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

+ **W.P.(C) 5998/2024 and CM APPL. 43294/2024**

**FOOD CORPORATION OF INDIA
LABOUR UNION**

.....Petitioner

Through: Mr. Yashvardhan, Ms. Kritika
Nagpal, Mr. Gyanendra Shukla and Mr. Pranav
Das, Advocates

versus

**FOOD CORPORATION OF
INDIA & ORS.**

.....Respondents

Through: Mr. Om Prakash and Mr. Pankaj
Kumar Yadav, Advocates for FCI along with Mr.
Amit Bhatnagar (Mg) (IRC) FCI.

**CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH**

**ORDER
31.07.2024**

1. This writ petition has been filed by the Petitioner Union under Article 226 of the Constitution of India seeking a writ in the nature of mandamus directing the Respondents to consider and grant promotion to eligible workers of Food Corporation of India (FCI) working in Mayapuri Depot transferred from Ghevra Depot in accordance with a separate seniority list maintained as per letter dated 12.07.2016 issued by FCI.
2. Petitioner is the registered Union of workers employed by FCI, which was set up under the Food Corporation Act, 1964 and is an instrumentality of the State. At the outset, learned counsel for FCI takes a preliminary objection to the maintainability of this petition on the ground that the



members of the Petitioner Union are ‘workmen’ within the meaning of Section 2(s) of Industrial Disputes Act, 1947 (hereinafter referred to as the ‘ID Act’) and have a statutory remedy under the ID Act.

3. In response, learned counsel for the Petitioner does not dispute that the members of the Petitioner Union are workmen under Section 2(s) of ID Act but opposes the preliminary objection on the ground that the relief sought in the present petition is a direction to the FCI to consider the eligible workers deployed in Mayapuri Depot, who have been transferred from Ghevra Depot for promotion, which is not connected to their employment as envisaged under Section 2(k) of the ID Act.

4. This Court is of the view that the preliminary objection as to whether the writ petition should be entertained in view of the statutory remedy under the ID Act goes to the root of the matter and needs to be considered at the outset. To my mind, once the learned counsel for the Petitioner does not dispute that members of the Petitioner Union are ‘workmen’ under Section 2(s) of the ID Act, the only issue that remains to be decided is whether promotion is a term of employment and if the answer to the question is in the affirmative, the petition cannot be entertained in view of the statutory remedy under the ID Act.

5. Section 2(k) of ID Act defines ‘*industrial dispute*’ to mean any dispute or difference between employers and employees or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. In my view, Section 2(k) includes the expression ‘*terms of employment*’ and promotion cannot but be a term of employment of a workman. I am fortified in my



view by the judgment of the Madhya Pradesh High Court in ***Managing Director M.P. State Forest Development Corporation 5th Floor Malviya Nagar Bhopal (Madhya Pradesh) v. M.P. State Forest Development Corporation Employees Union General Secretary Malviya Nagar Bhopal (Madhya Pradesh), Writ Petition No.3830/2015*** decided on 04.04.2024 and relevant passages are as follows:

“This writ petition under Article 227 of the Constitution of India is filed by the Petitioner/Managing Director, M.P.State Forest Development Corporation, Bhopal being aggrieved of award dated 30.8.2014 passed by learned Labour Court No.1, Bhopal in Case No.19/03-I.D.Reference instituted on 16.1.2003 on two grounds; firstly, whether the issue of promotion will fall within the definition of a dispute permissible under Section 2-A of the Industrial Disputes Act, 1947 and secondly, whether the issue of promotion will be covered under Section 2(k) of the Industrial Disputes Act, 1947.

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*Learned counsel for the respondent places reliance on a decision of the Apex Court in **J.H.Jadhav versus Forbes Gokak Limited (2005) 3 SCC 202** to contend that the matter of promotion will be covered under Section 2(k) of the Industrial Disputes Act, 1947. He also places reliance on a decision of the Apex Court in **Rajasthan State Road Transport Corporation & Another versus Krishna Kant & Others (1995) 5 SCC 75**.*

I have heard learned counsel for the parties and gone through the material available o record.

*It is evident that learned Labour Court has categorically mentioned in Paragraph No.8 of its award that Item No.6 of Schedule-II of the Industrial Disputes Act, 1947 includes a question of seniority. Even otherwise, a plain reading of Section 2(k) of the Industrial Disputes Act, 1947 reveals that it covers the dispute or difference between workmen and workmen having its larger implication between employers and workmen, which finds support from the law laid down by the Apex Court in **J.H.Jadhav versus Forbes Gokak Limited (supra)**.*

*In **Rajasthan State Road Transport Corporation & Another versus Krishna Kant & Others (supra)**, the Apex Court has held that the disputes not covered by Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947 can be determined by the Civil Court or by the Arbitration but the disputes relating to the rights or obligations created under the Industrial Disputes Act, 1947 can be adjudicated only by the Forums created by the Industrial Disputes Act, 1947.*



When the aforesaid aspect is taken into consideration and is examined in the light of the definition given in Section 2(k) of the Industrial Disputes Act, 1947 then there is no iota of doubt that the matter of promotion and seniority could have been adjudicated between the two employees by Labour Court under Section 2(k) of the Industrial Disputes Act, 1947 as it is an industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947.

Accordingly, this writ petition fails and is dismissed.”

6. Once the members of the Petitioner Union are admittedly workmen and the dispute pertaining to promotion is covered under Section 2(k) of ID Act as an industrial dispute, in light of the statutory remedy under ID Act, this writ petition cannot be entertained. In this context, it would be useful to allude to the judgment of this Court in ***PTI Employees Union v. Press Trust of India Ltd., 2020 SCC OnLine Del 1216***, wherein the Court observed that ID Act is a complete Code in itself, which provides remedies to employees in respect of all industrial disputes, which in the first instance, have to be adjudicated by the Industrial Tribunal and the awards of the Tribunal are amenable to the writ jurisdiction of this Court. This is the legislative policy and intendment underlying the ID Act. It is further held that writ petition should not be entertained in respect of industrial disputes for which a statutory remedy is available unless ‘*exceptional circumstances are made out*’. Exceptional circumstances have been enumerated in the judgment and a bare reading leaves no doubt that the case set up in the present petition for promotion based on a certain position in seniority cannot by any stretch fall under ‘*exceptional circumstance*’. Relevant paragraphs of the judgment are as follows:

“Summary of principles

30. Industrial Disputes Act is a complete Code in itself which provides the remedies to the employees in respect of all industrial disputes. All industrial disputes, in the first instance, have to be adjudicated by the



Industrial Tribunal under the Industrial Disputes Act and the awards of the Industrial Tribunal are amenable to the writ jurisdiction of this Court. This is the legislative policy and intendment underlying the Industrial Disputes Act.

31. The law is well settled by the Supreme Court that a writ petition should not be entertained in respect of industrial disputes for which a statutory remedy is available under the Industrial Disputes Act unless ‘Exceptional circumstances’ are made out. The Supreme Court further held that if the writ involves disputed questions of fact, the writ petition should not be entertained. The writ jurisdiction is a discretionary jurisdiction and the discretion should not ordinarily be exercised, if there is an alternative remedy available to the petitioner.

32. The **Sole Test** laid down by the Supreme Court for entertaining a writ petition relating to an industrial dispute is the existence of ‘Exceptional circumstances’. If the Court is satisfied on the existence of ‘Exceptional circumstances’, then and only then, the Court shall proceed to ascertain whether the writ involves disputed questions of fact. If the Court finds ‘Exceptional circumstances’ but the writ involves disputed questions of fact, then the writ petition shall not be entertained, meaning thereby that the writ petition may be entertained only if the Court is satisfied firstly, on the existence of ‘Exceptional circumstances’ and secondly, the writ petition does not involve disputed questions of fact.

33. If there are no ‘Exceptional circumstances’ for exercise of writ jurisdiction, the writ petition is liable to be dismissed on this ground alone. The **Second Test** as to whether the writ involves disputed questions of fact is to be applied if the **First Test** is satisfied and the writ involves ‘Exceptional circumstances’ meaning thereby that if there are no ‘Exceptional circumstances’, the writ Court is not required to consider whether the writ involves disputed questions of fact or not. To clarify it further, if there are no ‘Exceptional circumstances’, the writ petition in respect of an industrial dispute cannot be entertained even if the writ involves undisputed questions of fact.

34. The above principles are summarized as under:

I. If the writ petition discloses ‘Exceptional circumstances’ and does not involve disputed questions of fact, the writ petition in respect of an industrial dispute may be entertained.

II. If the writ petition discloses ‘Exceptional circumstances’ but the facts are disputed, the writ petition should not be entertained and the petitioner has to invoke the statutory remedies available as per law.

III. If the writ petition does not disclose ‘Exceptional circumstances’, the writ petition should not be entertained irrespective of whether the facts are disputed or not.



IV. Writ jurisdiction is a discretionary jurisdiction and the discretion is ordinarily not exercised, if an alternative remedy is available to the petitioner. The powers conferred under Article 226 of the Court are very wide but these are extraordinary remedies subject to self imposed restrictions.

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41. This case is squarely covered by the principles laid down by the Supreme Court in *U.P. State Bridge Corporation Ltd. v. U.P. Rajya Setu Nigam Karamchari Sangh (supra)* in which the High Court allowed a writ petition of the Trade Union to challenge the termination of a workman. The Supreme Court held that the High Court erred in entertaining the writ petition since the disputes related to the enforcement of a right/obligation under the Industrial Disputes Act and the specific remedy was provided under the Industrial Disputes Act. Relevant portion of the judgment is reproduced hereunder:

“11. We are of the firm opinion that the High Court erred in entertaining the writ petition of the respondent Union at all. The dispute was an industrial dispute both within the meaning of the Industrial Disputes Act, 1947 as well as U.P. IDA, 1947. The rights and obligations sought to be enforced by the respondent Union in the writ petition are those created by the Industrial Disputes Act.

(Emphasis Supplied)

42. This case is also covered by *A.P. Foods v. S. Samuel (supra)* in which the High Court allowed the writ petition against stoppage of ex-gratia/bonus by the management. The Supreme Court reiterated the principles laid down in *U.P. State Bridge Corporation Ltd. (supra)* and catena of other judgments and held that the writ petition under Article 226 of the Constitution should not be entertained when the statutory remedy is available under the Act unless exceptional circumstances are made out. Para 6 of the judgment is reproduced hereunder:

“6. In a catena of decisions it has been held that a writ petition under Article 226 of the Constitution of India should not be entertained when the statutory remedy is available under the Act, unless exceptional circumstances are made out.”

(Emphasis Supplied)

43. This case is also covered by *State of Uttar Pradesh v. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti (supra)* in which the writ petition to challenge retrenchment of 460 employees was allowed by the Allahabad High Court and various interim orders were passed in favour of the employees. The Supreme Court held that the High Court should not have entertained the writ petition in view of statutory remedy to the employees under the Industrial Disputes Act. The Supreme Court dismissed the writ petition with liberty to the employees to approach the



Tribunal in accordance with law. Relevant portion of the said judgment is reproduced as under:

“50. In our considered view, however, all such actions could be examined by an appropriate court/tribunal under the industrial law and not by a writ court exercising power of judicial review under Article 226 of the Constitution. If the impugned action of the Corporation of retrenchment of several employees is not in consonance with law, the employees are certainly entitled to relief from an appropriate authority.”

(Emphasis Supplied)

44. This case is also covered by *Transport and Dock Workers Union v. Mumbai Port Trust* (supra) in which the Bombay High Court allowed the writ petition in respect of an industrial dispute. The Supreme Court held that the High Court should have dismissed the writ petition on the ground of existence of alternative remedy under the Industrial Disputes Act. The Supreme Court further observed that an over liberal approach was unnecessarily adding to their load of arrears instead of observing judicial discipline in following settled legal principles. Relevant portion of the judgment is reproduced hereunder:

“14. In our opinion the writ petition filed by the appellants should have been dismissed by the High Court on the ground of existence of an alternative remedy under the Industrial Disputes Act. It is well settled that writ jurisdiction is discretionary jurisdiction, and the discretion should not ordinarily be exercised if there is an alternative remedy available to the appellant. In this case there was a clear alternative remedy available to the appellants by raising an industrial dispute and hence we fail to understand why the High Court entertained the writ petition. It seems to us that some High Courts by adopting an over liberal approach are unnecessarily adding to their load of arrears instead of observing judicial discipline in following settled legal principles. However, we may also consider the case on merits.”

(Emphasis supplied)

45. According to the learned senior counsel for the petitioner, the writ jurisdiction should be exercised because two years have passed after the filing of this writ petition. There is no merit in this contention as the respondent raised the preliminary objections to the maintainability of the writ petition at the very threshold of the commencement of arguments and these cases were pending due to lengthy arguments of learned counsels for both the parties. The petitioners themselves have filed CM. Appl. 41299/2018 in W.P.(C) 10596/2018 and CM. Appl. 41305/2018 in W.P.(C) 10605/2018 seeking adjudication on the maintainability of writ petitions. That apart, delay by itself has been held by the Supreme Court not to be a sufficient ground to exercise the writ jurisdiction. In *U.P. State*



Bridge Corporation Ltd. v. UP. Rajya Setu Nigam Karamchari Sangh (supra), the issue of delay on the part of the High Court in disposing of the dispute was raised before the Supreme Court. The Supreme Court rejected this plea and held that even when there is a delay, High Court should not have short-circuited the process. The Supreme Court dismissed the writ petition with liberty to the workman to raise an industrial dispute. Relevant portion of the said judgment is reproduced hereunder:

“17. The only reason given by the High Court to finally dispose of the issues in its writ jurisdiction which appears to be sustainable, is the factor of delay, on the part of the High Court in disposing of the dispute. Doubtless the issue of alternative remedy should be raised and decided at the earliest opportunity so that a litigant is not prejudiced by the action of the Court since the objection is one in the nature of a demurrer. Nevertheless even when there has been such a delay where the issue raised requires the resolution of factual controversies, the High Court should not, even when there is a delay, short-circuit the process for effectively determining the facts.”

(Emphasis Supplied)

46. In A.P. Foods v. S. Samuel (supra), the workmen raised the issue of delay of 20 years which had lapsed after the filing of the writ petition but the Supreme Court was not impressed. The Supreme Court dismissed the writ petition and directed the disputes to be referred to the Industrial Tribunal. Relevant portion of the said judgment is as under:

“14. However, because of the long passage of time (the writ petition was filed in 1996), the attendant circumstances of the case in the background noted above and in view of the agreement that this is a matter which requires to be referred to the Tribunal, we direct that the appropriate Government shall refer the following questions for adjudication by the appropriate Tribunal.”

(Emphasis Supplied)

7. The argument of the counsel for the Petitioner that a writ petition has been entertained by this Court in W.P.(C) No.14044/2018 cannot be a ground to entertain this petition inasmuch as the order dated 08.01.2019 passed in the said writ petition shows that notice was issued on the said date and no objection was taken by the Respondents on the maintainability and therefore, the interim order cannot aid the Petitioner in light of the judgment



in *PTI Employees Union (supra)*, substantively dealing with the issue of maintainability.

8. In view of the aforesaid judgment, this petition cannot be entertained and is accordingly dismissed, granting liberty to the Petitioner to take recourse to appropriate remedies under the ID Act. Pending application also stands dismissed.

JYOTI SINGH, J

JULY 31, 2024/kks