

CASE NO.:
Appeal (civil) 3451 of 2006

PETITIONER:
Food Corporation of India & Another

RESPONDENT:
Ram Kesh Yadav & Another

DATE OF JUDGMENT: 27/02/2007

BENCH:
Tarun Chatterjee & R. V. Raveendran

JUDGMENT:
J U D G M E N T

RAVEENDRAN, J.

This appeal by special leave is filed against the judgment dated 19.9.2005 of the Allahabad High Court in Special Appeal No. 615 of 2005 affirming the judgment dated 29.3.2005 of a learned Single Judge in CMWP No. 13032 of 2003.

2. The Appellant - Food Corporation of India (for short 'FCI'), introduced a scheme for granting compassionate appointment to dependants of departmental workers, who died while in service or who were retired by FCI on medical grounds, vide Circular dated 2.2.1977. By a subsequent circular dated 3.7.1996, the said benefit of compassionate appointment was extended to dependants of departmental workers who sought voluntary retirement on medical grounds at their own request, subject to the conditions stipulated in the said circular. The conditions, in brief, are :

- a) The worker should seek voluntary retirement on medical grounds before completing the age of 55 years.
- b) Such request should be accompanied by a medical certificate issued by an Authorised Medical Officer, subject to verification by FCI.
- c) The benefit of compassionate appointment shall be given only to a male dependant, (of the age group between 18 years and 30 years), that too in the handling labour category, subject to an Authorised Medical Officer confirming the medical fitness of such dependant to handle/carry bags of big size.
- d) The application for compassionate appointment shall be made in the prescribed form, within three months from the date of retirement.
- e) Compassionate appointment will be given only in deserving cases, that is, where there is no earning member in the family of the retired worker, or where it is found that the financial benefits which are available to the worker on retirement will not be sufficient to meet the needs for running the family.

The Scheme designated the Senior Regional Manager/Regional Manager as the competent authority and made it clear that compassionate appointment is discretionary. The Scheme stated :

"Notwithstanding anything contained in the above, the compassionate ground appointment is not as a matter of right but purely at the discretion of the competent authority taking into the account the circumstances and

conditions of the family of the medically retired workers and also subject to availability of the vacancy."

3. The Second Respondent was working as a Departmental worker (Handling Labour) in the Azamgarh Food Storage Depot of the appellant. The date of birth of second respondent was 6.2.1944. In the usual course, he would have attained the age of superannuation on 6.2.2004. The second respondent made a composite application dated 26.4.1999 seeking compassionate appointment to his son (the first respondent) on his voluntary retirement on medical grounds, stating thus :

"Sub: Appointment of my son Sri Ram Kesh in consideration of my retirement on medical ground \005

\005\005..as I am unable to do handling work of loading due to inability of carrying bags, I desire to go on retirement on medical ground, if my above-named son would be provided with an employment in my place as handling labour. Further I am the only earning member of my family and on my retirement if none of my family is employed, the entire family would be put to suffer hardship\005. Kindly allow me to go on retirement on medical ground and provide employment to my above named son in my place as handling labour\005"

[Emphasis supplied]

As on the date of the said application (26.4.1999), his age was 55 years 2 months and 20 days. In pursuance of the said application, the second respondent was retired from service as on 31.7.2000, vide office order dated 29.7.2000. Before that date, the Azamgarh Branch of FCI had also forwarded a proposal dated 26.5.2000 to its Lucknow Regional Office, for appointing the second respondent's son (first respondent) on compassionate grounds. The Regional Office rejected the said request for compassionate appointment vide letter dated 19/21.12.2001 addressed to the Azamgarh Office on the ground that second respondent was aged 55 years 2 months and 20 days as on the date of his application as against the maximum age of 55 years prescribed under the scheme. As the said rejection was not communicated to the respondents, they went on approaching the Azamgarh Office for first Respondent's appointment. Ultimately, they took up the matter through the Vice-President of the Employees' Union on 10.3.2003. Only thereafter, that is on 21.3.2003, a copy of the said order of rejection dated 19/21.12.2001 was made available to the Respondents. Immediately, the respondents filed CMWP No. 13032 of 2003 for quashing the order dated 19/21.12.2001 and seeking a direction to FCI to appoint the first respondent to the post of handling labour in place of second respondent who had retired on medical grounds.

4. The said writ petition was resisted by FCI on the ground that the first respondent was not entitled to appointment on compassionate grounds, as the second respondent had already crossed the age limit of 55 years when he made the application on 26.4.1999.

5. A learned Single Judge accepted the contention of the FCI and held that the first respondent was not entitled to compassionate appointment, as the second respondent had already completed the age of 55 years when he made the application. Consequently, the writ petition was rejected on 29.3.2005. The appeal filed by the respondents against the said order was allowed by a Division Bench of the High Court by order dated 19.9.2005. The Division Bench was of the view that once FCI accepted the request of an employee for retirement on medical grounds under the compassionate appointment scheme, it was obliged to give appointment to the dependant of such employee and his request cannot be turned down on any technical ground. It followed the decision of another Division Bench (Nizamuddin vs. The District Manager, FCI \026 Special Appeal No. 579/2005 decided on 11.5.2005) which took the view that FCI cannot take an inconsistent stand by 'allowing medical retirement for the father, and disallowing compassionate

appointment for the son'. The said order is challenged by FCI in this appeal by special leave.

6. The appellant contends that under the scheme, appointment of a dependant on compassionate grounds can be sought only where a worker seeking voluntary retirement on medical grounds, has not crossed the age limit of 55 years, in addition to fulfilling the other conditions of the scheme. As the second respondent had exceeded the said age limit of 55 years, by 2 months and 20 days, as on the date of the application for voluntary retirement, the Appellant had to refuse compassionate appointment to first Respondent. It is contended that a direction to appoint first respondent on compassionate grounds, has the effect of requiring the employer to act contrary to its rules (scheme), which is impermissible. The appellant also contends that the issue relating to retirement on medical grounds and the issue relating to compassionate appointment of a dependent, are distinct and different issues. It is submitted that if the conditions necessary for retirement on medical grounds are found to exist, the employee will be permitted to retire on medical grounds. The request for compassionate appointment would, thereafter, be examined separately and independently to find out whether the dependant was eligible and the conditions for such appointment are satisfied. It is pointed out that even if the retired employee and his dependant fulfilled all the conditions, compassionate appointment could not be claimed as a matter of right and the competent authority still had the discretion either to grant or refuse compassionate appointment, taking into account the circumstance and condition of the family of the retired employee and the availability of vacancy.

7. There is no doubt that an employer cannot be directed to act contrary to the terms of its policy governing compassionate appointments. Nor can compassionate appointment be directed de hors the policy. In *Life Insurance Corporation of India v. Asha Ramchandra Ambedkar* [1994 (2) SCC 718], this Court stressed the need to examine the terms of the Rules/Scheme governing compassionate appointments and ensure that the claim satisfied the requirements before directing compassionate appointment. In this case, the scheme clearly bars compassionate appointment to the dependant of an employee who seeks voluntary retirement on medical grounds, after attaining the age of 55 years. There is a logical and valid object in providing that the benefit of compassionate appointment for a dependant of an employee voluntarily retiring on medical grounds, will be available only where the employee seeks such retirement before completing 55 years. But for such a condition, there will be a tendency on the part of employees nearing the age of superannuation, to take advantage of the scheme and seek voluntary retirement at the fag end of their service, on medical grounds, and thereby virtually creating employment by 'succession'. It is not permissible for the court to relax the said condition relating to age of the employee. Whenever a cut off date or age is prescribed, it is bound to cause hardship in marginal cases, but that is no ground to hold the provision as directory and not mandatory.

8. As rightly contended by FCI, the issue of voluntary retirement of an employee on medical grounds and the issue of compassionate appointment to a dependent of such retired employee are independent and distinct issues. An application for voluntary retirement has to be made first. Only when it is accepted and the employee is retired, an application for appointment of a dependant on compassionate grounds can be made. Compassionate appointment of a dependant is not an automatic consequence of acceptance of voluntary retirement. Firstly, all the conditions prescribed in the Scheme dated 3.7.1996 should be fulfilled. Even if all conditions as per guidelines are fulfilled, there is no 'right' to appointment. It is still a matter of discretion of the competent authority, who may reject the request if there is no vacancy or if the circumstances and conditions of the family of the medically retired worker do not warrant grant of compassionate appointment to a dependant. Therefore, the observation of the High Court in *Nizamuddin* (supra) that allowing the request of the employee for voluntary retirement on medical grounds and rejecting the application of the dependant for compassionate

appointment on the ground of non-fulfilment of conditions of scheme would amount to taking inconsistent stands, is clearly erroneous.

9. But on facts, this case is different. The second respondent's application dated 26.4.1999 was a composite application for conditional voluntary retirement on medical grounds, subject to appointment of his son in his place. The application specifically stated that he desired to go on retirement on medical grounds if his son was provided with employment in his place. The second Respondent had thus clearly indicated that if employment on compassionate ground was not provided to his son, he was not interested in pursuing his request for retirement on medical grounds. FCI ought to have informed the employee that he could not make such a conditional offer of retirement contrary to the scheme. But for reasons best known to itself, FCI did not choose to reject the conditional offer, but unconditionally accepted the conditional offer. There lies the catch.

10. When an offer is conditional, the offeree has the choice of either accepting the conditional offer, or rejecting the conditional offer, or making a counter offer. But what the offeree cannot do, when an offer is conditional, is to accept a part of the offer which results in performance by the offeror and then reject the condition subject to which the offer is made.

11. In the context of second Respondent's conditional offer of voluntary retirement contained in the letter dated 26.4.1999, FCI had, therefore, the following options :

(a) Reject the request for voluntary retirement on the ground that a conditional offer was contrary to the Scheme and it was not willing to consider any conditional offer.

(b) Reject the request for compassionate appointment on the ground that the employee was more than 55 years of age or on the ground that it was not a deserving case or because there was no vacancy, and then refer the employee to a Medical Board for compulsory retirement on medical grounds.

(c) Require the employee to make separate applications for voluntary retirement on medical grounds and for compassionate appointment strictly as per rules and the scheme.

(d) Accept the request of the employee for voluntary retirement on medical grounds subject to the condition stipulated by the employee and provide appointment to his son on compassionate grounds;

When FCI accepted the offer unconditionally and retired the second respondent from service by office order dated 29.7.2000, it was implied that it accepted the conditional offer in entirety, that is the offer made (voluntary retirement) as also the condition subject to which the offer was made (appointment of his dependant son on compassionate grounds). In his application, the second respondent made it clear that he desired to retire voluntarily on medical grounds only if his son (first respondent herein) was provided with employment. If FCI felt that such a conditional application was contrary to the Scheme or not warranted, it ought to have rejected the application. Alternatively, it ought have informed the employee that the compassionate appointment could not be given to his son because he (the employee) had already completed 55 years of age and that it will consider his request for retirement on medical grounds delinking the said issue of retirement, from the request for compassionate appointment. In that event, the employee would have had the option to withdraw his offer itself. Having denied him the opportunity to withdraw the offer, and having retired him by accepting the conditional offer, FCI cannot refuse to comply with the condition subject to which the offer was made.

12. The appellant next contended that when the employee stated in his application that he was medically unfit to continue his work as a handling

labour and also produced a medical certificate from the concerned authority declaring that he was medically unfit for the work, obviously he could not be continued up to the age of superannuation and therefore, acceptance of his request for retirement of the second respondent by order dated 29.7.2000 could not in any event be faulted. This contention would have merited acceptance, if the employee's offer to voluntarily retire was unconditional. An employee is entitled to continue in service till the age of superannuation. Even if he is having some medical ailment, due to economic reasons, he may choose to continue up to 60 years. If the employer found that the employee was physically unfit to carry on his work, the employer was at liberty to refer his case to a Medical Board and on the basis of its opinion, compulsorily retire the employee on medical grounds. A compulsory retirement by the employer on medical grounds is different from a voluntary retirement by the employee on medical grounds. In fact the scheme earlier provided for compassionate appointment of a dependant, only when an employee was (compulsorily) retired by the employer, on medical grounds. The scheme was expanded on 3.7.1996, to provide for compassionate appointment for a dependant, when an employee voluntarily retired on medical grounds.

13. The appellant next contended that even if its action was found to suffer from some infirmity, the employee could at best contend that the action retiring him from service with effect from 31.7.2000 was illegal, but it could not be foisted with the obligation to offer employment to the son of the employee. It is, therefore, submitted that even if any relief was to be given, it ought to have been restricted to some nominal compensation for premature retirement as at the end of 31.7.2000.

14. The question in this case is not whether the request of the respondents was contrary to the scheme. Nor is it the question, whether the scheme would be violated if the first respondent is appointed on compassionate grounds. The limited question is whether FCI, having accepted the offer and accepted performance of the offer by the second Respondent, can refuse to perform or comply with the condition subject to which such offer was made. The answer is obviously in the negative. Having accepted the offer, FCI cannot avoid performance of the condition subject to which the offer was made. As noticed earlier, nothing prevented FCI from rejecting the application of the employee outright, or inform the employee before accepting the offer of voluntary retirement that it could not accept the condition, so that the employee would have had the option to withdraw the offer itself.

15. Lastly, it was pointed out that under the scheme, the competent authority had the discretion to deny compassionate appointment even if all the conditions were fulfilled; and that, therefore, the High Court ought to have merely directed consideration of the application for compassionate appointment, instead of directing appointment. But the denial of employment was not on the ground that the competent authority on considering the relevant circumstances, found that it was not a fit case for appointment on compassionate grounds. It is true that in the normal course, if the employee's son was found eligible for employment on compassionate grounds, the court ought to have directed consideration of his case in terms of the scheme instead of issuing a mandamus to give employment. But as already observed, the conditional offer having been accepted, FCI could not thereafter refuse appointment. We also find that FCI did not dispute the fact that the first respondent was eligible and suitable for the post of handling labour. Nor did FCI contend that there was no vacancy. The employee had retired in 2000. For nearly 7 years, his son has been denied employment. On the peculiar facts, we do not find it appropriate to interfere with the direction given by the High Court to appoint the first respondent, though for different reasons.

16. We have upheld the direction for grant of employment only because of the acceptance of an inter-linked conditional offer. Where the offer to voluntarily retire and request for compassionate appointment are not inter-linked or conditional, FCI would be justified in considering and deciding each request independently, even if both requests are made in the same letter

or application. Be that as it may.

17. In view of the above, the appeal is dismissed. But neither the retired employee nor his son will, however, be entitled to claim any monetary or other benefits on the ground of delay in issuing the offer of appointment. The appellant is given two months' time from today to appoint first respondent as per High Court's order. Parties to bear their respective costs.

JUDIS