

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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WRIT PETITION No.16700 OF 2001

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, 1949 is filed by the petitioners to issue a writ of *mandamus* declaring the order No.30(5)/2001-Labour Cell dated 27.06.2001 passed by the 1st respondent, rejecting their request for their induction into '**Direct Payment System**' or '**No Work No Pay Basis**' (for short, 'the D.P.S.') as illegal, arbitrary and contrary to the letter No.S&C 14(2)/99-LC dated 10.11.1999, issued by the 1st respondent, is violative of Articles 14 and 21 of the Constitution and, consequently, direct the respondents to admit the petitioners as Handling Labourers/Workers under 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 being 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 region 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 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, though they submitted the list containing all the workers since the inception of the society; wherein the petitioners were figured at serial Nos.41 to 44.

Though the respondents prepared and published the seniority list of the petitioners in 1988, and the petitioners are interested to work under D.P.S., the respondents did not implement D.P.S. in the F.C.I. depot of Amadalavalasa. Hence, one Reddy Mallesu and others, whose names figured in the seniority list of 40 members, filed Writ Petition No.8210 of 1999 for issue of *mandamus* directing the respondents to implement 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 directing the respondents to implement 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 only 39 workers. Though one P. Rama Rao, who is shown at serial No.40 underwent necessary medical examinations to assess his fitness as per the Circular, to absorb the workers into D.P.S., and one B. Ananda Rao, who 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 D.P.S., respondents 2 and 3 only have shown 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 D.P.S. and B. Ananda Rao, who is shown at serial No.19 and B. Rajanna, who is shown at Serial No.34 of the Seniority list did not join duty due to internal disputes in the society and 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 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 and issuance of order No.S&C 14(2)/99-LC dated 10.11.1999, issued by the 1st respondent, only 37 workers joined and two vacancies are still available.

The 1st respondent vide his letter dated 10.11.1999, directed all the District Managers in the A.P. Region, including the 2nd respondent herein, stating that consequent on the re-assessment of labour strength in terms of Head Quarters Circular No.IR(L)/4(15)/94, dated 05.12.1994, to induct specified number of labourers mentioned therein against each depot with immediate effect. In the said letter, the handling labour to be inducted at the F.C.I. depot of Amadalavalasa is shown as 5. Hence, the number of workers to be admitted into D.P.S. increased to 44 and as such the petitioners are seniors next to the persons inducted into D.P.S. are entitled to be absorbed into D.P.S. In

spite of issuance of letter dated 10.11.1999 by the 1st respondent to the 2nd respondent, the 2nd respondent failed to comply the same. Subsequently the petitioners through their society made a representation dated 03.02.2000 to the 2nd respondent to implement the order of the 1st respondent and induct them into D.P.S. In spite of same, the 2nd respondent did not extend D.P.S. to the petitioners, the petitioners preferred Writ Petition No.5212 of 2001 before this Court seeking a direction to the respondents to induct them into D.P.S. wherein this Court disposed of the Writ Petition No.5212 of 2001 on 12.04.2001 by directing the 1st respondent to consider the representation of the petitioners within a period of 8 weeks therefrom. Subsequently, the 1st respondent passed the impugned order vide his proceedings No.30(5)/2001-Labour cell, dated 27.06.2001 rejecting their request for admission into D.P.S. at the F.C.I. depot of Amadalavalasa.

The main grievance of the petitioners is that only those workers who are admitted into D.P.S. have to be permitted to work in the F.C.I. depot of Amadalavalasa, but the respondents are allowing the outsiders to work in the depot without any authority. Though the 1st respondent directed the 2nd respondent to induct 5 more workers at the F.C.I. depot of Amadalavalasa, the 2nd respondent did not consider their representation, they approached this Court and succeeded in getting a direction in their favour but the 2nd respondent thereafter considered their representation and rejected their claim; hence, the writ petition.

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 initially 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 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 39 labour, as per general condition No.4 of the Circular dated 05.11.1997. As per the norms of D.P.S. which is in 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 petitioners herein were not figured in the list of 40 members. When the senior members were asked to undergo medical examination, they approached this Court and filed W.P. No.8210 of 1999 seeking a direction to implement D.P.S., this Court disposed of the W.P. No.8210 of 1999 on 13.06.1999 with a direction to the respondents to implement D.P.S. at the F.C.I. depot of Amadalavalasa within three months therefrom.

It is further contended that in pursuance of the directions of this Court in W.P. No.8210 of 1999 and by virtue of the orders of 2nd respondent dated 08.09.99, 25.09.99 and 27.09.99, 37 persons were only inducted into D.P.S. and the same has been challenged in W.P. Nos.24571 and 17656 of 1999, which are pending before this Court.

While some others challenged the seniority list submitted by the society, which is subject matter in W.P. Nos.24571 and 17696 of 1999. Subsequently, it was contended that the 1st respondent issued a letter dated 10.11.1999 directing the District Managers including the 2nd respondent herein to induct 5 more labourers in the F.C.I. depot of Amadalavalasa, fresh seniority list could not be prepared on account of pendency of several Writ Petition before this Court.

It was further contended that in pursuance of the direction of this Court in W.P. No.5212 of 2001, the representation of the petitioners dated 03.02.2000 has been considered and clearly stated that by virtue of the Head quarters letter dated 05.11.1997, the requirement of 40 workers has been correctly assessed and the workers who are willing were asked to undergo medical examination and at that time no writ petitions were pending. In view of pendency of several Writ Petitions before this Court, the representation of the petitioners dated 03.02.2000 was correctly considered and disposed of by this Court on 27.06.2001, finally prayed to dismiss the writ petition.

During course of hearing, Sri V. Sudhakar Reddy, learned counsel for the petitioners contended that the petitioners herein were shown at Serial Nos.41 to 44 of the seniority list; though the society has submitted the list of all members in the society, the 2nd respondent has prepared the list of only 40 persons and from them, has taken only 37 persons into the D.P.S. at the F.C.I. depot of Amadalavalasa. Since the petitioners herein are figured at serial Nos.41 to 44 of the list, and already 3 vacancies were not filled and thereafter the 1st respondent has issued a letter dated 10.11.1999 directing the 2nd respondent to induct 5 more labourers at the F.C.I. depot of Amadalavalasa totally 6 labourers are to be admitted into the D.P.S. The petitioners submitted a representation dated 03.02.2000 to admit them into D.P.S., in view of the letter dated 10.11.1999. but the 1st respondents without applying

his mind, rejected their claim for admission into D.P.S. Hence, the petitioners are entitled to be admitted into D.P.S. and finally prayed to allow this petition.

Per contra, Sri D. Srinivas, learned standing counsel appearing for the respondents-corporation, would contend that since the petitioners were shown at Serial Nos.41 to 44 of the list, they could not be taken into D.P.S., as they did not undergo medical examination, which is a precondition as per clause (vi)(c) of the general conditions of the Circular dated 05.11.1997. Moreover, after disposal of W.P. No.5212 of 2001, the 1st respondent considered and rejected the claim of the petitioners strictly complying the general conditions of the Circular dated 05.11.1997 and opined that due to pendency of several writ petitions challenging the seniority list prepared by the 2nd respondent, the question of their induction into D.P.S. does not arise and, hence, prayed to dismiss the Writ Petition.

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 the 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 intending to change 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, a 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 they are figured at serial Nos.41 to 44 of the list and did not undergo 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 assess 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 D.P.S.

Unless the precondition of medical examination about the fitness of the labourers is certified, such labourers cannot be inducted into the D.P.S. However, the petitioners herein specifically admitted that asking them to undergo medical examination does not arise as they were not figured in the list of 40 members but their contention, from the beginning, is that as from the list of members to be admitted into the D.P.S. is 39 members, 2 posts were not filled and 5 more members were allotted to be admitted into the D.P.S. at the F.C.I. depot of Amadalavalasa, they are required to be admitted into D.P.S. but the 1st respondent without considering their representation dated 03.02.2000 in proper perspective rejected their claim, which is illegal and arbitrary. Learned counsel for the petitioner contended that the 1st respondent denied the claim of the petitioners on the ground that several writ petitions challenging the seniority were pending and also the strength as per the general conditions of the Circular dated 05.12.1997 is 39, but several workers were inducted into D.P.S. at various depots in the region of Andhra Pradesh.

The 1st respondent in his counter denied the relationship of employer and employees and the petitioners failed to prove that they are shown in the list at serial Nos.41 to 44. Moreover, the respondents after considering their representation rejected the claim of the petitioners holding that the strength available at the F.C.I. depot of Amadalavalasa is only 39, in view of the general conditions of the Circular and due to pendency of several writ petitions challenging the seniority list, the question of their induction in D.P.S. at the F.C.I. depot of Amadalavalasa does not arise, as they were not shown in the eligible seniority list and, hence, the 1st respondent rightly rejected their claim. Apart from 2 available vacancies in the list of 39 labourers, today Sri P. Rama Rao, who is shown at serial No.40, was ordered to be induced in D.P.S. vide order of this Court in W.P. No.4657 of 2001, while dismissing the Writ Petition No.4658 of 2001, filed by Sri B. Ananda Rao, who is shown at serial No.19. In view of today's direction in W.P. No.4657 of 2001 to admit P. Rama Rao into D.P.S., only one vacancy is available in 39 vacancies. In that view of the matter, and in view of pendency of several writ petitions challenging the seniority, no direction be issued against the respondent to induct the petitioners into D.P.S. at the F.C.I. depot of Amadalavalasa. Moreover, as on today, the 2nd and 3rd petitioners are now aged 60 years and 1st and 4th petitioners are aged more than 50 years, there cannot be any direction to the petitioners, at this stage, to undergo physical fitness test, as they cannot carry heavy weights.

In view of my foregoing discussion, the petitioners failed to prove their case to be admitted into D.P.S., the Writ petition is liable to be dismissed.

Accordingly, the Writ Petition is dismissed.

In consequence, miscellaneous petitions, if any, pending in this Writ Petition shall stand dismissed. 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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Date.29-01-2016

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