
(1993) 01 AP CK 0011

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2114 of 1989

S. Hanumantha Rao and Others

APPELLANT

Vs

F.C.I. and Others

RESPONDENT

Date of Decision : 21-01-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Food Corporations Act, 1964 — Section 12A(3), 12A(4)

Citation : (1993) 2 ALT 512 : (1993) 1 APLJ 436

Hon'ble Judges : Eswara Prasad, J

Bench : Single Bench

Advocate : G. Bikshapathy, for the Appellant; K.V. Ramana Rao, for the Respondent

Judgement

Eswara Prasad, J.—The petitioners are the employees of the respondent-Food Corporation of India. Earlier, they worked in Food Department of the Central Government. By virtue of the provisions of Section 12-A of the Food Corporations Act, 1964, the services of the petitioners stood transferred to the respondent-Corporation.

2. Options were called for from the petitioner in the year 1973, requiring them to opt either to the General Provident Fund (in short G.P.F.) scheme applicable to the Central Government Employees or to the Contributory Provident Fund (in short C.P.F) scheme of the respondent-Corporation. The petitioners submitted their options retaining the G.P.F. scheme of the Central Government and the respondent-Corporation continued the petitioner to subscribe for G.P.F. scheme. Subsequently, the Food Corporations Act was amended with effect from 31-12-1976, as a result of which, fresh options were required from the employees of the Corporation including the petitioners to state whether they would retain the leave, Provident Fund, retirement and other terminal benefits as admissible to the employees of the Central Government or leave, Provident Fund and other terminal benefits as admissible to the employees of the Corporation. In

response to the said requirement, the petitioners submitted their options opting for the Provident Fund scheme existing with the respondent-Corporation i.e., C.P.F.

3. By Circular No. 176 of 1979 dated 18-12-1979 the respondent-Corporation called for options once again from the Government servants who were in service on 31st March, 1979 to opt either to the G.P.F. scheme or to the C.P.F. scheme. As it will be more beneficial to the employees in the matter of pension by virtue of liberalised pension rules, the other employees of the Food Department who are working in other establishments of the respondent-Corporation have opted for G.P.F. Scheme. According to the petitioners, the said circular was not brought to their notice and they could not give their options, once again opting for General Provident Fund scheme. They submitted that the circular was not circulated in their office and they were not aware of the same. They further submitted that the other employees of the Corporation who had knowledge of the said circular gave their options and got the benefits. The petitioners questioned the proceedings of the 4th respondent in Memo, dated 4-8-1988 as illegal and arbitrary, by which the request of the petitioners for their continuance in General Provident Fund Scheme was turned out. The petitioners further contended that the options exercised by them in the year 1977 were never acted upon and they continued with General Provident Fund scheme only, and that they are entitled to have their accounts continued in the General Provident Fund scheme and that no action should be taken for allotment of Contributory Provident Fund accounts to the petitioners.

4. In the counter filed by the respondent-Corporation, it is stated that the petitioners are no longer the employees of the Central Government and that they became the employees of the Corporation after 1969 and that they are not entitled to the benefits of the Circular dated 9-8-79 of the Ministry of Home Affairs and the option given in the year 1977 is final and the petitioners cannot be permitted to go back on the same. The respondents admitted that the contributions of the petitioners are being debited to the General Provident Fund accounts, though the petitioners opted for Contributory Provident Fund accounts in the year 1973. But by virtue of the options exercised in the year 1977, the accounts have to be converted into Contributory Provident Fund accounts and that the petitioners cannot be permitted to continue under General Provident Fund accounts.

5. In order to appreciate the rival contentions of the parties, it is necessary to notice the provisions of the Act. By virtue of Section 12-A of the Act, the petitioners whose services were transferred to the Corporation, ceased to be the employees of the Central Government and became the employees of the Corporation. Sub-section (3) of Section 12-A of the Act reads as follows:

(3) 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 Sub-sections (4), (4A), (4B), (4C), (5) and (6)), be governed by the regulations made by the Corporation under this 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.

6. Sub-section (4) of Section 12-A of the Act is in the following terms:

(4) 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 if any 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 orders 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 regulations made by the Corporation under this Act, and such option once exercised shall be final:

7. From a reading of Sub-section (3), it is clear that the petitioners are no longer the employees of the Central Government and have become the employees of the Corporation. The Circular No. 176 of 1979 dated 18-12-79 is applicable to Government employees. Clause-6 of the said circular makes it clear that the circular is applicable to the Government servants employed under the Administrative control of the authorities of the Central Government including those on leave or on foreign service. The circular is not applicable to the employees of the Corporation and no benefit can be claimed by the petitioners under the said circular.

8. Clause (b) of Sub-section (4) of Section 12-A of the Act, extracted above, mandates that the options once exercised shall be final. The contention of Sri Bikshapathy is that though options were exercised by the petitioners, they were not acted upon and were not given effect should be taken as non est. The language of Clause (b) clearly lays down that the option once exercised shall be final and not "options acted upon" shall be final as contended by the learned counsel for the petitioners. The said provision leaves no doubt that the options once exercised shall be final whether they are acted upon or not. It being a statutory mandate, it cannot be set at naught merely because the Corporation did not act upon the options from the year 1977.

9. It was then contended by Sri Bikshapathy that the petitioners would be put to great hardship if they are directed to deposit the arrears of their contributions and if their accounts are transferred to Contributory Provident Fund accounts.

Under the General Provident Scheme, 6.33% from the salary of the petitioners was deducted, whereas 8.33% of salary of the petitioners has to be deducted as the employees' contribution to the Contributory Provident Fund account with a matching contribution of 8.33% by the employer and that it works great hardship to the petitioners if they are required to remit the arrears of contribution at the rate of 2% of salary from the year 1977 onwards. It has to be observed in no uncertain terms that the Corporation has been very negligent in dealing with the matter. Though the petitioners have opted in the year 1977, no steps were taken by the Corporation to transfer the accounts of the petitioners from General Provident Fund scheme to Contributory Provident Fund scheme from the year 1969 onwards and from year to year the contributions were being remitted to the General Provident Fund Accounts. The Corporation cannot punish the petitioners for no fault of theirs and require them to pay the arrears of contribution at the rate of 2% from the year 1969 onwards. It is necessary for the Corporation to waive the condition of payment of contributions at 8.33% and at the same time make the Corporation to contribute 8.33% towards the employer's liability. It has to be further observed that a big organisation such as Food Corporation of India should have been more careful and more considerate to its employees and should not act in such a negligent manner.

10. For all the reasons set out above, it has to be held that the options exercised by the petitioners are final and cannot be revoked and held to be non-existent as they were not acted upon. It is brought to the notice of the Court that the 1st petitioner retired from service in the year 1989 and he was not paid the Provident Fund nor the pension so far. The respondents are, therefore, directed to transfer the accounts of the petitioners from General Provident Fund scheme to Contributory Provident Fund scheme expeditiously, within four months from the date of receipt of this order, without insisting on 8.33% of contribution from the petitioners from the year 1969 to the date of transfer. The petitioners will however be required to contribute 8.33% from the date of transfer to the Contributory Provident Fund Accounts. The payments due to the 1st petitioner shall be made with interest from 30-6-1989 when he retired from service, within the aforesaid period of 4 months from the date of receipt of this order.

11. With the above directions, the Wirt Petition is disposed of. No costs.