Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. 9217- 9218 of 2019

Kandla Port Workers Union .... Appellant(s)

Versus

FCI & Ors. .... Respondent(s)

J U D G M E N T

L. NAGESWARA RAO, J.

1. By an order dated 09.05.1996, the Central Government transferred 15 employees who were working in the Vacuvator Division of the Kandla Port Trust (for short, '*KPT*') to the Food Corporation of India (for short, '*FCI*') with effect from 01.01.1973. Aggrieved by the benefit not being extended to the remaining 306 employees of the KPT who were transferred to FCI, the Appellant-Union filed Special Civil Application No.6891

of 1996 in the High Court of Gujarat. The application was allowed by a learned Single Judge and a direction was issued to the FCI, Respondent No.1-herein to issue an appropriate order clarifying that all the 321 employees who were working in the Vacuvator Division of the KPT should be treated to have been transferred under Section 12A of the Food Corporation of India Act, 1964 ("*the FCI Act*, 1964" for short) *w.e.f.* 01.01.1973. Respondent No.1 appealed to the Division Bench of the High Court. The judgment of the learned Single Judge was set aside and it was held by the Division Bench, by order dated 09.05.1996, that 306 members of the Appellant-Union were not entitled to the benefits granted to 15 employees. The correctness of the judgment of the Division Bench is challenged by the Appellant by way of filing the above Appeals.

2. An agreement was entered into between the Government of India and the Trustees of the Port of Kandla (KPT) on 08.04.1965 by which the KPT accepted

to act as an agent of the Government for the purpose of assembly, operation and maintenance of wheat discharging machines on behalf of the Government of India in connection with discharge of food grains from tankers/ vessels arriving at Kandla as and when required by the Government of India. According to the Agreement, the KPT was responsible for the operation and maintenance of the machines with a view to obtain the best possible performance therefrom and for the said purpose, KPT shall ensure adequate staff at various stages of operation and maintenance. It was further agreed that the Government shall, on conclusion of the Agreement, take over the staff engaged by the KPT.

3. An order was passed by the FCI on 18.09.1973 taking over the staff of the Vacuvator Division of the KPT *w.e.f.* 01.01.1973. By the said order, the regular employees of KPT were taken over as confirmed in the appropriate posts and they would be governed by the service conditions prescribed in the FCI (Staff)

Regulations, 1971 (“the Regulations” for short). The work charge employees were taken over as regular employees w.e.f. 01.01.1973 and they would be governed by the service conditions in respect of leave, probation, disciplinary action, *etc.*, according to the Regulations. The employees were made eligible to the pay as fixed and indicated in the Annexure to the said order *w.e.f.* 01.01.1973 in the FCI’s scale of pay. The employees who were taken over would be governed by the Food Corporation of India CPF Regulations. All the employees who worked in the Vacuvator Division of KPT joined and continued to work in the FCI.

4. In the meanwhile, an industrial dispute was raised which was referred to the Industrial Tribunal. The terms of reference are as follows:

> *“1. Whether the action of the management of FCT, Adipur in not extending the Option to elect revised pay scales to 15 workmen of Vacuvator Division Switched over from Kandla port Trust to FCT, Adipur with effect from 1.1.1973 or from the subsequent date after*

drawing increments etc., is justified? If not, to what relief these workmen are entitled to and from what date?

2. Whether the action of the management of Food Corporation of India Adipur in not regularizing the CPF/ GRP subscription and contribution from 1965 to March, 1973 in respect of the workmen switched over from Kandla Port Trust to Food Corporation of India, Adipur from CPF to CPP scheme is justified if not, to what relief the concerned workmen are entitled and from which date?"

5. The reference was allowed and Respondent No.1 was directed to give an option to the 15 persons whose names were mentioned in the award as per Para 3 of the Circular dated 01.05.1976 and fix their pay and increments accordingly. The said workmen were held to be entitled to exercise option under Section 12A (4) of the FCI Act, 1964 on their transfer to the FCI *w.e.f.* 01.01.1973. Respondent No.1 was unsuccessful in the challenge made to the award before the learned Single Judge of the High Court. In a reference made by the

Government of India under Section 10(2) of the Industrial Disputes Act, 1947, the Central Government Industrial Tribunal directed seniority to the employees of the FCI in the Vacuvator Division from the dates of their initial appointment in KPT.

6. In exercise of the powers conferred by Section 12A of the FCI Act, 1964, the Central Government transferred 15 employees to the FCI *w.e.f.* 01.01.1973 by an order dated 09.05.1996. The Appellant-Union filed Special Civil Application No.6891 of 1996 questioning the grant of transfer to the FCI *w.e.f.* 01.01.1973 only to 15 employees and not the remaining 306 employees. It was contended by the Appellant-Union in the said application that there were two terms of reference which were answered in favour of the employees. Though the operative portion was confined to 15 employees, the Industrial Tribunal directed that all the employees who worked in the Vacuvator Division shall be entitled to exercise option

under Section 12A (4) of the FCI Act. The Appellant-Union averred in the Special Civil Application that all the employees were similarly situated and the restriction of the benefit of transfer *w.e.f.* 01.01.1973 only to 15 employees resulted in hostile discrimination. The application was allowed by a learned Single Judge, in which it was held that the benefit granted to the 15 employees should be extended to all the other employees who were taken over by the FCI on 01.01.1973. The award of the Industrial Tribunal dated 18.05.1987 was interpreted by the learned Single Judge as covering all the 321 employees. On such basis, the learned Single Judge directed Respondent No.1 to issue an appropriate order clarifying that all the 321 employees shall be deemed to have been transferred to the FCI under Section 12A of the FCI Act *w.e.f.* 01.01.1973.

7. The Division Bench allowed the Appeal filed by Respondent No.1 by holding that the transfer of

employees who worked in the Vacuvator Division of the KPT should be done by the Central Government. Only permanent employees of the KPT were granted benefit of transfer *w.e.f.* 01.01.1973. However, the work charge employees were taken over as regular employees *w.e.f.* 01.01.1973 and were also given the benefits of leave, probation, disciplinary action, *etc*. in accordance with the provisions of the FCI Regulations. As per the Agreement dated 08.04.1965, the work charge employees of the KPT have been taken over by Respondent No.1- FCI. The Division Bench of the High Court held that in case the work charge employees did not take up their option of takeover by the FCI, they would have faced retrenchment from the service of the KPT. The submission of the Appellant-Union that Section 12A of the FCI Act is applicable to the members of the Appellant-Union was rejected by the Division Bench of the High Court and it was held that the provision is applicable to the Central Government employees only. Moreover, the work charge employees signed General

Conditions of Employment with their erstwhile employer i.e. KPT that they would not claim pension or gratuity which are extended to the Central Government employees. The Office Order dated 18.09.1973, which was issued pursuant to an agreement, provided that the employees taken over by Respondent No.1 shall be governed by the FCI CPF Regulations. The conclusion reached by the learned Single Judge that the benefit conferred on the 15 regular employees of the KPT should have been given to the others was not approved by the Division Bench and it observed that the operative portion of the award conferred benefit only to 15 regular employees of the KPT and not to the other work charge employees. The Division Bench of the High Court highlighted the latches on the part of the Appellant-Union in filing the Special Civil Application in the year 1996 for a relief that they were claiming from 1973. However, the Division Bench directed Respondent No.1 to make payment of gratuity for the service rendered by

the work charge employees prior to 1973, while they were employed with the KPT.

8. Mr. Nikhil Goel, learned counsel appearing for the Appellant-Union referred to the Agreement dated 08.04.1965 to contend that the Government shall take over the staff engaged by the KPT on conclusion of the Agreement. Mr. Goel relied upon the award of the Industrial Tribunal dated 05.08.1991 to submit that the relief sought for by the work charge employees in relation to regularization of CPF/ GRF subscription and contribution from 1965 to 1973 was answered in their favour. He contended that though demand No.1 pertains to the 15 workmen, demand No.2 relates to the work charge employees as well, and this demand was allowed by the Industrial Tribunal. He took us through the award to submit that the Tribunal held that Section 12A of the FCI Act is applicable to the work charge employees. He argued that the cause of action for filing the Special Civil Application on behalf of the

work charge employees arose only after the order dated 09.05.1996 was passed by the Government of India by which benefit of the award dated 05.08.1991 of the Industrial Tribunal was given only to 15 employees. He submitted that learned Single Judge is right in allowing the Writ Petition by holding that the work charge employees cannot be discriminated in the grant of the benefit extended to only 15 regular employees. Mr. Goel supported the conclusion of the learned Single Judge that the Tribunal was right in holding that the work charge employees have to be treated to be in service prior to 01.01.1973. Mr. Goel criticized the judgment of the Division Bench by arguing that reliance could not have been placed on the operative portion of the award of the Industrial Tribunal which was restricted only to 15 employees.

9. Mr. N.K. Kaul, learned Senior Counsel appearing for Respondent No.1 submitted that the work charge employees were appointed in the FCI *w.e.f.* 01.01.1973

and were governed by the FCI Regulations. No grievance was raised by them till the year 1996 when the benefit of the award dated 05.08.1991 of the Industrial Tribunal was granted to the regular employees. He submitted that no parity can be claimed by the work charge employees and they should not have complained as they could have been retrenched in 1973 itself. They agreed to be bound by the FCI Regulations and all of them have retired from the FCI after working continuously from 01.01.1973. The Office Order dated 18.09.1973 clearly mentions that the employees would be governed by the FCI CPF Regulations. He commended for our consideration the approval of the judgment of the Division Bench.

10. The nub of the dispute revolves around the entitlement of the work charge employees to the relief that was granted to the 15 regular employees. The Office Order of the FCI dated 18.09.1973 was issued under Clause XIX of the Agreement dated 08.04.1965

entered into between the President of India and the Trustees of the Port of Kandla. A clear distinction was made in the Office Order between regular employees and work charge employees. The regular employees were taken over as confirmed in their appropriate posts and they would be subject to the FCI (Staff) Regulations, 1971 regarding service conditions. According to the said agreement, the work charge employees were also taken over as regular employees from 01.01.1973 and would be bound by the FCI (Staff) Regulations, 1971. The award dated 05.08.1991 of the Industrial Tribunal requires to be considered in a detailed manner. The reference pertains to the demand regarding the extension of option to select revised pay scales to the 15 workmen of the Vacuvator Division of KPT who were taken over by the FCI.

11. As noted above, the first question before the Tribunal pertained to the dispute regarding the pay scales of 15 workmen of Vacuvator Division who were switched over from KPT to FCI *w.e.f.* 01.01.1973. The

second question related to the regularization of the CPF/ GRP subscription and contribution from 1965 to March, 1973 in respect of the workmen switched over from KPT to FCI from CPF to CPP scheme. While answering question No.2, the Tribunal held that the pensionery liability and CPF liability of the staff taken over by the FCI would commence from 01.03.1965 and the service of the members of the staff shall be treated as continuous from 01.03.1965. The Tribunal held that the members of the staff had subscribed to the GRP scheme and they were entitled to the pensionery benefits. The unilateral action on the part of the FCI in shifting them from GPF to CPF was found fault with by the Tribunal. Admittedly, the work charge employees were governed by the GPF scheme prior to their joining the FCI and they were switched over to the CPF scheme, which was held to be arbitrary by the Tribunal. The Tribunal further held that the transfer must necessarily be governed by Section 12A of the FCI Act. On the basis of the above findings, the Tribunal was of the opinion that there was

substance in the demand made by the Appellant-Union. However, the operative portion of the award pertains only to the grant of the relief that was claimed by the 15 workmen.

12. The order dated 09.05.1996 was passed by the Government of India granting the relief of transfer of the 15 employees to the FCI *w.e.f.* 01.01.1973. This was in compliance with the direction issued by the Industrial Tribunal by its award dated 05.08.1991.

13. The distinction between a regular employee and a work charge employee cannot be ignored. The questions raised in the reference before the Industrial Tribunal also deals with the regular employees and work charge employees separately. The ultimate relief that was granted by the Tribunal is also restricted to the 15 workmen who were regular employees. There is no doubt that the findings recorded by the Industrial Tribunal pertaining to the arbitrary or unilateral change

of Respondent No.1 from GPF to CPF are *qua* the work charge employees.

14. The Office Order dated 18.09.1973 by which all the employees who were working in the Vacuvator Division of the KPT were employed in the FCI also shows that regular employees and work charge employees were treated differently. Even assuming that the work charge employees also had a right to be appointed in the FCI, they cannot claim parity with the regular employees, that too in 1996. After having accepted the appointment in FCI as per the Office Order dated 18.09.1973, it is not open to the Appellant-Union to take up the cause of the work charge employees and claim on their behalf benefits similar to those granted to the regular employees.

15. The Division Bench of the High Court directed that Respondent No.1-FCI shall make payment of gratuity to those employees who shall give details, such as the

dates of their joining in the KPT, by treating them as employees of the FCI.

16. Though, we are not in agreement with the judgment of the Division Bench that the award of the Industrial Tribunal did not deal with question No.2 in the reference made to it, for the reasons recorded above we hold that the Appellants are not entitled to the relief claimed by them. Therefore, the Appeals are dismissed.

.....J.
[L. NAGESWARA RAO]

.....J.
[HEMANT GUPTA]

New Delhi,
December 06, 2019.