COURT CASE
MOST IMMEDIATE

No. W-05/0020/2019-DPE (WC)
Government of India
Ministry of Heavy Industries & Public Enterprises
Department of Public Enterprises

Public Enterprises Bhawan,
Block No.14, CGO Complex,
Lodhi Road, New Delhi-110003.
Dated, the 24th Oct., 2019

OFFICE MEMORANDUM

Subject: W.P.(C) No. 10165/2017 filed by M/s Suman Forwarding Agency Pvt Ltd vs The Chief Patron/Vice President/General Secretary, Central Warehousing Corporation Majdoor Union, AN in the Hon'ble High Court of Delhi–regarding

The undersigned is directed to refer this Department's O.Ms. of even number dated 04.10.2019, 18.10.2019 and Department of Personnel & Training O.M. No. 49014/1/2017-Estt.(C)-pt dated 07.10.2019(copy enclosed), on the subject cited above.

2. In this regard, all Ministries/Departments are requested to ensure that requisite information with regard to CPSEs under their administrative control, on the judgment dated 16.09.2019 of Hon'ble High Court, Delhi, may be furnished to Department of Food and Public Distribution (DFPD), for filing of a common counter affidavit, before the next hearing date, i.e. 01.11.2019 under intimation to this department.

(Naresh Kumar)
Under Secretary
Telephone No. 24366820

Encl: As Above.

To,

The Secretaries, Ministries/Departments of the Government of India for urgent necessary action.

Copy to :

a) Shri Nand Kishore Kashmira, Director (Storage), Department of Food & Public Distribution, Krishi Bhawan, New Delhi with the request to ensure filing a common counter affidavit before next date of hearing i.e. 01.11.2019.
b) Shri Kirtiman Singh, CGSC, E mail: kirtimansingh.cgsc@gmail.com for information please.

No.49014/1/2017-Estt.(C)-pt
Government of India
Ministry of Personnel, PG & Pensions
Department of Personnel & Training
*****

North Block, New Delhi
Dated: 7th October, 2019

OFFICE MEMORANDUM

Subject: W.P. No. 10165/2017 in the matter of M/s Suman Forwarding Agency Pvt. Ltd. Vs the Chief Patron/Vice President/ General Secretary, Central Warehousing Corporation (CWC) Majdoor Union and Ors before Delhi High Court- Hon'ble High Court's order dated 16.09.19- reg.

The undersigned is directed to refer to DoPT's O.M. of even No. dated 04.09.19 (copy enclosed) regarding the matter of casual labourers which has been issued in compliance to the order dated 01.08.19 (copy enclosed) of the Hon'ble High Court, Delhi. A copy of the order dated 16.09.19 of the Hon'ble High Court of Delhi in the above mentioned court case is now enclosed herewith which is to be complied by all Ministries/Departments including PSUs.

2. All Ministries/Departments/PSUs are, therefore, requested to take further action in this regard and send the required information to D/o Food & Public Distribution, the Administrative Ministry, for filing a common affidavit. A copy of the said information may also be endorsed to DoPT. **The Next Date of hearing in this Court case is 01.11.2019 and therefore, all actions should be completed well before 25.10.2019.**

Encl: As above.

7.10.19
(Surya Narayan Jha)
Under Secretary to the Government of India
Telefax: 23094248

To:

1) The Secretaries of all Ministries/ Departments of the Government of India. (As per the standard list)
2) Shri Kirtiman Singh, Central Govt. Standing Counsel
Chamber No. 463, Block-I,
Delhi High Court, Delhi
3) M/o Consumer Affairs, Food & Public Distribution, D/o Food & Public Distribution
[Kind attention: Sh. Nand Kishore Kashmira, Director (Storage)]
Krishi Bhawan, New Delhi

URGENTLY.

24/10/19

No.49014/1/2017-Estt.(C) Pt.
Government of India
Ministry of Personnel, PG & Pensions
Department of Personnel & Training
*****

North Block, New Delhi
Dated: 4th September, 2019

OFFICE MEMORANDUM

Subject : 'Equal pay for Equal Work' for Casual workers : Compliance with earlier instructions and Hon'ble Court's Judgements thereon

The undersigned is directed to refer to this Department's O.M.No.49014/2/86-Estt.(C) dated 07.06.1988 wherein it was, inter alia, stated that:

- Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.

- In cases where the work done by a casual worker is different from the work done by a regular employee, the casual worker may be paid only the minimum wages notified by the Ministry of Labour & Employment or the State Government/Union Territory Administration, whichever is higher, as per the Minimum Wages Act, 1948.

- Persons on daily wages (casual workers) should not be recruited for work of regular nature.

2. The above instructions have been issued keeping in view the judgements of the Hon'ble Supreme Court. It is reiterated that it is the responsibility of all Ministries/Departments to follow the above instructions in letter and spirit.

Surya Narayan Jha
4.9.19
(Surya Narayan Jha)
Under Secretary to the Government of India
Telefax: 23094248

To
All Ministries/Departments of Government of India.
(As per standard List)

No.W-02/0038/2019-DPE (WC)-GL- XVIII/19
Government of India
Ministry of Heavy Industries & Public Enterprises
Department of Public Enterprises

.....

Public Enterprises Bhawan,
Block No.14, CGO Complex,
Lodhi Road, New Delhi-110003.
Dated, the 13th September, 2019

OFFICE MEMORANDUM

Subject:- 'Equal pay for Equal work' for Casual Workers: Compliance with Hon'ble Courts' Judgments thereon-reg.

On the above subject, the undersigned is directed to refer to various instructions issued by the Hon'ble Supreme Court and also to the DOPT's OM dated 49014/1/2017-Estt.(C) pt. dated 04th September, 2019.

2. The following provisions are hereby extended to casual worker/daily wager employed by Central Public Sector Enterprises (CPSEs):

i. Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.

ii. In cases where the work done by a casual worker is different from the work done by a regular employee, the casual worker may be paid only the minimum wages notified by the Ministry of Labour & Employment or the state Government/Union Territory Administration, whichever is higher as per the Minimum Wage Act, 1948.

iii. Persons on daily wages (casual workers) should not be recruited for work of regular nature.

3. All CEOs of CPSEs and administrative Ministries/Departments are requested to ensure strict compliance of the above provisions.

(Naresh Kumar)
Under Secretary

To
All administrative Ministries/Departments of the Government of India.

$~2 & 3

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Date of Decision: 16th September, 2019**

\+ W.P.(C) 10165/2017 & CM Appl. 41513/2017

2 M/S SUMAN FORWARDING AGENCY PVT. LTD..... Petitioner

Through: Mr.Harvinder Singh and Mr.Shiven Khurana, Advocates

versus

THE CHIEF PATRON/VICE PRESIDENT/GENERAL SECRETARY, CENTRAL WAREHOUSING CORPORATION MAJDOOR UNION ..... Respondent

Through: Ms.Asha Jain Madan and Mr.Mukesh Jain, Advocates for R-1
Mr.Kirtiman Singh, CGSC with Mr.Waize Ali Noor, Advocate
Mr.K.K. Tyagi and Mr.Iftekhar Ahmad, Advocates for CWC
Mr.Rajiv Agarwal, Advocate as Amicus Curiae

\+ W.P.(C) 10665/2017 & CM Appls. 43644/2017, 43645/2017

3 CENTRAL WAREHOUSING CORPORATION THROUGH: ITS REGIONAL MANAGER, DELHI REGION ..... Petitioner

Through: Mr.K.K. Tyagi and Mr.Iftekhar Ahmad, Advocates

versus

CENTRAL WAREHOUSING CORPORATION MAZDOOR UNION AND ORS..... Respondents

Through: Ms.Asha Jain Madan and Mr.Mukesh Jain, Advocates for R-1
Mr.Harvinder Singh and Mr.Shiven Khurana, Advocates for R-2
Mr.Rajiv Agarwal, Advocate as Amicus Curiae

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. In ***State of Punjab v. Jagjit Singh***, (2017) 1 SCC 148, the Supreme Court held that principle of *"equal pay for equal work"* expounded through various decisions of Supreme Court constitutes law declared by Supreme Court, which is binding on all courts in India and is applicable to all temporarily engaged employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like) who are entitled to minimum of the regular pay-scale, on account of their performing the same duties, which are discharged by those engaged on regular basis against sanctioned posts.

2. Paras 51.1, 51.2, 51.3, 55, 57, 58, 59, 60 and 61 of the judgment in ***Jagjit Singh*** (*supra*), to the extent they are relevant, read thus:

> *"51.1. It is apparent that this Court in State of Punjab v. Surjit Singh did hold that the determination rendered in para 55 of the judgment in Uma Devi (3) case, was in exercise of the power vested in this Court under Article 142 of the Constitution of India. But the above observation does not lead to the conclusion or the inference, that the principle of "equal pay for equal work" is not applicable to temporary employees. In fact, there is a positive take-away for the temporary employees. The Constitution Bench would, in the above situation, be deemed to have concluded that to do complete justice to the cause of temporary employees, they should be paid the minimum wage of a regular employee discharging the same duties. It needs to be noticed that on the subject of pay parity, the findings recorded by this Court in Umadevi (3) case, were limited to the*

conclusions recorded in para 55 thereof (which we have dealt with above, while dealing with the case law on the principle of "equal pay for equal work").

51.2. ***Even in the case under reference, State of Punjab v. Surjit Singh, this Court accepted the principle of "equal pay for equal work", as applicable to temporary employees by requiring the State to examine the claim of the*** *respondents for pay parity by appointing an expert committee. The expert committee was required to determine whether the respondents satisfied the conditions stipulated in different judgments of this Court including State of Punjab v. Charanjit Singh, wherein this Court had acceded to the proposition that daily wagers who were rendering the same duties and responsibilities as regular employees, would be entitled to the minimum wage payable to regular employees.*

51.3. For all the above reasons, we are of the view that the claim of the temporary employees for minimum wages on a par with regularly engaged government employees cannot be declined on the basis of the judgment in State of Punjab v. Surjit Singh.

xxx xxx xxx

55. In view of all our above conclusions, the decision rendered by the Full Bench of the High Court in Avtar Singh v. State of Punjab , dated 11-11-2011, is liable to be set aside, and the same is hereby set aside. The decision rendered by the Division Bench of the High Court in State of Punjab v. Rajinder Singh is also liable to be set aside, and the same is also hereby set aside. We affirm the decision rendered in State of Punjab v. Rajinder Kumar, with the modification that the employees concerned would be entitled to the minimum of the pay scale, of the category to which they belong, but would not be entitled to allowances attached to the posts held by them.

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57. There is no room for any doubt that the principle of "equal pay for equal work" has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India under Article 141 of the Constitution of India. The parameters of the principle have been summarised by us in para 42 hereinabove. The principle of "equal pay for equal work" has also been extended to temporary employees (differently described as work-charge, daily wage, casual, ad hoc, contractual, and the like). The legal position, relating to temporary employees has been summarised by us, in para 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us yet again.

58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

59.……There is no escape from the above obligation in view of different provisions of the Constitution referred to above,

and in view of the law declared by this Court under Article 141 of the Constitution of India, the principle of "equal pay for equal work" constitutes a clear and unambiguous right and is vested in every employee—whether engaged on regular or temporary basis.

60. .....There can be no doubt, that the principle of "equal pay for equal work" would be applicable to all the temporary employees concerned, so as to vest in them the right to claim wages on a par with the minimum of the pay scale of regularly engaged government employees holding the same post.

61. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding that all the temporary employees concerned, in the present bunch of cases would be entitled to draw wages at the minimum of the pay scale (at the lowest grade, in the regular pay scale), extended to regular employees holding the same post."

(Emphasis supplied)

3. Vide order dated 28th March, 2019, Central Government was directed to file a status report on affidavit as to whether all Government Departments/ PSUs/Corporations under the Central Government including CWC are complying with the law declared by the Supreme Court in ***Jagjit Singh***, (supra). Para 25 of the order dated 28th March, 2019 is reproduced hereunder:

> *"25. The Central Government is directed to file the status report on affidavit as to whether all Government Departments/PSUs/Corporations under the Central Government including CWC are complying with the law declared by the Supreme Court in **Jagjit Singh** (supra) by paying the wages in terms of the directions of the Supreme Court to the temporarily engaged employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and*

the like). If all the Government Departments/ PSUs/Corporations are not complying with the directions of the Supreme Court in ***Jagjit Singh*** *(supra), the Government shall forthwith issue O.M. to all the Government Departments/PSUs/Corporations to comply with the aforesaid directions and place the same before this Court on the next date of hearing."*

(Emphasis supplied)

4. On 01st August, 2019, the status report was filed by the Central Government in which it was stated that the matter relating to equal pay for equal work for the workmen employed by the contractor is regulated by Rule 25(2)(v) of the Contract Labour (Regulation and Abolition) Central Rules, 1971. Relevant portion of the status report is reproduced hereunder:

"3. It is submitted that the DoPT has vide OM dated 29.07.2019 informed that DoPT has already issued an OM dated 07.06.1988 in respect of wages of casual labourers engaged by Ministries/Departments which is in consonance with the judgment of the Hon'ble Supreme Court in State of Punjab vs Jagjit Singh – (2017) 1 SCC 148. Para IV of the OM dates 07.06.1988 states as under:-

> *"Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day"*

A copy of the OM dated 29.07.2019 alongwith OM dated 07.06.1988 is annexed herewith and marked as ANNEXURE-A.

4. With regard to the implementation of the OM dated 07.06.1988 in the PSUs/Corporations under the Central Government, Department of Public Enterprises is required to be approached and consulted which will require some time.

5. It is further submitted that the matter for equal pay for equal work to the workmen employed by the contractor is regulated

under the provisions of Rule 25(2) (v) of the Contract Labour (Regulation and Abolition) Central Rules, 1971 which reads as under:-

> *"(v) (a) in cases where the workman employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work:*
>
> *Provided that in the case of any disagreement with regard to the type of work the same shall be decided by the Deputy Chief Labour Commissioner (Central)] [***];*
>
> *(b) in other cases the wage rates, holidays, hours of work and conditions of service of the workmen of the contractor shall be such as may be specified in this behalf by 1 [the Deputy Chief Labour Commissioner (Central)];*
>
> *Explanation.- While determining the wage rates, holidays, hours of work and other conditions of services under (b) above, the Deputy Chief Labour Commissioner (Central) shall have due regard to the wage rates, holidays, hours of work and other conditions of service obtaining in similar employments;"*

5. The Central Government has produced OM No.49014/1/2017-Estt.(C)pt dated 04th September, 2019 issued to all the Ministries and Departments of Government of India reiterating OM No.49014/2/86 Estt.(C) dated 07th June, 1988. Relevant portion of the office memorandum is reproduced hereunder:-

"No.49014/1/2017-Estt.(C)Pf.
Government of India Ministry of Personnel, PG & Pensions
Department of Personnel & Training
North Block, New Delhi
Dated: 4th September, 2019

OFFICE MEMORANDUM

Subject : 'Equal pay for Equal Work' for Casual workers : Compliance with earlier instructions and Hon'ble Court's Judgements thereon

The undersigned is directed to refer to this Department's O.M.No.49014/2/86-Estt.(C) dated 07.06.1988 wherein it was, inter alia, stated that:

- *Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.*
- *In cases where the work done by a casual worker is different from the work done by a regular employee, the casual worker may be paid only the minimum wages notified by the Ministry of Labour & Employment or the State Government/Union Territory Administration, whichever is higher, as per the Minimum Wages Act, 1948.*
- *Persons on daily wages (casual workers) should not be recruited for work of regular nature.*

2. The above instructions have been issued keeping in view the judgements of the Hon'ble Supreme Court. It is reiterated that it is the responsibility of all Ministries/Departments to follow the above instructions in letter and spirit."

(Emphasis supplied)

6. The Central Government has also placed on record OM No. W-02/0038/2019-DPE (WC)-GL-XVIII/19 dated 13th September, 2019 issued by Ministry of Heavy Industries & Public Enterprises Department of Public Enterprises directing all administrative Ministries/Departments that all the casual workers/daily wagers employed by the Central Public Sector

Enterprises (CPSEs) be paid wages equivalent to the minimum of the relevant pay scale plus dearness allowance. Relevant portion of the office memorandum is reproduced hereunder:-

"No.W-02/0038/2019-DPE (WC)-GL- XVIII/19
Government of India
Ministry of Heavy Industries & Public Enterprises
Department of Public Enterprises

.....

Public Enterprises Bhawan,
Block No.14, CGO Complex,
Lodhi Road, New Delhi-110003.
Dated, the 13th September, 2019

OFFICE MEMORANDUM

Subject : Equal pay for Equal work' for Casual Workers: Compliance with Hon'ble Courts' Judgments thereon-reg.

On the above subject, the undersigned is directed to refer to various instructions issued by the Hon'ble Supreme Court and also to the DOPT's OM dated 49014/1/2017-Estt.(C) pt. dated 04' September, 2019.

2.The following provisions are hereby extended to casual worker/daily wager employed by Central Public Sector Enterprises (CPSEs):

i. Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.

ii. In cases where the work done by a casual worker is different from the work done by a regular employee, the casual worker may be paid only the minimum wages notified by the Ministry of Labour & Employment or the state Government/Union Territory Administration, whichever is higher as per the Minimum Wage Act, 1948.

iii. Persons on daily wages (casual workers) should not be recruited for work of regular nature.

3.All CEOs of CPSEs and administrative Ministries/Departments are requested to ensure strict compliance of the above provisions."

(Emphasis supplied)

7. All the Departments of the Ministry of Central Government as well as PSUs under the Central Government are directed to comply with the office memorandums dated 07th June, 1988, 04th September, 2019 and 13th September, 2019 and file the status report with respect to the compliance thereof before the Central Government. The compliance report shall clarify how many casual/temporary workers were working under those PSUs and the date from which they were given benefits. The Central Government shall produce all the compliance reports before this Court on the next date of hearing. The Central Government shall circulate the copy of this order to all the Ministries and PSUs.

8. Vide order dated 01st August, 2019, this Court directed the Central Government to file a status report whether the contract labour in the present case are entitled to benefits of Rule 25(2)(v) of the Contract Labour (Regulation and Abolition) Central Rules, 1971 and/or the benefit of ***Jagjit Singh*** (Supra). Let the same be filed within four weeks.

9. List for compliance and further hearing on 01st November, 2019.

10. Both the parties are directed to file fresh brief note of submissions not exceeding three pages along with copies of the relevant documents/judgments on which they wish to rely with relevant portions duly highlighted for the convenience of this Court.

11. Learned amicus curiae shall also file brief note of submissions.

12. This Court appreciates the assistance rendered by Mr. Kirtiman Singh, learned standing counsel for Central Government in this matter.

13. Copy of this judgment be given *dasti* to counsels for the parties under the signatures of the Court Master.

Sd/-
J.R. MIDHA, J.

SEPTEMBER 16, 2019
ds

26/9/19

Court Master
High Court of Delhi
New Delhi