

Food Corporation of Workers Union

Vs

Food Corporation of India and Others

Writ Petition (Civil) No. 222 of 1984

(Kuldip Singh, S. C. Agrawal JJ)

20.07.1990

JUDGMENT

S. C. AGRAWAL, J.-

1. In this writ petition filed under Article 32 of the Constitution the petitioner, viz. Food Corporation of India Workers' Union (hereinafter referred to as 'the petitioner union') representing the departmentalised labour employed by the Food Corporation of India (hereinafter referred to as 'the respondent Corporation') is claiming parity in the matter of scales of pay, allowances and terms and conditions of service for departmentalised labour employed with the respondent Corporation throughout the country.

2. The respondent Corporation has been established by the Food Corporation of India Act, 1964 enacted by Parliament. It carries on business of procurement, storage and distribution of foodgrains throughout the country. It functions through four zonal offices in the North, East, West and South Zones. Each zone is divided into regions and districts for the convenience of administration. Each district has got several depots under it. Earlier the handling work at the godowns at the various depots of the respondent Corporation was done through private contractors. There was discontentment among the labour force working under the private contractors and they demanded abolition of contract labour system. This led to departmentalisation of the labour force consisting of handling mazdoors, sardars, munshis/mondals and ancillary mazdoors at some of the depots of the respondent Corporation. This process of departmentalisation of labour force was started in 1970 and it was introduced gradually in stages. It has been extended to workers at the major ports and the depots in port towns as well as some of the depots in the various regions. The respondent Corporation is having departmentalised labour in West Bengal, Assam, Bihar, Orissa, Delhi, U. P. Maharashtra and Andhra Pradesh. In the present writ petition we are concerned with departmentalised labour employed at the depots in Bihar, Assam, Orissa, U. P. and Delhi regions.

3. The departmentalised workers engaged at the docks and the port godowns and the depots in port towns are being paid wages on the same basis as the port and dock workers. The same principle has been adopted by the respondent Corporation for all the departmentalised workers in the other depots in the State of West Bengal. When departmentalisation of labour force was introduced in other regions, a dispute arose with regard to the pay scales to be applied to such workmen and the said dispute with regard to the wage structure of departmentalised workers in all depots in Bihar, more particularly the depots at Gaya, Mokemah and Jamshedpur, was referred to the arbitration of Shri K. K. Mitra, a retired Judge of the Calcutta High Court, under Section 10-a of the Industrial Disputes Act, 1947. The learned arbitrator gave his award (Annexure II) dated October 10, 1974 (hereinafter referred to as the 'Mitra Award') whereby it was directed that the wage structure of the

departmentalised workers at the depots in Bihar should be brought in line and at par with the rates prevalent in Calcutta. The respondent Corporation challenged the Mitra Award by filing a Writ petition in the Calcutta High Court. The said writ petition was dismissed by the learned Single Judge by order dated April 22, 1977 and the appeal filed by the respondent Corporation against the said order of the learned Single Judge was dismissed by the Division Bench of the High Court by judgment dated March 14, 1980. During pendency of the proceedings before the arbitrator the respondent corporation in their letter (Annexure IV) dated 28, 1973, had agreed that the award of the arbitrator would apply in toto to the departmentalised workers in Assam, Bihar and Orissa, who have been departmentalised with effect from June 15, 1973. At the time of departmentalisation in 1973 the departmentalised workers in Delhi and U. P. were having the same pattern of pay scales as was applicable to workers at Calcutta Port and port city godowns. The case of the petitioner union is that the departmentalised labour at Calcutta Port and port city godowns and depots in West Bengal are treated at par with port and dock labour and have been given revision in their wage structure from time to time whenever such revision has been made for port and dock workers but for the departmentalised labour in the other regions similar revision was not made and as a result the departmentalised labour in Bihar, Orissa, Assam, U. P. and Delhi regions have been practically stagnating at very low levels of pay and the difference in the pay scales is sizeable. The petitioner union has prayed that a writ of mandamus may be issued direction the respondent Corporation to adopt the same scales of pay, allowances and terms and conditions of service, including overtime benefits in duty hours, in respect of Departmentalised labour throughout India and direction the respondent Corporation to refix the scales of pay and allowances uniformly throughout India as applicable to the departmentalised labour employed by the respondent Corporation in its godowns in the State of West Bengal and to give consequential benefits retrospectively with effect from January 1, 1974.

4. in the counter-affidavit filed on behalf of the respondent Corporation it is stated that the Departmentalised labour employed in the respondent Corporation are having three different pay scales, viz. Calcutta Complex depots. East Zone depots and depots in Delhi and U. P. As regards the Calcutta Complex depots workers it is admitted that they are allowed the wage structure similar to that applicable to port and dock workers on the basis of the region-cum-industry formula for the reason that the departmentalised workers of the respondent Corporation are working in the same region and are doing similar type of work as is done by the Calcutta Port and Dock worker. With regard to the departmentalised labour in Delhi and U. P. it has been stated in the counter-affidavit that the wages were evolved and applied to workers of these States since June 15, 1973 and that the said wage structure was revised with effect from January 1, 1978 and that similarly a different wage structure exists for departmentalised labour in West Zone (Manmad). As regards the departmentalised workers outside Calcutta Complex depots in the East Zone, it has been stated in the counter-affidavit that in view of the Mitra Award the departmentalised workers of Assam, Bihar and Orissa were given the same pay scales as the departmentalised workers in the West Bengal i. e. Calcutta Complex depots, but now the wage structure of the departmental workers of Assam, Bihar and Orissa is different from the wage structure of Departmentalised workers in West Bengal in as much as two wage revisions have been allowed to Calcutta Complex workers with effect from January 1, 1974 and January 1, 1980 on the pattern of wage revisions have not been allowed to the workers of the East Zone depots. In the counter-affidavit it is further stated that on demand of the petitioner union the management of the respondent corporation have offered to revise the wage structure of the East Zone workers liberally, but not at the same level as paid to the Calcutta Complex workers. The case of the respondent Corporation is that the Mitra Award did not cast any continuous obligation on the part of respondent Corporation to allow the departmentalised workers

of East Zone the subsequent wage revisions allowed to the Calcutta Complex workers. The case of the respondent Corporation is further that the departmental workers working outside the port city godowns have been treated differently because there is differentiation in the job content of the workers employed in the port and port city godowns and the workers working elsewhere inasmuch as the workers at the port city godowns have to perform their functions in a continuous chain of operations right from clearing from the ship up to the stacking in the godowns and loading into the wagons in close conjunction with the other workers in the port whereas at other depots the workers have to do their own work loading and unloading from the trucks, wagons and stacking in the godowns independently. It has been submitted that different wage structures for the labour working in different places does not amount to discrimination on the basis of region-cum-industry formula and that real discrimination would be if the departmental workers at the same place get a different wage while they perform the same duty and therefore, the same wage structure cannot be extended to all the departmentalised workers.

5. An additional affidavit of M. L. Sharma has been filed on behalf of the petitioner union wherein it is stated that wage revisions for departmentalised labour of the respondent Corporation was granted to Departmentalised workers in Calcutta and West Bengal in 1977, 1980, 1984, to workers in U. P. in 1974, 1980 and 1984 and to workers in Delhi in 1978, but for workers in Bihar, Assam and Orissa there has been no wage revision at all. It has also been stated in the said additional affidavit that 11,903 workers engaged at the various ports and at hinterland depots are being paid the same wages as are paid to port and dock workers and that apart from them there are about 4875 departmentalised workers employed in other depots who are not being paid equal wages.

6. A reply to the said the additional affidavit has been filed on behalf of the respondent Corporation wherein the pattern of revision of wages of workers employed at Calcutta and in West Bengal, Uttar Pradesh and Delhi has not been disputed. It has been stated that the said wage revisions were effected as a result of bilateral negotiations and agreements depending on the local conditions based on the regions-cum-industry formula.

7. During the pendency of this writ petition this Court, on March 15, 1984, passed an interim respondent corporation was directed to pay Rs. 150 per month from July 1, 1983 to each departmental worker working in the East Zone in the shape of increase in the emoluments and a lump sum of Rs. 1500 per head in lieu of arrears till further orders. By the said order parties were directed to continue negotiations and it was also directed that in those negotiations workmen working in the States of U. P. and in the Union territory of Delhi may also be included. It appears that no settlement could be arrived at in the negotiations and thereupon conciliation proceedings were initiated. During the course of these conciliation proceedings a settlement was arrived at on May 30, 1989 whereunder the respondent Corporation agreed to give, by way of interim payment, a lump sum amount of Rs. 3000 towards arrears up to December 31, 1987, to the inland depots in Uttar Pradesh and Delhi regions and Rs. 3500 to the departmental workers working in the inland depots in Bihar, Orissa, North Eastern and Assam regions. The respondent Corporation further agreed to give, by way of interim relief with effect from January 1, 1988 Rs. 200 per month, to the departmental workers working in the inland depots of Uttar Pradesh and Delhi and Rs. 250 per month to the departmental workers working in the inland depots in Bihar, Orissa and Assam. It was also agreed that these amounts would be adjusted towards the final payments to be made to the departmental workers of the aforesaid regions as per the final decisions of this Court in this writ petition.

8. The aforesaid narration of facts shows that initially there was difference in the wage structure of

the departmentalised workers employed at the ports as well as other depots in West Bengal, who were being paid the same wages as are paid to port and dock workers and the wage structure of the Departmentalised workers in other depots in the Eastern Zone in the States of Bihar, Orissa and Assam. This disparity in wages gave rise to a dispute which was resolved by the Mitra Award whereby it was directed that the wage structure of the employees in the depots of Gaya, Mokemah and Jamshedpur should be fixed on the West Bengal pattern. The said award has been upheld by the Division Bench of the Calcutta High Court. In accordance with the said award and the assurance given by the respondent Corporation in their letter dated July 28, 1973, that the award would apply in toto to the departmentalised workers in Assam, Bihar, and Orissa who have been departmentalised with effect from June 15, 1973, the respondent Corporation fixed the wages of the departmentalised workers employed in the Eastern Zone in Bihar, Orissa and Assam at the same level as the wages of the departmentalised workers in Delhi and U. P. the same pattern of pay scales as was applicable to workers at Calcutta Port was adopted at the time of departmentalisation in 1973. Thereafter, there has been revision in the wage structure of the workers employed at Calcutta in 1977, 1980 and 1984. There has been no corresponding revision in the wages of the workers employed at the depots in Bihar, Assam and Orissa regions. In U. P. there has been revision in the wages of workmen in the year 1974, 1980 and 1984 and there was one revision in the wages of workers employed in Delhi in 1978. This has given rise to considerable disparity between the wages of workmen employed at the ports, port city godowns and depots in West Bengal on the one hand and the workers employed in the depots in other regions viz. Bihar, Orissa, Assam, U. P. and Delhi. This would be evident from the following figures available on the record (Annexure VI to writ petition and Annexure VI to the counter-affidavit of S. L. Bhanot) relating to the minimum wages paid in July 1983, to the various categories of workers employed at ports port city godowns and depots in West Bengal, and workers employed at depots in Bihar, Orissa and Assam regions in Eastern Zone and in U. P. and Delhi regions :

# Ports, Port city Bihar, Orissa Delhi region Godowns and and Assam depots in West regions Bengal. 1 2 32. Munshi/ 829.40 523.54 677.40 Mondal3. Handling 801.90 502.10 658.50 Labour4. Ancillary 781.90 468.86 645.90 Labour##

9. The figures given in the additional affidavit of M. L. Sharma filed on behalf of the petitioner union and Annexure II to the counter affidavit of R. K. Seewal show that this disparity had been further aggravated by 1988.

10. The respondent Corporation has sought to justify this disparity in the wage structure on the ground that workers employed at depots in Bihar, Assam Orissa. U. P. and Delhi regions cannot claim parity with the workers employed at the ports and port city godowns and has invoked the region-cum-industry formula and it has been submitted that since the workers are working in different regions there cannot be parity in wages.

11. As to whether the workmen employed at depots in Bihar, Orissa, Assam, U. P. and Delhi regions are entitled to the same wage structure as is available to workers employed at Calcutta Port and at port city godowns as well as at depots in West Bengal and Whether the regions-cum-industry formula would be applicable are matters to be considered and dealt with by industrial adjudication and these questions are normally not allowed to be agitated before this Court in a petition under Article 32 of the Constitution. In the instant case, However, we find that this matters has already been considered by the Mitra Award made under the Industrial Disputes Act and the said award has been upheld by the Calcutta High Court. Before the arbitrator the respondent Corporation had sought to justify the different wage structure for workmen employed at ports and port city godowns

and the workmen employed at the depots in ports and port city godowns and the workmen employed at the depots in Gaya, Mokemah and Jamshedpur on the industry-cum-region formula. The arbitrator did not accept the said contention and on the basis of the evidence produced before him he found that there is no concern near Gaya, Mokemah and Jamshedpur carrying on the same nature of work as the respondent Corporation and the industry part of the formula cannot be applied and that the region part would be applied if there were concern in the region carrying on similar line of business but there is no concern carrying on similar nature of business, of comparable status and standing and that in the circumstances the industry-cum-region rule affords no guideline. The arbitrator was of the view that instead of region-cum worker (sic industry) formula the zone-cum-same employer rule should be applied to avoid discrimination which leads to real discontent among the employees and felt that it would be fair and proper to fix up the wage structure on the West Bengal pattern or otherwise it would be creating unnecessary discrimination without reasonable grounds. Affirming the said award of the arbitrator, the Division Bench of the Calcutta High Court has observed :

"In our opinion, the learned arbitrator is right in holding that there was no comparable unit in respect of the job which the handling labour of the Food Corporation of India does. Moreover it is stated that there was co comparable employer in the region with which the arbitrator was concerned. In fixing the wage of the handling agents and labourers, in our opinion, rightly the learned arbitrator considered the same type of work which is being done by the port and dock workers handling the same kind of job."

12. The said decision of the High Court has become final and is binding on the respondent Corporation. In the circumstances, it is not open to the respondent Corporation to invoke the region-cum-industry formula and deny to the workers employed in the depots in Bihar, Orissa, Assam, U. P. and Delhi regions, parity in the matters of wages with the workers employed at Calcutta Port and the godowns in the Calcutta city complex and the depots in the State of West Bengal.

13. It is also no open to the respondent Corporation to put forward the plea that the nature of work performed by the two categories of workers is different. The plea has been rejected by the arbitrator in the Mitra Award wherein it has been observed :

"It is also proved by evidence that the handling mazdoors perform the same nature of work as those in Calcutta vis-a-vis West Bengal."

14. The Division Bench of the High Court has agreed with the said finding.

15. The respondent Corporation has sought to justify the disparity in the wages of Departmentalised labour employed in the different regions on the ground that they are not transferable from one place to another. In the counter-affidavit filed on behalf of the respondent Corporation it is stated that regular employees of the respondent Corporation are transferable from one place to another place throughout the same country and therefore, they are having uniform pay scales and service conditions throughout the country. This aspect has been considered in the Mitra Award. On the basis of the evidence produced before him, the learned arbitrator has observed that expect for house rent allowance and compensatory allowance, the scale of pay, dearness allowance and other fringe benefits are uniform throughout India for officers, clerks and peons and that clerks and sub-staff are not transferred from one region to another except on promotion or on special prayer. This would show that clerks and sub-staff, though normally not transferable, are having uniform pay scales and

service conditions and that non-transferability does not stand in the way of their being given uniform pay scales and other benefits. Non-transferability cannot, therefore, be put forward as a ground for denying parity in wage structure to the departmentalised labour employed in the different regions by the respondent Corporation.

16. The contention urged on behalf of the respondent Corporation that the Mitra Award did not cast any continuing obligation on the respondent Corporation to allow to the workers employed in the depots at Gaya, Mokemah and Jamshedpur the subsequent wage revision allow to Calcutta Complex workers is not tenable because such a revision is implicit in view of the Mitra Award whereby it has been directed that with a view to avoid discrimination which leads to real discontent among the employees, the wage structure of the workmen employed should be fixed up on the West Bengal pattern. This means that after the parity in the wage structure is restored the same should be maintained or otherwise there would be recurrence of the discrimination which was sought to be avoided.

17. Since none of the reasons that have been put forwarded by the respondent Corporation to deny parity in the pay scales is sustainable, it must be held that the Departmentalised labour employed at the depots in Bihar, Orissa, Assam, U. P. and Delhi regions are entitled to have the same wage structure as is available to the workers employed at Calcutta Port and Calcutta city godowns and the depots of the respondent Corporation in the State of West Bengal and the wages of the workers should be revised as and when the wage structure of the workers employed at the Calcutta Port and Calcutta city godowns and depots in the State of West Bengal and revised.

18. In the writ petition the petitioner union has claimed benefit of revision of pay scales with effect from January 1, 1974. the reason being that, by circular dated September 29, 1977, the wages of the departmentalised labour employed at ports were revised with effect from January 1, 1974. Since the departmentalised labour employed at depots in Bihar, Orissa Assam, U. P. and Delhi regions are entitled to the same wage structure as available to the workers employed at Calcutta Port and Calcutta city godowns to the workers employed at Calcutta Port and Calcutta city godowns and at depots in the State of West Bengal, the labour employed at depots in Bihar, Orissa, Assam, U. P. and Delhi regions can legitimately claim the benefits of revisions of pay with effect from January 1, 1974, the date with effect from which the wages of the Departmentalised labour employed at Calcutta Port were revised in 1977. This writ petition was no doubt filed by the petitioner union in January 1984. The petitioner union has stated that it has been repeatedly trying to get the matter sorted out by negotiations and has also taken up the issue with the concerned authorities of the Labour Department of the States, but the conciliation efforts have failed and the disputes was also not referred for adjudication. The finds support from the counter-affidavit filed on behalf of the respondent Corporation wherein it is admitted that demand was made by the petitioner union for revision of the pay scales for workmen employed at the depots in Bihar, Orissa and Assam on the same lines as wage as wage revisions was allowed to Calcutta port workers with effect from January 1974 but the management of the respondent Corporation did not accede to the same though it offered to revise the wage structure of the east zone workers liberally. It is not the case of the respondent Corporation that there was revision of wages of workers of East zone till the filing of the writ petition.

19. It would thus appear that after the revision of the wages of the departmentalised labour employed at the Calcutta Port in 1977, the petitioner union had been making efforts for revision of the wages for the workers employed at other depots on the same lines both by negotiations as well as through the process of conciliation and adjudication under the Industrial Disputes Act but the said

efforts did not succeed and thereafter the petitioner union moved this writ petition in this court. In the circumstances referred to above, we are of the opinion that the benefit of revision of wage structure should be granted to the workers employed at depots in Bihar, Orissa, Assam, U. P. and Delhi regions with effect from January 1, 1974.

20. In the result the writ petition is allowed and the respondent Corporation is directed to revise the wage structure of the departmentalised labour employed at depots in Bihar, Orissa, Assam, U. P. and Delhi regions and bring their wages at the same level as the wages of departmentalised labour employed at Calcutta Port and Calcutta city godowns and depots of the respondent Corporation in the State of West Bengal. This revision of wages should be made with effect from January 1, 1974 in a way that there is corresponding revision in the wages of the departmentalised labour employed at the depots in Bihar, Orissa, Assam, U. P. and Delhi regions as and when there was revision in the wages of the departmentalised labour employed at Calcutta Port and Calcutta city godowns and depots of the respondent Corporations in the State of West Bengal. The revision in wages in pursuance of these directions should be completed by September 30, 1990 so that the workers are paid the revised wages with effect from October 1, 1990. The computation of the amount found payable to the workers employed at the depots in Bihar, Orissa, Assam, U. P. and Delhi regions by way of arrears for the periods from January 1, 1974 to September 30, 1990 on account of revision of the wages in pursuance of these direction should be completed by November 30, 1990 and after adjusting the amount that has been paid to these workers in pursuance of the interim order passed by this Court on March 15, 1984 and the settlement dated May 30, 1989, the balance amount of such arrears should be paid to the workers in two equal instalments payable on December 31, 1990 and June 30, 1991.

21. As regards the future, the respondent Corporation is directed that the wages of the departmentalised labour employed at the depots in Bihar, Orissa, Assam, U. P. and Delhi regions should be revised with the wages of the labour employed at Calcutta port, Calcutta city godowns and depots in the State of West Bengal and when wages of such workers are revised.

22. There will be no order as to costs.

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