

CASE NO.:
Appeal (civil) 2489 of 2000

PETITIONER:
FOOD CORPORATION OF INDIA

Vs.

RESPONDENT:
S.N. NAGARKAR

DATE OF JUDGMENT: 29/01/2002

BENCH:
S. Rajendra Babu, Ruma Pal & Bisheshwar Prasad Singh

JUDGMENT:

Bisheshwar Prasad Singh, J.

This appeal by special leave has been preferred by the Food Corporation of India and is directed against the judgment and order of the High Court of Punjab and Haryana dated April 30, 1999 in L.P.A. No. 164 of 1999.

By the impugned judgment and order the High Court affirmed the order passed by a learned Single Judge of the High Court dated February 16, 1999 in Execution Application No.2021 of 1997 filed for execution of the order passed in C.W.P. No. 4983 of 1993 holding that in terms of the judgment and order dated 6th May, 1994 in C.W.P. No.4983 of 1993, the respondent herein was not only entitled to notional seniority and promotions but also to the arrears of pay and allowances with effect from the dates of such promotion.

The facts of the case may be briefly noticed :-

Respondent herein (Petitioner in the writ petition) joined as an Assistant Grade III (D) in the Food Corporation of India the appellant herein, on 28th June, 1968. One Shri H.K. Bhardwaj (respondent No.4 in the writ petition) was similarly appointed as Assistant Grade III (D) on 1st July, 1968. Both were simultaneously promoted as Assistant Grade II (D) from the panel of 1969. However, when Mr. Bhardwaj was further promoted as Assistant Grade I (D) on the basis of inclusion of his name in the panel of 1971, the respondent was not similarly promoted on account of the fact that his name had not been included in the panel of 1971. This, according to the respondent, had been done intentionally with a view to harm him. Only much later the respondent was also promoted to Assistant Grade I (D) on the basis of 1975 panel. Though Mr. Bhardwaj was further promoted as Assistant Manager (D) on the basis of 1986 panel, respondent continued as an Assistant Grade I.

The case of the respondent in the writ petition, was that he being senior to Mr. Bhardwaj (respondent No.4 in the writ petition), his case could not be overlooked when Mr. Bhardwaj was promoted as Assistant Grade I (D) and later promoted as Assistant Manager (D). His case was that on account of the deliberate omission of his name from 1971 panel, he was deprived of his chances of promotion, and the authorities had acted arbitrarily and in an illegal manner.

The petitioner made representations. The authorities realizing their mistake, took corrective action. By an order dated 23/27th November, 1989, respondent was granted notional seniority and promotion. He was retrospectively promoted as Assistant Grade II (D) and Assistant Grade I (D) from earlier dates but he was neither given the arrears of salary nor his further promotion as Assistant Manager (D). He was, therefore, compelled to file a writ petition being Civil Writ Petition No. 4983 of 1983. In the said writ petition respondent

No.1, apart from praying that he should be considered for promotion to the post of Assistant Manager (D), also prayed for modification of the order dated 23/27th November, 1989 which deprived him of arrears of pay and allowances and other consequential benefits. His prayer was that he should be given not only notional promotions and seniority but also the arrears of pay and allowances with effect from the dates on which he was promoted to Assistant Grade II (D) and Assistant Grade I (D) on the basis of 1969 and 1971 panels respectively. He also claimed arrears of pay with effect from the date he was promoted as Assistant Manager (D).

The writ petition came up for hearing before a learned Judge of the High Court of Punjab & Haryana and it appears from the perusal of the said judgment and order that the respondents in the writ petition did not controvert the averments made in the writ petition as no reply was filed by the respondents. It also appears that neither the counsel for the petitioner nor the counsel for the respondents appeared when the matter was taken up for hearing. The learned Judge, however, perused the record before him and after noticing the relevant facts inter alia observed as follows:

"A perusal of the writ petition alongwith the documents filed with it clearly shows that even though entitlement of the petitioner to retrospective pay fixation had not been disputed by the respondents, actual benefits have not been given to him. This to the petitioner despite the fact that as early as 9.3.1993, the Assistant Manager of the Corporation had informed the petitioner's counsel that the matter is under consideration. Failure of the respondents to take a decision in the matter has already caused a serious prejudice to the petitioner and, therefore, it is eminently a fit case in which a direction deserves to be given to the respondents to give the benefits of pay fixation to the petitioner and also consider his case for promotion with effect from the date persons junior to him have been promoted".

He consequently allowed the writ petition in the following terms :-

"Consequently, the writ petition is allowed and a writ of mandamus is issued to the respondents to give the benefits of pay fixation to the petitioner as Assistant Grade II and Assistant Grade I and also to consider his case for promotion to the post of Assistant Manager (D) from a date persons junior to him have been promoted. This exercise must be completed within a period of four months from the date of submission of a certified copy of this order. The arrears of pay shall be paid to the petitioner within one month thereafter. In case the amount of arrears is not paid within this period, the petitioner shall get interest @ 18% from the date of this order. No costs."

It is not disputed before us that subsequently respondent herein was promoted as Assistant Manager (D) with effect from the year 1988 but it was also decided that he should be paid his pay and allowances as Assistant Manager (D) only with effect from 2nd January, 1995, the date of joining.

Respondent herein was aggrieved on account of the fact that no formal order was issued granting him promotion and notional seniority nor was any action taken to promote him as Assistant Manager (D). It appears that the respondent had filed a contempt petition which he withdrew on 19th December, 1995 but he filed the second contempt petition which was disposed of by the Court by its Order dated 25th April, 1996. The contempt application was disposed of relegating the respondent to his remedy of challenging the impugned action of the respondents by filing a Civil Writ Petition. The Court noticed that while the petitioner (respondent herein) contended that the order of the Court passed in Writ Petition on 6th May, 1994 had been implemented in part, according to the respondents' authorities, the order had been fully implemented.

The respondent herein thereafter filed a Writ Petition before the High Court of Judicature at Allahabad which was not entertained by that Court in view of the fact that the Writ Petition in effect was for the execution of an order passed by the Punjab and Haryana High Court and was, therefore, not maintainable before the Allahabad High Court. Respondent herein thereafter filed another Writ Petition before the Punjab and Haryana High Court and on 10th December, 1996 the High Court held that since the Writ Petition was in the nature of an application for execution and full implementation of the order passed by the Court, a second Writ Petition was not maintainable. It was, however, observed that the petitioner, if so advised, may file an application for executing the order passed by the Court in Writ Petition No.4983 of 1993.

In view of the observations of the High Court in its order dated 10th December, 1996 the res

pondent filed C.M. No.14471 of 1997 in Civil Writ Petition No. 4983 of 1993 being an application under Order XXI Rules 10 and 11(3) read with Section 151 C.P.C. praying that the application for execution of the order dated 6th May, 1994 be allowed and the full amount/arrears with interest may be ordered to be paid. Unfortunately, this application was also dismissed as not maintainable on the ground that the applicant had earlier filed a contempt petition which came to be dismissed. It was observed that in case any amount was due and payable to the applicant his only remedy was to approach the Civil Court.

Against this order dated 9th February, 1998, the petitioner (respondent herein) preferred a special leave petition before this Court

being SLP (C) No. 1182 of 1998. This Court by its order dated 10th August, 1998 disposed of the special leave petition with the following observations:

"The doubt of the petitioner is with regard to the final direction made in the impugned order, i.e. the remedy to approach the civil court, whether it is to approach execution court or to file a fresh suit for that remedy. In the circumstances, he is at liberty to move the High Court for review or clarification of the impugned order to clear the doubt. Without prejudice to the rights of the petitioner to move the High Court for that purpose, the SLP is dismissed".

Respondent herein then filed a Review Petition in Execution Application No.2021 of 1997 which he had earlier filed in Civil Writ Petition No. 4983 of 1993 decided on 6th May, 1994. This application was entertained by the High Court and by an Order dated 16th February, 1999 the Review Petition was allowed. Application for execution of the order dated 6th May, 1994 passed in Civil Writ Petition No.4983 of 1993 was also allowed. The learned Judge held that the judgment and order nowhere indicated that the arrears were to be paid from the date of his joining and not from the date of his promotions. The Corporation (appellant herein) was directed to pay the arrears to the respondent in terms of the aforesaid judgment and order dated 6th May, 1994. The Court granted three months' time to the respondents in that application to complete the exercise. This order, which was passed on 16th February, 1999, was challenged by way of Letters Patent Appeal which was also dismissed by order dated 30th April, 1999, against which the instant appeal has been preferred by special leave.

Learned counsel appearing on behalf of the appellant submitted that this was a case where no promotional promotion and seniority was given to the respondent. In such a case the concerned employee is entitled to the pay scale of the promotional post only with effect from the date he joins the post and not from the date of his promotion. He sought to rely on two judgments of this Court reported in : (1996) 7 SCC 533, State of Haryana and others vs. O.P. Gupta and others and (1989) 2 SCC 541, Paluru Ramkrishnajah and others etc. vs. Union of India and another. On the other hand counsel for the respondent submitted that this is not a case where this Court is called upon to consider the submission urged on behalf of the appellant. In the instant case, the writ petition filed by the respondent was allowed by judgment and order dated 6th May, 1994 passed in Civil Writ Petition No.4983 of 1993. That order attained finality as it was not appealed from. In execution proceedings, the appellant cannot go beyond the order passed by the Court in the writ petition and, therefore, what has to be considered is whether the High Court was right in holding that in terms of the order of the Court dated 6th May, 1994 passed in Civil Writ Petition No.4983 of 1993, the respondent is entitled to the arrears of pay and allowances with effect from the date of promotions. If the answer is in the affirmative, the question whether such relief ought to have been granted cannot be agitated in execution proceeding. We find considerable force in the submission urged on behalf of the respondent. In these proceedings it is not permissible to go beyond the order of the learned Judge dated 6th May, 1994 passed in Civil Writ Petition No.4983 of 1993. The execution application giving rise to the instant appeal was filed for implementing the order dated 6th May, 1994 and in such proceeding, it was not open to the appellant either to contend that the judgment and order dated 6th May, 1994 was erroneous or that it required modification. The judgment and order aforesaid having attained finality, has to be implemented without questioning its correctness. The appellant therefore, cannot be permitted to contend in these proceedings that the judgment and order dated 6th May, 1994 was erroneous in as much as it directed the appellant to pay to the respondent arrears of salary with effect from the dates of promotion, and not from the dates the respondent actually joined the promotional posts.

The learned Judge dealing with the execution application, in our view, rightly held that the

order dated 6th May, 1994 disposing of the writ petition clearly entitled the respondent to arrears of pay and allowances with effect from the dates of promotion and not from the date s he actually joined the promotional posts.

We have earlier extracted the relevant part of the order passed by the Learned Judge. The order clearly directs the issuance of a writ of mandamus to give the benefit of pay fixation to the respondent as Assistant Grade II and Assistant Grade I and also for consideration of his case for promotion to the post of Assistant Manager (D) from the date the persons junior to him were promoted. The order further directs that the arrears of pay shall be paid with in one month thereafter, and in case it was not paid, the petitioner (respondent herein) was to get interest @ 18% from the date of that order.

The learned Judge noticed the facts of the case, that for no fault of the respondent, and solely on account of the fact that his name was not included in the relevant panel by mistake, he was deprived of his promotion to Assistant Grade I and his further promotion to the cadre of Assistant Manager (D).

Having regard to the facts and circumstances of the case, the Court was satisfied that the respondent was not only to be considered for promotion to the promotional posts, but was also entitled to arrears of pay and allowances since he had been deprived of those benefits not on account of any fault of his but on account of the fault of the authorities concerned. It is well settled that in exercise of writ jurisdiction, the Court may mould the relief having regard to the facts of the case and interest of justice.

In this appeal, we are not called upon to pass a judgment on the correctness of the order passed by the learned Judge in Civil Writ Petition No.4983 of 1993 dated 6th May, 1994. The only question that arises for consideration is whether under the said judgment and order, the respondent is entitled to the arrears of pay and allowances from the dates of promotion. In our view the learned Single Judge as well as the Division Bench in Letters Patent Appeal have correctly held that the respondent (petitioner in the writ petition) is entitled, in terms of the order dated 6th May, 1994, to arrears of pay and allowances with effect from the dates he was granted the two promotions, and not from the date he joined the promotional posts. No interference by this Court in exercise of jurisdiction under Article 136 of the Constitution of India is called for. This appeal is, therefore, dismissed with costs which is quantified at Rs.2,500/-.

.....J.
(S. RAJENDRA BABU)

.....J.
(RUMA PAL)

.....J.
(BISHESHWAR PRASAD SINGH)

January 29, 2002.