(1987) 08 AP CK 0038

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5456 of 1985

Abdul Aleem APPELLANT

Vs

Senior Regional Manager, FCI RESPONDENT

Date of Decision : 18-08-1987

Acts Referred:

Food Corporations Act, 1964 — Section 12A(4)

Citation : (1995) 3 LLJ 473

Hon'ble Judges : Sardar Ali Khan, J

Bench : Single Bench

Advocate : G. Bikshapathy, for the Appellant; P. Venkatarama Reddy, S.C., for the Respondent

Final Decision : Allowed

Judgement

Sardar Ali Khan, J.—The Court made the following Order.

2. The petitioner in this case seeks for issue of a writ of mandamus declaring the office order No. PF/1349/Estt, dated 9.5.1985 passed by the 2nd respondent herein as illegal, invalid and without jurisdiction.

3. Under the impugned order, the petitioner who was working as a Watchman in the district office of the respondents-Corporation stands relieved of his duties with effect from 31.5.1985 afternoon on attaining the age of superannuation of 58 years. The contention of the petitioner is that his age of superannuation is not 58 years, but it should be 60 years and therefore he is not due to retire two years before he reaches the age of superannuation.

4. The brief facts of the case are that the petitioner was appointed as a Dusting Operator in the year 1954 in the Food Department attached to the Ministry of Food and Agriculture. His services were terminated in 1956 while he was working in Storage Unit at Bhopal. His name was again sponsored by the Employment Exchange for the post of a Watchman in Central Storage Unit, Central Zone, Hyderabad, which was attached to the Ministry of Food and Agriculture. He was

selected for the post of Watchman and was appointed with effect from 7.9.1959 in the said unit at Hyderabad. He was confirmed in that post on 7.5.1960 (sic). The post of watchman falls in the category of Class IV group. The Class IV employees in the Central Government retire at the age of 60 years. Therefore, the contention of the petitioner is that he is due to retire on attaining the age of 60 years and he is also eligible for pension applicable to the Central Government employees. It may also be mentioned that he is a member of the General Provident Fund Scheme from 1959 onwards and that he has been making regular contributions. The petitioner''s contention is that his date of birth is 20.2.1927 and he will be completing the age of 60 years on 20.5.1987. The case of the respondents-Corporation is that as per Circular No. 13-104 E dated 11.1.1977 issued by the headquarters office of the Food Corporation of India, options were called for from the employees of the Food Corporation of India to opt either for the terminal benefits admissible to the Central Government employees or the terminal benefits admissible under the Regulations made by the Food Corporation of India. The petitioner has opted for the leave, provident fund and other terminal benefits as admissible to the employees of the Food Corporation of India in the option form submitted by him. Therefore, the petitioner having voluntarily opted for the terminal and other benefits as per the Food Corporation of India Regulations in his option form signed on 28.6.1977, he is estopped to contend that he is governed by the Central Government Rules as far as the retirement age is concerned. The retirement age in the respondents-Corporation is 58 years.

5. In the light of these rival contentions it has become necessary to see from the record, as to whether the petitioner had exercised his option for the Food Corporation of India Regulations in his option form signed on 28.6.1977, and if so, what is the consequent action that has been taken by the respondents-Corporation treating him as the employee who is governed by the Regulations of the respondent-Corporation. It is significant to note that the respondents-Corporation has continued to make deductions to the General Provident Fund from the salary of the petitioner which was being credited to the General Provident Fund Account No. S.Z. 11236 under the provisions of the General Provident Fund Central Services Rule, 1960. Now if the petitioner is deemed to have opted for the Regulations of the Food Corporation of India, then there would be no question of deducting monthly subscriptions from the petitioner towards the Provident Fund which is being remitted to the Head-quarters to the General Provident Fund. In para 3 of the counter-affidavit this position is sought to be explained away stating that, "In view of the fact that the petitioner opted for provident fund and other terminal benefits admissible to the F.C.I, employees, the same should have been remitted to the Contributory Provident Fund Account. The Accounts Division of the District Office has already addressed communications to the Headquarters for conversion of this account to Contributory Provident Fund Account in view of the petitioner''s option. The mere fact that the change has not been effected does not mean that the petitioner continued to be governed by the Central Government Rules with regard to the

retirement age." Therefore, the fact emerges clearly from the abovesaid statement in the counter-affidavit itself that the petitioner has since 1977 onwards been treated as a person who is governed by the Central Government Rules and not by the regulations of the respondent-Corporation. Another factor which demonstrates the fact that the petitioner has been treated as a person who is governed by the Central Government Rules is the memo No. Esst398/85/ Pension, dated 10.7.1987 issued to the petitioner asking him to submit the pension papers urgently in quadruplicate. It is an undisputed fact that the pension is payable only to those employees who were governed by the Rules of the Central Government and not by the Food Corporation of India. The question, therefore, that arises is how the petitioner was treated by the respondent-Corporation over a period of ten years from the date when he is supposed to have exercised his option as an employee who is governed by the Central Government Rules. In the light of the subsequent conduct of the respondent-Corporation it cannot be denied that he has been treated as a person who has opted for the Central Government Rules and not by the regulations of the Corporation.

6. Moreover from the records that have been produced by the learned counsel for the respondent-Corporation in this case, the option form given by the petitioner figures at page 91 of the record of service of the petitioner. A perusal of this form clearly shows that the tick-mark which has been put on the form is at Clause (b) which shows that the petitioner will be governed by the leave, provident fund, retirement or other terminal benefits admissible to employees of the Central Government in accordance with the rules and orders of the Central Government as amended from time to time. The learned Counsel for the respondent has stated that the tick-mark is misplaced due to the fact that the carbon was not properly adjusted and, therefore, the tick-mark instead of coming over the clause which says that he should be governed by the Regulation of the Corporation has been put, on the clause which says that he is to be governed by the Central Government Rules. On a closer examination of this form it is revealed that there is another tick-mark at Clause (a) by virtue of which the petitioner is supposed to have opted to the scales of pay applicable to the post held by him under the Government immediately before the date of transfer. Immediately down below in the clause about the scale of pay applicable to the post under the Corporation has been struck off. If there is a misplacement of the carbon on the tick-mark on the option form, then it is difficult to have the juxtaposition of the two tick-marks on the form as they are now existing. In any case I am not persuaded by the argument advanced in this regard by the learned counsel for the respondent and I am not inclined to accept the bold contention that there has been a mistake in making the tick-mark on the option form. The subsequent conduct of the respondent-Corporation and the tick-marks which are found on the option form clearly show that the petitioner has opted for the Central Government Rules and not for the Regulations of the Corporation.

7. Apart from the factual position, obtaining as stated above, it remains to be

seen whether there is any justification from the legal point of view to deprive the petitioner of further two years of service under the provisions of the Food Corporation Act of 1964. u/s 12A(3) of the said Act it is provided that-

"An officer or other employee transferred by an order made under Sub-section (1) shall, on and from the date of transfer, cease to be an employee of the Central Government and become an employee of the Corporation with such designation as the Corporation may determine and shall subject to the provisions of Subsections 4, MA), (4B), (4C), (5) and (6), be governed by the regulations made by the Corporation under mis Act as respects remuneration and other conditions of service including pension, leave and provident fund, and shall continue to be an officer or employee of the Corporation unless and until his employment is terminated by the Corporation".

The crucial section for the purpose of this case is Section 12A(3) of the Act. It is under this section that every officer or other employee transferred by an order made under Sub-section (1), shall within six months from the date of transfer, exercise his option in writing to be governed-

(a) by the scale of pay applicable to the post held by him under the Government immediately before the date of transfer or by the scale of pay applicable to the post under the Corporation to which he is transferred;

(b) by the leave, provident fund, retirement or other terminal benefits admissible to employees of the Central Government in accordance with the rules and order of the Central Government as amended from time to time or the leave, provident fund or other terminal benefits admissible to the employees of the Corporation under the regulation made by the Corporation under this Act.

It is significant to note that under the provisions of Section 12A(4)(b) of the Act the option by a employee transferred by an order is to be exercised in regard to the leave, provident fund, retirement or other terminal benefits admissible to employees of the Central Government in accordance with the rules and orders of the Central Government or he can opt for the Rules admissible to the employees of the Corporation under the regulations made by the Corporation under this Act. In case a person opts for the regulations of the Corporation, what he can opt for is only with regard to leave, provident fund or other terminal benefits. There is no mention of retirement in so far as the regulations of the Corporations are concerned. The word "retirement" is used only in connection with the Rules of the Central Government which covers the leave, provident fund, retirement or other terminal benefits admissible to the employees. When there is no mention of the word "retirement" how can it be said that a person who has opted for the Regulations of the Corporation will still be governed by the Rules with regard to the age of superannuation obtaining in the Corporation. It is not as if that the word retirement" has not been mentioned due to oversight or omission with regard to the regulation of the Corporation. It has been done with a purpose to ensure that Class IV employees of the Central Government who retire at the age of 60 years, would continue to be governed by the Rules of 60 years of age as provided under the Central Government Rules. The other employees of the Central Government and the Corporation retire at the age of 58 years. In this view of the matter, I find much force in the contention raised by the learned counsel for the petitioner Mr. Bikshapathy, that even for argument sake, if the petitioner is deemed to have opted for the Regulations of the Corporation, it cannot be said that he is due to retire on attaining the age of 58 years because the question of retirement is not one which forms the subject matter of the option to be made by an employee transferred to the Corporation from a Department of the Central Government. Viewed from any angle this Writ Petition deserves to be allowed.

8. Therefore, the office order No. PF/1349/Estt. dated 9.5.1985 passed by the 2nd respondent is set aside as being illegal, invalid and without jurisdiction. The Writ Petition is accordingly allowed but in the circumstances without costs.

9. It is represented by the learned counsel for the petitioner that on 31.8.1987 the petitioner has attained the age of 60 years also and in that view of the matter there could be no question of his reinstatement in service. However, it is evident that in view of the fact that the impugned order has been set aside as being illegal and arbitrary the petitioner will be entitled to such benefits that had accrued to him under the Rules and Regulations in force as if he has continued in service till the age of 60 years till 31.5.1987.