

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 15.11.2018

JUDGMENT PRONOUNCED ON : 11.12.2018

CORAM:

THE HON'BLE MR. JUSTICE S.MANIKUMAR
and
THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.A.No.2177 of 2018

and

CMP No.16887 of 2018

1. The Food Corporation of India,
Rep. By its Chairman/Managing Director,
No.16 to 20, Barakhamba Lane,
New Delhi - 110 001.
 2. The Executing Director,
Food Corporation of India,
Zonal Office (South),
Opposite to Shastri Bhavan,
No.3, Haddows Road,
Chennai - 600 006.
 3. The General Manager
(Tamil Nadu),
Food Corporation of India,
No.8, Sathya Moorthy Road,
Chetpet, Chennai - 600 031.
 4. The Area Manager,
Food Corporation of India,
District Office, Tatabad,
Coimbatore.
- ... Appellants/Respondents

Vs.

- 1.V.M.Madhusoodhanan
- 2.S.Senduran
- 3.S.Arunachalam
- 4.K.M.Gopal
- 5.K.Gurusamy
- 6.S.Gandhi
- 7.G.Gani

... Respondents/Petitioners

PRAYER: Writ Appeal has been filed under Clause 15 of Letters of Patent against the order made in W.M.P.No.21696 of 2018 in W.P.No.18387 of 2018 dated 19.07.2018.

Prayer in WMP No.21696 of 2018:

To stay the operation of the impugned Transfer order dated 27.06.2018 in reference No.IR(L)/25(5)/P&T/DPS/Ro/2018 of the 3rd respondent pending the disposal of the Writ Petition as far as the Petitioners 1 to 7 are concerned.

W.P.No.18387 of 2018:

To issue a Writ of Certiorarified Mandamus Calling for the records of the 3rd respondent in connection with the impugned Transfer Order dated 27.06.2018 in reference No. IR(L)/ 25(5)/ P&T/ DPS/ RO/ 2018 and quash the same as far as the petitioners 1 to 7 are concerned and direct the 1st respondent to refrain from transferring petitioners 1 to 7 from peelamedu FSD to any other Depot till they are paid salary allowances perquisites etc. equal to the FCI Departmental labour.

For Appellants : Mr.N.G.R.Prasad, Senior Counsel
for Mr.S.Vijayakumar

For Respondents : Mr.V.Selvaraj
for Mr.R.Srinivas

J U D G M E N T

SUBRAMONIUM PRASAD, J.

The instant Writ Appeal is directed against the interim order in W.M.P.No.21698 of 2018 in W.P.No.18387 of 2018 dated 19.07.2018.

2. The appellants are the respondents in the Writ Petition. Writ Petition is filed challenging the Transfer Order dated 27.06.2018, in reference No.IR(L)/25(5)/P&T/DPS/RO/2018 passed by the General Manager, (Tamil Nadu), Food Corporation of India, No.8, Sathya Moorthy Road, Chetpet, Chennai - 600 031. Writ petitioners have also prayed for an interim order, for stay of the above-mentioned Transfer Order.

3. According to the Writ Petitioners, they are engaged in loading and unloading of food grains in FSD, Peelamedu, Coimbatore and the petitioners are working as DPS workers under the Corporation since 1996. It is stated that the petitioners

were initially working as casual labour and subsequently, they were taken into DPS. In pursuance of the notification under Section 10(1) of the Contract Labour (Regulation and Abolition) Act 1970 under the DPS, petitioners have paid directly and can be removed by the appellants for disciplinary reasons. In order to execute the work, appellants herein have established several godowns and other storage facilities throughout the Country and engage labour, for handling the food grains while they are in transit or in the godown.

4. Writ Petitioners would submit that for the execution of the above work, workers are engaged in the tasks of loading, unloading of food grain bags, from trucks, wagons, salvaging of bags in such trucks or wagons, breaking the stacks, putting, and removing bags on weight scale, delivery of bags in trucks/wagons, standardisation, stacking, restacking, destocking of bags, collection of loose grains, weighment, physical verification, etc.

5. Writ Petitioners have submitted that around 47,912 workers have been employed by the Food Corporation, as against one lakh contract labourers. Writ petitioners have submitted after the abolition of the Contract Labour System, by notification issued by the appropriate Government, appellants have failed to absorb the workers, as regular employees, and therefore the workmen, agitated through their union, and strike notice was issued. Writ petitioners have submitted that, an industrial dispute was raised by the labour union, before the Assistant Labour Commissioner, on behalf of the workmen, employed in food storage depots, in the South Zone. Conciliation failed and the appropriate Government referred an industrial dispute for adjudication, as to whether the services of the workmen employed in different Food Storage depots, in Food Corporation of India in the South, where notifications were issued prohibiting engagement of contract labourers, under Section 10(1) of CL (R and A) Act, are entitled to be regularised.

6. According to the Writ Petitioners, Peelamedu depot, where from dispute arose is covered by the reference. The Labour Court passed an award dated 29.07.1998 directing regularisation of all the workmen of the South Zone of Food Corporation of India, from the date of Notification, issued under Section 10 of the Contract Labour Abolition Act. The challenge to the award was rejected by this Court, and the matter is pending before the Hon'ble Supreme Court in C.A.No.10499 of 2011.

7. According to the Writ Petitioners, the 3rd respondent i.e. the General Manager (Tamil Nadu), Food Corporation of

India, issued a notice dated 03.11.2017, calling upon the workers, in Peelamedu to give their willingness for transfer to other depots.

8. This has been objected to by the workmen. Before the Writ Court, it has also been stated that a tender has been notified for handling services in the Peelamedu depot. Even though the tender notification dated 17.11.2017 was under challenge, the Area Manager has issued Transfer Order directing the transfer of labours. Thus, the transfer order been challenged before the Writ Court.

9. While considering the averments made in the interim stay application, a learned single Judge in the presence of the learned counsel appearing for both sides, passed the following order:-

"Mr.S.Vijayakumar, the learned Standing Counsel, accepts notice on behalf of the respondents and seeks time to take in the matter, and as much, the matter may be listed on 03.08.2018. However, till such time, the petitioners, who have not joined in the new place of posting pursuant to the order of transfer shall be paid the minimum guaranteed wages payable to them counting the same from today. But payment on such wages is subject to the outcome of this Writ Petition and also without prejudice to the claim of the respondents in this Writ Petition.
Post the matter on 03.08.2018."

10. It is this interim order, is under challenge before us. It is pertinent to note that the interim order dated 19.07.2018 was stayed by the Division Bench of this Court on 31.10.2018. Writ Petitioners (Respondents herein) have submitted that after the impugned order dated 19.07.2018 passed in the presence of the learned counsel for both parties, appellants have filed a counter and that they have also filed a vacate stay petition in W.M.P.No.23006 of 2018. The respondents would state that the appellants have suppressed the fact of filing a vacate stay petition on 31.10.2018, and the order was passed by a Hon'ble Division Bench, staying the order dated 19.07.2018 without being informed that the appellants have already filed a petition for vacating the order dated 19.07.2018 passed by the learned Single Judge.

11. Heard the learned counsel appearing for both sides and perused the materials placed before this Court.

12. Mr.N.G.R.Prasad, learned counsel appearing for the appellants stated that the interim order passed by the learned single Judge is contrary to the order passed by the Hon'ble

Supreme Court. The order dated 31.07.2017 passed by the Hon'ble Supreme Court in S.L.P.No.19218 of 2016, arose out of the impugned final judgment dated 20.11.2015, in a PIL No.84 of 2014, passed by the High Court of Bombay at Nagpur. High Court of Bombay while disposing of a Writ Petition, by passed the following direction.

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

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

(ii) The Government of India shall decide the issue regarding de-notification of the depots of the Food Corporation of India, in respect of which notification is issued u/s.10 of the said Act, within a period of six months from today, in the light of observations made by us hereinabove and the report of M/s.Deloitt Consultancy and the report of High Level Committee appointed by the Government of India itself.

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

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

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

13. The Hon'ble Supreme Court, while dismissing the SLP, observed as under:-

"1. We do not see any merit in these special leave petitions, which are hereby dismissed. We make it clear that this order shall not prevent the petitioners - Food Corporation of India Workers Union/Food Corporation of India Shramik Union/FCI Handling Workers Union, to challenge any order, passed in furtherance of the directions issued in the impugned order (dated

20.11.2015), in appropriate proceedings before an appropriate Court.

2. In case, such a challenge is raised by the petitioner(s), in continuation of the liberty granted to the petitioner(s), the claim raised by the petitioner(s) shall be considered in accordance with law, uninfluenced by any observations made by the High Court in the impugned order (dated 20.11.2015)."

14. According to him, Transfer Order passed by the appellants herein, is perfectly justified, and is in consonance with the order of the Bombay High Court, as affirmed by the Hon'ble Apex Court, and therefore, the learned single Judge, ought not to have passed the interim order dated 19.07.2018, stating that those, who have not joined in the new place, pursuant to the order of transfer, shall be paid the minimum guaranteed wages payable to them, whether they actually joined the transferred post or not.

15. Per contra, Mr.V.Selvaraj, learned counsel appearing for the respondents would vehemently contend that the transfer order is per se wrong, on the facts and circumstances of the case. According to him, appellants cannot disturb the workers working in Peelamedu. The order of transfer is mala fide.

16. Fact that after the order dated 19.07.2018 passed by a learned Single Judge, appellants have already filed a vacate stay petition is not denied. Appellants could not be permitted to sail, in two Boats. Having chosen to file a vacate stay petition, they ought not to have proceeded ahead, with the present Appeal and that they should have pursued the petition, for vacating stay and gone ahead, with the hearing in the Writ Petition.

17. In any event, it cannot be said that the impugned order is a judgment, within the meaning of Clause 15 of the Letters Patent of this Court. Interim order, has not yet attained finality, determining the rights and liabilities, as between parties, and cannot be said to have given rise to a cause, and allege substantial injustice to the appellant, falling to contend to bring in within the expression "Judgement" occurring in Clause 15 of the Letters Patent. Application for stay has not yet been finally disposed of. It has to be heard finally, when the appellant has already filed the petition for vacating the interim order.

18. Though submissions were made on the merits, this Court is not inclined to go into the same, in view of the fact that

vacate stay petition has been filed in the Writ Petition, numbered, as W.M.P.No.23006 of 2018. Writ Appeal is dismissed with the request to the learned single Judge, to take up the petition for vacate stay, at the earliest or to dispose of the main Writ Petition itself.

19. The Writ Appeal is therefore, dismissed with the above directions. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

To
Sub Assistant Registrar

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+2ccs to Mr.S.Vijayakumar, Advocate Sr.84576 and 85204
+2ccs to Mr.R.Srinivas, Advocate Sr.84987 and 85723

W.A.No.2177 of 2018

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