

ITEM NO.9

COURT NO.8

SECTION XVI

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 43350/2018

(Arising out of impugned final judgment and order dated 27-07-2017 in MAT No. 1995/2016 04-10-2018 in RVW No. 228/2017 passed by the High Court At Calcutta)

EXECUTIVE DIRECTOR FCI &amp; ORS.

Petitioner(s)

VERSUS

SUBHASH PARAMANIK &amp; ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.168959/2018-CONDONATION OF DELAY IN FILING )

Date : 12-02-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE R. BANUMATHI  
HON'BLE MR. JUSTICE R. SUBHASH REDDY

For Petitioner(s) Mr. Ajit Pudussery, AOR  
Mr. K. Vijayan, Adv.  
Mr. Ajeet Singh Verma, Adv.

For Respondent(s) Mr. Anand Grover, Sr. Adv.  
Mr. Sagar Bandyopadhyay, Adv.  
Mr. Tapas Saha, Adv.  
Mr. Harish Dasan, Adv.  
Mr. Chand Qureshi, Adv.  
Mr. Hiren Dasan, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Delay condoned.

We have heard learned counsel appearing on behalf of the petitioners - FCI as well as learned senior counsel appearing on behalf of the respondents-employees.

The respondents-workmen working as causal labourers under 'No Work No Pay' (NWNP) System claims parity of pay on par with the

contractual workmen working in Bhikna Depot of FCI.

The learned Single Judge as well as the Division Bench of the High Court held that the respondents are on par with contract workers and held that the said issue has already been decided by the Supreme Court in *Civil Appeal Nos. 9472-9473 of 20013 titled as Food Corporation of India and Others vs. Bijoy Kumar Singh and Ors* dated 14.01.2010.

Learned counsel appearing on behalf of the petitioner - FCI submitted that after the judgment of the Supreme Court in Civil Appeal Nos. 9472-9473 of 2003, Circular No. 13/2010 dated 3.11.2010 regarding minimum wages payable in the Schedule employment of loading and unloading in godsheds etc. came to be issued. The said circular reads as under:

The Ministry of Labour and Employment, Office of the Chief Labour Commissioner (C) New Delhi has since revised the Minimum Wages payable in the Schedule Employment of Loading and Unloading in Goodsheds, Godowns, Warehouses etc. w.e.f.1.10.2010 vide their order No.1/10(5)/2010-LS-II dated 28.9.2010 (copy enclosed). Minimum wages fixed by the Ministry of Labour w.e.f. 1.10.2010 are as under:

Area	Rates of Wages		
	Basic Wages	+ V.D.A.	Total
'A'	Rs.180.00	+Rs.54.00	Rs.234.00
'B'	Rs.150.00	+Rs.44	Rs.194
'C'	Rs.120.00	+Rs.36.00	Rs.156.00

These minimum wages fixed under the Minimum Wages Act by the Ministry of Labour & Employment in

respect of 'A', 'B' & 'C' areas will be paid to the labourers engaged under this system, if their piece-rate earning on a day, when he was engaged as per the existing procedure, is less than the notified rates of wages. In case the piece-rate earned in a day per worker is more than the notified daily wages the actual amount will be payable under the schedule of rates as per the existing procedure.

It was submitted that subsequently another notification dated 11.03.2011 was issued by the Ministry of Consumer affairs, Food and PD that "No work No Pay" system will be implemented by the FCI at Adra Depot. The relevant portion of the said notification reads as under:

"I am directed to refer to FCI, D.O.letter No.IR(L)/3(7)/99/Vol.V/Pt. Dated 18.02.2011 on the above mentioned subject. The aforesaid matter has been examined in the Ministry and it has been decided with the approval of Hon'ble Ministry of State (I/C) for Consumer Affairs, Food & PD to introduce the "No Work No Pay" System of Labour at Adra Depot of FCI in West Bengal subject to the following conditions:

(a) The "No Work No Pay" System may be implemented by FCI at Adra Depot based on their norms of 221 workers as intimated by them.

(b) As per the Scheme, the payments to the workers shall be admissible on piece rate basis at the existing rate or Central Government minimum wages (whichever is higher) on the day of work which shall be revised every two years based on AICP Index and FCI as an employer shall bear the liability as

applicable from time to time under Workmen's Compensation Act, Payment of Gratuity Act, ex-gratia in lieu of bonus under the Payment of Bonus Act, etc.

(c) The FCI would examine the legal implications of the court case filed by 177 workers pending at Kolkata High Court (W.P.No.19285 of 2001)/CGIT Asansol) while implementing the scheme and apprise the position to this Ministry.

Learned counsel appearing for the petitioners submitted that by virtue of above Notification dated 11.03.2011 "No work No Pay" System of labour has been introduced at the Adra Depot of FCI in West Bengal and that the respondents have been paid the wages as per "No work No Pay" System of labour who are workmen in the Adra Depot. It was submitted that the respondents are governed by the Circular No. 13/2010 and the Notification of the Ministry of Consumer Affairs and Food dated 11.03.2011 and in the writ petition filed on 3<sup>rd</sup> June, 2014, the respondents have not challenged the said Circular/Notification issued by the Ministry of Consumer Affairs and Food. It was further submitted that the respondents cannot claim parity with workmen in Bhikna Depot and as per the judgment reported in 1985 (2) SCC 294 - *Food Corporation of India Workers' Union vs. Food Corporation of India & Ors.* each and every depot of FCI is a distinct establishment.

Learned counsel appearing on behalf of the petitioner has further submitted that when the writ petition came up for hearing before the learned Single Judge, the FCI has not filed any reply and FCI was not given an opportunity of being heard. Since the

effect of the circular is not considered, the matter may be remitted back to the High Court for fresh consideration.

Learned counsel appearing on behalf of the FCI has submitted that there is a reference made by Central Government pending before the National Consumer Tribunal, Bombay on the issue of parity of wages and the same is pending.

Learned senior counsel appearing on behalf of the respondents-workmen submitted that the above notification issued by the Ministry of Consumer affairs, Food and PD, dated 11.03.2011 is contrary to the judgment reported in *2017 (1) SCC 148 State of Punjab vs. Jagjit Singh and Ors.* Learned senior counsel further submitted that the respondents-workmen are on par with the workmen employed with the Bhikna Depot Contract workers of FCI and the learned Single Judge and the Division Bench have rightly passed the impugned judgment holding that the workmen are on par with the workmen in Civil Appeal Nos. 9472-9473 of 2003. The learned counsel on instructions, however, submitted that the matter may be remitted back to the Single Judge of the High Court for affording opportunity to the petitioner- FCI and to consider the effect of the Circular and the Notification.

The Judgment of the Supreme Court in Civil Appeal Nos. 9472-9473 of 2003 dated 14.01.2010 in and by which the Supreme Court set aside the conviction of officers of FCI in contempt proceedings and affirmed the direction of the learned Single Judge and the Division Bench wherein the issue was for fixing appropriate scales of pay for the contract workers who were working in Bhikna Depot. Thereafter, FCI issued the Circular No. 13/2010 (Dated

3.11.2010) and the Government also issued Notification dated 11.03.2011 approving the introduction of "No work No Pay" System of Labour at Adra Depot of FCI in West Bengal. We find substance in the contention of the learned counsel appearing on behalf of the FCI that when the writ petition was filed in the year 2014, the respondents ought to have challenged Circular No. 13/2010 and also the Notification dated 11.03.2011 if they are aggrieved by the same.

Having considered the submissions of the learned counsel appearing for the parties, the impugned order dated 27.07.2017 in MAT No. 1995 of 2016 as well as judgment of the learned Single Judge in Writ Petition No. 22855 of 2014 dated 11.08.2016 are set aside and the matter is remitted back to the High Court for affording sufficient opportunity to the appellants - FCI to file their reply. The respondents are, given liberty to suitably amend their writ petitions, if they are so advised, within a period of two weeks. The appellant - FCI shall file its reply within eight weeks thereafter. We request the High Court to dispose of the matter as early as possible preferably within a period of six months.

The special leave petition is, accordingly, disposed of.

Pending application(s), if any, shall also stand disposed of.

(MADHU BALA)  
COURT MASTER (SH)

(PARVEEN KUMARI PASRICHA)  
BRANCH OFFICER