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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 10440/2022 & CM APPL.30182/2022 (stay)

FOOD CORPORATION OF INDIA SHRAMIK UNION... Petitioner

Through: Mr. R.M. Sinha with Mr. P.M. Sinha,
Mr. Chandan Kumar and Ms. Nandini
Hans, Advocates.

versus

FOOD CORPORATION OF INDIA Respondent

Through: Mr. Om Prakash with Ms. Shivangini
Sharma, Advocates.

+ W.P.(C) 10450/2022 & CM APPL.30202/2022 (stay)

FOOD CORPORATION OF INDIA WORKERS ASSOCIATION

CITU Petitioner

Through: Mr. R.M. Sinha with Mr. P.M. Sinha,
Mr. Chandan Kumar and Ms. Nandini
Hans, Advocates.

versus

FOOD CORPORATION OF INDIA Respondent

Through: Mr. Om Prakash with Ms. Shivangini
Sharma, Advocates.

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Date of Decision: 12th July, 2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. Present writ petitions have been filed with the following prayers:-



- i Notice / Order dated 20.06.2022 under Section 9-A of the Industrial Dispute Act, 1947 (21 days' notice) for the UNILITERAL change in service condition applicable to the workman in respect of matters referred in 4th Schedule of the Act i.e. withdrawing the inclusion of incentive in wages for computation of CPF and gratuity qua Departmental Workers.*
- ii Notice / Order dated 20.06.2022 under Section 9-A of the Industrial Dispute Act, 1947 (21 days' notice) for the UNILITERAL change in service condition applicable to the workman in respect of matters referred in 4th Schedule of the Act i.e., treating the 'Mandal' as handling labour qua Departmental Workers.*
- iii Notice / Order dated 20.06.2022 under Section 19(2) of the Industrial Dispute Act, 1947 (2 months' notice) for UNILITERAL modification /termination of the settlement dated 13.03.1999 i.e. exclusion of HRA component from the wages for the computation / calculation of incentives and Over Time Allowance (OTA) qua Departmental Workers.*
- iv Notice / Order dated 20.06.2022 under Section 19(2) of the Industrial Dispute Act, 1947 (2 months' notice) for UNILITERAL modification / termination of the settlement dated 03.08.2012 i.e. withdrawing, the payment of A area rates (uniform rate) to all DPS Workers across the country irrespective of place of their posting.*

2. Learned counsel for the petitioners submits that W.P.(C) 10440/2022 and W.P.(C) 10450/2022 are identical in nature and these two writ petitions have been filed on behalf of two different associations. Thus, this Court is inclined to dispose of both the writ petitions by a common order.



3. Learned counsel for the petitioners submits that notice dated 20.06.2022 under Section 9-A of the Industrial Disputes Act, 1947 is not in accordance with law. Attention has been invited to Form E as provided under the Industrial Disputes (Central) Rules, 1947. Learned counsel for the petitioners submits that notice(s) under Section 9(A) and Section 19(2) of the Industrial Disputes Act, 1947 are required to be served in the form prescribed under Form E, as provided under the Industrial Disputes (Central) Rules, 1947 and since notice(s) have not been issued in accordance with the proforma, the same are liable to be quashed. Learned counsel for the petitioners further submits that in fact even as per Annexure annexed with the notice dated 20.06.2022, the respondents have stated that the practice of including incentives in the basic wages for computation of CPF contribution and gratuity payment from time to time shall stand modified in terms of Section 9A of the Industrial Disputes (Central) Rules, 1947 and the other relevant legal provisions. Learned counsel for the petitioners submits that this act of the Food Corporation of India is totally contrary to the principles of Industrial Disputes Act, 1947 and is liable to be quashed.

4. Learned counsel for Food Corporation of India submits that the present writ petitions are not maintainable as there lies an equally efficacious remedy of raising an industrial dispute in accordance with the Industrial Disputes Act, 1947 before the appropriate forum. Learned counsel for Food Corporation of India submits that in fact some of the Unions have already raised the industrial disputes before the appropriate forum and Food Corporation of India has received the notices from the Office of the Deputy Chief Labour Commissioner (Central), Kolkata and the Office of the



Regional Labour Commissioner (Central), New Delhi. Learned counsel for Food Corporation of India submits that the notice dated 20.06.2022 is now subject matter of adjudication before the appropriate forum and the Conciliation Officer has already initiated the proceedings. Learned counsel for Food Corporation of India has further invited the attention of this Court to the orders passed by both the authorities regarding the obligations imposed by Section 22(1)(d) for workmen and Section 22(2)(d) and Section 33 of the Industrial Disputes Act, 1947 for employer. Learned counsel for Food Corporation of India has submitted that Food Corporation of India is bound by the law and directions given by the appropriate forum.

5. Section 9A of the Industrial Disputes Act, 1947 provides that if an employer proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, a notice is liable to be served in the prescribed manner containing the nature of the change proposed and such notice has to be of 21 days.

6. Form E of the Industrial Disputes (Central) Rules, 1957 is reproduced herein below:-

“The Industrial Disputes (Central) Rules

FORM E

(See Rule 34)

Notice of change of service conditions proposed by an employer

Name of employer _____

Address _____

Dated the _____ *day of* _____ *19* _____

In accordance with Section 9-A, of the Industrial Disputes Act, 1947, I/We



hereby give notice to all concerned that it is my/our intention to effect the change/changes specified in the annexure, with effect from _____ in the conditions of the service applicable to workmen in respect of the matters specified in the Fourth Schedule of the said Act.

Signature

Designation

ANNEXURE

(Here specify the change/changes intended to be effected)

Copy forwarded to:-

1. *The secretary of registered trade union, if any.*
2. *The Assistant Labour Commissioner (Central) _____
(here enter the office address of the Assistant Labour Commissioner (Central) in the local area concerned)*
3. *The Regional Labour Commissioner (Central)*
4. *The Chief Labour Commissioner (Central), New Delhi”*

7. The main grievance of the petitioner is that in fact, only a notice was required to be served specifically saying that Food Corporation of India had an intention to effect the changes, whereas in the present case, the Food Corporation of India has given a direction that upon expiry of 21 days, the changes shall stand implemented.

8. Industrial Disputes Act, 1947 is a piece of social welfare legislation. Therefore, interpretation of the Act is to be done in the manner that it protects the interests of the workmen. The procedure prescribed under Industrial Disputes Act, 1947 is that after service of notice under Section 9A as per Form E, if a workman is not satisfied, an industrial dispute may be raised before the appropriate forum and then the same is adjudicated and



decided. In the present case, it seems that the notice served slightly deviated from the proforma E. However, it has come on record as pointed out by learned counsel for the petitioner that these notices have already been the subject matter of the industrial disputes raised before the appropriate forum and a direction has been passed that there would be no change in the service conditions as provided under Section 33 of the Industrial Disputes Act, 1947. It is now an admitted position that these notices are the subject matter of the industrial disputes being raised by FCI Handling Workers Union and Food Corporation of India Workers Union, 58/1, Diamond Harbour Road, West Bengal, Kolkata -700023 and the Conciliation Officer is seized of the matter. The Conciliation Officer in orders dated 04.07.2022 and 06.07.2022, has specifically invited the attention to the obligations imposed by Section 22(1)(d) for workmen Union and Section 22(2)(d) for employer and Section 33 of Industrial Disputes Act, 1947. Section 33 of the Industrial Disputes Act, 1947 specifically provides that during the pendency of the reconciliation proceedings before the Conciliation Officer, the conditions of service shall remain unchanged.

9. Learned counsel for the respondent has stated that Food Corporation of India is bound by the orders passed by the Conciliation Officer.

10. Thus in view of the above discussions, it is axiomatic that the notice dated 20.06.2022 shall not be given effect till the proceedings are concluded by the Conciliation Officer.

11. With these observations, the writ petitions along with all pending applications stand disposed of. However, this Court has not gone into the



merits of the case. Both the parties are at liberty to raise their respective contentions before the appropriate authority.

DINESH KUMAR SHARMA, J

JULY 12, 2022

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