

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION Nos.4657 AND 4658 OF 2001

COMMON ORDER:

These two Writ Petitions, under Article 226 of the Constitution of India, 1949 are filed by two different petitioners to issue a writ of *mandamus* declaring the action of the respondents in not admitting them as workers under '**Direct Payment System**' or '**No Work No Pay Basis**' (for short, 'the D.P.S.') as illegal, arbitrary and contrary to the decision of this Court in W.P. No.8210 of 1999 dated 30.06.1999 and also letter No.S&C 14(2)/99-LC dated 10.11.1999 issued by the 1st respondent and, consequently, direct the respondents to admit the petitioners as Handling Labourers/Workers under the D.P.S. and regularize their services.

The case of the petitioners, in brief, is that they are residents of Srikakulam District and are working as Kalasis at the F.C.I. depot of Amadalavalasa, Srikakulam District since 1984 in the handling operations. Initially, the petitioners used to work directly under the management of respondents on piece rate basis; later, due to introduction of contract system in handling and transport operations, their wages were paid by the Contractor. Later, handling and transportation operations were given to Krishnapuram Labour Contract Co-operative Society (for short, 'the society') and their wages were being paid through that society.

While the matter stood thus, the Government of India enacted Contract Labour (Regulation and Abolition) Act, 1970 (for short, 'the Act') with a view to prevent exploitation of contract labour and to provide better working conditions to the workers. Even after advent of the Act, as the contract labour system was abolished, no steps were taken to put an end to the contract labour system in handling and

transport operations by the respondents in the State of Andhra Pradesh, the petitioners along with others made several representations to the Higher Authorities of the Food Corporation of India for abolition of contract labour system in their depots in A.P. region where Labour Co-operative Societies were engaged. Accepting the demands of the Union, a Circular No.IR(L)/31(21)/97 dated 05.11.1997 was issued by the Food Corporation of India introducing the D.P.S. in pursuance of Section 10(1) of the Act.

As per the general conditions of the Circular, the District Manager, 2nd respondent herein, has identified the eligible workmen *i.e.*, handling labourers working at F.C.I. depot of Amadalavalasa and published a list of 40 workers. The petitioner, P. Rama Rao, in W.P. No.4657 of 2001 is one among them, who is shown, at Serial No.40 in the seniority list and the petitioner, B. Ananda Rao @ Anandam, in W.P. No.4658 of 2001 was included in the list at Serial No.19.

Though the respondents prepared and published the seniority list of the petitioners in 1988, and the petitioners are interested to work under the D.P.S., the respondents did not implement the D.P.S. in the F.C.I. depot of Amadalavalasa. Hence, the petitioners along with others filed Writ Petition No.8210 of 1999 for issue of *mandamus* directing the respondents to implement the D.P.S. as per the Circular dated 05.11.1997 and regularize their services; wherein this Court disposed of the Writ Petition on 13.06.1999 by directing the respondents to implement the D.P.S. as per the Circular dated 05.11.1997 within three months therefrom. Subsequently, as per the order of 2nd respondent dated 08.09.1999, the respondents implemented D.P.S. and have taken 39 workers. Though the petitioner in W.P. No.4657 of 2001 underwent necessary medical examinations to assess his fitness as per the Circular issued to absorb the workers into the D.P.S., and he was shown at serial No.40 in the seniority list;

and the petitioner in W.P. No.4658 of 2001 was shown at serial No.19 and as he was the President of the Society and due to internal disputes he was being obstructed from joining the D.P.S., respondents 2 and 3 absorbed only 39 persons allegedly stating that it was prepared as per the formula in Circular dated 05.11.1997.

The 2nd respondent issued order in S&C 13(7)/99, dated 08.09.1999 for admission of 39 workers. However, out of 39 workers only 35 workers reported to duty under the D.P.S. and B. Ananda Rao, petitioner in W.P. No.4658 of 2001 and B. Rajanna, who is shown at Serial No.34 in the Seniority list, did not join duty due to internal disputes in the society and two others B. Raja Rao and P. Lakshmudu, who are shown at Serial Nos.24 and 38 respectively in the seniority list were not allowed to join the duty as the Industrial Disputes filed by them before the Labour Court, Visakhapatnam were pending but they were admitted into the D.P.S. only after passing of the final orders in I.D. Nos.13 and 14 of 1997 on 07.02.2001 respectively. Even after admitting Rajarao and Lakshmudu at Serial No.24 and 38 of the list, there are two vacancies as per the scheme; despite availability of vacancies, the petitioner in W.P. No.4657 was not admitted in the scheme and it is discriminatory. It is specifically contended that though the respondents required 40 workers as per the formula and had prepared seniority list of 40 persons but issued orders only for 39 persons so as to deprive the petitioner in W.P. No.4657 from engaging in the D.P.S. as handling and transportation labour. When the 2nd respondent prepared a seniority list of 40 persons and published the same, he ought to have taken the petitioner in W.P. No.4657 of 2001 into D.P.S. but without any specific reason did not issue any order admitting the petitioner into D.P.S. as per the Circular.

Similarly, the petitioner in W.P. No.4658 of 2001, who is required to undergo medical examination along with others, was not admitted to undergo medical examination since he was the President

of the Union, fighting for the rights of the other members and till today there is a vacancy meant for him. Due to some obstructions, the petitioner in W.P. No.4658 of 2001 did not undergo medical examination, as required under the Circular; therefore, he is eligible to be admitted into D.P.S. As the 2nd respondent did not admit the petitioners herein under D.P.S., the society got issued a notice dated 09.09.1999 demanding the 2nd respondent to issue order admitting him into D.P.S. but not responded. Similarly, B. Ananda Rao made a representation dated 03.02.2000 to all the respondents to admit him into D.P.S. and also filed a representation dated 22.12.2000 before the 2nd respondent explaining the reason for his inability to join immediately under D.P.S. and expressed his willingness and consent to report to duty under D.P.S. at the F.C.I. depot of Amadalavalasa but the respondents did not admit him under D.P.S.

While the matter stood thus, the 1st respondent issued a letter No.S&C 14(2)/99-LC dated 10.11.1999 to all the District Managers in the A.P. Region, including the 2nd respondent herein, stating that consequent on the reassessment of labour strength in terms of Head Quarters Circular No.IR(L)/4(15)/94, dated 05.12.1994, the District Managers are directed to induct the specified number of labourers mentioned therein against each depot with immediate effect. In the said letter, the handling labour to be inducted in Amadalavalasa depot is shown as 5. Even as per this Circular, P. Rama Rao is to be included into D.P.S. as he is eligible in all respects but the 2nd respondent did not admit him into D.P.S. totally in violation of the Circulars issued by the 1st respondent and the direction issued by this Court in W.P. No.8210 of 1999 dated 13.09.1999. Similarly, the petitioner B. Ananda Rao is also eligible for being included in D.P.S. Therefore failure of the respondents to admit them in D.P.S. is illegal and the action of the respondents is in violation of the order in W.P.

No.8210 of 1999 and the Circular dated 05.11.1997. Therefore, the petitioners prayed to issue a direction to admit them into the Direct Payment System in handling and transportation operations at the F.C.I. depot of Amadalavalasa and to grant consequential benefits.

The 1st respondent filed counter-affidavit denying material allegations *inter-alia* contending that there was no direct relationship of employee and employer between the petitioners and the respondents-corporation at any point of time; the handling and transport work used to be entrusted to private contractor and thereafter to the Labour Contract Co-operative Societies on contract basis and the petitioners never worked as workmen in the respondents-corporation. It is further contended that admitting the petitioners into the D.P.S. is an exclusive function of the appropriate Government. In this case, it is the duty of the Central Government to abolish the contract labour in any area and in any organization. The Central Government has not issued any notification under Section 10(1) of the Act but, on representations of various unions, the respondents-corporation issued a letter on 05.11.1997 introducing the Direct Payment System ('No Work No Pay' basis) whereby the strength of handling labour was assessed as per general condition No.4 of the System, only 39 handling labour. As per the norms of D.P.S. which is the nature of settlement under Section 18(1) of Industrial Disputes Act, 1947 the respondents-corporation called for willingness and seniority list of workers who are working on the date of letter dated 05.11.1997. In response to this, Krishnapuram Labour Contract Co-operative Society submitted letters on the basis of which seniority list was prepared and they were asked to undergo medical examination on 13.10.1998. Seniority list was prepared and the petitioner in W.P. No.4657 of 2001 was shown at Serial No.40 in the seniority list whereas the petitioner in W.P. No.4658 of 2001 was shown at serial No.19. The petitioner in W.P. No.4657 of 2001 admittedly underwent medical examinations but he was not admitted

since he was shown at Serial No.40 as the required strength was only 39; whereas B. Ananda Rao, petitioner in W.P. No.4658 did not undergo a medical examination which is a precondition to admit the labourers under D.P.S. Hence, both the petitioners are not entitled to claim any relief for being admitted into D.P.S. and the respondent however admitted about filing of Writ Petition No.8210 of 1999 seeking a direction to fix their seniority and finally prayed for dismissal of both the writ petitions.

During course of hearing, Sri V. Sudhakar Reddy, learned counsel for the petitioners in both the writ petitions contended that P. Rama Rao, petitioner in W.P. No.4657 of 2001 was shown at Serial No.40 and the requirement was also 40 since three persons were not admitted under D.P.S., the petitioner is entitled to be admitted under D.P.S. and failure to admit him is totally discriminatory. Even otherwise, as per the letter dated 10.11.1999, 5 labourers were permitted to be admitted into D.P.S. but the respondents without adhering to the Circular issued by the Food Corporation of India and in violation of the letter dated 10.11.1999 denied induction of the petitioner P. Rama Rao into D.P.S. illegally and the action of the 2nd respondent is arbitrary.

Similarly, B. Ananda Rao, petitioner in W.P. No.4658 of 2001, is also eligible to be inducted into the D.P.S. but he was prevented to undergo medical examination on the specific date, due to heading the union as President fighting for the rights of labourers when there is a reasonable cause for his failure to undergo medical examination, denial of induction into D.P.S. is arbitrary and illegal. Therefore, a direction by way of *mandamus* be issued to the 2nd respondent to admit both the petitioners into the D.P.S. as per the orders of this court in W.P. No.8210 of 1999 and the Circular dated 05.11.1997.

Per contra, Sri D. Srinivas, learned standing counsel appearing

for the respondents-corporation, would contend that since P. Rama Rao was shown at Serial No.40 he could not be taken into D.P.S., though he underwent medical examination on the specified date as the requirement was only 39. The petitioner, B. Ananda Rao, in W.P. No.4658 of 2001 did not comply the requirements as per Circular *i.e.*, failed to undergo medical examination, thereby he is disentitled to claim induction into D.P.S. in pursuance of the Circular issued by the Food Corporation of India. Consequently, no direction be given to induct him into D.P.S. as he failed to comply precondition for admitting the petitioner B. Ananda Rao into Direct Payment system and prayed for dismissal of both the petitions.

Considering rival contentions and perusing the material available on record, the sole point that arises for consideration is:

Whether the petitioners in these Writ Petitions are entitled to be inducted into the Direct Payment System or No Work No Pay System as per the Circular No.IR(L)/31(21)/97 dated 05.11.1997 and Letter No.S&C 14(2)/99-LC dated 10.11.1999?

POINT: Undisputedly, the Food Corporation of India issued Circular No.IR(L)/31(21)/97 dated 05.11.1997 changing the system of engaging labourers in handling and transportation operations at various depots in the region of Andhra Pradesh. As per the Circular dated 05.11.1997, specific procedure is prescribed for induction of labourers into D.P.S. Undisputedly, the petitioners did not question strict adherence to the procedure by the respondents and admitted that the petitioner, B. Ananda Rao, in W.P. No.4658 did not undergo a medical examination which is a precondition for such induction into D.P.S.

One of the basic requirements as per clause (vi)(c) of the

general conditions of the Circular dated 05.11.1997 is that a certificate from a local Government Medical Officer not below the rank of an Assistant Surgeon indicating the probable age of the workman is required to be produced. Similarly, according to clause (ix) of the general conditions, each worker shall be subject to medical examination by a Medical Officer appointed/nominated by F.C.I. to certify their Physical Fitness for the job of labourers and only those labourers who are physically sound and fit may be allowed to be inducted into the D.P.S.

Unless the precondition of medical examination about the fitness of the labourers is certified, such labourers cannot be inducted into D.P.S. The petitioner in W.P. No.4658 of 2001 admitted, in Para 3 at page 8 of his affidavit filed along with the petition, as follows:

“At that time I was also called to join under Direct Payment System as I am at Serial No.19 in the Seniority List and I was required to undergo medical examination along with other 39 members. I humbly submit that as I was the President of Krishnapuram Labour Contract Co-operative Society and there were internal disputes in the Society, the other Members of the Society, whose names are not figured in the Seniority List, have obstructed me from joining under Direct Payment System.”

From the admission extracted above, it is evident that the petitioner in W.P. No.4658 of 2011 did not undergo medical examination which is a condition precedent for being inducted him into D.P.S. certifying that he is physically fit to work as handling labourer (loader). The Circular dated 05.11.1997, made it clear that unless the labourers satisfy the requirement, they cannot be inducted into D.P.S. The cause shown by the petitioner in W.P. No.4658 of 2001 for his failure to join is not a sufficient cause and the respondents are unconcerned with such lame excuses. The petitioner in W.P. No.4658 of 2001 did not explain the reason for his failure to undergo medical examination, as required under clause (ix) of the Circular. The

question of admitting the petitioners into D.P.S. would arise only when a letter of induction was issued by the respondents but the respondents did not issue any such letter of induction to the petitioners as the petitioners failed to comply the requirements of the Circular.

The requirement of undergoing medical examination is a *sine-qua-non* for admitting the petitioners into D.P.S as they have to carry bags weighing about 90 KGs or 65 KGs each in handling and transport operations at the F.C.I. depot of Amadalavalasa; unless the petitioners are physically fit to carry bags of such weight, their induction into the D.P.S. would not serve any purpose. Therefore, production of physical fitness certificate, as required under clause (ix) of the general conditions of the Circular is mandatory. Since the petitioner in W.P. No.4658 of 2001 failed to comply clause (ix) of the general conditions of the Circular, he is not entitled to be inducted into D.P.S. at the F.C.I. depot of Amadalavalasa.

Though a demand was made by the petitioner for his induction by making representations and submitting letters to the respondents, no purpose was served only for the reason that he did not comply the requirement under the Circular to induct him into D.P.S. Since the respondents did not violate the Circular dated 05.11.1997 issued by the 1st respondent or any other statutory rule or provision, the question of issuing any direction by way of *mandamus* does not arise. On the other hand, the petitioner is guilty of violation of Circular dated 05.11.1997. In such case, this Court, while exercising the limited power of judicial review, cannot compel the respondents to induct the petitioner into the D.P.S. in handling transportation operations at the F.C.I. depot of Amadalavalasa, since petitioner himself violated the rules, though the respondents absorbed only 39 persons into D.P.S.

Whereas, coming to the case of petitioner in W.P. No.4657 of 2001, his name was found in serial No.40 in the seniority list prepared

by the 2nd respondent and, upon notification, called upon him to undergo medical examination to certify his physical fitness as required under clause (ix) of general conditions the Circular dated 05.11.1997. Accordingly, he underwent medical examination and complied all the requirements as per the Circular, as admitted by the 1st respondent specifically in the counter. However, the reason for failure of the 2nd respondent to induct the petitioner into D.P.S. is that the F.C.I. depot of Amadalavalasa required only 39 labourers but not 40, since the petitioner is shown at Serial No.40, he was not inducted into D.P.S. in contravention of terms and conditions for regulating D.P.S. as specified in clause (1)(ii) of the Circular, which is as follows:

“(ii) In case of Ancillary/Casual workers, they will be paid at the statutory minimum wages of that area.

No. of Handling Labour (Loader): Annual turnover
(Recc plus

Issues in big bags

365 x 90

No. of Ancillary : At the rate of 4 persons per 5000 Mts
Labourers : covered capacity of the depot.”

Initially, the 2nd respondent worked out the requirements and found 40 labourers required for handling and transportation of goods at F.C.I. depot of Amadalavalasa but later reduced the same to 39 workers but reason was not explained. Even according to the Circular dated 05.11.1997, the capacity of F.C.I. depot of Amadalavalasa is 24,880 Metric tonnes. In the absence of any satisfactory explanation for reduction of 40 workers to 39 workers, it is difficult to accept the contention of 2nd respondent for its failure to induct the petitioner into D.P.S. Even otherwise, among the 39 workers, the petitioner in W.P. No.4658 of 2001 and one Rajanna, who are shown at Serial Nos.19 and 34 did not report to duty; thereby the total strength of labourers in the depot was only 37 and still two vacancies were available as on the date of making representation by the petitioners in W.P. Nos.4657 and

4658 of 2001; but the respondents did not consider their request to induct them into D.P.S. Hence, failure of the 2nd respondent to induct the petitioner in W.P. No.4657 is discriminatory and in violation of fundamental right to work. Hence, I find that it is a fit case to direct the 2nd respondent to induct the petitioner in W.P. No.4657 of 2001 into D.P.S. for handling and transportation operations at the F.C.I. depot of Amadalavalasa, as per the Circular issued by the Food Corporation of India.

Accordingly, the Writ Petition No.4657 of 2001 is allowed, directing the 2nd respondent to admit the petitioner, P. Rama Rao, in W.P. No.4657 of 2001 into D.P.S. in the F.C.I. depot of Amadalavalasa within a period of 15 days from the date of receipt of a copy of this order. The W.P. No.4658 of 2001 is dismissed as the petitioner, B. Ananda Rao, failed to comply the mandatory requirement of undergoing medical examination for admitting him into D.P.S.

In consequence, miscellaneous petitions, if any, pending in these Writ Petitions shall stand closed. No order as to costs.

**M. SATYANARAYANA MURTHY,
J**

Date: 29-01-2016.
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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WRIT PETITION Nos.4657 AND 4658 OF 2001

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Date.29-01-2016

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