

The General Manager Vs. The President

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Court : Karnataka

Decided On : Oct-09-2020

Judge : N S Sanjay Gowda

Appeal No. : WP 19187/2015

Appellant : The General Manager

Respondent : The President

Judgement :

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE9H DAY OF OCTOBER, 2020 BEFORE THE HONBLE MR.JUSTICE N.S.SANJAY GOWDA W.P.No.11249/2015 (L-MW) C/W. W.P.No.11638/2015(L-RES), WP.No.19187/2015 (L-RES) IN W.P.No.11249/2015 BETWEEN: SRI. GURURAJ SHENOY, AGED45YEARS S/O LATE UPENDRA SHENOY, PARTNER M/S SHRI GURU TRANSPORT, NEAR C.W.C WEAR HOUSE CORPORATION, MANNAGUDDA, MANGALORE - 575 003. PETITIONER (BY SRI. PUNDIKAI ISHWARA BHAT, ADVOCATE) AND:

1. THE DEPUTY CHIEF LABOUR COMMISSIONER (CENTRAL) SHRAMSADAN, 3RD CROSS, 3RD MAIN, TUMKUR RAOD, YESHWANTHPUR, BENGALURU - 560 022.

2. THE AREA MANAGER, FOOD CORPORATION OF INDIA, TILAK NAGAR, SIR. M.V.ROAD, SHIVAMOGGA - 577 201. 2

3. THE PRESIDENT FCI HEAD LOAD AND DAILY WAGE WORKERS UNION, No.2-4A, SRI MOOKAMBIKA NILAYA, ANJARA GRAMA, HIRIYADKA POST, UDUPI - 576 113. RESPONDENTS (BY SMT. MANJULADEVI.R. KAMADALLI, CGSC FOR R-1 SRI.N. DINESH RAO FOR M/S RAO ASSOCIATES, ADVOCATE FOR R-2, SRI. S. SUBBA RAO, SENIOR COUNSEL FOR SRI.M.NARAYAN BHAT, ADVOCATE FOR R-3) THIS PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE

ORDER

DATED: 24.11.2014 PASSED BY THE R-1 (ANNEXURE- A) AND THE CONSEQUENTIAL NOTICE DATED: 24/30.12.2014 ISSUED BY THE R-2 (ANNEXURE-B) AND ETC. IN W.P.No.11638/2015 BETWEEN:

1. THE FOOD CORPORATION OF INDIA, REPRESENTED BY ITS CHAIRMAN/ MANAGING DIRECTOR, HAVING ITS HEAD OFFICE No.11, BARAKAMBA LANE, NEW DELHI - 110 001.

2. THE FOOD CORPORATION OF INDIA, ZONAL OFFICE, HADDOUS ROAD, CHENNAI, REPRESENTED BY ITS ZONAL MANAGER.

3. THE GENERAL MANAGER, THE FOOD CORPORATION OF INDIA, No.10, EAST END MAIN ROAD, 4TH T BLOCK, JAYANAGAR, BENGALURU - 560 011.

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4. THE AREA MANAGER, THE FOOD CORPORATION OF INDIA, 371/A, PRESTIGE COMPLEX, RAMASWAMY CIRCLE, MYSORE - 24. PETITIONERS (BY SRI. N.DINESH RAO FOR M/s RAO ASSOCIATES, ADVOCATE) AND:

1. FOOD CORPORATION OF INDIA WORKERS UNION REPRESENTED BY ITS JOINT SECRETARY, 58/1, DIAMOND HARBOUR ROAD, KOLKATA - 700 023.

2. DEPUTY CHIEF LABOUR COMMISSIONER (CENTRAL) SHRAM SADAN, III CROSS, 3RD MAIN, YESHWANTPUR INDUSTRIAL SUBURB, II STAGE, TUMKUR ROAD, BENGALURU - 560 022. RESPONDENTS (BY SRI. S.SUBBA RAO, SENIOR COUNSEL FOR M/S SUBBARAO AND CO., FOR R-1, SMT. MANJULADEVI.R KAMADALLI, CGSC FOR R-2) THIS PETITION IS FILED

UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE DECISION/

ORDER

DATED 21.07.2014 PASSED BY THE R-2 VIDE ANNEXURE-C AND ETC. IN W.P.No.19187/2015 BETWEEN:

1. THE GENERAL MANAGER, THE FOOD CORPORATION OF INDIA, No.10, EAST END MAIN ROAD, 4TH T BLOCK, JAYANAGAR, BENGALURU - 560 011.

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2. THE AREA MANAGER, THE FOOD CORPORATION OF INDIA, DISTRICT OFFICE, SIR M.V.ROAD, THILAK NAGAR, SHIMOGA - 577 201.

3. DEPOT MANAGER, THE FOOD CORPORATION OF INDIA, PERAMPALLY, SHIVALLI VILLAGE, UDUPI-576 101. PETITIONERS (BY SRI. N.DINESH RAO FOR M/S.RAO ASSOCIATES, ADVS.) AND:

1. THE PRESIDENT, FOOD CORPORATION OF INDIA HEAD LOAD AND DAILY WAGES, WORKERS UNION, No.2-4A, SRI MOOKAMBIKA NILAYA, ANJARA GRAMA, HIRIYADIKA POST, UDUPI - 576 101.

2. DEPUTY CHIEF LABOUR COMMISSIONER(CENTRAL) SHRAM SADAN III CROSS, 3RD MAIN, YESHWANTHPUR INDUSTRIAL SUBURB, II STAGE, TUMKUR ROAD, BENGALURU - 560 022. RESPONDENTS (BY SRI. S.SUBBA RAO, SENIOR COUNSEL FOR SRI. M. NARAYANA BHAT ADVOCATE FOR R-1, SMT.MANJULADEVI.R. KAMADALLI, CGSC FOR R-2) THIS PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE DECISION/

ORDER

DATED:24.01.2014 PASSED BY THE R-2 VIDE ANNEXURE-B. THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR

ORDER

S, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

5.

ORDER

1 W.P.No.11638/2015 is filed by the Food Corporation of India (for short, hereinafter referred to as FCI) challenging the order passed in favour of contract labour working in the Food Storage Depot of FCI, Mysuru, through M/s.Balaji Warehousing Company.

2. W.P.No.19187/2015 is filed by the FCI challenging the order passed in favour of contract labour working in Food Storage Depot at Udupi.

3. W.P.No.11249/2015 is filed by the Contractor who supplied labour to the Food Storage Depot of FCI at Udupi.

4. In all these writ petitions, the validity of the orders passed in favour of the contract labour working at the Food Storage Depot at Udupi and Mysuru, whereby they are entitled for the same wages and the same service conditions on par with the other labour engaged under the No Work No Pay system in the Food Storage Depot 6 of FCI at Udupi and Mysuru and the Direct Payment system being paid at Food Storage Depot FCI at K.R.Nagar and Nanjangud, are under challenge by the FCI and also by a Contractor, who had supplied labour to the FCI.

5. The facts giving rise to the present writ petitions are as follows: The General Secretary of the FCI Workers Union, Kolkata and the President of the FCI Head Load and Daily Wages Workers Union, Udupi, filed claim petitions against the FCI, which had registered itself as an establishment under the Contract Labour (Regulation and Abolition) Act, 1970 (for short, the Act), contending that the labour supplied by the Contractor at their Food Storage Depot in Mysuru and Udupi were doing the same and similar nature of the work as the labour in the other depots, who were being paid either under the Direct Payment system or under the No Work No Pay system, 7 but however, they were not being treated on par with them in terms of wages and service conditions.

6. It was their specific case that the FCI has several depots throughout the State and it has entered into contracts with Contractors who were required to supply labour. It was their case that these Contractors, who were supplying labour, were paying them the wages at piece rate basis and this was much lower than the wages being paid to the labour who were engaged either under the Direct Payment system or under the No Work No Pay system and they were, therefore, entitled to equal pay on the principle of Equal Pay for Equal Work.

7. On being notified of the claim applications, the FCI, entered appearance and contested the proceedings.

8. The FCI in the claim relating to the workers at Mysuru, contended that in respect of six depots i.e., at Mysuru, K.R. Nagar, Nanjangud, Kushalnagar, Tumkur and Maddur, they had engaged the services of a Contractor to supply labour and out of the 6 depots, they stated that in respect of three depots namely Mysuru, Kushalnagar and Tumkur, the Contractor was making the payment to the labour, while in respect of the labour engaged through the Contractor at Nanjangud and K.R.Nagar, the payment to the labour was being paid through the Direct Payment system through the Society and in respect of the labour engaged through the Contractor at Maddur, payment was being made on the No Work No Pay system.

9. The FCI, as recorded by the Authority in its order at paragraph 2, admitted that the labour engaged through the Contractors and the labour paid through the Direct Payment system were doing the same work.

10. The FCI, as observed by the authority in paragraph 2 of its order in respect of the claim relating to the labour engaged through the Contractor for its depot in Udupi, stated that there were six Food Storage Depots situated at Udupi, Hassan, Tavarekoppa, Gadikoppa, 9 Bhadravathi and Androth and in respect of the depots at Udupi, Hassan, Tavarekoppa and Androth, they were engaging labour through Contractors and in respect of Food Storage Depots at Gadikoppa and Bhadravathi, they were adopting the No Work No Pay system. The FCI also admitted that the nature of work under the contract labour system and the No Work No Pay system were the same and the only difference between them was

that in case of labour engaged through the Contactor, the payment was made to the labour through the Contractor, whereas, under the No Work No Pay system, the FCI was making direct payment to the labour. It was stated that in respect of labour engaged through the Contractor, the labour was paid by the Contractor as per the terms of the Contract and the FCI ensured that the Contractor complied with the provisions of the Minimum Wages Act, Provident Fund Act and Payment of Gratuity Act in respect of the said labour. 10

11. It was also stated that the labour working under the No Work No Pay system were getting over-time, bonus, paid leave, service benefits and gratuity, etc., whereas the labour working through the Contractors were only getting the wages due to them. It was also stated that under No Work No Pay system, the labour were paid at Rs.222.41% ASOR (above schedule of rate) and under the contract labour system, payment was being made at Rs.499% ASOR (above schedule of rate). It was admitted that the labour under the contract labour system were getting minimum wages, whereas under No Work No Pay system, the labour were given ESI facility, EPF facility, bonus and over-time.

12. It may be pertinent to note here that the FCI accepted that the labour engaged through a Contractor were discharging the same and similar nature of work as the labour who were being paid through the Direct Payment system or under the No Work No Pay system. 11

13. In other words, it was not in serious dispute in both the cases that the nature of the work discharged by the labour engaged through a Contractor and the labour which were paid directly by the FCI, i.e., both under the Direct Payment system and the No Work No Pay system, was essentially the same.

14. The Competent Authority, on consideration of the stand taken by the FCI, proceeded to record a finding that the labour working at Mysuru and Udupi were doing the same and similar nature of work as the labour working in the depots of FCI at K.R.Nagar and Nanjangud under the Direct Payment system and so also the labour working in the Food Storage Depot at Gadikoppa and Shivamogga under the No Work No Pay system and they were, therefore, entitled to be paid wages and be provided with the service conditions on par with the labour working

under the Direct Payment system in K.R.Nagar and Nanjangud and under No Work No Pay system in Gadikoppa and Shivamogga. 12

15. The FCI, being aggrieved by this direction to pay wages and provide service conditions on par with the other labour working either under Direct Payment system or under No Work No Pay system, are before this Court by way of these writ petitions.

16. The Transport Contractor, who supplied labour for the Food Storage Depot at Udupi, is also before this Court on the ground that he is liable to pay only the contractually agreed wages i.e., minimum wages and he cannot be saddled with the liability to pay wages on par with other labour.

17. Sri.Dinesh Rao, learned counsel for the FCI contended that the direction to pay wages to the labour supplied through the Contractor cannot be sustained since it cannot be said that the labour are discharging the same or similar nature of work. He contended that the FCI had four categories of labour systems namely departmental labour, labour working under Direct Payment system, labour engaged under No Work No Pay 13 system and labour engaged through Contractors. He contended that these four different kinds of labour employed by the FCI cannot be equated on par and therefore, the impugned orders cannot be sustained.

18. Sri Dinesh Rao, learned counsel for the FCI relied upon the following judgments: i) STATE OF PUNJAB & OTHERS Vs. JAGJIT SINGH & OTHERS - AIR 2016 SC5176 ii) STATE OF HARYANA & OTHERS Vs. CHARANJIT SINGH & OTHERS - (2006) 9 SCC321 iii) STEEL AUTHORITY OF INDIA LTD. & OTHERS Vs. NATIONAL UNION WATER FRONT WORKERS & OTHERS - AIR 2001 SC3527 19. Sri K.Subba Rao, learned Senior Counsel appearing for the Union contended that the stand of the FCI, a public sector undertaking, cannot be accepted at all and the arguments advanced virtually amounted to the State attempting to brazenly perpetuate an illegality which has been deprecated time and again by the Apex Court in a number of decisions. He contended that the fundamental 14 fact that the labour who were engaged by the FCI, irrespective of the artificial categorization of the labour being attempted by the FCI, were basically

discharging the same nature of work i.e., they were all engaged in loading and unloading of bags containing food grains was not at all in dispute and therefore, irrespective of categorization made by the FCI, it cannot be contended that the labour would not be entitled for pay on the principle of Equal Pay for Equal Work. He submitted that the FCI, even if it engages labour through a Contractor, is nevertheless statutorily bound to pay wages, provide holidays, maintain the same hours of work and other conditions of service on par with the labour who were directly employed by the FCI for the same or similar nature of work. He submitted that since the labour under all the categories were discharging similar nature of work, necessarily, they would have to be paid the same wages on the principle of Equal Pay for Equal Work. 15

20. Sri K.Subba Rao, learned Senior Counsel for the Union relied upon the following judgments: i) SANJIT ROY Vs. STATE OF RAJASTHAN -AIR 1983 SC328ii) SANKAR MUKHERJEE & OTHERS Vs. UNION OF INDIA & OTHERS - AIR 1990 SC53221. Learned counsel for the Transport Contractor contended that as far as the Contractor was concerned, he had entered into a contract with FCI under which he was required to pay only the prescribed minimum wages and he could not be saddled with anything over and above his contractual liability that he had incurred with the FCI. He contended that under the contract, the only stipulation was that the Contractor would not pay less than the minimum wages and apart from this stipulation, there was no other requirement for him as far as the wages were concerned.

22. He ultimately submitted that if it is to be held that the labour supplied by him are required to be paid on par 16 with other labour in the other depots, on the principle of Equal Pay for Equal Work, then, necessarily, the FCI would have to be burdened with the additional liability and he could not be prejudiced by asking him to pay over and above what was prescribed under the contract.

23. Thus, from the facts narrated above, the principal question that arises for consideration in these writ petitions is: Whether the FCI can pay only minimum wages to the labour engaged through the contractors under the shield of a Labour Contract and thereby deprive the labour who are doing the same or similar work

as other labour in other Depots, the wages and the service conditions that the labour in the other depots were being given?.

24. In order to answer the said question, it will have to be first determined whether the nature of work discharged by the contract labour is the same as the work that is discharged by the labour engaged under 17 Direct Payment system or under the No Work No Pay system.

25. In the impugned order, it is recorded at paragraph 2, that the Food Corporation of India, in the case relating to the contract labour working at Mysuru, stated as follows: During the course of hearing, Shri Narasimha Murthy, Area Manager, FCI, Mysore stated that he is registered as Principal Employer in respect of the contractors engaged in 6 depots viz FSD/FCI, Mysore, FSD/FCI, KR Nagar, FSD/FCI, Nanjangud, FSD/FCI, Kushalnagar, FSD/FCI, Tumkur and FSDI/FCI, Maddur. Out of 6, in two depots i.e. Nanjangud and K.R.Nagar the payment is made through Direct Payment System through Society. In Maddur depot the payment is made through No Work No Pay System. In FSD/FCI Mysore, Kushalnagar and Tumkur the contractor is making payment to the contract labours. He has accepted that the contract workers and DPS workers are doing same and similar nature of work. He further stated that he is working in the FCI from last 19 years and as Officer from last 11 years. As Area Manager, the payment for DPS18workers and the payment for contractor are passed by him. (underlining by me) 26. Similarly, in respect of contract labour working at Udupi, as observed in paragraph 2 of the impugned order, the FCI had stated as follows: In FCI, KRPG and Whitefield only internal transport contractors have been appointed for transportation of food grains within the godown complex by fixing the rate per MT as per tender process and in these cases the contractor will supply only trucks as and when indented (Copies of awarding letters are enclosed). On the contrary, at KGF depot H&T contractor has been appointed and remuneration for each operation is being paid as per ASOR rate for handling, and per MT rate for transportation (copy of awarding letter is enclosed). It is therefore evident from the above that, though the nature of work is same, the labour system prevailing is separate from depot to depot under the same Area Manager. That the quantum of work done by both the set of labourers is not identical to the turnover of 19 the

work, that is to say that workload varies from depot to depot in the following aspects. i) Volume of procurement ii) Off take of food grains from the godowns iii) Food loading operations are also different from depot to depot. For illustration in case of FCI KRPB and Whitefield all the godowns are served with Railway siding facilities, where DPS labourers are directly unloading the bags from the wagons and stacked inside the godowns. Whereas, at FCI KGF depot, the rakes are placed at Bangarpet Siding, bags unloaded from wagons are loaded into trucks and transported to the depot and at depot point unloading of bags from the trucks and then stacked inside the godown. In addition to above, the judgment passed in respect of the following cases by the Honble Supreme Court are taken into consideration for substantiating management stand: a) Appeal (Civil) case No.6009-6010/2001 filed by Steel Authority of India Ltd. And others V/s. National Union Water Front Workers and others that each depot is a separate establishment. 20 b) WP.No.422/2000 filed by Workers Union V/s. FCI before the Honble judges Sri S.Rajendra Babu and Sri P.VenkataramanaReddi. Judgment copy of the above has already been produced on 14.06.2011. (underlining by me) 27. As could be seen from the above, in respect of contract labour both at Mysuru and at Udupi, the FCI clearly admitted that the nature of work discharged by both were the same and only the system of payment to the labour was different. In other words, in respect of labour supplied through a Contractor, the FCI chose to adopt either a Direct Payment system or it adopted a system of No Work No Pay.

28. It is to be stated here that the manner of payment by the FCI cannot be the determinative factor in deciding whether the nature of work discharged by the labour in its various depots were one and the same.

29. It may also be pertinent to state here that it was essentially an admitted fact by the FCI that the labour 21 engaged in all its depots through the Contractor, were essentially engaged in the same work of loading and unloading. The work of Loading and Unloading, by its very definition, indicates that the labour basically load or unload food grain bags from Transport vehicles and store them in the Depots or lift them from the Depots and the nature of this work would fundamentally be the same for all the labour.

30. The Competent Authority, in both the cases, has also recorded a finding that the nature of work discharged by the contract labour and the nature of work discharged by the labour engaged under Direct Payment system or No Work No Pay system were the same. In fact, the Competent Authority has recorded the following finding in the order pertaining to Mysuru and Udupi respectively: It is important to mention here, the management was offered not less than four opportunities to the policy/criteria on the basis of which the Corporation decides to 22 declare the DPS system, No Work No Pay system and the contract labour system. But the management has not submitted such policy/criteria to understand why such discrimination amongst the workers who are doing the same and similar nature of work in the different depots. Thus, it is amply clear that the opponent No.1 has no uniform policy or criteria for introducing DPS/No Work No Pay system in their FSD/FCI depots. In spite of various opportunities offered, the management representative could not produce any policy/criteria to differentiate the depots adopting the system of no work no pay scheme, and contract labour system. On examination it is found that whenever any depot is prohibited under Section 10(1) of the CL (R&A) Act, the management of FCI unilaterally declares either Direct Payment system or no work no pay system. The workers working in DPS system, working in no work no pay system or contract labour system are doing the same and similar nature of work. Unfortunately, the workers working in contract labour system are deprived better wages and other facilities like bonus, 23 overtime, paid earned leave, service benefits and gratuity etc., (underlining by me) 31. It is thus clear that in both the cases, the labour were discharging the similar nature of work.

32. In view of the above fact, the further question that would arise for consideration is that, when the FCI decide to engage labour through a Contractor, whether they could resort to payment of merely the minimum wages and thereby get over the requirement of paying to the labour wages on the Equal Pay for Equal Work principle. In other words, whether the FCI could pay different wages to the labour who were engaged in discharging the same nature of work, merely because some of the labour were engaged through a Contractor.

33. To answer this question, a brief overview of the Contract Labour (Regulation and Abolition) Act, 1970 (for short, hereinafter referred to as the Act) would be

necessary. 24

34. The Act was enacted by the Parliament to regulate the employment of contract labour in certain aspects and to provide for its abolition in certain circumstances.

35. Chapter II of the Act provides for the establishment of Advisory Boards, one Central and one for the States. Chapter III of the Act deals with the requirement of registration of establishments who employ Contract Labour. Chapter IV deals with the Licensing of Contractors and this Chapter would be relevant for this case.

36. Section 12 (1) in Chapter IV contemplates that every Contractor to whom the Act applies can undertake or execute any work, through contract labour, only under, and in accordance with a license issued by the Licensing Officer. Sub-section (2) of Section 12 of the Act mandates that the appropriate Government may, while granting a license, impose, including and in particular, conditions as to hours of work, fixation of 25 wages and other essential amenities in respect of contract labour, as it may deem fit to impose.

37. In other words, statutorily, a license issued to a Contractor to undertake or execute work through contract labour may carry a condition regarding the hours of work, fixation of wages and other essential amenities in respect of contract labour and the Contractor is therefore statutorily obliged to abide by the terms of the license issued to him.

38. In exercise of the powers conferred under Section 35 of the Act, the Contract Labour (Regulation & Abolition) Central Rules, 1971 (for short, hereinafter referred to as the Rules) have been framed.

39. Rule 25 of the Rules deals with the Forms and terms and conditions of the license in respect of every license issued under Section 12 (1) of the Act. The said Rule mandates that every license granted under Section 12 of the Act would be subject to ten conditions. 26

40. The fifth condition i.e., Rule 25(2)(v)(a) and (b) of the Rules, would be relevant for the purpose of this case and the same reads as under: (a) in cases where the workman employed by the contractor perform the same or similar kind of work as

the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment and the same or similar kind of work: Provided that in the case any disagreement with regard to the type of work the same shall be decided by the Deputy Chief Labour Commissioner (Central); (b) in other cases the wage rates, holidays, hours of work and conditions of service of the workmen of the contractor shall be such as may be specified in this behalf by the Deputy Chief Labour Commissioner (Central); Explanation. - While determining the wage rates, holidays, hours of work and other conditions of services under (b) above, the Deputy Chief Labour 27 Commissioner (Central) shall have due regard to the wage rates, holidays, hours of work and other conditions of service obtaining in similar employments; (underlining by me) 41. As could be seen from the said Rule, the labour employed by the Contractor, who perform the same or similar nature of work as the labour directly employed by the principal employer would necessarily have to be paid the same rate of wages, holidays, hours of work and other conditions of service. Thus, even in respect of labour supplied through a Contractor, the mandate of the law is that those labour supplied by the Contractor would have to be necessarily paid the same rate of wages and be given the same benefit of the same service conditions as that of the labour who had been directly employed by the principal employer who were discharging the same or similar nature of work.

42. It is quite obvious that the principle embodied, in Section 12 (2) of the Act and clearly stipulated in Rule 28 25 (2) (v) (a) of the Rules, is the constitutionally recognized principle of Equal Pay for Equal Work. The intent behind the said provision is manifestly clear, which is that a principal employer by engaging labour through a Contractor cannot exploit the said labour by paying them lesser wages and inferior conditions of service. In other words, the law recognizes that there may be a need for an Employer to secure labour through a Contractor, but whenever the Principal Employer chooses to do so, it is required to ensure that the said labour also get the same wages and same benefits as its directly employed labour.

43. In the instant case, even according to the FCI, the labour who are being paid either under Direct Payment system or under No Work No Pay system or the labour engaged through the Contractor were engaged in the same or similar nature of work. If that be so, statutorily, it would become the duty of FCI to ensure that the Contractor that they had engaged to supply labour would 29 also have to necessarily pay the labour that he provides, the same rate of wages as the other directly employed labour by the principal employer who are discharging the same or similar nature of work.

44. If the law itself mandates that a Contractor, who is licensed to supply contract labour, should pay the same rate of wages and provide the same service conditions to his labour as the labour directly employed by the principal employer, the principal employer cannot get over this statutory mandate by entering into a contract which stipulates that the Contractor would only be required to pay minimum wages and thereby defeat the constitutional principle of Equal Pay for Equal Work.

45. To put it differently, a Contractor, in contravention of the terms of his license, cannot get away with merely paying minimum wages to his labour, when there were other labour who were discharging the same kind of work were being paid much more than the minimum 30 wages. If such a procedure is permitted, it would amount to nullifying the principle of Equal Pay for Equal Work.

46. A Contract is basically an agreement between two consenting parties, who are competent to contract and who have entered into an agreement for a lawful consideration and with a lawful object. If the consideration or object of the contract is to do an act which is forbidden by law or is of such a nature that if it is permitted, would result in defeating the provisions of any law, then such a Contract, in law, is void (vide Section 10 and Section 23 of the Indian Contract Act).

47. It will now have to be seen whether the contract entered into by the FCI with the Contractor is a lawful contract or is a void contract. In this regard, Section 30 of the Act would also have to be looked into to examine whether a contract entered into by the FCI can be said to be a lawful contract. 31

48. Section 30 of the Act reads as follows:

30. Effect of laws and agreements inconsistent with this Act.- (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any agreement or contract of service, or in any other law or in the terms of any agreement or contract of service, or in any standing orders applicable to the establishment whether made before or after the commencement of this Act: Provided that where under any such agreement, contract of service or standing orders the contract labour employed in the establishment are entitled to benefits in respect of any matter which are more favourable to them than those to which they would be entitled under this Act, the contract labour shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that they receive benefits in respect of other matters under this Act. (2) Nothing contained in this Act shall be construed as precluding any such contract labour from entering into an agreement with a the principal employer or the contractor, as the case may be, for granting them rights or privilege in respect of any matter which are more favourable to them than those to which they would be entitled under this Act. (underlining by me) 32 49. As could be seen from the above, notwithstanding anything contained in any agreement or contract of service, the provisions of the Act would prevail and not the term of any contract. In other words, even if there is an agreement, a term of which, enables the principal employer and the Contractor to pay only minimum wages to the labour as against the mandate of Rule 25 (2) (v) (a) & (b), the same would be of no avail in the light of Rule 25 (2) (v) (a) & (b) of the Rules, which requires that all labour engaged in the same or similar nature of work would have to be paid the same wages and would have to be provided with the same service conditions.

50. Thus, it is clear that the provisions of the Act would override any agreement that has been entered into between the principal employer and the Contractor, in respect of payment of wages to labour on the principle of Equal Pay for Equal Work. 33

51. It is also to be noticed that the license issued to the Contractor who supplied labour to the FCI Depot at Mysuru which has been produced as Annexure R-1 in

the Statement of Objections filed by the Union, contains a clause in consonance with Rule 25 (2) (v) (a) and (b) of the Rules. It is therefore clear that the Contractor was obliged to ensure that the labour supplied by him get the same wages and also the same conditions of service as the other Labour employed to discharge the same or similar kind of work.

52. From the above discussion above, it is clear that in view of the admitted stand of the FCI and the findings recorded by the Competent Authority, the labour employed by the Contractor and labour who had been paid by the FCI directly, were engaged in the same or similar nature of work. Thus, as a necessary consequence, the principle of Equal Pay for Equal Work would be attracted and the labour supplied by the Contractor would be entitled to the same wages and 34 service conditions as the other labour engaged in other depots, either under Direct Payment system or under No Work No Pay system. In other words, merely because the labour are engaged through a Contractor, they cannot be made to receive lesser wages though they were discharging the same kind of work as the other labour.

53. The reliance placed upon by the FCI on the judgment rendered by the Division Bench of Nagpur Bench of High Court of Bombay in P.I.L.No.84/2014 is of no relevance, inasmuch as, the said judgment relates to the request of FCI for grant of exemption under Section 31 of the Act. The question of Equal Pay for Equal Work in respect of labour engaged directly and through a Contractor was not the subject matter of the said PIL.

54. Similarly, the reliance placed upon by the FCI in respect of the judgment rendered in Writ Petition (Civil) No.422/2000 by the Apex Court is also of no relevance since in that case the Apex Court merely declined to 35 grant relief to the workman under Article 32 of the Constitution of India and left it open for the workman to agitate the issue raised by them before the appropriate forum.

55. In fact, in the very judgment relied upon by the FCI i.e., in the case of STATE OF PUNJAB & OTHERS Vs. JAGJIT SINGH & OTHERS - AIR 2016 SC5176 the Apex Court has categorically stated that the principle of Equal Pay for Equal Work will have to be applied in relation to temporary employees (daily wage employees),

adhoc employees, employees appointed on casual basis, contractual employees and the like and the sole factor that is required to be considered is as to whether the concerned employees were rendering similar duties and responsibilities as are being discharged by like employees holding similar or corresponding posts. Thus, as per the said judgment, even in respect of contractual employees, the principle of Equal Pay for Equal Work would be attracted. 36

56. As noted above, it is the admitted case of the FCI that the nature of the work being discharged by the labour employed through the Contractor is the same as that of other labour and in that view of the matter, it would be necessary to apply the principle of Equal Pay for Equal Work. The Competent Authority by the impugned orders has rightly held that the labour through Contractors will have to be paid on par with other workers as narrated in the impugned orders. There is absolutely no infirmity in the orders impugned in these batch of writ petitions filed by the FCI will have to be necessarily fail and the same are accordingly dismissed.

57. As far as the writ petition of the Contractor is concerned, i.e., W.P.No.11249/2015, it is no doubt true that one of the terms of his licence, as pointed out by Sri K. Subba Rao, learned Senior Counsel for the Union, is that the petitioner was required to pay wages, provide holidays, hours of work and other service conditions to his labour in the same manner as it relates to the labour 37 directly employed by the principal employer of the establishment i.e., the FCI. However, the FCI, despite this term of the license, has chosen to enter into a contract, which limits its liability to pay only minimum wages in gross contravention of Section 31 read with Section 12 of the Act and Rule 25 (2)(v)(a) and (b) of the Rules.

58. The FCI, being a public sector undertaking, cannot seek to avoid its liability to pay the same wages to all its workers engaged in the task of loading and unloading in its depots, by resorting to a contract which basically nullifies a statutory term of the license. It is, therefore, necessary that the FCI be directed to pay the difference of wages that becomes payable to the labour under the impugned orders by applying the principle of Equal Pay for Equal Work. To this extent, orders impugned insofar as the Transport Contractor is concerned, is

modified.

59. Since the entitlements of the workmen have been unpaid due to this dispute since the past several years, it is necessary to direct the FCI to comply with the impugned orders and ensure that the workmen are paid their dues within three months from the date of receipt of a certified copy of this order. Sd/- JUDGE PKS

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