
(2012) 03 JH CK 0038

In the Jharkhand High Court

Case No : Writ Petition (S) . No. 2503 of 2009

Central Silk Board

APPELLANT

Vs

ZMS Khan and Others

RESPONDENT

Date of Decision : 27-03-2012

Acts Referred:

Citation : (2012) 3 JCR 49 : (2012) 3 JLJR 561

Hon'ble Judges : Prakash Tatia, J;Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : Satish Bakshi and Nipun Bakshi, for the Appellant; M.M. Pal and Mahua Palit for the Private Respondents, M/s Md. Mokhtar Khan and Prabhash Kumar for the Union of India, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—The petitioner, Central Silk Board (herein after referred as C.S.B.), statutory body created under the Central Silk Board Act, 1948 is aggrieved by the judgment and order dated 13.1.2009 passed by the Central Administrative Tribunal, Patna Bench, Patna (circuit at Ranchi) in Original Application no. 75 of 2008 whereby and where under the learned Tribunal has directed the respondent/ petitioner herein to grant benefit of Flexible Complementing Scheme(herein after referred as F.C.S.) to the Scientists working in the C.S.B. and its research institutes from 30.7.2001 with all consequential benefits within a period of four months from the date of receipt of the copy of the order. The brief facts of the case are that on the recommendation of the 5th Central Pay Commission the Ministry of Personnel. Public Grievances and Pensions, Department of Personnel and Training, Government of India, vide office memorandum no. 9th November, 1998 took a decision that the F.C.S. should, as per its original objective, be applicable only to the Scientists and Technologists holding scientific posts in Scientific and Technological Department and who are engaged in scientific activities and services with an objective that only the Scientists, who have created demonstratable achievement or higher level of

technological merit are, recommended for promotion under the F.C.S. Accordingly, for achieving the aforesaid objective, a number of guidelines were laid down under the said Office Memorandum dated 9th November, 1998 for identifying institutions / organizations as Scientific and Technological institutions as well as for defining the scientific activities and services. Scientists and Engineers and the scientific post is prescribed in Annexure-1 to said office memorandum, it was indicated that the F.C.S. shall not be applicable where the criteria specified vide this office memorandum are not fully met. It also prescribed a revised assessment procedure as prescribed in Annexure-II to the said office memorandum to be followed by all scientific ministries / departments for considering advancement under the F.C.S. The scheme provides in-situ promotions for the scientific posts on assessment criteria fixed under the scheme.

2. The applicants/ private respondents here in are working as scientists in the C.S.B. under the administrative control of Ministry of Textile. All of them had joined services as senior research assistant. The said F.C.S. was adopted by C.S.B. w.e.f. 30.8.2006 pursuant to the order of the Ministry of Textile, Government of India contained in Annexure-R-2 forming part of the present writ petition. The applicants being aggrieved by the adoption of the F.C.S. w.e.f. 30.8.2006, instead of 9.11.1998 i.e. the date of the office memorandum referred to herein above moved the learned Central Administrative Tribunal through Original Application No. 75 of 2008 inter alia for the following reliefs:-

i) for quashing part of the order of the Ministry of Textile, Government of India vide letter no. 25012/54/1999-SILK dated 30.8.2006 whereby the sanction of the F.C.S. had been approved from 30.8.2006 prospectively instead of 9.11.2006 i.e. date of the office memorandum.

ii) for further direction to implement the F.C.S. w.e.f. 9.11.1998.

iii) for further direction upon the Respondent- Board to consider "the case of the applicant" who had already completed the maximum residency period of seven years as on the date of the implementation of the scheme i.e. 30.8.2006 to the extent that they should be first declared as scientists-C under the fitment process after completion of four years of service in S.R.O. Cadre and secondly, they be promoted as scientist-D on the basis of the assessment for which interviews had been held during the month of March-April, 2007.

3. Respondent/ petitioner on the other hand filed their written statement before the learned Tribunal admitting that the F.C.S. for C.S.B. scientists has been approved w.e.f. 30.8.2006 prospectively instead of 9.11.1998, the date of the office memorandum. It is further averred that applicants accepted the benefits of the scheme for in-situ promotion with protest. It was also stated that C.S.B. and its research institutes are also recognized by the department of Science and Technology by order dated 30.7.2001. Therefore, the scheme could be extended to C.S.B. only after its recognition as a Scientific and Technological organization and after examining of various other factors for which appropriate

funding was not provided in the earlier year. The learned Tribunal allowed the original application in favour of the applicant on the ground that the C.S.B. and its research institutes were recognized as S&T organization w.e.f. 30.7.2001 and as such the applicants were entitled for benefits of the F.C.S. from the date of its recognition i.e. 30.7.2001 instead of 30.8.2006 as made by the impugned order of the Ministry of Textile.

Private respondents have appeared and contested the case of the writ petitioner by filing their counter affidavit in support of their contention. The Union of India which has been included as Respondent no. 17 in the instant writ petition have also filed their counter affidavit inter-alia supporting the stand of the writ petitioner that the decision to include the F.C.S. in C.S.B. has been taken by Ministry of Textiles on consideration of number of factors including the financial implication of the decision which would be huge and recurring in nature. It has been submitted that the said scheme has been extended to several other Boards like Coffee Board, Spice Board from 2006 and not from the earlier date. As such, there is no discrimination with the case of the applicants.

4. The only question that requires consideration in the instant writ petition as per the contention of the writ petitioner- C.S.B. is whether Learned C.A.T. was right in extending the benefits of the F.C.S. to the applicants- scientists with effect from the date of recognition i.e. 30.7.2001 as a science and technology organization by Ministry of Science and Technology or w.e.f. 30.8.2006, when the Ministry of Textile issued the order conveying its approval for extending of F.C.S. to the Scientists of C.S.B., indicating therein that the scheme would be effective from the date of issue of the letter dated 30.8.2006.

5. In support of the aforesaid contention learned counsel for the appellant has submitted that the adoption of the F.C.S. by the statutory body like the C.S.B. from a particular date involves consideration of a number of factors including financial implications and which is dependent upon the approval of the administrative ministry i.e. Ministry of Textile. It does not apply automatically pursuant to the issuance of the office memorandum dated 9.11.1998. It has also been submitted that the said F.C.S. has been extended by the Government of India for Scientist working in several other Boards from the year 2006 and not from 9.11.1998 as claimed by the applicants / private respondents.

6. In support of their submission writ petitioner has relied upon the judgment of the Hon''ble Supreme Court of India reported in Sureshchandra Singh and Others Vs. Fertilizer Corpn. of India Ltd. and Others, . They have also relied upon the judgment of the Hon''ble Supreme Court reported in State of Bihar and Others Vs. Bihar Pensioners Samaj, It has been submitted that the choice of a cut off date of implementation of scheme is that of the employer and no legal right is conferred upon the employees to seek the mandamus or direction for implementation of the scheme from a particular date, which depends upon the conscious decision of a employer taking into account the number of factors.

7. In order to address the issue involved in the Instant writ petition, it is appropriate to consider that the implementation of the F.C.S. to other scientific and technological department like the C.S.B. is dependent upon the policy decision of the Government of India, contained in office memorandum dated 9.11.1998, Annexure-1 to the writ petition issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India. The matter relating to the implementation of the F.C.S. was considered by the 5th Central Pay Commission which made certain recommendations. These recommendations were examined by the Ministry of Personnel, Government of India in consultation with the Secretary for the department of Science and Technology and some other major departments which arrived at a decision which are incorporated in the office memorandum dated 9.11.1998. The recommendation of the Pay Commission that the modified F.C.S. proposed by it should be applicable to all the departments including the department of Space, Atomic Energy and D.R.D.O. without any special dispensation for any individual department was not accepted. However, it was decided that the F.C.S. should be made applicable only "to scientist and technologist holding scientific post in science and technology department and who are engaged in scientific activities and services", so that scientist who have to their credit demonstrable achievement or higher level of merit are recommended for promotion on rigorous assessment norms under the F.C.S. In order to carry out the aforesaid objective it was laid down that :-

(a) the criteria of identifying institutions organizations as scientific and technological institutions as well as for defining scientific activities and services, scientists and engineers and the scientific posts shall be as prescribed in Annexure-I to this office memorandum dated 9.11.1998, It was strictly Implemented that the F.C.S. shall not be applicable" where the criteria specified vide this office memorandum are not fully met

(b) A revised assessment procedure was prescribed in Annexure-II to be henceforth followed by all the scientific ministries/department for considering advancement under the F.C.S.

8. It was also decided that to remove the existing disparity in the operation of F.C.S. in various scientific and technological department, all the posts covered under the F.C.S. shall carry the uniform scales of pay, designation and the minimum residency period linked to the performance as included in para 3 of the said O.M. and an umbrella notification was also issued vide G.S.R. No. 660(E) dated 9.11.1998 for bringing it into immediate effect.

9. It is important to mention at this stage that the question relating to the applicability / extension of F.C.S. to other scientific organization which were making demands for extension of the F.C.S. was specifically laid down in para 5. of the instant O.M. Dated 9.11.1998 which is important enough to be quoted herein below:-

"It has further been decided that in order to extend the benefit of in-situ promotions under the F.C.S. to other Scientific Organizations that are demanding the extension of F.C.S. in their case, the administrative Ministry of such institutions shall satisfy itself that such institutions are scientific and technical institutions and the officers are scientists holding scientific posts and are involved in scientific and technical activities as devined in the Annexure-I to this Office Memorandum and make its recommendations to the Department of Science and Technology. On receipt of such a request the Department of Science and Technology shall set up a committee, including the representatives of the Department of Personnel & Training and of the Department of Expenditure as well as eminent scientists relevant to the discipline for examining the proposal referred by the administrative Ministry concerned. A final decision on the proposal of an administrative Ministry for extension of F.C.S. to other scientific organization shall be taken based on the recommendations of this committee. Since it is not necessary that all the pay scales under the F.C.S. should be applicable in all the Scientific Organization, as the size of the organization may not justify introduction of the entire group of, scales, the Committee, while making its recommendation, would take a specific view as to the number of scales that should operated in the organization as well as the appropriate residency period for ensuring an even pace of promotion. However, the progression under F.C.S. will only be as per scales indicated in para 3 of this office From perusal of the aforesaid decision contained in para 5 it would be unequivocally clear that in case where other scientific organization like C.S.B. were demanding extension of F.C.S. in their case, the administrative ministry of such institution i.e. Ministry of Textile in the instant case, shall satisfy itself that such institution is a Scientific and Technological institution and the officers are the Scientists holding scientific posts and are involved in scientific and technological activities as defined in Annexure-I to the instant office memorandum. After having completed this exercise the administrative ministry i.e. ministry of Textile herein shall make its recommendation to the department of Science and Technology, Government of India. On receipt of such request, the department of Science and Technology shall set up a committee, including representatives of the department of Personnel and Training and department of Expenditure as well as eminent scientists relevant to the discipline for examining proposals referred to by the administrative ministry concerned i.e. Ministry of Textile in the present case. It is important to reiterate herein that as per the decision contained in the instant para 5 quoted herein above, the final decision on the proposal of the administrative ministry for extension of the F.C.S. to other scientific organization would be taken based on the recommendation of this committee.

10. It is worthwhile to mention herein that the Ministry of Textile undertook the exercise to make recommendation to the department of science and technology as per the requirement made in the said para 5 of the O.M. dated 9.11.1998, pursuant to which an expert committee constituted by the Ministry of Science

and Technology, Government of India examined the proposals and made recommendations as contained in its office memorandum dated 30.7.2001 which is contained in Annexure-R-3 of the instant writ petition. The instant O.M. dated 30.7.2001 also makes reference to the Ministry of Textile O.M. no. 25012/54/1999-SILK dated 22.9.2000 while making the recommendations which are as follows:-

* C.S.B. and its research Institutes may be recognized as S&T organizations.

* F.C.S. may be sanctioned to Scientists working in the C.S.B. and its research institutes upto the level of Scientist "F" strictly in conformity with the provisions of DOPT's Notification dated 9.11.1998.

* The scale of pay of Director of the Central Sericulture Research and Training Institutes of the C.S.B. may be revised at par with the Directors of other national laboratories / institutions.

It is further indicated that the Ministry of Textile may consider the above recommendation for implementation of F.C.S. with the approval of Department of Personnel & Training / Minister of Finance.

11. It has been categorically stated on behalf of the petitioner in para 3 of their written statement which is annexed to the writ petition that :-

"It is also pertinent to state that the C.S.B. and its research institutes were recognized as S&T organization by the Department of Science and Technology vide its order No. A-12048/4/2000-Rectt. dated 30.7.2001. It is very clear that the F.C.S. which is meant for scientific organization could be extended to C.S.B. only after the later was declared as S&T organization and after examining, the various other factors required to extend the scheme ".

It is pertinent to state that the C.S.B. and its research institutes are recognized as S&T organization vide order No. A-12048/4/2000-RECTT dated 30.7.2001. However, it was also indicated therein that the F.C.S. could be extended to C.S.B. only after the later was declared as S&T organization and after examining the other factors requires to extend the scheme. The petitioner had denied the request of the applicants to claim F.C.S. w.e.f. 9.11.1998 i.e. the date of the O.M. as per their averments made in para 3 of their written statement. Similarly in para 8 of their present writ petition it has been stated that" it was clarified that the C.S.B. was recognized as a Scientific & Technological organization only on 30.7.2001 but after complying the provisions as contained in annexure, the said scheme was applied to the petitioner board w.e.f. 30.8.2006 after observing the guidelines laid down in Annexure-1".

12. From perusal of the contents of the O.M. dated 9.11.1998, especially pare 5 thereof and the averments of the respondents/ petitioner herein it is clear that on the recommendation of the administrative ministry i.e. Ministry of Textiles of the petitioner, C.S.B., the department of Science and Technology made a recommendation for recognizing the C.S.B. and its institutes as Scientific and

Technological, organization vide its office, memorandum dated 30.7.2001. The petitioner-C.S.B. has also admitted in so many words, quoted herein above that C.S.B. was recognized as a Scientific and Technological Organization on 30.7.2001.

13. However, the bone of contention revolves around issuance of the letter dated 30.8.2006 by the Ministry of Textiles whereby, the approval of Government of India for extension of F.C.S. to the scientists of C.S.B. at various level indicated therein is to be effective from the date of issuance of the said letter dated 30.8.2006. It is evident that the C.S.B. has been recognized to be scientific and technological organization on the proposal of the administrative ministry i.e. Ministry of Textiles w.e.f. 30.7.2001 on the basis of the recommendations of the expert committee of the Ministry of Science and Technology through its Office Memorandum of the same date 30.7.2001. The exercise contemplated in para 5 of the said office memorandum had been undertaken by the administrative ministry i.e. Ministry of Textiles where under it was required to satisfy itself that such institution is a Scientific and Technological institutions and the officers are Scientists holding scientific posts and are involved in scientific and technological activities as per Annexure-I to the said O.M. dated 9.11.1998 while making its recommendation to the Department of Science and Technology. Therefore, the issuance of the letter dated 30.8.2006 is only consequential order. The letter dated 30.8.2006 issued by the Ministry of Textiles cannot be said to over-each the decision already taken by following the prescribed procedures by the same Ministry of Textiles, the administrative ministry of the C.S.B. which led to the recognition of the C.S.B. as a Scientific and Technological Organization vide Office Memorandum dated 30.7.2001 issued by the Department of Science and Technology, Government of India for extending the benefits of F.C.S. to the Scientists working in C.S.B. in conformity with the provision of DOPTs notification O.M. dated 9.11.1998. By indicating in para 2 of the said letter dated 30.8.2006 that the scheme would be effective from the date of issue of the letter, the writ petitioner and the Ministry of Textiles have resorted to fixing an arbitrary and irrational cut up date when admittedly as per the procedures prescribed under the O.M. dated 9.11.1998, the C.S.B. stood recognized as Scientific and Technological organization w.e.f. 30.7.2001 for the purpose of extending the benefits of F.C.S. to the Scientists working in C.S.B. at the defined levels.

14. The petitioner cannot take the plea of administrative difficulty in conducting the assessment procedures for granting the aforesaid in-situ promotions to the deserving scientists and the delay caused in the said process for making the scheme itself effective from the date of its recognition i.e. 30.7.2001 instead of 30.8.2006 as indicated in the letter dated 30.8.2006 of the Ministry of" Textiles. The learned Tribunal being satisfied with the averments of the writ petitioner/ organization that C.S.B. had been duly declared as Scientific and Technological Organization w.e.f. 30.7.2001 proceeded to hold that the applicants cannot be denied the benefits of F.C.S. from the said date. It accordingly, allowed the original application by issuing necessary direction for granting the benefits of

F.C.S. to the applicants w.e.f. 30.7.2001 instead of 30.8.2006 as indicated in the letter dated 30.8.2006 issued by the Ministry of Textiles.

15. The decisions relied upon by the petitioner reported in *Sureshchandra Singh and Others Vs. Fertilizer Corpn. of India Ltd. and Others*, . and also reported in *State of Bihar and Others Vs. Bihar Pensioners Samaj*, relate to the question where the discretion is conferred upon the employer to confer certain benefits like increase in the retirement age to its employees, which is dependent upon a number of factors to be decided within the sole discretion of the employer himself and from a particular date. In the present case it is evident from the discussion made herein above that the C.S.B. and its administrative ministry, i.e. Ministry of Textiles after a proper and thorough exercise made recommendation to the department of Science and Technology for recognition of the C.S.B. as a Scientific and Technological organization as per the procedures prescribed in the decision contained in the office memorandum dated 9.11.1998 issued by the department of Personnel and Training. Government of India for extending the F.C.S. to Scientists of such recognized Scientific and Technological organization. Once the organization was recognized as Scientific and Technological organization on the report of the expert committee of the Ministry of Science and Technology, Government of India and accepted by the writ petitioner as well, the mere administrative delay in conferring the said benefits to certain persons like the applicants in the instant case cannot be made the basis for making scheme itself effective from a date five year later i.e. 30.8.2006 from the date of its recognition i.e. 30.7.2001 without any rational and lawful justification. As such, we do not find any infirmity in the order of the learned Tribunal so as to interfere with the impugned judgment. Accordingly, the writ petition is dismissed.