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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-11765-2011

Date of Decision : August 16, 2018

Dalbara Khan

.... Petitioner.

Versus

Food Corporation of India and others.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Ms. Sonia G. Singh, Advocate
for the petitioner.

Mr. J.S.Puri, Advocate
for the respondents.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari to quash impugned list of workers working on contract to be shifted under Direct Payment System (DPS) dated 06.02.2011 (Annexure P/3) being illegal, unjust and against the seniority list prepared by the department.

2. As per the petitioner, he was working on contract for loading and unloading work with Food Corporation of India (for short, 'FCI'), Bhawanigarh Depot. On 12.11.2010, a Memorandum of Understanding (MOU) (Annexure-P/1) was arrived at between some Unions and FCI and the Contract Labour System was abolished. This system was adopted in

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Punjab also vide letter dated 12.01.2011 (Annexure P/2). On the basis of said letter, respondents prepared list of 50 workers to bring them under direct payment system and list is dated 06.02.2011 (Annexure P/3).

3. As per the petitioner, the respondent-Corporation had prepared the list (Annexure-P/5) of Bhawanigarh Centre containing 164 workers on the basis of EPF number. As per the procedure of appointment of workers in FCI, there was no minimum age or education prescribed. Some of the workers in the list Annexure-P/5 were working since 1987 and the same was being prepared as per length of service and EPF numbers. The petitioner was at serial No.44 of the said list. However, respondent-Corporation in an arbitrary and unjust manner prepared the list on the basis of wages and date of birth, which is illegal and arbitrary as the persons having the age of 45 or 50 years, who had joined the department just some time ago, were being regularized by the respondent-Corporation on the basis of his date of birth. To the contrary, the absorption under direct payment system should have been done on the basis of length of service only and as such, list Annexure P/3 is liable to be quashed.

4. Respondents contested the petition on the ground that the writ petition is not maintainable because the remaining effected workers were not impleaded in the writ petition. Even Ministry of Labour, Government of India has not been impleaded as a party respondent. On merits, the respondents took the plea that the contract labour system was abolished in FCI and depot of Bhawanigarh alongwith 23 depots, system of direct payment was introduced through three members' committee as nominated

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by the workers. For assessment of requirement of labour, the FCI norms are as under:-

“Handling Labour

Average work load (receipt issue) at last three year
240 X 135

The work load for the year 2007-08, 2008-09 and
2009-10 was considered for average.

Ancillary Labour

4 ancillary labour 5000 MT capacity. After working out the requirement, only those workers who had been working during the period of existing contractor or during the period of previous contractor, were inducted for this period, total period of three years proceeding April 2010 was considered. Instruction dated 25/26.11.2010 for preparation of seniority list of ex-contract worker for induction as per requirement were issued.”

5. After issuance of notification dated 23.04.2010, 50 workers were inducted by the formula detailed above and as per instructions dated 25/26.11.2010, if seniority of two or more workers was the same, in that event, the date of birth was to be considered for arranging their inter se seniority. At Bhawanigarh depot, the seniority of contract labour was on the basis of record and date of birth was taken as criteria and there was no pick and choose by the respondent-Corporation. Even allotment of EPF numbers cannot be made the basis of seniority and it was prayed that the writ petition be dismissed.

6. Having considered the submissions made by learned counsel for the parties and appraisal of record, taking the case from the admitted facts that the contract labour system was abolished in respondent-

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Corporation and direct payment system was introduced so as to abolish the contract labour system the same also was adopted throughout and was made applicable to Bhawanigarh depot also where the petitioner was allegedly working since 1987. The petitioner has been placing reliance upon seniority list Annexure-P/5 wherein name of Dalbara Khan has been shown to be at serial No.44. It is also not disputed that the scheme was introduced on the basis of notification dated 23.04.2010 issued by the Government of India, Ministry of Labour regarding abolition of contract labour system in 24 depots of FCI including Bhawanigarh. In the said communication Annexure-R3/1, following guidelines were laid down:-

“In this connection, a committee consisting of Area Manager (D) & Manager (A/cs) be constituted and if need be assistance of local staff may be obtained who may be in position to identify and verify the worker and their particulars. The committee shall verify the genuine workers on the basis of following record.

1. Gate Entry Register.
2. Identity cards issued to workers by contractor duly countersigned by authorized officer of FCI.
3. Acquaintance rolls for the payment made to the workers by contractor. Such acquaintance roll should be duly authenticated by FCI Officer.
4. EPF schedule in respect of EPF contribution deposited with the concerned RPFC by the contractor or FCI as the case may be.

The seniority list of workers selected after identification and physical fitness is to be prepared for each FCI owned depot separately of Handling labour and Ancillary Labour on the basis of actual number of days work done by each labour

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during last three years in concerned depot with the contractor. In case of seniority of two or more workers was same then date of birth was to be considered for arranging their inter-se-seniority. The senior most worker will be inducted as Handling labour and Ancillary Labour as per assessment carried out in view of Hqrs.formula. The Corporation will resort to direct payment system on No Work No Pay Basis through a committee consisting of three labour representatives nominated by the Labour Union from among the workers of the concerned depot for which necessary guidelines will be issued separately on receipt of confirmation from your office about preparation of seniority list.”

7. As regard to Bhawanigarh depot, the requirement of handling labour was 42 and that of ancillary labour, it was 8.

8. The petitioner has mainly relied upon list Annexure-P/5, but there was nothing on the file indicating that Annexure-P/5 was prepared on the basis of some seniority list and if that is not to be taken as the seniority list, then the petitioner has no case on the record.

9. More so, in Annexure P/5, the alleged seniority list, the name of Dalbara Khan son of Bachna Khan has been mentioned at serial No.44 and his date of birth is mentioned as 01.02.1959 and as per the affidavit of Dalbara Khan Annexure R3/4, his date of birth is 20.05.1969 meaning thereby that the said list is factually incorrect as per the affidavit of the petitioner himself. No such reliance can be placed upon such a list so as to decide the claim of the petitioner. Otherwise, the list Annexure-P3 has been prepared by the committee constituted as per the instructions of the

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Ministry of Labour. The petitioner has not been able to make out any case to set aside the impugned list.

10. Resultantly, the present writ petition is dismissed.

(SHEKHER DHAWAN)
JUDGE

August 16, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes