

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

* * * *

W.P. No. 8255 of 2018**Between:**

Food Corporation of India Workers Union
Bearing Regd.No.8219 Having Registered Office
at 58/1 Diamond Harbour Road Kolkata 700
023, Represented by its Founder and General
Secretary Mr.G.S.Jena Aged about 87 Years
R/o.58/1 Diamond Harbour Road Kolkata.

.....Petitioner

AND

Food Corporation of India
Statutory Body incorporated by the operation of Food Corporation of
India Act 1964 Represented by its General Manager Having Office at
1620 Barakhamba Lane New Delhi-110001 India & others

.....RespondentsDATE OF JUDGMENT PRONOUNCED : **18.06.2024**SUBMITTED FOR APPROVAL**HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

1. Whether Reporters of Local Newspapers
may be allowed to see the Judgments ? Yes/No
2. Whether copies of Judgment may be
marked to Law Reporters/Journals ? Yes/No
3. Whether Your Lordships wish to see the
fair copy of the Judgment ? Yes/No

VENKATA JYOTHIRMAI PRATAPA, J

*** HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

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.....Respondents

! Counsel for the Petitioner : Sri O.Manohar Reddy, learned
Senior Counsel assisted by Sri Arup
Koushik Karavadi

^ Counsel for the Respondents 1&2 : Sri K.S.Murthy,
Learned Senior Counsel assisted by
Sri O.Udaya Kumar, learned standing
counsel.

Counsel for the respondent No.3 : Sri J.UM.V.Prasad
Dr. Majji Suri Babu, learned
counsel for the Petitioners in I.A.No.4
of 2023

< Gist :

> Head Note:

? Cases Referred:

1. PIL No.84/2014 Nagpur Bench, High Court of Judicature at
Bombay, dated 20.11.2015 para -30
2. WP(C) No35398/2016 & Batch dated 13.01.2017
High Court of Kerala.
3. WP No.18387/2018 & batch dated 15.04.2019 Madras High
Court
4. WP(MD) No.25867 of 2023 and others dated 11.01.2024 Madras
High Court.
5. 2023: AHC:237373-DB
6. (2007) 8 SCC 150

APHC010190852018



**IN THE HIGH COURT OF ANDHRA
PRADESH AT AMARAVATI
(Special Original Jurisdiction)**

[3396]

TUESDAY ,THE EIGHTEENTH DAY OF JUNE
TWO THOUSAND AND TWENTY FOUR

PRESENT

HON'BLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA

WRIT PETITION No: 8255/2018

Between:

Food Corporation Of India Workers Union,

...PETITIONER

AND

Food Corporation Of India and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1. ANUP KOUSHIK KARAVADI

Counsel for the Respondent(S):

1. O UDAYA KUMAR

2. J U M V PRASAD (CENTRAL GOVERNMENT COUNSEL)

The Court made the following:

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA**WRIT PETITION No.8255 of 2018****ORDER:****1. The facts, as projected in the Writ Affidavit, in brief, are;**

a. Petitioner is Food Corporation of India Workers' Union, which is a registered Trade Union filed the W.P. on behalf of 751 '*Direct Payment System*'¹ workers engaged in the Respondent No.1 for handling foodgrains in their depots. Respondent No.3 entrusted the Respondent No.1 with a duty to procure food grains and carry out its movement and distribution throughout the country by loading and unloading, through skilled labour. Pursuant to the long-standing demand for absorption and permanence, a settlement was arrived between the Petitioner Union and the Respondent No.1 management, vide the Memorandum of Settlement dated 01.11.1994.

b. A circular dated 05.12.1994 was issued by the Respondent No.1 to recognize the rights of the handling labourers, commonly identified as DPS. These labourers are posted in various depots/godowns of respondent No.1 and at various railway sidings for the purpose of unloading food grain stock and stacking them at the siding godown before dispatch.

c. Thereafter, Respondent No.1 issued a circular dated 22.07.1996 to the Zonal Manager with certain conditions to improve the labour

¹ In short, DPS

relations in the institution. One of the conditions involved therein, claimed to have been implemented/proposed to be implemented was to transfer the surplus labourers from the DPS pool to another depot having shortfall to balance the situation.

d. Vide the circular dated 05.11.1997 to the South Zonal Manager, the Respondent No.1 placed on record the service conditions of the labourers engaged under DPS system and No Work-No Pay basis. Under these conditions, no enablement is given to the Respondent No.1 to transfer the DPS system labourers without reason and cause.

e. The DPS workers are deprived of the salary, leave etc., which are given to the departmental labour engaged by the respondent No.1, even when they discharge the similar work. In addition to the minimum wages as declared by the Central Government, the DPS workers are additionally paid certain incentive wages on piece rate depending on the number of bags that are loaded/unloaded/handled after a particular cut off mark. Basis of the piece-rate payment is notified and revised by the respondent No.1 from time to time. Without this additional earning, the DPS workers would not be able to make a decent living. The departmental workers have always been segregated in the posting matters so as to not create conflict with the additional earning being paid to the DPS workers.

f. To ventilate the grievance of differential treatment, a number of writ petitions were filed. Hon'ble Apex Court, vide order dated

08.07.2003 granted liberty to the workmen to approach the National Industrial Tribunal. During the pendency of the matter before the Tribunal, vide an order dated 27.05.2004 an interim relief in the tune of additional payment of Rs.50/- per day was granted in addition to the existing rate. The matters are still pending.

g. The Nagpur Bench of the Hon'ble Bombay High Court *suo moto* took up a Public Interest Litigation² concerning large scale payments made to the departmental workers of the Respondent No.1. *Vide* order dated 20.11.2015, the High Court made certain observations on the payments to such workers. In the S.L.P. filed before the Hon'ble Supreme Court, vide an order dated 31.07.2017, it was made clear that any order passed pursuant to the directions from the High Court's order dated 20.11.2015 could be challenged in appropriate proceedings before appropriate court and the adjudication thereupon has to be made uninfluenced by the observations in the High Court's order.

h. The respondent No.1 by circular dated 12.07.2016 issued internal guideline for '*implementation of exemption notification dated 06.07.2016 under Section 31 of the Contract Labour (R&B) Act, 1970*', purportedly to comply with the directions issued by the Hon'ble Bombay High Court, *vide* order dated 20.11.2015.

i. Thereafter, Respondent No.1 issued the impugned order dated 12.01.2018 directing the Area Managers to collect the choice of place to

² In short, PIL

which the labourer wishes to be transferred by stating its decision to rationalize by keeping the depots located in certain areas in the State of Andhra Pradesh and Telangana, under DPS system of labours and labourers of remaining depots to be transferred to the said depots.

j. Petitioner, *vide* representation dated 22.01.2018 submitted its objections to the impugned order. A meeting was held between the petitioner Union and the respondent No.1 Management on 02.02.2018, wherein the Petitioner Union objected the implementation of the impugned order. Without considering the request of the petitioner union, Respondent No.1 issued tender notice dated 19.02.2018 calling bids for handling and transport work in Eluru Depot on out sourcing basis. *Vide* representation dated 23.02.2018, the petitioner Union placed its objections and the same is still pending with the respondent No.1.

k. DPS workers are not formally appointed through an appointment letter and the Guidelines and rules in relation to their service do not provide any provision for transfer like regular employees. Therefore, there cannot be any transfers. Circulars dated 22.07.1996 and 12.07.2016 clearly provide that the transfers could be made only in the event where the labourers are in excess at a given place. The 2007 Assessment concerning the sanctioned strength would show that there is no such excess.

l. The impugned order was issued consequent to the guidelines dated 12.07.2016 and consequent to the Judgment dated 20.11.2015.

The impugned order is mala fide and aimed at curtailing the livelihood of the DPS workers represented through the petitioner union. For no valid reason, the DPS workers cannot be transferred for few depots.

m. Hence, the present W.P. is filed seeking to issue a writ of Mandamus for the following relief;

“declaring the action of the Respondents to transfer the Direct Payment System Labourers working with FCI depots located in the states of Telangana and Andhra Pradesh to 8 depots on the ground of rationalisation as mentioned in the impugned order bearing No. DPS/4/10/2015-Vol.II dated 12th January 2018 to be illegal, arbitrary, contrary to the applicable guidelines as issued by the Respondent No.1 and agreements entered into between parties and violative of Articles 14, 19 and 21 of the Constitution of India and consequently, direct the respondents not to transfer the members of the Petitioner Union who are engaged by the Respondent No.1 on Direct Pay System in line of implementation of circular dated 12th January 2018 and to pass such other order or orders as this Hon’ble Court may deem fit and proper in the circumstances of the case and in the interest of justice.”

Contents of the Counter Affidavit

3. A counter affidavit was filed by Respondent Nos.1 and 2 denying all the averments made in the writ affidavit and putting the Petitioner to strict proof of the same, with the following key averments;

- a. The W.P. is not maintainable in law and facts.
- b. The impugned order dated 12.01.2018 was issued in obedience to the order of the Bombay High Court in PIL No.84 of 2014 and the letter dated 12.07.2016 wherein, certain guidelines for implementation of exemption Notification dated 06.07.2016 under Section 31 of the

Contract Labour (R&A) Act, 1970 issued by Ministry of Labour and Employment, Government of India. As per point No.3 of the letter dated 12.07.2016, all the 226 notified depots/rail heads are covered by the notification dated 06.07.2016 and FCIs. With a view to reorganize and rationalize the deployment of existing departmental/DPS/NWNP system workers for their gainful utilization by pooling them into fewer depots as operational requirements so that optimum the number of workers are deployed for carrying out FCI operations in the most efficient manner.

c. The respondent No.2 issued a Circular dated 22.07.1996 to all the Zonal Managers placing on record at point No.14 that the Zonal Manager can transfer the surplus labour from any depot to one region to any depot of other regions in the same zone under the same labour system.

d. As per Circular dated 22.07.1996, the General Manager is empowered to transfer the labour within his region from one depot to other depots.

e. As per the Memorandum of Settlement with the petitioner Union, the respondent Corporation is paying salaries to the DPS workers and the High Court of Bombay in PIL No.84 of 2014 viewed the matter of giving high salaries to the labours seriously and while disposing of the PIL observed that the Government of India shall take a decision regarding abolition of system of departmental labour in a phased manner or absorbing their services in other establishments as

recommended by the High-level Committee. Keeping in view the said order, the Corporation redeployed the staff in various depots of Andhra Pradesh region. As regards DPS workers, it is ensured that minimum wages are received by all the labours in addition to this, DPS workers are getting higher income through handling operations specially in procurement season due to additional payment of incentive/OTA.

f. In the meeting, the Corporation called for the petitioner union to their proposal on or before the first week of April, 2018 to take suitable action to avoid labour problem but no such proposal was given. To shorten the work loan at FSD, Eluru, the contract labour were engaged as and when work is there and for that period only payments will be made to the contract, whereas, for DPS Labour, whether work is there or not, they are entitled to get wages.

g. Due to decentralization, the procurement will be carried out by the State Government and the work of FCI has become very limited. The labours are sitting idle and the corporation is forced to pay the idle wage to the DPS labour. To overcome the problem, the corporation has taken the decision to minimize the depot. Keeping in view the decentralization, the Corporation has decided to retain some depots under DPS system for gainful utilization. The proposal of transfer of DPS labour is also to ensure their decent standard of living as well as to save the nation's money. Therefore, the same is within the rule and in the interest of the nation.

5. A reply affidavit was filed by the Petitioner with the following key averments;

a. The impugned circular of the Respondent Corporation is to camouflage exploitation policy of contract labour.

b. The service conditions of the DPS workers are stipulated by the Minutes of Meeting dated 29.09.1997.

c. The actions of the Respondent Corporation in regard to transfers, would result in deprivation of permanent workers and multiplicity of litigation.

d. The impugned circular issued without any notice under Section 9-A of the Industrial Disputes Act is in gross violation.

e. The decision rendered by the Nagpur Bench of the Hon'ble Bombay High Court is concerning DLS labourers of FCI and not DPS labourers, and the said order is passed without hearing the labour representatives and is in violation of Section 9A.

f. Transferring DPS workers would be in gross violation of conditions of services.

Arguments Advanced at the Bar

6. Heard Sri O. Manohar Reddy, learned Senior Counsel assisted by Sri Arup Koushik Karavadi, learned counsel for the Petitioner, Sri K.S. Murthy, learned Senior Counsel assisted by Sri O.Udaya Kumar, learned Standing Counsel appearing for the Respondent Nos.1 and 2, Sri J.UM.V.Prasad, learned counsel

representing the Respondent No.3 and Dr. Majji Suri Babu, learned counsel for the Petitioners in I.A.No.4 of 2023.

7. Sri O. Manohar Reddy, learned Senior Counsel would submit that a settlement was arrived, vide Memo of Settlement dated 01.11.1994 between the petitioner and the management of respondent No.1 and that the DPS labourers are posted in various depots and godowns for the purpose of unloading foodgrain stock to the siding godowns. It is also pointed out that a circular has been issued by Respondent No.1 to the Zonal Manager to improve labour relations with FCI and one condition therein was to transfer the surplus labourers of DPS to another depot on shortfall to balance the situation. While stating so, learned senior counsel would submit that this circular never authorised the Respondent No.1 to take a general decision of transfer. Learned counsel further would submit that the Judgment of the High Court of Bombay is relating to the departmental labour who are regular employees and it is no way connected to the workers engaged under DPS. It is contended that the impugned proceedings have been issued contrary to the MoU and circulars of management issued from time to time, only if the workers are surplus, they can be transferred. It is stated that when there are no surplus labour, the question of transfer does not arise.

8. Learned Senior Counsel further would submit that there are no service conditions framed for DPS workers and their employment is

purely covered by agreements between the Union and the Management and as per Section 18 of the Industrial Disputes Act, 1947³ the settlement between the Union and Management is binding on both the parties. Learned Senior Counsel would further submit that they have not challenged the policy decision since the guidelines cannot supersede the law i.e., agreement between the parties.

9. *Per contra*, Sri K.S. Murthy, learned Senior Counsel appearing for Respondent Nos., 1 and 2 would submit that to procure food-grains the respondent No.1 for the purpose of loading and unloading they engaged labour in four types and that the DPS workers are directly paid by FCI with minimum wages, even if there is no work on a particular day to ensure that the workers are not put to any deprivation of any monetary benefit. Learned counsel would further submit that the Corporation has every right to transfer the DPS workers, vide the Judgment of High Court of Bombay. It is stated that earlier, the procurement was entrusted to FCI, but now it is with the State Government. It is also stated that no mala fides are attributed touching the impugned proceedings and that the wage and seniority are protected. Learned Senior Counsel would further state that the policy based on which, the transfers were proposed are not under challenge and that by the impugned proceedings, they have given choice to the employees also. Learned senior counsel further highlighted that the

³ For short, I.D. Act

interim order was granted based on the interim order of the High Court of Calcutta, whereas finally the same stood vacated.

10. Learned Senior Counsel further would submit respondent No.1 rightly issued the impugned proceedings and that considering the orders of the High Court of Bombay Bench at Nagpur, Government of India has issued the Notification dated 06.07.2016 exempting 226 notified depots as per Section 31 of the Contract Labour for Regularisation and absorption, 1970. Accordingly, 16 depots in Andhra Pradesh and Telangana State Governments stand de-notified under the provisions of the Contract Labour Act. In view of the exemption granted, respondent No.1 issued circular framing guidelines for implementation of the notification. By virtue of the Circular, Area Manager is competent to rationalise the exact man power to avoid other payment expenditure to minimise the expenditure.

11. Learned Senior Counsel further would submit that in the process of rationalisation, it is proposed to transfer DPS labours from the remaining depots to eight FCI depots i.e., Pennada, Dhowleswaram, Gudivada and Chirala, Kazipet, Zammigunta, Miryalaguda, from the Telangana State. Area managers are informed vide impugned Order that the FCI has decided to rationalise the DPS system in eight depots accommodating the workers working in other 16 depots. Learned senior counsel further would submit that even in case of transfer of such DPS workers, the High Courts of Allahabad, Mumbai and Madras have

not interfered. In the present case, the Area Managers have called for the option of DPS workers and only the workers who have given their options regarding their place of choice are to be accommodated in the respective depots.

12. Learned Senior Counsel finally would submit that when the transfer is based on the choice of workers to a particular place, and there cannot be any problem or inconvenience to the workers as it is not the case of coercive transfer of workers to any depots. He would submit that the W.P. is misconceived and premature and that the proposal of respondent No.1 in rationalising the DPS workers is only to the suit the administrative convenience and to minimise the avoidable expenditure and that there is every necessity to implement the policy decision. Accordingly, prays for dismissal of the W.P.

13. I.A.No.4/2023 has been filed by the petitioners, who are DPS workers (29 workers) of respondent-Corporation seeking to implead them as respondents in the present writ petition. Dr. Majji Suri Babu, learned counsel representing the petitioners would submit that the petitioners were transferred to Telangana State prior to the impugned order. Subsequent to impugned order, because of the interim suspension, their request is not considered for transfer. These petitioners, who are the workers, though support the case of Respondent No.1 on the policy of rationalisation, in moving the DPS workers from one place to other. Learned counsel would submit that the

Court may pass appropriate orders relating to their impleadment in the present I.A. With the consent of the learned counsel representing both the parties, this petition is taken up for hearing, along with the main W.P.

Point for Determination

14. Having heard the submissions and on perusal of the material on record, the point that would emerge for determination is:

Whether the DPS workers cannot be transferred and whether the proposal of transfer vide impugned proceedings is contrary to the Memorandum of Settlement and Circulars issued by the FCI from time to time?

Consideration by the Court

15. Instant Writ Petition under Article 226 of the Constitution of India has been filed by the FCI Workers' Union represented by its founder and General Secretary, seeking to declare the action of the respondents in transferring the DPS Labourers working with FCI Depots of Andhra Pradesh and Telangana States in eight depots on the ground of rationalisation, vide letter through DPS/4/10/2015-Vol-II dated 12.01.2018. Initially an interim stay has been granted in this matter which is extended until further orders.

16. Needless to say, FCI deployed the labour for handling operations of food-grain bags at their depots under various systems. For ready reference, different types of labour systems are given below:

- i. Departmental Labour System
- ii. Direct Payment System
- iii. No Work No Pay System
- iv. Contract Labour System

17. On the basis of a report published in Times of India newspaper, the Nagpur Bench of the Bombay High Court took up a *suo moto* action,⁴ noticing that certain workmen were receiving monthly wages in the tune of Rs.4 lakhs, whereas some received Rs.10,000/- . After considering the submissions made, the court directed the Government of India to consider the request made by FCI as per Section 31 of CL (R& A) Act, 1970 seeking exemption to some depots so as to enable them to engage contract labourers to minimise the loss and unnecessary expenditure. The Bench had also issued a slew of directions. The relevant portions of the order are;

"30. In that view of the matter, we dispose of the present Public Interest Litigation by passing the following order:

(i) The Government of India is directed to decide the representation made by the Food Corporation of India for grant of exemption under the provisions of Section 31 of the said Act within a period of one month from today, in the light of observations made by us hereinabove within a period of one month from today.

(ii) The Government of India shall decide the issue regarding de-notification of the depots of the Food Corporation of India, in respect of which notification is issued u/s. 10 of the said

⁴ P.I.L.No.84/2014 Nagpur Bench, High Court of Judicature at Bombay. Para 30 dated 20.11.2015

Act, within a period of six months from today, in the light of observations made by us hereinabove and the report of M/s.Deloitt Consultancy and the report of High Level Committee appointed by the Government of India itself.

(iii) We clarify that the respondent/Food Corporation of India would be entitled to transfer the services of departmental labourers from one depot to another subject to protecting their salary and all other service conditions.

(iv) We also clarify that the respondent/Corporation would be at liberty to implement its policy of change in the Scheme of incentives.

(v) The Government of India shall also take a decision regarding abolition of system of departmental labourers in a phased manner or absorbing their services in other establishments as recommended by the High Level Committee."

(emphasis supplied)

18. In pursuance and in compliance of the directions issued by the High Court of Bombay, Nagpur Bench, the Government of India granted exemption to FCI to engage contract labourers wherever necessary. Now because of the exemption, FCI can engage contract labour in any of their depots according to their necessity. Of course, this exemption is not a permanent one and it is only to meet the administrative exigencies for a particular period of time. It is represented that from to time, the Government of India has been pleased to exempt Section 31 of CL (R& A) Act, 1970 to FCI to engage Contract labourers.

19. It is not out of place to mention that in S.L.P. preferred against the order of the Bombay High Court, the Supreme Court *vide* an order

dated 31.07.2017, while holding that there are no grounds to interfere with the same, made it clear that any order passed pursuant to the directions from the High Court's order dated 20.11.2015 could be challenged in appropriate proceedings, before appropriate court and the adjudication thereupon has to be made uninfluenced by observations in the High Court's order.

20. At this juncture, it is relevant to refer to the contention presented by the petitioner that the judgment of the Nagpur Bench of the Hon'ble Bombay High Court does not deal with the aspect of the transfers concerning DPS workers. It is beneficial to extract the para-27, which reads thus;

"**27.** We also fail to understand as to why the departmental labourers should not be transferred from one depot to another depot. As could be seen from the judgment of the Apex Court in the case of Food Corporation of India Worker's Union Vs. Food Corporation of India and others (Writ Petition (Civil) No.222 of 1984, dated 20th July, 1990) reported in 1990-II-LLN-664/1990 (Supp) SCC 296, it was the contention of the said Corporation that there cannot be similar wages at different depots since services of the departmental labourers were not transferable. The said contention has been rejected by Their Lordships of the Apex Court. By now it is a settled principle of law that transfer is an incidence of service. When wages and all other service conditions of departmental labourers working at different depots are identical, we see no reason as to why their services could not be transferred from one depot to another. As has been submitted by the

Corporation, 1594 departmental labourers are getting salary without any work; whereas at some of the depots, there is huge deficiency of labourers.”

(emphasis supplied)

21. No doubt, the judgment of the High Court of Bombay, Nagpur Bench is relating to the departmental labourers, who are regular employees of FCI. The fact remains that though the labourers working under DPS, are not regular departmental workers and for all purposes their relation with the Corporation is permanent in nature. It is an undisputed fact that irrespective of the availability of the work, FCI has to pay minimum wages to DPS workers.

22. On this point, it is beneficial to refer to the decision rendered by the learned Single Judge of the Kerala High Court in **FCI Workers Union and others v. Food Corporation Of India and others.**⁵

“6. In so far as the first contention raised by the petitioners, apparently, it is footed on Bombay High Court judgment as well as to nature of engagement. This Court is of the view that the Bombay High Court did not deal with any issue relating to the transfer. The observation made in paragraph 27 of Bombay High Court judgment as to the transfer of departmental labourer obviously with reference to maximise utilisation of departmental labourer to minimise the loss by transferring them to a depot where there is man power shortage. In fact in order to minimise the loss, the Bombay High Court directed the Union of India to consider the request of the FCI for de-notification. Now the action taken to transfer is a consequential act to streamline their

⁵ High Court of Kerala W.P.(C)No.35398/2016 and batch ---dated 13.01.2017

business. Therefore, the only question is whether the DPS workers can be transferred or not. In fact this issue is covered against the petitioners by the judgment of the Division Bench of this Court in W.A No.376 of 2003. In paragraph 11 and 12 of the judgment of the Division Bench, it was held as follows:

"11. On behalf of the appellants it has been contended that if transfers are ordered, the workmen would find it difficult to shift to new places of posting. Being poor, they will not be able to afford accommodation or to look after their families.

12. The difficulty of the workmen may be genuine. Though no details in this behalf have been furnished in the pleadings, yet, their anguish can be imagined. However, even if it is assumed that there is some difficulty, the only way for the Corporation would be to terminate the services of the workmen who are surplus. If this were to be done, the hardship will be even more. It is to promote the interests of the workmen that the Corporation appears to have decided to adjust them at different places. In case they do not wish to accept the offer, the Corporation may be forced to stop employing them for their daily work. In such situation, the workmen shall be rendered jobless. It appears that the report of the Corporation was to promote the interest of the workmen. In doing so, it did not violate any protection which may have been guaranteed under the Circular June 14, 1996."

In the light of the binding judgment as above, I need not further probe regarding the legality of the transfer of DPS workers."

(emphasis supplied)

23. It is an admitted fact that no transfer has been done so far but the union attacked the impugned proceedings when a Circular has been issued directing the authorities to obtain an option from the DPS

workers for their transfer to eight places which are identified to continue DPS workers from 16 stations, which are de-notified under Section 31 of the Contract Labour (Regulation & Abolition) Act, 1970.⁶

24. It is necessary to keep in mind that now this Court is dealing with a challenge on the proposal of transfer relating to workers under DPS. There is no dispute about the fact that the workers under this system are paid piece rates on ASOR percentage basis in case of contracts. Gang workers are paid actual amount of ASOR percentage for the quantum of work done or the minimum guaranteed wage. It will be revised by the Government of India after every six months.

25. The workers under DPS have been given the benefits of CPF in addition to ex-gratia/PL/Gratuity/Workmen compensation/ paid weekly off/notional holidays/sick leave/Medical first aid. ASOR percentage of piece rate wages are being revised on 01.04 and 1.10 of every year proportion to the increase in minimum daily wages. The DPS workers scheme introduced pursuant to a settlement between the Union and management of FCI in the year 1996. The labour under this system will be directly paid by FCI. It is pertinent to mention here that even if there is no work on a particular day, DPS workers are ensured with minimum wages.

26. As referred to supra, apart from the statutory benefits, they are also given service benefits. This Scheme also would ensure minimum

⁶ For short, CL (R& A) Act, 1970

wages to the workers. Pursuance to notification issued by the Government of India dated 06.07.2016, 16 FCI depots in the combined State of Andhra Pradesh were de-notified. Now these 16 depots can engage contract labour to meet their necessity on a particular day. Out of 8 depots, four depots are situated in the State of Andhra Pradesh and four depots are situated in the State of Telangana working under DPS. When these 8 FCI depots are not de-notified, FCI has to transfer the workers from the remaining 16 depots which are de-notified by the Government of India.

27. The main plank of challenge by the Petitioner against the proposal of transfer of DPS workers is on the following grounds:

a. It is contrary to the Memorandum of Settlement and Circulars issued by the Headquarters from time to time. Hence, general decision of transfer cannot be taken into consideration.

b. The employment of DPS workers is covered purely by an agreement, since no service conditions are framed for the DPS labour.

28. On the other hand, FCI contends that in the light of the decision of the Government of India to de-notify certain depots under Section 31 of CL (R&A) Act to minimise the loss and unnecessary expenditure only to protect the interest of the corporation to save them from huge demurrages for causing delay in unloading the products from railway wagons, they have taken a decision to rationalise the issue. It

was further argued that viewed from any angle, it will not cause any impediment or hurdle to the interest of DPS labour.

29. It is essential to refer to certain decisions of various High Courts concerning the transfer of DPS workers in FCI, which are relied on by the learned counsel for the Respondent.

30. In *V.M. Madhusoodhanan v. Food Corporation Of India and others*⁷, a learned Single Judge of the Madras High Court dealt with a batch of Writ Petitions impugning transfer orders. Reliance was placed by the learned counsel for the Respondents on this. Petitioners therein, who were working under the DPS with the FCI, contended that their service conditions are not similar to that of the regular employees as they are not appointed in a sanctioned post in regular time scale of pay, therefore they cannot be treated on par with the regular employees to effect transfers to far away depots. The High Court refused to interfere with the transfer proceedings but has given a slew of directions. The relevant paras from the judgment are as follows;

“**18.** Considering the arguments, this Court is of an opinion that as per the submission made by the learned counsel for the petitioners, the Standing orders as applicable to the regular employees may not be applicable to the labourers working under Direct Payment System. In this regard, it is relevant to refer the provisions of the Industrial Employment (Standing Orders) Central Rules 1946. The Rules provide Model Standing orders, which is to be

⁷ Madras High Court --- W.P.No.18387/2018 and batch, dated 15.04.2019

followed in the absence of any approved Standing orders in respect of the labourers working in various establishments. As per the Model Standing order contemplated in the above Rules, “A workman may be transferred according to exigencies of work from one shop or department to another or from one station to another or from one establishment to another under the same employer: Provided that the wages, grade, continuity of service and other conditions of service of the workman are not adversely affected by such transfer.”

19.It is emphatically contemplated under the provisions of the Rules. **There is no impediment for the management to transfer a labour from one Station to another Station or one Depot to another Depot. However, the protection in respect of wages, grade, continuity of service and other conditions of services, are to be protected. Thus, transfer is permissible. However, on transfer, the Direct Payment Labourers are protected in respect of their salary and all other service conditions.”**

(emphasis supplied)

31. Learned Standing Counsel appearing for the Respondent also relied on the decision rendered by a learned Single Judge of the Madurai Bench of the Madras High Court in ***U. Sivamoorthy and others v. Union of India and others***,⁸ wherein the issue of *en bloc* transfer of the DPS employees was involved. The relevant portion of the judgment reads as follows;

⁸ W.P.(MD) No.25867 of 2023 and batch, dated 11.01.2024, Madras High Court

“13.The learned Senior Counsel appearing for the respondents had contended that the existing DPS labourers at Tuticorin Food Corporation of India are not adequate to handle the goods. Therefore, necessarily we have to engage contract labourers. It will not be in the interest of industrial peace to mix-up the contract labourers with DPS workers. Therefore, they have chosen to transfer the DPS employees en bloc to other needy depots. Therefore, it is clear that the decision to transfer the existing DPS workers at Tuticorin to a different depot has been taken due to administrative exigency.

14.This Court is in agreement with the contention of the learned Senior Counsel appearing for the respondent Corporation, that in case DPS workers mix-up with the contract workers, the industrial peace in the depot would get affected. That apart, three learned Single Judges of this Court have already taken a view that the Food Corporation of India is entitled to effect transfer insofar as the DPS employees are concerned. The en bloc transfer of DPS employees from Tuticorin depot will clearly fortify the contentions of the learned Senior Counsel appearing for the respondents that the said decision has been taken due to administrative exigency and considering the fact that the industrial peace need to be protected at Tuticorin Depot.”

(emphasis supplied)

32. On the other hand, learned Senior Counsel appearing for the Petitioners would submit that the judgment referred supra was

passed on the point of adequacy and that the present case is distinguishable.

33. In **Pawan Kumar and Others v. Union of India and others**⁹, a Division Bench of the Allahabad High Court has held as follows;

“**39.** The prayer no.(iii) is for quashing of the order dated 30.10.2021 for En-bloc transfer of departmental labours from Hapur Depot to Chanderi Kanpur Depot of the Food Corporation of India.

Identical issue had earlier been cropped wherein En -bloc transfer of employees from Naini Depot, Allahabad to Manduwadih, Varanasi Depot of Food Corporation of India was made and the same was challenged in Writ Petition No.38560 of 2016 (Bhartiya Khadya Nigam Mazdoor Sangh and 40 others vs. F.C.I. through its Chairman and three others) before this Court, which was dismissed vide order dated 26.09.2016. Hence, the impugned order dated 30.10.2021 being identical order, which has already been upheld by the learned Single Judge of this Court and the order passed by the learned Single Judge has not been challenged. Hence, there is no reason for this Court to take a contrary view or pass any order stopping the transfer to be made.

These transfers are made in administrative exigencies and no Court should ever interfere with the transfer order until and unless it is proved that the same has been made malafidely.

⁹ 2023:AHC:237373-DB

Therefore, the prayer no.(iii) made in the writ petition cannot be accorded.”

(emphasis supplied)

34. The conclusion that can be arrived on a bare reference to the decisions referred supra is that the DPS labourers can be transferred. Learned Senior Counsel for the Petitioner would contend that it is not the situation in the instant case, in the light of the Memorandum of Settlement and Circulars.

35. A reference to the Memorandum of Settlement dated 15.06.1994 relating to DPS labourer does not indicate anything relating to their transfer. This Memorandum would only discuss about the representation of SORs and guaranteed wages.

36. Coming to the instructions received from the Headquarters to the Zonal Managers relating to Labour relations in FCI, it is mentioned that the Headquarter has taken some steps to normalise labour relations in FCI. Out of such steps, No.4 is relevant to this case and it reads infra:

“4. Surplus labour from a depot should be transferred to another depot under same labour system in the same district by concerned Distt. Manager to meet shortfall of labour in a particular depot. Similarly, transfer of surplus labour of any depot of a Distt. To another depot of other Distt. within same Region but under same labour system, will be done by SRM concerned. The Zonal Manager will transfer the surplus

labour from any depot to one Region to any depot of other Region in same Zone under same labour system.”

37. Coming to the guidelines dated 12.07.2018, with reference to a policy decision, which has been taken by FCI for the rationalisation of the labour system to minimise the loss and unnecessary expenditure, for ready reference, it is essential to extract the following;

“v) The objective of rationalization of the labour strength is to curtail the cost of incentive wages, therefore the pooling should be done in such a manner that output per day of a handling labour will remain ordinarily between 135-150 bags on the peak day of loading/unloading of rakes.

vi) All the FCI workers currently working in CWC and SWC godowns/hired depots/ Railheads need to be pooled in to FCI's own depots and contract labour be deployed in their place in case godowns are to be retained.

vi) As per existing instructions, workers under Departmental and DPS category on their transfer by FCI, in the interest of administration are entitled to get weightage of seniority at the new place. It has been decided that till further order, Seniority position of group of the workers of the gang transferred from one depot to other, will not be disturbed and separate identity of such workers will be maintained in the incoming depot so that it does not jeopardize promotional avenues of the workers already working in such depots.

viii) The surplus workers of one Region can be adjusted in the depots of other regions of the Zone.

ix) In case option is given by the surplus workers of a Region for transfer to the other Regions within the Zone the same should be carefully considered by Zone and shifting them to

shortfall depots may be adhered under intimation to IR-L division of FCI Hqrs.

x) Individual depot should have single labour system and in no case labour of more than one system be engaged in one depot.”

38. Learned Senior Counsel for the Petitioner would submit that the Circular issued on 22.07.1996 would disclose surplus labour from one depot to another depot should be transferred under the same labour system, in case of any short fall, in a particular depot, but now, it is proposed to transfer DPS workers as a general policy, disregarding the surplus or short fall. This Court does not find any force in the said contention for the reason that the purpose and object of rationalisation is very clear in the light of the exemption obtained to avoid the loss and unnecessary expenditure, the proposal of transfer is being made. Such being the case, it cannot be said that the proposal of transfer itself is in violation of the Memorandum of Settlement and consequent circulars. FCI would ensure minimum wages to the workers under DPS even after transfer.

39. The impugned proceedings are vivid to the effect that the option does not disentitled DPS workers for their transfer benefits, seniority and promotional avenues will be protected. FCI ensures wages, incentives, service benefits and statutory benefits also. The only reason for the proposal for rationalisation appears to be earlier the procurement of the essential commodities lies with FCI, and now it is being taken

care of by the State government. As such, FCI would not get much work to engage the labour under DPS. The reason being, on any particular day, depending on the demand and necessity, if FCI engages contract labour for that day, they need not pay anything except the wages on that particular day. But now, when all depots of FCI are maintaining DPS labour, even without extracting any work from them, FCI has to pay minimum wages apart from the service benefits. In that view of the matter, this Court is of the considered opinion that the proposal of transfer is not contrary to the settlement and the Circulars issued by FCI from time to time.

40. Furthermore, I.A.No.4 of 2023 has been filed by 29 Petitioners urging this Court to vacate the stay order since they want transfer. It is stated that because of the stay order, FCI could not attend their request and no transfer has been made so far and no worker has approached the Court expressing their difficulty to move from one place to another, contrary to it, the workers approached the Court seeking vacation of the interim order of stay granted against the impugned proceedings.

41. As rightly observed by the High Court of Kerala, which is referred to supra, the only recourse left to the corporation is to termination of the service of the workmen, who are surplus. If it is done, the workers will have to face more hardship than in case of a transfer. The proposal of transfer appears to be keeping in mind, the interest of the workers under DPS and to avoid this situation, where, they shall remain jobless.

42. Coming to the question of hardship to the workers because of rationalisation, as stated supra, they are assured with minimum guaranteed wages even if there is no work on any day, they will be paid according to the actual quantum of work done. Even if there is no work to be done, they will be paid Minimum guaranteed wages. The fact remains that they are not the regular employees till this time and the FCI has to see the DPS workers cannot be deprived of any monetary benefits in the light of their transfer from one depot and another depot. Furthermore, no challenge is made in the present petition against the policy decision of transfer for the purpose of rationalisation as rightly put by the learned Senior Counsel for the respondents. It is in fact, a premature one impugning the proposal of transfer.

43. The Hon'ble Apex Court in ***Mohd. Masood Ahmad v. State of U.P. and others***,¹⁰ outlined the scope of interference that can be exercised by this Court in the matters concerning transfers as follows;

"7.....Following the aforesaid principles laid down by the Supreme Court, the Allahabad High Court in *Vijay Pal Singh v. State of U.P.*, (1997) 3 ESC 1668, and *Onkar Nath Tiwari v. Chief Engineer, Minor Irrigation Dept.*, (1997) 3 ESC 1866, has held that the principle of law laid down in the aforesaid decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a court of law in exercise of its discretionary jurisdiction under Article 226 unless the court finds that either the order is

¹⁰ (2007) 8 SCC 150

mala fide or that the service rules prohibit such transfer, or that the authorities who issued the orders, were not competent to pass the orders.”

(emphasis supplied)

44. Thus, the interference of this Court in the course of a transfer can only be in cases, where it is clothed by *mala fide*, in violation of the service rules or when passed by incompetent authority. Basing on the discussion supra, it is clear that transfer of DPS workers is not beyond the authority. Moreover, in the present case, no worker has been transferred to any place against their will and wish. Therefore, as far as the impugned order, this Court is not inclined to interfere with the same. In that view, the Writ Petition is devoid of merits and is liable to be dismissed. Accordingly Point Answered.

45. Be that as it may, this Court is of the view that in case of any real personal difficulty, opportunity has to be given to the DPS worker to represent the same and FCI should consider such cases, subject to the genuineness of the objection, as per the governing rules.

46. With the above observations, the Writ Petition is dismissed.

No order as to costs.

As a sequel, pending Interlocutory Applications, if any, shall stand closed.

JUSTICE VENKATA JYOTHIRMAI PRATAPA

18.06.2024

Mjll*

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HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

Writ Petition No. 8255 of 2018

Mjl/*

18.06.2024