

## UNIVERSITY'S STAND ON THE ISSUE OF HOUSEKEEPING WORKERS - LEGAL ISSUES

Dated: 22 June, 2020

The University on the issue of “Safai Karamcharis” wishes to clarify its stand by giving the factual position of the matter as the mass e-mailing, social media reports and news coverage on this subject are not only distorted versions but also suppressive of vital facts and misleading to the core. In the letter of the Hon. Minister dated June 17, 2020, following ‘directions’ were given to the University.

- A.** Reassessment of the manpower requirement
- B. Cancellation** of the existing **Contract**
- C.** Reinstatement of workers and payment by the University

The University has got it legally examined. The core issues involved in this case are fundamentally flawed and hence the ‘B’ & ‘C’ above are not legally sustainable, while the advisory on manpower deployment is also not binding. We will revert to this after a brief background.

The National Law University Delhi, a premier Law University, established at the initiative of Delhi High Court, by an Act of Govt. of NCT of Delhi, commenced its academic activities from September 2008. The University being a residential one, having hostels for its students, needs services of house-keeping staff (Safai Karamcharis) for the University campus which were outsourced through Contractors. The number of Safai Karamcharis at that time was more than the actual requirement, as no assessment was then made, and even the guidelines of Govt. of NCT came into force sometime in the year 2012 to the effect that before awarding contract for supply of house-keeping (Safai Karamcharis), assessment should be made as to the requirement of number of personnel to be deployed for the purpose. So till the present Contractor was awarded the work of supply of Safai

Karamcharis to the University, it continued with the same number of Safai Karamcharis, as it never wanted that any one should lose his/her job.

The State Audit Team of the Govt. of NCT of Delhi as well as the CAG Audit Team number of times pointed out in its report to float fresh tender for outsourcing the services of safai karamcharis by following the norms to assess the requirement of safai karamcharis. As such the University had to float fresh tender, and awarded the tender of providing services of safai karamcharis to RMG by assessing the requirement of safai karamcharis. Since the contract of earlier contractor was over, the present contractor has deployed its own manpower in the University, with the result the manpower of earlier contractor was withdrawn by it since they were employed by him.

**The following points form the substance of the position of the University on this issue.**

1. This dispute is primarily between the workers and the contractor/company. **The University never hire workers; it only hires services.** The deployment of workers keeps changing and only the service remains static. In such a contractual situation, the University is under no legal liability to provide perpetual employment to the workers deployed by the company after the completion of the term of the contract. The workers have no enforceable rights vis-vis principal employer for continued retention and hence any direction to retain them after the termination of contract is without any legal basis.
2. The test laid down by Hon'ble Supreme Court in ***Bharat Heavy Electricals Ltd. vs. Mahendra Prasad Jakhmola & Ors. dated 20.02.2019***, to determine the relationship of employer and employee, the representationists cannot be deployed by the University and pay their wages since neither the University employed them nor were they being paid their wages directly by the University. The wages of all Housekeeping Staff and other payments are

always paid directly to the Contractor. "Two of the well-recognized tests to find out whether the contract labourers are the direct employees of the principal employer are: (i) whether the principal employer pays the salary instead of the contractor; and (ii) whether the principal employer controls and supervises the work of the employee."

In the present case, the answers are in negative and hence the University does not have any legal duty and obligation towards such workers.

3. Presently out of 36 workers, 14 workers were still retained by contractor who were working with the old contractor, and 22 are the workers of the present service provider. The present contractor in a meeting also clearly volunteered to provide employment to all the former workers at other establishments closer to the University. As such these 22 workers of the earlier service provider were offered to join with the present service provider, out of which only 8 workers have joined. Remaining are adamant to join only in case they are given the assurance that the University will absorb them permanently, whosoever the contractor may be in future.
4. It is reiterated, the University took all possible humanitarian measures and persuaded the present contractor to provide them alternate employment and the contractor agreed to provide the same (copy enclosed). Where is the hardship? Why the workers are then insisting the employment, temporary or continuous, in the University only? No one is asking this question as to under what rights or legal obligations, the University is expected to retain these workers perpetually. Any instruction to this effect is violative of the law and will not sustain.
5. The core question is: Can the workers (present and past) employed by the contractor(s) would be permanently absorbed in the University service irrespective of the change of the contractor?
6. It is worth mentioning that allowing such practice of deploying the manpower of outgoing contractor would result in alarming increase in the number of such manpower and there will be no use of having a contractor

for supply of the manpower, as it will be a sham contract and all such manpower will be treated as employee of the University. (This position has been held and reiterated by the Apex Court in many judgments).

7. We would appreciate all concerned to examine this issue on factual and legal grounds instead of sensationalising the matter.
8. The NLUD Act 2008 requires any proposal having a policy question or financial implications will have to be approved by the University bodies i.e. Finance Committee/Executive Council/ Governing Council and no other source/authority. The matter has also been placed before the Hon'ble Chancellor.
9. The University has to get this issue examined through its governing bodies mainly Executive Council and Governing Council for final directions on this issue. This is in consonance with the mandate given to the University by NLUD Act.
10. The cancellation of the existing contract shall be in violation of law and the University will not be able to sustain it in the court of law as a duly awarded contract cannot be cancelled arbitrarily. There are number of Supreme Court decisions on this issue.
11. The most sacrosanct issue is the autonomy of the University granted under the NLUD Act 2008 and also by the UGC in terms of category I institution. Such instructions to the University by the Government directly impinges upon the autonomy of the University. In view of the judgment of the Hon'ble Supreme Court in ***State of Punjab And Anr. vs Sardari Lal and Ors. on 28 November, 2000*** decided this issue ***whether the State Government has any power to override the decision of the appropriate authority of the University when such power is not conferred directly upon the State Government under the Statute or any regulation framed thereunder.*** And it was held that the University's autonomous status stands inviolable. The judgment quotes: ***"The University is an autonomous body and, therefore, the State Government will not be entitled to interfere with the internal administration of the University***

***notwithstanding the fact that the State Government is the funding body until and unless the University Statutes provides for the same or there is any Act of Legislation conferring that power on the State Government.”***

12. The widely reported account about police action at the behest of the University is absolutely wrong and misplaced. We in the spirit of empathy and equity have always been able to resolve our matters without requiring any external intervention.
13. The forgoing account clearly places the whole matter in a clear perspective. However, if the grievance still persists on the part of any group or persons they are free to invoke legal remedies in the court of law.

In view of the above observations and the settled principles of law, even through the judgments of Supreme Court, makes the University's stand very clear and legally valid. The University will honestly expect the Government to take care of the University's autonomy. The State Government should be proud of NLU Delhi in view of the NIRF rankings. NLUD is at no.2 for the last three consecutive years of all the Legal Institutions in India and the UGC has also recognised NLUD as a Category 1 University.

Submitted for the information of all concerned.



Ranbir Singh

Encl. as above