(2013) 09 DEL CK 0045

In the Delhi High Court

Case No : Writ Petition (C) No. 5110 of 1998

Shri K.M. Vaghela APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Food Corporations Act, 1964 — Section 5

Citation : (2013) 09 DEL CK 0045

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Sanjeev Narula, for the Appellant; Geeta Sharma and Ms. Saadhvi Shahi, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—By this writ petition, the petitioner, who was previously an employee of the Food Corporation of India (FCI)/respondent No. 2, and who thereafter joined the Central Government, Ministry of Food and Civil Supplies/ respondent no. 1, seeks the relief of joining of his services rendered with FCI to the service period with the respondent No. 1/Union of India through the Ministry of Food and Civil Supplies for the purpose of grant of pension. That there is a circular dated 17.10.1984 of the respondent No. 1 with respect to joining of services of an employee of Central Government with a central autonomous organization and vice versa is not disputed. In fact, this circular is filed as Annexure R-2 to the counter-affidavit of respondent No. 1. In terms of circular dated 17.10.1984 benefit of joinder of services is granted when the employee on joining the central government exercises the option of joining his two services and grant of pension by the central government, by surrendering the CPF benefits which are with the autonomous organization, and which CPF amount with interest the autonomous organization remits directly to the new employer/ Central Government/respondent No. 1.

2. In the present case there is no issue raised by the respondent No. 1 that the

petitioner had exercised the requisite option and that the respondent No. 2/FCI transferred the CPF benefits of the petitioner to the Central Government, Ministry of Food and Civil Supplies in terms of an order dated 30.3.1985 which is filed as Annexure P-11 to the writ petition. Therefore the petitioner would be entitled to the benefit of the circular dated 17.10.1984 for joinder of his services with the respondent No. 2/FCI to the services rendered with the respondent No. 1/Union of India for the purpose of pensionary benefits.

3. The only defence which is urged in the counter-affidavit of the respondent No. 1 is that as per the definition of autonomous organization given in the circular FCI is not a central autonomous organization because more than 50% of the expenditure of FCI is not met through cess or central government grants. I find this a very questionable defence because except this self-serving averment, nothing else has been filed or stated. It is a well known fact that there is no private investment in the FCI as it is fully funded by the Central Government and therefore I do not understand how this defence is taken up for the sake of defence. In fact, if this defence was genuine, the respondent No. 1 would have filed the balance sheets and income and expenditure statement of respondent No. 2 to show that FCI/respondent no. 2 is not funded by the Central Government. I may note that Section 5 of the Food Corporations Act, 1964 provides that it is the Central Government which from time to time provides capital of FCI. Sub-section(3) of Section 5 states that such capital is provided by the Central Government after due appropriation made by Parliament by law for the purpose and subject to such terms and conditions as may be determined by the Government. I need not elaborate any further on this aspect because surely FCI is not a private corporation, and in fact, FCI was formed because the entire department of the Government pertaining to functions of the food department were specifically transferred to the respondent No. 2-corporation for independent functioning.

4. In view of the above, it is clear that there is an applicable circular of the respondent No. 1 dated 17.10.1984, as per this applicable circular services of an employee rendered with the respondent No. 2 can be added to the services rendered by the employee with the respondent No. 1, the requirement of CPF benefits being transferred by the respondent No. 2 to the respondent No. 1 stands complied with is an undisputed fact, and also the fact that respondent No. 2 is undoubtedly a Government of India Undertaking covered under the circular dated 17.10.1984, therefore, the petitioner is quite clearly entitled to join his services rendered with the respondent No. 2 with his services rendered with the respondent No. 1 for calculation of pensionary benefits. Writ petition is accordingly allowed and respondent No. 1 is directed to give all terminal benefits including the pensionary benefits to the petitioner taking the total service period for grant of pension as the total period of services rendered by the petitioner with the respondent No. 2 and the respondent No. 1. Necessary payments pertaining to pensionary benefits be made to the petitioner by the respondent No. 1 within two months from today alongwith interest @ 6% per annum on the

amount which would be due to the petitioner. I may note that pension amount will now have to be re-calculated because the services of the petitioner with the respondent No. 2 will have to be added to the total services for calculating the pension. Respondent No. 1 should make the necessary calculations and after giving credit to the petitioner of amounts already received by him, it should pay the balance due within two months from today alongwith interest as stated above. Parties are left to bear their own costs.