

CASE NO.:
Writ Petition (civil) 422 of 2000

PETITIONER:
FOOD CORPORATION OF INDIA WORKERS UNION

Vs.

RESPONDENT:
FOOD CORPORATION OF INDIA AND ANR.

DATE OF JUDGMENT: 05/04/2002

BENCH:
S. Rajendra Babu & P. Venkatarama Reddi

JUDGMENT:

P. Venkatarama Reddi, J.

The petitioner is a Trade-Union of workmen which is seeking to enforce the claim of its members employed in 223 depots of Food Corporation of India ('FCI' for short) under the Direct Payment System (hereinafter referred to as 'DPS') for payment of wages at par with departmental workmen of FCI. It is contended that the direct payment system having been given a go-bye for good and direct relationship of employer and employee having been established between the labour force governed by DPS and the Management, the Respondent-Corporation is under an obligation to accord the same treatment to them as is being given to the departmentalised/absorbed workmen. It is submitted that the nature, type of work and the modalities of carrying out the handling work by the DPS workers and the departmental workers in the various depots of FCI is the same and therefore denial of equal wages and other service benefits to the DPS workers is arbitrary, discriminatory and violative of Articles 14 and 21 of the Constitution. In short, this petition under Article 32 is based on the plea of equal pay for equal work. A writ to direct the Respondent-Corporation to grant same wages, allowances, status and other benefits to the handling workers employed on DPS in 223 depots as are available to departmentalised handling workers. Certain other ancillary reliefs are sought for. A comparative chart showing the wages and other fringe benefits available to these two categories of workers has been given in Exhibit P-8. In the course of the arguments, the learned senior counsel appearing for the petitioner has endeavoured to develop her argument founded on equal pay for equal work by seeking support from various decisions of this Court. Much reliance has also been placed on the Award dated 1.4.1991 of the National Industrial Tribunal, Bombay, rendered in the context of similar relief claimed by DPS workmen of 55 depots.

In the Counter-affidavit filed on behalf of the first respondent, it is not disputed that the nature of work done by the DPS workers and the departmental workers is substantially the same. But, it is contended that the quantum of work done by the handling Mazdoor under DPS is not identical to the turnover of work of departmental labour. In this context, it is pointed out in paragraph 5 that the work load varies from depot to depot and even within the same depot there are variations in working pattern in the light of such factors as volume of procurement, off-take of food grains from the godowns etc. The

seasonal character of food handling operation in various depots has also been stressed. While asserting that in view of the large variations in the working pattern and work load, the contract labour system is better suited to the needs of FCI, it is pointed out that on account of the agitation launched by the Workers union, the Management had no alternative but to agree for abolition of contract labour system and introducing DPS or 'no work no pay' system in lieu of contract labour. Reference has been made to various settlements arrived at between FCI Management and FCI workers union in this connection. The initiative in this regard was taken pursuant to the understanding reached for the first time on 23.5.1973, according to which the departmental labour system as well as the direct payment system could be maintained depending on the local requirements. It is stated that except at Ghevra depot, nowhere departmental labour as well as DPS labour is engaged simultaneously in the same depot/godown. It is pointed out that as against 223 depots mentioned in the writ petition, 215 depots are governed by DPS and 7 depots in A.P. State are actually functioning under no work no pay system. It is claimed that each depot is and is being treated as separate establishment and is being run by the respective labour systems viz., departmental, DPS, no work no pay. Only in Ghevra depot, the dual labour system is existing. It is reiterated that DPS system of labour has been introduced in various depots pursuant to mutual understanding between the Management and labour unions and their terms and conditions are regulated as per mutual negotiations and settlements. Giving the details of mode of payment in paragraph 9, it is stated as follows :-

"Under this system the payment is made to the Labourers on the basis of above schedule of rates agreed between FCI Management and the Petitioner Union. These workers are piece-rated workers and whatever the work done by them on the basis of Schedule of Rates, the payment is released to them subject to minimum guaranteed wages which is at present Rs.107/- of Handling Labour per day. The Schedule of Rates and Minimum Guaranteed wages are revised after every 2 years on the basis of the increase in the All India Consumer Price Index, as per settlement signed between FCI Management and Petitioner Union."

It is then pointed out that the FCI workers union has already raised an industrial dispute before the Regional Labour Commissioner (Central) New Delhi, wherein the issue of parity of wages has been focussed. Moreover, it is stated that individual DPS labourers of about 46 depots have filed petitions in Delhi High Court seeking the same relief. As regards the award of National Industrial Tribunal, Bombay, pertaining to 55 DPS depots, it is stated that the award was challenged in the Delhi High Court both by the Workers union and the Management and the writ petitions were disposed of by the High Court on 1.8.1995 in terms of the settlement dated 1.11.1994. Therefore, the said award does not hold the field.

On the above grounds, which were reiterated in the course of arguments by the learned senior counsel appearing for the 1st respondent, it is contended that the principle of equal pay for equal work has no application here. It is stressed, the need and legitimacy of direct payment system has been recognised by all concerned and the system itself has come into vogue as a result of negotiations and agreements between the Union of Workmen and the Management. Having regard to the pleadings of the parties and the factual controversy involved, we are of the view that it would not be appropriate for this Court to record its conclusions on merits. In order

to give effect to the principle of equal pay for equal work, which is no doubt a constitutional obligation implicit in Article 14, we have to enter into the factual arena and embark on an investigation of disputed facts such as the work load and the working pattern in various depots of the Food Corporation of India. The mere fact that the qualitative nature of work performed by DPS workers and the departmental workers is the same, is not conclusive. Other aspects highlighted in the counter-affidavit having a bearing on the volume and duration of work in the depots have to be gone into. Incidentally, the justification and expediency of continuing the Direct Payment System which has been recognized by various settlements has to be looked into. A comparative study of the working pattern in various depots, the overall job requirements and the overall effect it will have on the body of workmen as a whole and the Management, are all matters that may be relevant to consider. It is not a case of mere application of a legal principle to the admitted or undeniable facts. But, it depends on concrete facts brought out in evidence. When the same issue is being agitated by the petitioner-union by raising an industrial dispute, it is all the more inappropriate for this Court to make an adjudication on merits in a writ petition filed under Article 32. The award of the National Industrial Tribunal on which reliance was placed virtually stands superseded by the settlement arrived at between the parties culminating in the disposal of the writ petition challenging the said award in terms of such settlement.

We, therefore, decline to grant any relief under Article 32 of the Constitution. We leave it to the petitioner to agitate the issue before appropriate Forum. The writ petition is therefore dismissed. The dismissal of this petition shall not be construed as an expression of any view on the merits of the respective contentions.

..J.
(S. Rajendra Babu)

.J.
(P. Venkatarama Reddi)

April 5, 2002.