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WP.No.9800 of 2023

In the High Court of Judicature at Madras

Dated : 17.8.2023

Coram :

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition No.9800 of 2023  
& WMP.Nos.9890 & 19236 of 2023

Food corporation of India  
Workers Union Rep. by its  
Vice President Mr.I.Selvaraj  
(Chennai Branch)

...Petitioner

Vs

- 1.The Assistant Labour Commissioner,  
Ministry of Labour and Employment,  
O/o.the Deputy Chief Labour Commissioner  
(Central), No.4, Haddows Road,  
Shastri Bhavan, Chennai-6.
- 2.The Food Corporation of India rep.  
by its Managing Director, No.16-20,  
Khadhya Sadan, Barakhamba Lane  
Road, Barakhamba Road,  
Delhi-110 001.
- 3.The General Manager, Tamil Nadu  
Food Corporation of India, Regional  
Office Chennai, No.8, Mayor  
Sathyamurthy Road, Chetpet,  
Chennai-31.



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4.The Divisional Manager, Food  
Corporation of India, Coimbatore  
Divisional Office, No.264,  
Dr.Rajendra Prasad Road,  
Tatabad, Coimbatore-12.

5.The Divisional Manager, Food  
Corporation of India, Thanjavur  
Divisional Office, Sembanarkoil Depot,  
Pudukkottai Road, Nirmala Nagar,  
Thanjavur-7.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the 4th respondent in Lr.No. NWNP/GENL.CORRES/2022-23 dated 07.3.2023, quash the same and forbear respondents 2 to 5 from any manner recovering the weekly off wages and overtime allowance already paid to the members of the petitioner union and direct respondents 2 to 5 to refund the recovered amount of wages to the 284 workers of the petitioner union.

|                |   |                                              |
|----------------|---|----------------------------------------------|
| For Petitioner | : | Mr.P.Ebenezer Paul                           |
| For R1         | : | Mr.A.Murugan, ACGSC                          |
| For R2 to R5   | : | Mr.S.Vijay Kumar for<br>M/s.C.K.Chandrasekar |

### ORDER

This is a petition filed by the petitioner seeking to quash the order dated 07.3.2023 passed by the fourth respondent and to forbear respondents



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2 to 5 from recovering the weekly off wages and overtime allowance already paid to the members of the petitioner union and to direct respondents 2 to 5 to refund the recovered amount of wages to the 284 workers of the petitioner union.

2. The facts leading to filing of this case are as follows :

(i) The Food Corporation of India is paying the daily wages to the workers of the petitioner union as per the provisions of the Minimum Wages Act, 1948 i.e. Rs.595/- per day for B category workers and Rs.477/- per day for C category workers. Vide circular dated 22.11.2013, the Food Corporation of India, Headquarters at New Delhi issued instructions for fixation of duty hours and payment of overtime allowance to the 'no work no pay' system workers as per the provisions of the Minimum Wages Act.

(ii) In continuation thereof, the Food Corporation of India, Headquarters at New Delhi, vide circular dated 30.11.2017, fixed the weekly off on Sunday as per the provisions of the Minimum Wages Act to the 'no work no pay' system workers making it clear that the daily rate of minimum wages paid from time to time to the 'no work no pay' workers



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included the wages for the weekly day of rest. In furtherance of it, the weekly off wages and overtime allowance paid earlier years together to the workers were sought to be recovered from September 2021. According to the petitioner, prior approval of the authorized officer should be obtained in writing before making deductions and an opportunity of hearing should be given by respondents 2 to 5.

(iii) A representation dated 18.10.2021 was given by the petitioner to the first respondent seeking to arrive at a settlement in the matter of wage deduction from the workmen, which commenced from September 2021 and to return back the alleged excess amount deducted from the workmen. In that, by letter dated 08.12.2021, the third respondent sent a communication to the first respondent. Thereafter, the first respondent called for objections from the petitioner and a reply was given on 02.3.2023 objecting to the recovery and seeking to restore the lawful payments and to refund the deducted amounts to the individual worker.

(iv) Further, by proceedings dated 03.3.2023, the first respondent directed the respondent corporation to submit the statement of calculation as to the excess payment and it was not provided. Hence, the first respondent



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directed respondents 2 to 5 to stop recovering the excess payment till the detailed calculation as to the excess payment and recovery is provided. Further, he posted the matter on 30.3.2023. However, to their shock and surprise, the fourth respondent, vide the impugned circular dated 07.3.2023, ordered for recovery of excess wages paid from December 2013 to January 2020. Further, the recovery was ordered to be effected from March 2023 and respondents 4 and 5 started deducting the weekly off salary already paid from the members of the petitioner. Challenging the said circular, the petitioner is before this Court on behalf of the workers in Salem, Coimbatore and Sembanarkoil.

3. The learned counsel for the petitioner submits that the conciliation proceedings initiated at the instance of the petitioner is still pending. He further submitted that though the first respondent, by proceedings dated 03.3.2023, directed the respondent corporation not to recover the alleged excess wages paid, contrary to that, the respondent corporation has recovered excess overtime allowance and weekly off wages which is per se unsustainable.



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4. It is further the contention of the petitioner that the recovery which was sought to be effected was beyond the period of five years which is in violation of the judgment of the Apex Court in the case of Rafiq Masih. The learned counsel for the petitioner relied upon the judgment of the Apex Court in the case of *State of Punjab Vs. Rafiq Masih (White Washer)* [reported in 2015 (4) SCC 334].

5. Per contra the learned counsel for the respondents 2 to 5 submit that the petitioner union could not be said to be an aggrieved party and they had not impleaded the affected members and also that they could raise only an industrial dispute and hence, the writ petition should be dismissed.

6. He further submitted that the officers of the respondent corporation, who misinterpreted and effected payments, were subjected to departmental action for negligence due to the loss caused to the respondent corporation and the recovery of excess payment of wages was effected pursuant to the undertaking given by the labourers for every three months



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for every two years before receiving the payment and it was submitted to the Divisional Office directly. Further, a recovery notice was issued to all the individual labourers, but it was refused to be received. Hence, the notices were sent by registered post with acknowledgement due were also returned. Hence, the recovery notice was displayed in the notice board of the respective depots and the recovery was made only after following due procedure. Therefore, the judgments relied upon by the petitioner had not dealt with the situation where statutory prescription permitted recovery after following due procedure. Ultimately he sought to dismiss the writ petition as devoid of any merits.

7. Heard the learned counsel for the petitioner, the learned Additional Central Government Standing Counsel appearing for the first respondent and the learned counsel appearing on behalf of respondents 2 to 5.

8. Aggrieved by the recovery undertaken by the respondent corporation, the petitioner approached this Court by filing this writ petition. The issue involved in the present case has already been dealt with by the



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Hon'ble Apex Court in the case of Rafiq Masih (supra), wherein it was held that the employer cannot recover excess salary at the belated stage and quashed the recovery orders passed. The relevant portion of the said judgment is extracted hereunder:

*“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employer, would be impermissible in law:*

*(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*

*(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*

*(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is*



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issued.

*(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*

*(V) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.*

*13. We are informed by the learned counsel representing the appellant-State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.*



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*14. The appeals are disposed of in the above terms.”*

9. In view of the ratio laid down by the Hon'ble Apex Court in the case of Rafiq Masih (supra), the impugned order dated 07.03.2023 passed by the fourth respondent is set aside. Accordingly, this writ petition is allowed. No costs. Consequently connected miscellaneous petitions are closed.

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Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No

To

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Ministry of Labour and Employment,  
O/o.the Deputy Chief Labour Commissioner  
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2.The Food Corporation of India rep.  
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**W.M.P.No.9889 of 2023**

**in**

**W.P.No.9800 of 2023**

**M.DHANDAPANI., J.**

Dispensed with for the present.

**17.08.2023**

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