

**THE HIGH COURT OF TRIPURA
AGARTALA**

WP(C) NO.405 OF 2005

Food Corporation of India Workers Union,

A registered Trade Union of Workmen, having its registered office at 58/1, Diamond Harbour Road, Kolkata-700023, represented by its authorized Representatives-Sri Ranjit Ghosh, Sardar, F.C.I., C.W.C., Hapania Depot and Workers Representative of Food Corporation of India Workers Union.

..... *Petitioner*

- *Vs* -

1. Food Corporation of India,

Represented by its Managing Director, having its Head Office at 16-20 Barkhamba Lane, new Delhi-10001.

2. The Senior Regional Manager,

Food Corporation of India, North East Frontier Region, Midland Shillong-3.

3. The District Manager,

Food Corporation of India, Assam-Agartala Road, Agartala, P.S. East Agartala, District-West Tripura.

4. Central Warehousing Corporation,

Represented by the Regional Manager, Regional Office, 39, Sapta Swahid Path, Sarumotaria, Dispur, Guwahati-781006.

..... *Respondents*

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the petitioner : Mr. A.K. Bhowmik, Sr. Advocate
Mr. R. Dutta, Advocate

For respondent Nos.1,2&3 : Mr. C.S. Sinha, Advocate

For respondent No.4 : Mr. P. Roy Barman, Advocate

Date of hearing : **23.04.2015.**

Date of delivery
of Judgment & order : **29.04.2015.**

Whether Fit for Reporting :

Yes	No
	✓

JUDGMENT & ORDER

The petitioner(Food Corporation of India Workers Union), a registered Trade Union of the Workmen of the Food Corporation of India(for short, FCI) filed the instant writ petition on behalf of 37 workmen, alleged to have engaged by FCI for handling of foodgrains in the Central Warehouses Corporation(for short, CWC) Go-Down at Hapania, Agartala praying for quashing letter vide No.IR.1(8)/Part-I/2005 dated the 19th May, 2005(*Annexure-3* to the writ petition) whereunder the respondent No.3 proposed to the Regional Manager of CWC for appointing handling contractor as well as for making payment of handling charges to the existing workers through such contractor.

2. Heard learned senior counsel, Mr. A.K. Bhowmik, assisted by learned counsel, Mr. R. Dutta for the petitioner and learned counsel, Mr. C.S. Sinha for respondent Nos.1, 2 and 3 as well as learned counsel, Mr. P. Roy Barman for respondent No.4.

3. The petitioner, *inter alia*, contended that it represents 37 workmen engaged by FCI for handling foodgrains in CWC Go-down, Hapania, Agartala and the Trade Union is represented by Sri Ranjit Ghosh, a Labour Sardar of FCI, CWC Go-down, Hapania Depot and that Ranjit Ghosh has been authorized by the Trade Union to file the writ petition.

3.1. It is contended that the 37 workmen were engaged in the handing of foodgrains since the year 1984. The respondents(respondent Nos.1 to 3) refused to pay the said workmen wages at par with Direct Payment System(for short, DPS) workers of FCI and, therefore, an industrial dispute raised and a reference was made to the Industrial Tribunal, Guwahati, Assam vide Reference Case No.10(C) of 1993 and the said reference was answered in favour of the workmen, against the FCI and challenging that decision of the Industrial Tribunal, FCI preferred a writ petition before the High Court and that writ petition was dismissed, and as a result the award of the Tribunal dated 17.02.1988 reached its finality. A copy of the award made by the Tribunal is annexed as Annexure-2 to the writ petition.

3.2. It is contended by the petitioner-Union that the respondents did not pay the substantial arrears due to the workmen and, therefore, another writ petition vide WP(C) No.227 of 2005 was filed by the petitioner-Union and it is pending before the High Court. During pendency of that writ petition, the respondent No.3

wrote impugned letter dated 19.05.2005(Annexure-3 to the writ petition) to the Regional Manager of CWC, Guwahati proposing to do away with the DPS to the workmen and instead intended to introduce payment of wages through labour contractor. It is also contended by the petitioner that Government of India, Ministry of Labour issued an order dated 08.07.2003 referring the dispute, namely—

"Whether the workers working under Direct Payment System, no work no pay system and the management committee system are entitled for the same pay and other benefits as are available to the departmentalized labour in various depots of FCI throughout the country? If so, to what benefits they are entitled to" –for adjudication by the National Industrial Tribunal, Mumbai.

The petitioner-Union contended that in view of the above reference made by Government of India to the National Industrial Tribunal, the petitioner-Union by a letter dated 28.06.2005(Annexure-4 to the writ petition) addressed to the respondent No.2 with a copy to respondent No.1 informed the respondents that the matter relating to equal wages for equal work in respect of DPS workers including the workers of Hapania Depot is pending for adjudication before the National Industrial Tribunal, and therefore the respondents are obliged not to alter the condition of service of the workmen in terms of Section 33 of the Industrial Disputes Act.

3.3. It is the case of the petitioner-Union that as per order of the Industrial Tribunal dated 17.02.1988(Annexure-2 to the writ petition), 37 workers working in handling the goods of FCI in CWC go-down, Hapania shall continue to be treated as workers with DPS and such condition of services cannot be changed by engaging labour contractor.

4. Respondent Nos1, 2 and 3 by filing a common counter affidavit contended that the petitioner is a Union of workers of FCI and the said Union cannot represent the workers engaged by CWC who was handling loading and unloading works of FCI. Simply receiving of wages from FCI does not entitle them to be treated as employees/workers of FCI. The workmen in question were engaged by CWC and the FCI while using the go-down of CWC used the labourers and paid wages to them through a labour Sardar being duly certified by CWC. The situation has been explained clearly in the letter dated 19.05.2005 written by respondent No.3 to CWC which indicates that the said workmen have been indirectly forcing the FCI to treat them as workmen of FCI which FCI cannot accept.

4.1. It is also contended that as and when FCI have their own storing accommodation, they would cease to use the FCI go-downs and such cessation would automatically effect the engagement of the workmen represented by the petitioner-Union. They have no legal right or entitlement to be treated at par with the

regularly employed workmen of the FCI. There is no illegality, impropriety or unfairness in the letter dated 19.05.2005 and this Court is not required to interfere in the letter.

5. Respondent No.4, CWC, has been added as party subsequently and no relief is sought against respondent No.4. However, on receipt of the notice, respondent No.4 also submitted a counter affidavit *inter alia* contending that the go-downs of CWC at Hapania were hired by FCI and that the workmen represented by the petitioner-Union were engaged by FCI for handling goods of FCI and there were disputes between FCI and those workmen for which a reference was made to the Industrial Tribunal at Guwahati, Assam vide reference Case No.10(C) of 1993 in which CWC was also made a party and the status and relationship of the FCI and the employees decided by the said Tribunal. CWC did not engage those workmen and did not make payment to those workmen but CWC had been issuing a work done certificate to FCI only in respect the handling works done by those workmen.

6. The only issue which fell for consideration in this writ petition is whether the FCI can do away with the existing Direct Payment System(DPS), to the existing workers and engage handling contractors for payment of handling charges to the existing workers.

7. The petitioner-Union contended that FCI engaged those 37 workmen for handling of foodgrains in CWC go-downs at Hapania and a dispute arose regarding payment of wages to those workmen at par with DPS workers of FCI and so the dispute was referred to the Industrial Tribunal, Guwahati, Assam vide reference Case No.10(C) of 1993 and the dispute was answered in favour of the workmen.

7.1. It is also contended by the petitioner-Union that the respondent-FCI preferred a writ petition against order of the Industrial Tribunal but the writ petition was dismissed and so the award of the Tribunal dated 17.02.1998 reached its finality.

7.2. This contention of the petitioner-Union that an industrial dispute was referred to the Industrial Tribunal at Guwahati and the Tribunal decided the issue in favour of the workmen and that FCI preferred writ petition against that award and the writ petition has been dismissed, has not been disputed by the respondent Nos.1, 2 and 3 in their counter affidavit.

8. Learned counsel, Mr. Sinha appearing for the respondent Nos.1, 2 and 3 has submitted that the petitioner-Union produced no scrap of paper to show that those 37 workers were engaged by FCI and from the pleadings of the petitioner-Union as well as the respondents it is clear that those 37 workers were already working in the CWC go-downs at Hapania and their services

were utilized by FCI for loading and unloading of goods in CWC godowns and payments were made through CWC. Therefore, those 37 workers cannot be treated as the workers of FCI.

9. Learned senior counsel, Mr. Bhowmik on the other hand has submitted that the award of the Tribunal dated 17.02.1988 is clear that those 37 workers were engaged by FCI and they were paid by FCI through labour Sardar and CWC only certified the works done by those workmen.

10. On perusal of Annexure-2 the award of the Tribunal dated 17.02.1988, I find the following issue was referred to the Tribunal:

"Whether the claim of wages of 37 workers w.e.f 1-8-88 to 31-10-89(15 months) at par with direct payment system workers of Food Corporation of India is justified? If so, what relief the workers concerned are entitled to?"

10.1. At page 2 of the award in paragraph 2, the Tribunal observed:

"As many as 37 workers are involved in this reference and their identity is not disputed. Accordingly to the union the loading unloading works in the warehouses Godowns are done either by regular employees of the corporation with having regular scales of pay or by piece rated workers called direct payment system workers and those 37 workers are piece rated workers

engaged by F.C.I. in Hapania a Warehouse owned by Central Warehousing Corporation, for loading and unloading of works.....”

10.2. Since the Tribunal’s award dated 17.02.1988 has reached finality and the Tribunal has observed that the identity of 37 workers were not disputed, in the present writ petition the respondents cannot take a different stand disputing the settled position of workmen already held by the Industrial Tribunal.

11. Having carefully gone through this gazette notification, I find that the notification was published in the gazette on April 18, 1998 and a close reading of the Tribunal’s award makes an inference that the Tribunal passed the award in 1998 whereas at the bottom the date is mentioned as 17.02.1988 which might be a mistake since in a case of 1993 judgment/award cannot be in 1988 but that has not been clarified neither by the petitioner nor by the respondents in their pleadings. Anyway, in view of the above position settled by the Tribunal I find no merit in the argument advanced by learned counsel, Mr. Sinha that those 37 workers were not engaged by the FCI and that they were engaged by the CWC.

12. Learned counsel, Mr. Roy Barman has submitted that those 37 workers were engaged by FCI for handling their goods and they were never engaged by CWC. This stand was taken by CWC before the Industrial Tribunal also and that has been resolved by

the Tribunal which has reached finality and therefore FCI cannot take a different stand.

13. Having considered the submission of learned counsel of both side and the materials, especially the award of the Tribunal, I am of the considered opinion that those 37 workers were engaged by FCI for loading and unloading works of goods of FCI in CWC godowns at Hapania.

14. The award of the Tribunal makes it abundantly clear that those 37 workmen should be paid under the Direct Payment System(DPS). The Tribunal in its award(Annexure-2 to the writ petition) has decided thus:

"To establish the relationship of employer and employee, Mr. Das Gupta relied on 1978 LAB. 1-C 1264 and ILJ. 1992 FCI workers union & other Vs. FCI & others. Calcutta High Court. In Calcutta High Court case the FCI requests the CWC to provide certain godowns to them and to employ workman exclusively for handling and storing works for FCI. Here the CWC simply acts as an agent of FCI. In the cited case, the Hon'ble Calcutta High Court held that the workers engaged by CWC are the workman of FCI. In the instant reference FCI hires a godown of CWC at Hapania for storage of their goods and payments to the workers are made directly by FCI. Accepting the decision I must say that there exists a relationship of employer and employee between the management of FCI and of the workers; but not relationship of employer and employees between the management of CWC and of the workers.

In the light of the above discussions it can be safely held that there exists a relationship of employer and employee in between the management of FCI and of the workers who have been working for loading and unloading of goods of FCI at Hapania under the direct payment system of FCI prior to 1988 and are also working as such, at present, and are drawing wages at the revised rates under settlement of 1992, they are legally entitled to have the benefits of wage rates of settlement dt. 7-11-88 effective from 1-9-88. Deprivation of the benefits under settlement dt. 9-11-88 on the plea that they are not their workers is arbitrary and not legally tenable in the eye of law.

As a result, it is held that the management of FCI is not justified in withholding the benefits of revised wage rates under settlement dt. 9-11-88 to these 37 workers for the period from 1-8-88 to 31-10-89 and the management of FCI is hereby directed to pay the wages under the Direct Payment System of settlement of 1988 forthwith to there 37 workers."

14.1. The above observation of the Tribunal, since has reached finality, the position of the workmen that they were entitled to the same wages of Direct Payment System(DPS) workers of FCI and their service condition cannot be altered by introducing a new system of engaging handling contractor. The impugned letter dated 19.05.2005(Annexure-3 to the writ petition) was written by respondent No.3 to the Regional Manager of CWC. Apparently, it would appear that the issue involved in this writ petition is premature since no action has been taken by CWC on the said letter

dated 19.05.2005. Rather as I find in the counter affidavit of CWC they have taken a clear stand in para 13 and 14 of the counter affidavit contending that it would not be possible to appoint handling contractor. In para 13 and 14 respondent No.4 stated thus:

"13. That, in this regard it is also necessary to mention, that, regional office, Gauhati of the Respondent No 4 intimated the FCI, that, the necessary arrangement for repairing of road is not related with the storage worthiness of the godown. Moreover CWC, the Respondent No 4, took up the matter with earnest and in respect to the appointment of H&T contractor it was intimated to the FCI by the Respondent No 4, that, since long FCI labour dispute is continuing without any settlement it would not be possible to cause appointment of the H & T contractor unless and until FCI confirms, that, existing handling laboures at CWC Hapania would be withdrawn at the initiative of the FCI.

14. That, due to the non settlement of the labour unrest/dispute and due to the absence of required cooperation of FCI authority, CWC failed to extend its service to FCI by appointment of H&T contractor. It is noticed, that, FCI authority has gradually de-hired the storage space in different phase without following CWC norm and as on date FCI is having only 1000 MT reservation of space at CW Hapania against which 570 MT damage stick is in storage."

14.2. In view of the above stand taken by the respondent No.4 it is quite clear that the proposal initiated by respondent No.3 in the letter of FCI dated 19.05.2005 has been negated by CWC.

15. It is already settled by the Industrial Tribunal that those 37 workmen shall be treated at par with Direct Payment System Workmen of FCI and their service condition cannot be changed by engaging labour contractor as proposed in the impugned letter dated 19.05.2005. The proposal made by respondent No.3 by writing letter dated 19.05.2005 to the Regional Manager of CWC therefore stands quashed.

16. The writ petition is accordingly allowed and stands disposed of.

17. Parties are to bear their own costs.

JUDGE