagement with ICSIL stood terminated with effect from 12th January, 2021. Neither communication, on its face, records a finding of guilt or imposes a disciplinary penalty.

47. The stigma asserted by the Petitioner arises instead from what transpired during the inspection, the recording made on that occasion and its alleged subsequent circulation. The parties are in dispute on those matters. Their resolution would require a factual enquiry into the circumstances of the inspection, the statements made, the material then available, and the manner and purpose of any subsequent publication. That exercise cannot appropriately be undertaken in these writ proceedings on the present record. The Court therefore cannot declare the allegations false or return a finding exonerating the Petitioner. To do so, without the evidence necessary to determine their truth, would merely substitute one untested conclusion for another. The absence of an inquiry preceding the termination cannot warrant such a course.

48. It is therefore sufficient to record the limited scope of the present decision. No disciplinary inquiry was held, and no competent forum has adjudicated the allegations of corruption or financial misconduct against the Petitioner. Their truth or falsity does not fall for determination here. The dismissal of the writ petition therefore carries no affirmation of those allegations and no finding that they are unfounded.

Relief

49. For the reasons already stated, reinstatement in the service of the Board cannot be granted. The Petitioner has not established that he was



appointed by the Board, that he held any post under it, or that any contract of employment existed between them on 12th January, 2021. To direct reinstatement would therefore require the Court first to assume the very relationship whose existence the Petitioner was required to establish, and thereafter to restore him to an employment whose governing terms have not been proved.

50. This dismissal shall not preclude the Petitioner from pursuing any remedy otherwise available before the competent industrial or civil forum. All contentions of the parties, including on limitation, maintainability, jurisdiction, workman status, the nature of the ICSIL arrangement, breach of contract, and entitlement to compensation, are left open.

51. The writ petition is accordingly dismissed.

SANJEEV NARULA, J

AUGUST 6, 2026/nk