

(2019) 02 CHH CK 0487

Chhattisgarh High Court

Case No: Writ Appeal No. 148 Of 2019

Food Corporation Of India And
Ors

APPELLANT

Vs

Ram Kumar Akela And Ors

RESPONDENT

Date of Decision: Feb. 27, 2019

Hon'ble Judges: Ajay Kumar Tripathi, CJ; Parth Prateem Sahu, J

Bench: Division Bench

Advocate: R.S. Patel, Ravi Maheshwari

Final Decision: Dismissed

Judgement

Ajay Kumar Tripathi, CJ

1. Food Corporation of India is in appeal against the order dated 16.11.2018 passed by the learned Single Judge since the learned Single Judge allowed

the writ application of the workmen and held that no recovery could be made against the private Respondents on the basis of withdrawal of a circular,

relating to grant of incentives for carrying excess load of gunny bags above 50 kg. of weights, which was available to the workmen in terms of a

circular in existence prior to 15.12.2005.

2. It seems that the Bombay High Court in a PIL keeping in mind the international obligation and the recommendation of International Labour

Organization held that the weight of gunny bags which a labourer was handling should not be more than 50 kg. of weight. Based on such judicial

declaration, the Appellant-Food Corporation of India decided to withdraw the incentive and also took steps for recovery. Litigations arose in other

High Courts as well where such steps taken by the Food Corporation of India was interfered with and set aside. The learned Single Judge, however, took note of a decision rendered by Patna High Court because of the fact that the decision of Patna High Court in favour of the workmen was upheld even by the Hon'ble Apex Court. The learned Single Judge had this to observe in the impugned order :

8. At this juncture, it would be relevant to take note of the fact that a bunch of writ petitions were filed in the Patna High Court by a set of petitioners who were discharging their duties under the respondent Corporation within the territories of the State of Bihar. The lead case of which was registered as Civil Writ Jurisdiction Case No. 1330 of 2018. The bunch of writ petitions finally came up for hearing before the Patna High Court on 18.05.2018 and the High Court of Patna finally vide its judgment dated 18.05.2018 allowed the writ petitions. The relevant paragraphs of the said judgment are being reproduced hereinunder:

15. In the instant case, the respondents have never ever pressed their request for implementation of decision taken vide Circular No. 18 of 2005 rather by issuing Circular No. 5 of 2006 dated 20.02.2006, they themselves stayed operation of the Circular of 2005.

16. It would be pertinent to note that while passing the award, the Tribunal has not ordered for recovery of excess wage incentive from the workers paid for handling bags since 01.12.2005. The issue was not even pressed as an ancillary issue by the respondents before the Tribunal. As the respondents themselves stayed the implementation of Circular No. 18 of 2005 vide Circular No. 5 of 2006 dated 20.02.2006, as a result of which, the workmen were getting their wages as was being paid to them prior to issuance of Circular No. 18 of 2005, the wages paid to the workers were neither illegal nor unjustified and the payment was result of a conscious decision of the respondents to continue with the payment to the workmen as was the norms existing prior to issuance of Circular No. 18 of 2005.

17. It is also not the case of the respondents that the workmen had made any misrepresentation or committed any fraud in obtaining the wages for handling bags since 01.12.2005.

20. Thus, keeping in mind the ratio laid down by the Supreme Court in State of Punjab & Ors. vs. Rafiq Masih (Supra), in the opinion of the Court, the decision of the respondents to recover so called excess amount paid to the workmen in excess under Piece Rated Incentive Scheme for handing bags since 01.12.2005 would be unfair, wrongful, improper and unwarranted and such deduction from salary or retirement benefits of the workmen would put them in extreme hardship and would make it difficult for them to provide for the need of their family.

21. In view of the discussions made above, the writ petitions are allowed. The impugned Circular Nos. 08 of 2016 and 01 of 2017 dated 17.08.2016 and 17.01.2017 respectively issued by the respondents are hereby quashed.

9. The said judgment passed by the Patna High Court was subsequently also put to challenge before the Supreme Court vide Special Leave to Appeal

No. 24799/2018. The Supreme Court finally vide its order dated 05.10.2018 dismissed the Special Leave to Appeal preferred by the respondent

Corporation. As a consequence of the judgment of the Patna High Court being affirmed by the Supreme Court, the circular dated 17.08.2016

challenged in the present writ petition has already been held to be bad in law to the extent of the action on the part of the respondents initiating recovery proceedings against the petitioners.

3. The facts and disputes being identical in nature, the learned Single Judge, therefore, allowed the writ application for the same set of reason and

rationale provided by the Patna High Court and the dismissal of the SLP of the Food Corporation of India by the Apex Court.

4. Food Corporation of India is not satisfied with the view taken in consonance with the decision of Patna High Court and the counsel makes an effort to re- argue the matter even before us.

5. Since we do not find any distinction either in facts or the issue agitated by the Respondents before the writ Court of Chhattisgarh High Court and

since such decision of recovery in the circumstances was held to be bad in law or in teeth of the decision of the Hon'ble Apex Court rendered in the

case of State of Punjab and Ors. Vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 33 4 which in turn has been upheld by the Hon'ble Apex

Court, we find difficulty in interfering with the order of the learned Single Judge. Workmen or employees working under a particular employer cannot be treated differently merely because of geographical location. There has to be one uniform standard by which all workmen must be treated in matters of such policy. Since the Food Corporation of India has failed even before the Apex Court in dislodging the judgment of the Hon'ble Patna High Court in regard to their decision of recovery, merely because a review has been filed by the Food Corporation of India before the Hon'ble Apex Court that cannot become a ground for either keeping the present appeal in abeyance or not deciding the issue on merits.

6. We do not find any error in the view so taken by the learned Single Judge.

He has also stated that the order has been passed keeping in mind judicial discipline and consistency in decision making by Courts in identical matters.

7. Appeal is dismissed.