

REPORTABLE

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5079 OF 2015
(Arising out of S.L.P. (Civil) No. 36226/2011)

FOOD CORPORATION OF INDIA

....Appellant

Versus

SANKAR GHOSH & ORS.

..Respondents

J U D G M E N T

R. BANUMATHI, J.

Leave granted.

2. This appeal has been filed by the appellant-Food Corporation of India challenging the judgment and order dated 16.09.2011 of the High Court of Calcutta in F.M.A. No.1172 of 2010, in and by which, direction has been given to the appellant-Corporation to consider the claim of respondent Nos.1 to 12 for regularization of their services by treating them as casual employees appointed in an irregular manner and

granting liberty to the appellant-Corporation to absorb the said respondents in any available vacant posts.

3. Brief facts of the case are that the Food Corporation of India (FCI) awarded contract to the Food Handling Co-operative Society in the year 1982 for execution of various operational works in its depots at C.S.D. Dubguri and Siliguri. The Food Handling Co-operative Society executed the works for two years from 10.11.1982 to 09.11.1984 and then continued to work up to 30.04.1995. The respondents took part in such operational works as '*Analyser*', '*Picker*' and '*Dusting Operators*' from 01.01.1983. There was a dispute with regard to mode of engagement of respondents in the aforesaid posts. According to the FCI, the respondents worked under the above contractor. However, respondents claimed that they were engaged directly by FCI as casual workers. The respondents raised an industrial dispute and the same was referred to Central Government Industrial Tribunal, Calcutta by the Government of India, Ministry of Labour on 15.09.1994. The Central Government Industrial Tribunal at Calcutta in Reference No.31/1994 vide its award dated

06.10.1997 directed FCI to regularize the respondents in the post of *Dusting Operators* with effect from 09.01.1983 on the basis of doctrine of 'equal pay for equal work'. Aggrieved by the same, the appellant filed writ petition being Writ Petition No.16519(W)/98 challenging the said award dated 06.10.1997 and the same was dismissed by the single Judge of the High Court of Calcutta vide Order dated 20.11.1998. Being aggrieved, the appellant-FCI preferred appeal being M.A.T. No.4130/1998. By an interim order dated 22.03.1999, the Division Bench of the High Court directed the appellant-Corporation to engage the respondents subject to the result of the appeal in M.A.T. No.4130/1998. On 23.04.2004, the appeal was allowed and the impugned award dated 6.10.1997 was set aside. Consequent thereupon, the services of the respondents were disengaged by FCI on and from 18.05.2004.

4. Contention of the appellant-Corporation is that the respondents are merely contractual labourers and were not engaged in accordance with any of the provisions of the FCI Recruitment Rules 1971 and for the aforesaid work, contract

was given to the Labour Co-operative Society of which respondents were members. Contention of the appellant-Corporation is that in compliance with the interim order of the High Court dated 22.03.1999, appellant-Corporation had given appointment letters to the respondents which were subject to the final order of the High Court in the appeal and by final order dated 23.04.2004, the High Court allowed the appeal and quashed the award of the tribunal and consequently the respondents were disengaged with effect from 18.05.2004. Further, contention of the appellant-Corporation is that the post of *Dusting Operator* is not a direct recruitment post and is a promotional post to be filled up in 100% by way of promotion and therefore there is no scope for their regularization merely because of the fact that the respondents had served for considerable time and the Division Bench erred in directing the appellant-Corporation to consider the claim of the respondents.

5. Per contra, the respondents-workmen contentions are that they had been appointed by the District Manager of FCI on 09.01.1983 on Class III and IV posts of *Dusting*

Operator, Picker and Analyser and were working under the supervision and control of Food Corporation of India by discharging their duties as a regular employees of the Corporation since their appointment in the year 1983. The respondents have contended that they are duly qualified and served the Corporation for more than ten years without the intervention of the Court or the Tribunal and hence are entitled to be regularized.

6. Upon consideration of the rival contentions, vide Order dated 03.11.2014, this Court directed the parties to furnish certain details. The relevant extract of the said Order reads thus:-

“ ...the petitioner Corporation’s case before the courts below was that the respondent-workmen were members of the Food Handling Co-operative Society. The case of the respondents was that they were working in the godown of the FCI in different capacities such as Dusting Operators, Pickers, Assistant Analysers and Analysers. The workmen also appear to have produced material in the form of payment sheet for the period 01.04.1991 to 16.04.1991 before the Industrial Tribunal to demonstrate that they were being paid their wages directly by the Assistant Manager (D) FCI. Before us also the Corporation insists that the respondents had no privity of contract with the Corporation and that they were at all material times engaged by and working for the cooperative society mentioned above. The Industrial Tribunal and the High Court have no doubt appraised the evidence and recorded a finding that the respondents were working as casual labourers with the appellant-Corporation but the material available on record prima facie appears to have deficient to support any such finding.

Mr. Piyush K. Roy, learned counsel for the respondents fairly conceded that the only evidence which appears to have been relied upon before the Labour Court to establish a privity of contract between the respondents and the Corporation is the alleged payment sheet for the period 01.04.1991 to 16.04.1991. In the circumstances it may be difficult to sustain the findings recorded by the Industrial Tribunal and the High Court that the respondents were indeed working as casual labourers with the Corporation. That is especially so when the High Court has directed their regularization as Dusting Operators which posts according to Mr. Roy learned counsel appearing for the respondents is a promotional post to be filled up by promotion out of those working as Pickers. In that view we direct the appellant-Corporation to place on record the following: (i) Rules that suggest appointment in the cadre of Dusting Operators is permissible only by promotion out of Pickers and others working in the Food Corporation; (ii) Material to suggest whether any payment was ever made by the FCI directly to the respondents if so the period for which such payments has been made; (iii) material to show as to when the respondents were employed, by whom they were employed and when were their services actually terminated. The above is necessary because the respondents do not appear to be in active service of the Corporation for the past 10 years.

The respondent shall also simultaneously file the following documents: (a) copies of engagement/ appointment order if any issued in their favour, whether in the name of the appellant-Corporation or the Food Handling Labour Co-operative Society; (b) material to show that they were actually working as casual labourers with the Corporation and that their presence/attendance was marked by the Corporation or by the Corporation authorities; (c) Termination /Retrenchments order or any other material shall also be filed by the respondents.....”

7. Pursuant to the above Order, appellant-Corporation has filed an affidavit dated 24.12.2014 along with various annexures. Insofar as the direction regarding the appointment in the cadre of *Dusting Operators*, appellant-Corporation has referred to the provisions of Clause 1 of Regulation 7 read with

the table set out in Appendix 1 to the FCI Staff Regulations 1971 that the post of *Dusting Operator* could be filled up 100% by way of promotion and also referred to various provisos to Clause 9 of the Regulation.

8. Per contra, the respondents rely upon Clause 7(3)(c) of FCI Staff Regulations which provides for appointment in the Corporation on a purely temporary basis. Further, clause 7(2)(c) empowers the Board to relax any of the provisions of recruitment rules contained in Appendix 1. It has been contended that the said post of *Dusting Operator* can also be filled up by direct recruitment in the event of non-availability of suitable candidates for the said post. Respondents have also relied upon Circular dated 06.05.1987 issued by FCI pursuant to the meeting of Board of Directors dated 24.02.1987 whereby all casual labourers who had 90 days service on and before 02.05.1986 were proposed to be regularized according to the classification against Class III and IV posts. Further, according to the respondents, similar circular for regularization of casual employees was issued on 09.09.1996 by the FCI and many other similarly placed

employees were regularized and only the case of the respondents was ignored by FCI.

9. We do not propose to go into the merits of the rival contentions raised by the parties in the additional affidavits and the documents filed pursuant to this Court's Order dated 03.11.2014. Without expressing any opinion on the merits of the matter, we set aside the impugned order of the High Court and remit the matter back to the High Court for consideration of the matter afresh in the light of the fresh material adduced by the parties. The Division Bench of the Calcutta High Court shall afford an opportunity to both the parties and consider the matter afresh in accordance with law.

10. With the above observations, the appeal is disposed of. No order as to costs.

.....J.
(T.S. THAKUR)

.....J.
(R.K. AGRAWAL)

.....J.
(R. BANUMATHI)

New Delhi;
July 8, 2015