(2004) 06 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1611 of 1995

Siddh Nath Bhardwaj APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 30-06-2004

Acts Referred:
Food Corporations Act, 1964 — Section 12A

Citation : (2004) 4 RLW 2764

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : Suresh Kumar Sharma, for the Appellant; Virendra Lodha, for the Respondent

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—The prayer of the petitioner in the instant writ petition is as under:

"(i) to direct respondents to pay the post retirement benefits as admissible to the employees of Union of India such as pension, Group Insurance and other post retirement benefits along with interest to the petitioner;

(ii) to treat the petitioner in service as Assistant Manager (Depot) Food Corporation of India Dholpur till March 31,1985 and to pay him duty salary for month of March, 1985 along with interest.

2. Contextual facts depict that the petitioner came to be appointed as Enquiry Inspector in the department of Food and Civil Supplies, U.P. Vide order dated July 1, 1947. The petitioner was declared surplus and retrenched due to the General Retrenchment Scheme on July 2, 1953. On the basis of six years experience the benefit was provided to retrenched employees and the petitioner was selected for the appointment in the cadre of Verification Inspector in the Ministry of Food and Agriculture, Government of India, New Delhi vide order dated August 27, 1958. After coming into force the Food Corporation Act, 1964 (for short ''Act''), the

petitioner was transferred and posted on deputation as Senior Godown Keeper/ Asstt. Grade-I in Food Corporation India (for short ''FCI'') on October 20,1966. The petitioner was elevated in the cadre of Quality Inspector Grade-I vide order dated March 16,1968. In July, 1982 the petitioner was transferred and posted as Assistant Manager (Depot) Food Corporation India in District Dholpur, Rajasthan, vide order dated July 18, 1982. The petitioner worked on this post till February 28, 1985. The date of birth of the petitioner is March 1, 1927 and he ought to have retired on March 31, 1985, but he stood retired on February 28, 1985. The petitioner averred in the writ petition that as per Section 12A of the Act the Officers and Staff are required to exercise option. The first option is required to be given before the order of transfer is made to indicate as to whether the employee willing to be transferred to the Corporation or not and the second option has to be exercised within six months from the date of transfer as to whether he would like to be governed by the retirement benefits of Central Government or of the Corporation. The petitioner averred that Union of India did not seek option of the petitioner for his transfer/absorption in the Food Corporation India, which was obligatory in view of Section 12A of the Act. Therefore the petitioner could not exercise his option or his intention of not becoming an employee of the Corporation within the stipulated period till his retirement. Therefore the petition remained and retired as employee of the Centra) Government.

3. The petitioner further averred in the writ petition, that Dy. Manager (Admn.) for Zonal Manager (North), New Delhi issued an order dated July 1, 1974 directing all the employees including the petitioner whose services have been placed at the disposal of FCI to exercise the option in writing within six months from the date of transfer as to whether (a) they would be governed by the scales of pay applicable to the post held under the Government immediately before the date of approval or by the scale of pay applicable to the post under the Corporation to which they are transferred, (b) by the leave, Provident Fund, Retirement and other terminal benefits applicable to the 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 to the Corporation under the regulations made by the Corporation under this Act and such option once exercise shall be final. According to the petitioner the order dated July 1, 1974 was not applicable to the petitioner since the petitioner had been promoted and working in the cadre of Quality Inspector Grade-1 and was getting the pay scale of the Corporation. Sub clause (B) of the Government order was not applicable to the petitioner as the petitioner had not been transferred and absorbed in the Corporation by the Govt. of India. Although the order dated July 1, 1974 was superfluous in the matter of petitioner, the petitioner exercised the option in favour of the scales of pay applicable to the post under the Corporation to which he was promoted and getting the pay scale and further the provident fund and other terminal benefits admissible to the employees of the Central Government

in accordance with the rules and orders of the Central Government as amended from time to time. The petitioner exercised another option on September 24, 1980 in favour of the leave encashment, General Provident Fund, Pension and other post retirement benefits admissible to the Central Government employees. The petitioner remained as subscriber of General Provident Fund throughout the service and paid the required installments vide GPF Account No. FCI/N.Z/2214 while the employees of Govt. of India who exercised their first option in favour of transfer in the Corporation and second option in favour of post retirement benefits of the Corporation were allowed and made members of Contributory Funds. The petitioner was paid General provident fund after his retirement, while Central Govt. employees absorbed in FCI were paid contributory provident fund, gratuity after their retirement. The former employees of the Govt. of India who were absorbed in FCI after their transfer and exercise their option in favour of post retirement benefits of the Corporation were permitted to deposit subscription towards contributory provident fund in the Corporation and were paid Contributory Provident fund and other post retirement benefits of the Corporation after their retirement. But the petitioner was paid General Provident Fund as admissible to the employees of the Govt. of India after his retirement. According to the petitioner the act of respondents in treating the petitioner differently is arbitrary and violative of Articles 14 and 16 of the Constitution of India.

4. The petitioner further averred in the writ petition that he is entitled to get all the retirement benefits of the Central Govt. employees along with the pension as he has rendered about 33 years qualifying service w.e.f. April 1, 1985 and one month duty salary for the month of March, 1985. The petitioner has also averred that he has neither been treated the employee of the Central Government, as he has not been paid the terminal benefits admissible to the employees of Central Government such as pension etc. nor he has been treated the employee of FCI as he has not been paid the contributory provident fund, gratuity and other post retirement benefits admissible to the employees of the Corporation under the rules. The petitioner submitted the pension papers through proper channel on February 8, 1985. Under the orders of the Government dated February 10, 1977 and August 29, 1984 a permanent Govt. servant born on pensionable appointment on absorption under such autonomous body will be eligible for pro-rata retirement benefits in accordance with the provisions. The directions were issued by the Ministry of Finance on April 8, 1974 as amended from time to time. All the Central Govt. employees who were absorbed in the FC1 in accordance with the rules and after exercising their option in favour of the transfer in FC1 and terminal benefits admissible to the employees of Corporation were and are given the pro-rata retirement benefits and death cum retirement gratuity based on the length of qualifying service under the Government till the date of absorption. The petitioner has been treated differently. The petitioner claims pro-rata pension and death cum retirement benefits, gratuity, based on the qualifying service under the Government. The petitioner has submitted detailed

representations since February 8, 1985 till December 13, 1995.

5. The respondents in their return to writ petition raised preliminary objection as to the maintainability of writ petition on the ground that the writ petition has been filed after a long time and it deserves to be dismissed without entering into the merits of the case. It has been pleaded that only those Food Transferees were required to exercise their option in 1974 whose services were transferred upto that time. Since the services of petitioner were not transferred upto that time, he was not entitled to exercise any option in 1974 or subsequent to it. Even if he had exercised any option, he could not be entitled for any benefit of option because his case did not fall within the ambit of the Circular issued by FC1. Since the services of petitioner were transferred on August 11, 1978 he could only exercise the option only upto February 10, 1979, which was the cut off date. In the instant case the petitioner exercised the option on February 3, 1979, thereby he claimed the FCI terminal benefits. Having failed to exercise the option within the stipulated period the relief claimed by the petitioner cannot be granted to him. Since the entire amount has been accepted by the petitioner without any demur, he is estopped from filing the writ petition after ten years. Death cum Retirement benefits along with the interest has already been paid to the petitioner. The writ petition is wholly misconceived.

6. I have given my anxious consideration to the rival submissions any carefully scanned the material on record.

7. It is well settled that pension is a right and the payment of pension does not depend upon the discretion of the Employer. Even if option in regard to pension is not exercised by the employee, he could not be deprived of the pension which otherwise would have been payable to him. In Dhalu Ram v. RSEB Jaipur (1), the Division Bench of this Court indicated as under:-

"......Even if it is assumed that at same point of time the petitioners should be deemed to have opted for CPF scheme of the Board on account of their services being placed at the disposal of the Board the option was not voluntary made and as such should not be allowed to defeat the claim of the petitioners, We are, therefore, of the clear view that the present petitioners could not have been deprived of their pensionary rights by thrusting upon them an option which was likely to take away their pensionary rights."

8. In so far as argument in regard to delay in filing the writ petition is concerned, I am of the view that the writ petition involving violation of Article 14 and 16 of the Constitution can not be thrown out on the ground of delay. Similar view has been expressed by this Court in RCPFM Association v. State of Rajasthan (2). The Division Bench of this Court in RCPFM Association v. State of Rajasthan (3), observed that merely because the aggrieved members of the Association had not opted pension at a particular time in view of the then prevailing circumstances, they cannot be estopped from claiming the right to opt for pension subsequently.

9. The thrust of Article 14 of the Constitution is that the citizen is entitled to

equality before law and equal protection of laws. Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation. Legislative and executive action may be sustained if it satisfies the twin tests of reasonable classification and the rational principle co-related to the object sought to be achieved. In Ramana Daya Ram Shetty v. International Airport Authority (4), their Lordships of the Supreme Court propounded that a discriminatory action of the Government is liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

10. In D.S. Nakara v. Union of India (5), Hon''ble Supreme Court held that criterion of date of enforcement of the revised scheme entitling benefits of the revision to those retiring after specified date while depriving the benefits to those retiring prior to that date was violative of Article 14. In the instant case the petitioner had attained the age of superannuation on March 31, 1985 and he ought to have been given post retirement benefits as per rules of Union of India. The responsents have illegally the date of superannuation of petitioner as February 28,1985. The date of birth of petitioner as March 1, 1927 has not been controverted by the respondents, therefore the date of superannuation of petitioner comes to March 31, 1985 and not February 28, 1985. As per provisions contained in Section 12A of the Act, it was incumbent upon the Union of India to have asked for the exercise of option by the petitioner for his transfer/absorption in the FCI. The petitioner was fully entitled to the benefits as admissible to employees of Central Government if he has not exercised the option, as he worked in the office of Union of India since August 27, 1958 and he was employee of the Union of India. 1 find no merit in the submission of respondents that the circular date July 1, 1974 was not applicable to the petitioner. A look at the said circular goes to show that the employees whose services were at the disposal of FC1 were required to exercise their option. It is totally incorrect on the part of respondents to say that the petitioner would be deemed to have been transferred on August 11, 1978. It also appears from the record that the petitioner accepted retirement benefits under protest without prejudice to the right of claim of the petitioner. 1 find that the petitioner exercised the option on September 24, 1980 claiming leave encashment, general provident fund, pension and other retirement benefits as admissible to Central Govt. Employees as per provisions of Section 12A of the Act.

11. For these reasons, I allow the writ petition and direct the respondents to pay to the petitioner post retirement benefits as admissible to the employees of Central Government such as pension, Group Insurance and other post retirement benefits w.e.f. April 1, 1985. The respondents are also directed to treat the petitioner in service as Assistant Manager (Depot) Food Corporation India, Dholpur in March, 1985 and pay him the salary for the month of March, 1985. The payment already made to the petitioner towards retiral benefits, if any, shall be adjusted towards the pension. The respondents shall ensure compliance of this order within sixty days from the date of receipt of this order. In the facts and

circumstances of the case, there shall be no order as to costs.