

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision :13.12.2018

LPA No.556 of 2018 (O&M)

Food Corporation of India and others

.....Appellants

Versus

Charanjit Singh and another

..... Respondents

LPA No.747 of 2018 (O&M)

Food Corporation of India and others

.....Appellants

Versus

Hans Raj Mofaria and another

..... Respondents

LPA No.756 of 2018 (O&M)

Food Corporation of India and others

.....Appellants

Versus

Karamjit Singh and another

..... Respondents

LPA No.768 of 2018 (O&M)

Food Corporation of India and others

.....Appellants

Versus

Sohan Singh and another

..... Respondents

LPA No.769 of 2018 (O&M)

Food Corporation of India and others

.....Appellants

Versus

Gurbinder Singh and another

..... Respondents

LPA No.770 of 2018 (O&M)

Food Corporation of India and others

.....Appellants

Versus

Gurtarlochan Singh and another

..... Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE**

Present: Mr. Chetan Mittal, Sr. Advocate with
Mr. Sumeet Goel, Advocate and
Mr. Udit Garg, Advocate for the appellants.

Mr. G.S.Bal, Sr. Advocate with
Ms. Gursimran Kaur, Advocate for respondent No.1.

KRISHNA MURARI, CHIEF JUSTICE (Oral):

These *intra court* appeals, under clause X of the letters patent, are directed against the same judgment dated 17.01.2018, passed by the learned Single Judge, hence have been clubbed and heard together and are being disposed of by this common judgment.

The issue for adjudication before the learned Single Judge and the writ petition(s) filed by the respondent(s)-employee(s) herein was in respect of that they have been shifted retrospectively from CDA pattern pay scales to that of IDA pattern scales. It may be pertinent to point out that the

shifting was done in accordance with the judgment and order passed by the Hon'ble Apex Court dated 03.05.1990 (Annexure P-7). The relevant part of the judgment for adjudication of the dispute is being extracted herein:-

“(i) The scales of pay and dearness allowance as recommended in the Report will be extended to those employees who have been appointed with specific terms and conditions for grant of Central dearness allowance. This will be equally applicable to the employees who by rules laid down by the public sector enterprises are being paid Central dearness allowance;

(ii) The employees appointed on or after January 1, 1989, will be governed by such pay scales and allowances as may be decided by the government in its discretion. Those appointed earlier with IDA pattern will continue to be governed in accordance with the terms and conditions of their appointment”.

In pursuance to the aforesaid directions of the Apex Court, office memorandum dated 10.08.2009, was issued by the Union of India.

The said circular was put to challenge by filing a writ petition and the issue raised for adjudication was whether the employees appointed by way of promotion after 1.1.1989 will be entitled to grant of Central dearness allowance or industrial dearness allowance.

Learned Single Judge without entering into the questions of validity of the circular, which was under challenge before him, allowed the

writ petition(s) and set aside the order dated 18/22.09.2015 passed on the basis of the circular merely on the ground that was an ex parte order without any notice and opportunity of hearing. The petition(s) was disposed of directing the employers to proceed afresh in the matter after issuing show cause notice and opportunity of hearing.

Learned Senior counsel appearing for the appellant vehemently submits that once the circular on the basis of which the impugned orders were passed is intact and the validity has not been entered into by the learned Single Judge, the issuance of a show cause notice and opportunity of hearing would serve no purpose inasmuch as the appellants-employer cannot go back beyond the circular, and thus, it would be an exercise in futility. We are also of the considered opinion that till such time the circular on the basis of which the orders impugned in this writ petition(s) was passed intact the notice and opportunity of hearing is going to serve no purpose. It was incumbent upon the learned Single Judge to have considered the validity of the circular on the grounds mentioned in the writ petition(s) and thereafter proceeded to have passed an order. On account of this illegality the impugned order is not liable to be sustained and is hereby set aside.

Apart from the above, there is one more aspect of the matter which needs to be considered by the learned Single Judge in two of the cases the issue involved was whether the employees after having consented to accept the IDA pattern can withdraw it after about three years. The said issue raised in the two writ petitions has also not been addressed by the

learned Single Judge.

The appeals are allowed to the extent indicated above. The matters stand remitted back to the learned Single Judge to pass fresh order in accordance with law and in the light of the observation made hereinabove.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

13.12.2018

Manoj Bhutani

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No