
(1990) 11 CAL CK 0019
In the Calcutta High Court
Case No : C.O. No. 21 (W) of 1989

F.C.I. Deputationists Association and Others	APPELLANT
Vs	
F.C.I. and Others	RESPONDENT

Date of Decision : 06-11-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1991) 1 CALLT 176 : (1990) LabIC 199 : (1992) 1 LLJ 697 : (1990) 4 SLR 41

Hon'ble Judges : Paritosh Kumar Mukherjee, J

Bench : Single Bench

Advocate : S.K. Roy and Supriya Chattopadhyaya, for the Appellant; Tapas Banerjee and Achintya Kumar Sen, for the Respondent

Final Decision : Partly Allowed

Judgement

Paritosh Kumar Mukherjee, J.—Food Corporation of India Deputationists Association and others moved this writ petition on January 6, 1989, and, inter alia, prayed for a writ in the nature of Mandamus upon the Food Corporation of India (hereinafter referred to as the "F.C.I.") and their officials to absorb the F.C.I. State Government Deputationists in the categories of Sub-Inspectors/ Assistant Store Keepers/ Distributors/ Samplers, who had put in less than 18 years "continuous service" in the post of Assistant Grade II carrying pay scale of Rs. 380-640/- and not in the post of Assistant Grade III carrying pay scale of Rs. 290-485/-and for other reliefs.

2. This writ petition has come up for final hearing, after completion of affidavits, before me on May 16, 1990, and it was heard on subsequent days.

3. Mr. S.K. Roy, learned Advocate appearing in support of the writ petition, has placed the following facts for consideration of this Court: -

On or about November 26, 1966, there was an agreement entered into between the State of West Bengal through its Secretary of the Food and Supplies

Department and the F.C.I, whereby for facilitating smooth transfer of functions, certain arrangements were entered into between the State of West Bengal and the F.C.I., which is set out hereinbelow:-

"9(b) Till such time as the employees of the State Government taken over by the Corporation are absorbed by the Corporation they will be on deputation. Such officers and staff on deputation shall continue to be governed by the same pay and scales of pay as under the State Government. The other terms and conditions of their deputation will be settled by mutual consultation between the Corporation and the State Government which in any case shall not be less favourable than what is admissible under the West Bengal Government rules. The Corporation shall bear leave salary and pensionary contribution for the staff that would be on deputation to it.

(c) In respect of officers and staff that will be eventually absorbed by the Corporation in its service, the Corporation shall make regulation under the Food Corporation Act in such manner as to conform to, as far as possible, the conditions of service that governed such officers and staff at present under the Government. The Corporation shall also relax if necessary its rules of recruitment in order to enable it to absorb the officers and staff that will be eventually absorbed in its service."

4. According to the petitioners, the last pay revision was made by the State of West Bengal in 1981 in respect of Sub-Inspectors, Distributors, Assistant Store Keepers and Assistant Samplers, all of whom belonged to Subordinate Food and Supply Service Grade III, and they were given pay scale of Rs. 300-685. As per rule 9 of the West Bengal Services (Revision of Pay and Allowance) Rules, 1981, (hereinafter referred to as "ROPA Rules, 1981" a Government employee who has not got a single promotion or appointment in the higher grade in the same service or post even after completion of 18 years of continuous and satisfactory service, shall be placed in the immediate next higher scale of pay, his designation, however, remaining unchanged.

5. Thus, according to the present writ petitioners, who are all deputationists, the employees who had completed 18 years of continuous and satisfactory service, were entitled to pay scale of Rs. 340-750/-.

6. The last scale of pay of the employees in the F.C.I, being revised with effect from January 1, 1973, the following categories of staff were and are enjoying the scales of pay as follows: -

Assistant Grade III Rs. 290-485/- Assistant Grade II Rs. 380-640/- Production Supervisor, Asst. Supervisor etc. Rs. 425 -700/-

7. In terms of clause 9(c), cited above, it will appear that option having been exercised by the petitioners with effect from July 1, 1984, the petitioners are entitled to the pay scale of Assistant Grade II instead of that of Assistant Grade III, which carries a lesser pay scale of Rs.290-485/-.

8. Mr. Roy has placed the impugned decision from the communication issued by Shri M.C. Tewari, for Manager (Personnel P. & IR), Food Corporation of India, which is addressed to the Zonal Manager (East), F.C.I, dated September 23, 1988, which is Annexure I at page 31 of the instant writ petition.

From clause (6) of the said decision it appears that benefit of ad hoc promotion to 38 West Bengal State Government employees to the Food Corporation of India has been given to the following effect:-

"Board have not approved the proposal to allow the benefit of ad hoc promotion to the absorbed deputationists".

9. From Clause (7) of the said decision regarding absorption of deputationists holding the post of Sub-Inspector in higher post, i.e.. Assistant Grade II post, it has been decided by the Board that "the Sub-Inspectors can only be absorbed in F.C.I, from July 1, 1984 in the corresponding pay scales with reference to the pay scales as they were holding on June 30, 1984 in the West Bengal State and they cannot be absorbed as Assistant Grade II in the F.C.I, as on July 1, 1984." which has been challenged in the instant writ petition.

10. Appearing for the writ petitioners, Mr. Roy submitted that the respondent F.C.I, and each one of them having allowed the writ petitioners to discharge their duties from December, 1966 to June 30, 1984, continuously for 18 years, are not entitled to demote the writ petitioners by conferring absorption, as Assistant Grade III, as it has been done in the facts and circumstances of the present case.

11. In this connection, he has submitted that the employees having completed 18 years of continuous and satisfactory service, were entitled to the scale of pay of Rs. 340-750/-, as indicated hereinabove, and by the impugned action the respondent F.C.I, has acted arbitrarily and without any valid reasons and, as such, the prayer made in the instant writ petition should be allowed, as indicated above.

12. Dr. Tapas Banerjee, learned Advocate appearing with Mr. Achintya Kumar Sen for the F.C.I., has submitted the following facts, for consideration of this Court.

13. He has admitted that in December 1966 pursuant to the agreement between the F.C.I. and the State Government a large number of West Bengal Government employees were sent on deputation to the F.C.I.

14. He has also admitted that under the said agreement salary was to be paid in accordance with the pay scale prevalent at the time as that might be given from time to time until formal absorption but allowances to be paid according to the F.C.I. Rules.

15. Dr. Banerjee further added that with effect from July 1, 1984, the absorption took place in respect of "some of the deputationists" but not all, and before absorption a screening committee was constituted.

16. In this connection, he has placed strong reliance on Annexure "C" to the

affidavit in opposition from page 38 of the said affidavit, wherefrom it appears that by Circular No.21 of 1984 dated March 19, the following decision has been taken by the F.C.I.,:-

"2. The absorption of the employees will be subject to the following conditions:-

(i) The State Government employees who opt for permanent absorption in the service of the Corporation will be treated as direct recruits and will be subject to the terms and conditions as prescribed in F.C.I. (Staff) Regulations, 1971.

(ii) They will count their seniority in the post/ grade in which they are absorbed from the date of absorption in the Corporation.

(iii) Details indicating the post and the scale of pay held by the State Government deputationists as also the corresponding post in F.C.I, and the scale of pay attached to the post in F.C.I, is indicated in Annexure II. The employees who opt for absorption in the Corporation will be initially appointed to the corresponding post indicated therein.

(iv) West Bengal State Government employees who have been on deputation in F.C.I, for a period of atleast five years as on April 30, 1984, will only be eligible for absorption in the service of the Corporation."

17. After placing the aforesaid circular, Dr. Banerjee submitted that the writ petitioners having exercised option, with their eyes open, and having been absorbed as Assistant Grade III with effect from 1984, they are not entitled to challenge that they have not been absorbed in proper category or had not been given proper scale of pay.

18. In the second place, he submitted that the writ petitioners, being all Lower Division Clerks in the West Bengal Government until they were absorbed and they having been sent on deputation with effect from December, 1966, it is nobody's case that they were absorbed with effect from December 1966, but they were actually absorbed with effect from July, 1984, and, as such, they cannot claim absorption in Assistant Grade II as a matter of right.

19. Lastly, he submitted that the "appointment" does not make any difference as the petitioners were never appointed as Assistant Grade II and between December, 1966, and June, 1984, they were given two or three increments in terms of "ROPA Rules, 1981".

20. Accordingly, this Court has to decide as to whether by issuing impugned Circular dated September 23, 1988, containing the offending clause (7) of the said Circular in respect of absorption of the deputationists holding the post of Sub-Inspector in higher post as Assistant Grade II, the respondent F.C.I, had acted arbitrarily and not adhered to the benefit of the 18 years' continuous satisfactory service, as they were entitled under the "ROPA Rules, 1981".

21. Secondly, this Court has to decide as to whether the respondent F.C.I, having decided to absorb the writ petitioners by the impugned decision dated September

23, 1988, with retrospective effect, from July 1, 1984, is entitled to demote and/or revert the writ petitioners and confer a lesser pay scale, that is, that of Assistant Grade III and whether the said action of the respondent F.C.I, can be justified by any sense of equity or fair play.

22. In this context, this Court may conveniently refer to the "letter of protest" issued on behalf of the petitioners, through the General Secretary of the Association, dated October 28, 1987, whereby the petitioners had raised protest before the Senior Regional Manager, West Bengal Region, Food Corporation of India, which is Annexure "C" at page 28 of the writ petition, to the following effect: -

"Protest against demotion of Sub-Inspector! Asst. Grade II in Asst. Grade III at the time of absorption,

You are aware that through submission of several memorandum from time to time along with supporting documents on the part of the Deputationists Association it has been pointed out that deputed Sub-Inspectors are entitled to be absorbed at Asst. Grade II and any decision contrary to this is utter violation of all regulations or principle.

It is not unknown to you that on December 11, 1966 and March 31, 1967 prior to joining on deputation to F.C.I, the West Bengal Food and Supplies Department issued a release order directing the staff to join their (F.C.I.) respective posts to which they are appointed in the Food Corporation of India, The order reads as follows:-

"In terms of Govt. Order No. 10253 F.S. dated December 3, 1966 all staff of this office whose services have been placed at the disposal of the Food Corporation of India on deputation as per list enclosed with the said Government Order are released in the afternoon of December 11, 1966 with direction to join their respective posts to which they are appointed in the Food Corporation of India in the afternoon of December 12, 1966."

But you know that out of three thousand deputationists only seventeen hundred have till now been absorbed, rest have been hanging on the balance due to said controversy and thereupon total absorption is being delayed. In order to avoid further delay, the Association has decided to accept the proposed absorption, for the present under protest and without prejudice to the right, contention and claim of the said deputationists that the said deputationists are entitled to be absorbed as Asst. Grade II."

23. aS such, it appears before this Court that the writ petitioners had not accepted the absorption at any point of time and as per submission of Dr. Banerjee the petitioners having accepted the absorption with their eyes open, the same is not correct and not borne out by the records.

24. From the pleadings adduced by the parties, it appears before this Court that because of continuous satisfactory service for 18 years on "deputation", the

petitioners having discharged the function of Asst. Grade II, at the time of absorption the petitioners are not entitled to be treated in a discriminatory fashion by absorbing them in Asst. Grade HI, as it has been done in the facts of the present case, and, as such, in my view, the writ petition is entitled to succeed and the impugned decision dated September 23, 1988, in so far as item no.7 is concerned deciding to absorb the writ petitioners in Asst. Grade III with effect from July 1, 1984, is set aside.

25. The respondent F.C.I, is directed to confer the post of Asst. Grade II to the writ petitioners carrying the pay scale of Rs. 380-640/-and not discriminate the writ petitioners by granting them the pay scale of Asst. Grade III carrying a lesser pay scale of Rs. 290-485/- as in the facts and circumstances of the present case. Such conferment of pay scale should be done as quickly as possible, preferably within a period of two months from communication of this order.

26. The petitioners will be entitled to further benefits of continuous service after absorption in Asst. Grade II in accordance with law, under rule 9 of the "ROPA Rules, 1981".

27. The writ petition is allowed in part, as above.

All interim orders including the order of status quo granted by this Court on January 6, 1989, are vacated.

There will be no order for costs.

28. Prayer for stay of operation of this order is considered and as this Court has granted two months' time to implement the pay scale, the prayer for stay is refused in such circumstances.

Let xerox copies of this order be given to the learned Advocates of both parties on their observing all necessary formalities for communication and for compliance.