

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

THURSDAY, THE 17TH DAY OF DECEMBER 2020 / 26TH AGRAHAYANA, 1942

W.P. (C) No.26423 OF 2020(C)

PETITIONER/S:

FACT WORKERS ORGANISATION,  
REG NO.07-43/95,  
UDYOGAMANDAL,  
ERNAKULAM - 683501.,  
REPRESENTED BY ITS SECRETARY GENERAL.

BY ADVS.  
SRI.R.SANJITH  
SMT.C.S.SINDHU KRISHNAH

RESPONDENT/S:

- 1 UNION OF INDIA,  
REPRESENTED BY THE SECRETARY,  
MINISTRY OF HEAVY INDUSTRIES AND PUBLIC ENTERPRISES,  
NEW DELHI-110003.
- 2 THE FERTILISERS AND CHEMICALS TRAVANCORE LIMITED,  
UDYOGAMANDAL,  
ERNAKULAM-683501,  
REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR.
- 3 GENERAL MANAGER(HR AND A) ,  
FERTILISERS AND CHEMICALS TRAVANCORE LIMITED,  
UDYOGAMANDAL, ERNAKULAM-683501.
- 4 REGIONAL LABOUR COMMISSIONER (CENTRAL) ,  
OFFICE OF THE REGIONAL COMMISSIONER (CENTRAL) ,  
OLIMUGHAL, VAYU SENA ROAD ,  
THRIKKAKKARA ,  
KAKKANAD ,  
ERNAKULAM-682030.

R1-R4 BY ADV. CHANDINI G NAIR, CGC

OTHER PRESENT:

SRI M.GOPIKRISHNAN NAMBIAR- STANDING COUNSEL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17.12.2020, ALONG WITH W.P.(C)NO.27918/2020(L), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

THURSDAY, THE 17TH DAY OF DECEMBER 2020 / 26TH AGRAHAYANA,  
1942

W.P.(C) No.27918 OF 2020(L)

PETITIONER/S:

- 1       FACT EMPLOYEES ASSOCIATION,  
          REG.NO. 58 OF 1123,  
          UDYOGAMANDAL,  
          PIN - 683501,  
          REPRESENTED BY ITS GENERAL SECRETARY JABAR M.M. ,
  
- 2       PRADEEP KUMAR A.K. ,  
          PROCESS OPERATOR,  
          B.NO. 11199,  
          FERTILISERS AND CHEMICALS TRAVANCORE LIMITED,  
          UDYOGAMANDAL DIVISION,  
          RESIDING AT ARYAKULATH HOUSE,  
          ANJUMANA,  
          EDAPPALLY P.O,  
          ERNAKULAM.
  
- 3       C.B. SIVARAMAN,  
          MEDICAL ASSISTANT(RETIRED) ,  
          FERTILISERS AND CHEMICALS TRAVANCORE LIMITED,  
          UDYOGAMANDAL DIVISION,  
          CHEMBANKATTIL HOUSE,  
          PULLICHIRA P.O. ,  
          MAYYANAD,  
          KOLLAM DISTRICT.

BY ADVS.  
SRI.RAJESH NAIR  
SRI.BIJOY CHANDRAN

RESPONDENT/S:

- 1       UNION OF INDIA,  
          REPRESENTED BY THE SECRETARY TO GOVERNMENT,  
          MINISTRY OF HEAVY INDUSTRIES AND PUBLIC  
          ENTERPRISES, NEW DELHI - 110003.

- 2 THE DIRECTOR,  
DEPARTMENT OF PUBLIC ENTERPRISES,  
PUBLIC ENTERPRISES BHAVAN,  
MINISTRY OF HEAVY INDUSTRIES AND PUBLIC  
ENTERPRISES,  
BLOCK NO. 14,  
CCO COMPLEX,  
LODHI ROAD,  
NEW DELHI - 110003.
- 3 THE FERTILISERS AND CHEMICALS TRAVANCORE LIMITED,  
REPRESENTED BY ITS  
CHAIRMAN AND MANAGING DIRECTOR,  
UDYOGAMANDAL,  
ERNAKULAM - 683501.
- 4 THE GENERAL MANAGER (HR AND A)  
FERTILISERS AND CHEMICALS TRAVANCORE LIMITED,  
UDYOGAMANGAL,  
ERNAKULAM - 683501.
- 5 THE REGIONAL LABOUR COMMISSIONER, (CENTRAL) ,  
O/O THE RLC (CENTRAL) ,  
KENDRIYA SRAM SADAN,  
OLIMUGHAL,  
KAKKANAD,  
ERNAKULAM DISTRICT,  
PIN - 682030.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17.12.2020, ALONG WITH W.P.(C)NO.26423/2020(C), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## **JUDGMENT**

Since common issue is raised, these writ petitions are heard together and are being disposed of by this common judgment.

2. **W.P.(C) No.26423 of 2020** :- The petitioner in this writ petition is FACT Workers Organisation at Udyogamandal, represented by its General Secretary. The petitioner has filed this writ petition under Article 226 of the Constitution of India, seeking a writ of certiorari to quash Ext.P1 circular dated 25.11.2020 and Ext.P2 memorandum dated 19.01.2020 to the extent it is applicable to the workmen of the 2<sup>nd</sup> respondent. The petitioner has also sought for a writ of mandamus commanding respondents 2 and 3 not to change the conditions of service of the workmen covered by Ext.P3 settlement without adhering to the procedures contemplated under the Industrial Disputes Act, 1947 and its allied laws; and commanding the 4<sup>th</sup> respondent to adjudicate Ext.P4 complaint preferred by the petitioner, within a time frame to be fixed by this Court, after directing *status quo* with respect to implementation of Exts.P1 and P2.

3. On 01.12.2020, when this writ petition came up for admission, the learned Assistant Solicitor General of India and also the learned Standing Counsel for respondents 2 and 3 sought time

to get instructions.

4. On 04.12.2020, when this writ petition came up for consideration, during the course of arguments, one of the contentions raised by the learned counsel for the petitioner was that Ext.P2 guidelines has application only in the case of Executives and Non-Unionised Supervisors of Central Public Sector Enterprises and it has no application insofar as workmen in those Enterprises are concerned. On the challenge made against Ext.P1 circular, the learned counsel for the petitioner placed reliance on the decision of the Apex Court in **Agencia E. Sequeria v. Labour Commissioner and others [(1997) 3 SCC 150]** that of this Court in **Joseph C.C. v. Kerala State Electricity Board and others [ILR 2020 (2) Ker. 208]**. The learned Central Government Counsel sought time to get instructions and accordingly, the matter was ordered to be listed on 11.12.2020.

5. On 11.12.2020, when this writ petition came up for consideration, the learned Assistant Solicitor General of India, on instructions, submitted that Ext.P2 guidelines has application only in the case of Executives and Non-Unionised Supervisors of Central Public Sector Enterprises and it has no application insofar as workmen in those enterprises are concerned.

6. **W.P.(C) No.27918 of 2020** :- The 1<sup>st</sup> petitioner, namely, FACT Employees Association at Udyogamandal, represented by its General Secretary along with two workmen, have filed this writ petition, seeking a writ of certiorari to quash Ext.P2 circular dated 25.11.2020 and Ext.P3 Office Memorandum dated 19.11.2020; and for a declaration that Exts.P2 and P3 are illegal and arbitrary, and cannot be imposed on the workmen of the 3<sup>rd</sup> respondent Company. The further relief sought for is a writ of mandamus commanding the 3<sup>rd</sup> respondent Company to pay such amount illegally recovered from the petitioners and other workmen, as the case may be, along with arrears of additional Dearness Allowance as per their entitlement with penal interest, without regard to Exts.P2 and P3, expeditiously, at any rate, within a time frame to be fixed by this Court.

7. On 15.12.2020, when this writ petition came up for admission, the Registry was directed to post this matter, along with W.P.(C) No.26423 of 2020.

8. Heard the learned counsel for the petitioners in the respective writ petitions, the learned Assistant Solicitor General of India for Union of India and also the learned Standing Counsel for FACT.

9. The document placed on record as Ext.P2 in W.P.(C). No.26423 of 2020 [Ext.P3 in W.P.(C).No.27918 of 2020] is an Office Memorandum dated 19.11.2020 issued by the 1<sup>st</sup> respondent regarding freezing of Dearness Allowance to employees of Central Public Sector Enterprises, drawing pay as per 2017, 2007, 1997, 1992 and 1987 IDA pay revision guidelines at current rates till 30<sup>th</sup> June 2021. The said Office Memorandum reads thus:

"The undersigned is directed to say that in view of the crisis arising out of COVID-19, it has been decided that additional installments of Dearness Allowance payable to Employees of Central Public Sector Enterprises (CPSEs) drawing pay as per 2017, 2007, 1997 1992 & 1987 DA pay revision guidelines, due from 01.10.2020 shall not be paid. The additional installments of Dearness Allowance at current rates (w.e.f. 01.07.2020) will continue to be paid.

2. As and when the decision to release the future installment of Dearness Allowance due from 01.07.2021 is taken by the Government, the rates of Dearness Allowance as effective from 01.10.2020, 01.01.2021 & 01.04.2021 will be restored prospectively and will be subsumed in the cumulative revised rate effective from 01.07.2021. No arrears for the period from 01.10.2020 till 30.06.2021 shall be paid.

3. The above guidelines shall be applicable in case of Executives and Non-Unionised Supervisors of CPSEs drawing 2017, 2007, 1997, 1992 & 1987 DA pay scales. The DA rates in case of CPSE employees drawing CDA pay scales has already been frozen vide DPE's OM No.W-02/0038/2017-DPE(WC)-GL-IX/20 dated 28.04.2020 in line with the

Department of Expenditure's OM No.1/1/2020-E.II(B) dated 23.04.2020 in this regard.

4. All administrative Ministries/Departments of Government of India are requested to bring the foregoing to the notice of CPSEs under their administrative control for necessary action at their end.

5. This issues with the approval of the Minister (HI&PE)."

(Underline supplied)

10. Based on Ext.P2 Office Memorandum, the 3<sup>rd</sup> respondent General Manager (HR&A) of FACT issued Ext.P1 circular dated 25.11.2020 in W.P.(C) No.26423 of 2020 [Ext.P2 in W.P.(C).No.27918 of 2020], whereby it is informed that based on the Government of India directives it has been decided that additional installments of Dearness Allowance payable to employees, due from 01.10.2020, shall not be paid. The additional instalments of Dearness Allowances due from 01.01.2021 and 01.04.2021, shall also not be paid. However, Dearness Allowance at rates with effect from 01.07.2020 will continue to be paid. Accordingly, amount paid in excess from 01.10.2020 will be recovered from the salary payable for the month of November, 2020. The excess amount paid towards leave encashment in respect of existing employees will be recovered and so also terminal benefits of employees separated from 01.10.2020 will also be adjusted from the amount payable to them. The excess



contributions paid to Provident Fund and Employees Pension Scheme, if any, shall be adjusted in contribution payable for the month of November, 2020. It is provided in Ext.P1 circular that as and when the decision to release the future installments of Dearness Allowance due from 01.07.2021 is taken by the Government, the rates of Dearness Allowance as effective from 01.10.2020, 01.01.2021 and 01.04.2021 will be restored prospectively and will be subsumed in the cumulative revised rate effective from 01.07.2021. No arrears for the period from 01.10.2020 till 30.06.2021 shall be paid.

11. As already noticed hereinbefore, on 11.12.2020, when W.P.(C).No.26423 of 2020 came up for consideration, the learned Assistant Solicitor General of India, on instructions from the 1<sup>st</sup> respondent, submitted that Ext.P2 Office Memorandum dated 19.11.2020 has application only in the case of Executives and Non-Unionised Supervisors of Central Public Sector Enterprises and it has no application in so far as the workmen in those Enterprises are concerned.

12. In such circumstances, the operation of Ext.P1 circular dated 25.11.2020 in W.P.(C).No.26423 of 2020 [Ext.P2 in W.P.(C).No.27918 of 2020] issued by the 3<sup>rd</sup> respondent General Manager

4<sup>th</sup> respondent in W.P.(C) No.27918 of 2020) has to be confined to Executives and Non-Unionised Supervisors of Central Public Sector Enterprises and it is declared accordingly. Consequently, Ext.P1 circular dated 25.11.2020 to the extent it is made applicable to persons other than Executives and Non-Unionised Supervisors of Central Public Sector Enterprises is set aside, resulting consequential monetary benefits to other category of employees including workers.

During the course of arguments, it is pointed out by the learned Standing Counsel for FACT that conciliation proceedings are now pending before the 4<sup>th</sup> respondent Regional Labour Commissioner (Central) and the next meeting is scheduled on 21.12.2020. It is for the petitioner Trade Union in the respective writ petitions and the 2<sup>nd</sup> respondent Management to co-operate with the conciliation proceedings on repayment of any amount already recovered based on the circular dated 25.11.2020.

The writ petitions are disposed of as above.

**Sd/-**

**ANIL K. NARENDRAN  
JUDGE**

**APPENDIX OF W.P. (C) NO.26423/2020**

**PETITIONER'S/S EXHIBITS:**

- EXHIBIT P1                      TRUE COPY OF THE CIRCULAR DATED  
25/11/2020 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT P2                      TRUE COPY OF THE OFFICE MEMORANDUM DATED  
19/11/2020 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P3                      TRUE COPY OF THE DULY EXECUTED  
SETTLEMENT DATED 14.08.2010 ENTERED INTO  
BY AND BETWEEN THE TRADE UNION AND THE  
MANAGEMENT OF 2ND RESPONDENT.
- EXHIBIT P4                      TRUE COPY OF THE COMPLAINT DATED  
27/11/2020 REFERRED BY THE PETITIONER  
BEFORE THE 4TH RESPONDENT.

**APPENDIX OF W.P. (C) NO.27918/2020**

**PETITIONER'S/S EXHIBITS:**

- EXHIBIT P1            TRUE COPY OF THE MEMORANDUM OF SETTLEMENT DATED 14.08.2010 SIGNED BETWEEN THE MANAGEMENT AND THE UNIONS OF FACT LTD., UNDER SECTION 12(3) OF THE I.D. ACT, IN THE PRESENCE OF THE 5TH RESPONDENT R.L.C.
- EXHIBIT P2            TRUE COPY OF THE CIRCULAR/LETTER NO.GM(HR AND A)-CO-385, DATED 25.11.2020 ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT P3            TRUE COPY OF THE OFFICE MEMORANDUM NO. W-2-02/0039/2017-DPE(WC)-GL-XVI/20 DATED 19.11.20 ISSUED BY THE 2ND RESONDENT.
- EXHIBIT P4            TRUE COPY OF REPRESENTATION/LETTER DATED 27.11.2020 SUBMITTED BY THE 1ST PETITIONER ALONG WITH THE OTHER UNIONS OF FACT LTD., BEFORE THE 5TH RESPONDENT.