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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 30.07.2026**Judgment delivered on: 20.08.2026**

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CNR No. DLHC010318922026

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LPA 551/2026 & CM APPL. 46511/2026**RAM RATAN VERMA AND ORS.****.....Appellants**

Through: Mr. Amar Dave, Sr. Adv. with
Mr. Shailendra Singh, Mr. Santosh
Kumar Pandey, Mr. Vikas Pandey and
Mr. Abhyuday Dhasmana, Advs.

versus**UNION OF INDIA AND ORS.****.....Respondents**

Through: Mr. Manoj, Adv. with Ms. Aparna
Sinha, Adv. for R-2.

CORAM:**HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TEJAS KARIA****J U D G M E N T****DEVENDRA KUMAR UPADHYAYA, C.J.**

1. The appellants who are retired employees of Food Corporation of India [hereinafter referred to as the “FCI”] (a statutory corporation established under Section 3 of the Food Corporations Act, 1964 [hereinafter referred to as the “Act, 1964”]) – respondent no. 2, are in appeal before us taking exception to the judgment dated 16.04.2026 passed by learned Single



Judge, whereby *W.P.(C) 7270/2019* instituted by them has been dismissed and their claim for being given the benefit of pension at par with those retirees of the FCI who prior to their absorption by way of transfer to FCI were working as government employees in the Department of Food of the Government of India, has not been acceded to.

2. The FCI, as observed above, was established under Section 3 of the Act, 1964 and in terms of the scheme contained in Section 12A of the Act, 1964 certain government employees working in the Department of Food of Government of India, were absorbed in the service of the FCI on transfer. Such employees shall hereinafter be referred to as “**transferred employees**”.

3. On establishment of the FCI, the appellants and several other employees were directly recruited by the FCI as per the conditions of service determined in this respect by the FCI itself. Section 12(3) of the Act, 1964 provides that method of appointment, conditions of service and scale of pay of the officers and other employees of the FCI may be such as may be determined by the regulations to be made by the FCI under the Act, 1964. Those employees, who were directly recruited to serve the FCI which shall include the appellants as well, will hereinafter be referred to as the “**direct recruits**”.

4. The underlying writ petition was instituted by the appellants with the grievance that though they served the same establishment under the same pay pattern for long periods as the transferred employees, they have been denied the pensionary benefits that was made available to the transferred



employees. It is the case of the appellants that while transferred employees were given the benefit of pension on the model the pension was made admissible to the other central government employees, however, the appellants and other direct recruits have been discriminated inasmuch as the benefit of pension on the pattern of the pension available to the transferred employees has not been extended to them and for the said purpose these direct recruits were never given an opportunity to opt for Pension Scheme from the Contributory Pension Fund Scheme [hereinafter referred to as the “**CPF Scheme**”]. According to the appellants, this opportunity to switch over from CPF Scheme to Pension Scheme was mandated by the Office Memorandum [hereinafter referred to as the “**O.M.**”] dated 01.05.1987 issued by the Department of Pension and Pensioners’ Welfare, Ministry of Personnel, Public Grievances and Pensions, Government of India.

5. The challenge mounted by the appellants to impugned action on the part of the FCI, which resulted in the alleged denial of the benefit of pension at par with the pension made available to transferred employees, is two folds. *Firstly*, it has been contended on behalf of the appellants that they have been discriminated *vis-à-vis* the transferred employees and *secondly*, such benefit has been made available to the employees of various other Public Section Undertakings [hereinafter referred to as the “**PSUs**”], the administrative control in respect of which rests with the Food Ministry itself, such as Bureau of Indian Standards [hereinafter referred to as the “**BIS**”].

6. It is also the case of the appellants that in terms of O.M. dated 01.05.1987, the appellants and other direct recruits were never given an opportunity to give their option to move to Pension Scheme from the CPF



Scheme, which otherwise was mandated by the Government of India by issuing the O.M. dated 01.05.1987. It is contended further in this regard that in terms of the provisions contained in Section 6(2) of the Act, 1964, it is mandatory for the FCI to be guided by such instructions on questions of policy as may be given to it by Central Government, however, the FCI never acted upon what was prescribed and directed by the Government of India by issuing the O.M. dated 01.05.1987 and therefore, the discrimination meted out to the appellants is manifest.

7. Referring to Clause 6.1 of the O.M. dated 01.05.1987, it has been contended by Mr. Dave, learned senior counsel representing the appellants that under the said provision the FCI was mandated to issue necessary orders giving option to those of its employees, who were subscribing to the CPF Scheme, however, by not issuing any such necessary orders the O.M. dated 01.05.1987 has been violated resulting in denial of the pension to the appellants. Further, reference has also been given to Clause 7.2 of the said O.M. dated 01.05.1987 to submit that it was mandated therein that administrative ministries, who might have been administering any of the CPF Rules, shall issue similar orders in respect CPF beneficiaries covered by such other schemes in consultation with Department of Pension and Pensioners' Welfare, however, no such order was issued as required/mentioned under Clause 7.2 of the said O.M. dated 01.05.1987 by either the Ministry of Food, which is the administrative ministry so far as FCI is concerned or by the FCI itself. It is, thus, argued that it is on account of failure on the part of the FCI and the Ministry of Food to abide by the mandatory provisions contained in Clauses 6.1 and 7.2 of the O.M. dated



01.05.1987, which has resulted in denial of the benefit of the Pension Scheme to the appellants.

8. Relying on the judgment of Hon'ble Supreme Court in ***Union of India v. S.L. Verma, 2006 (12) SCC 53***, it has been argued that the switch over from CPF Scheme to Pension Scheme was not confined to government servants as per Clause 7.2 of the O.M. dated 01.05.1987 and accordingly, since the benefit of switching over was extended to the employees of BIS, which is also a statutory body, the administrative ministry of which is the Ministry of Food itself, as such the appellants have been discriminated against *vis-à-vis* the employees of other statutory public bodies like the BIS.

9. Reliance has also been placed on behalf of the appellants on a Division Bench judgment of this Court in ***Union of India v. Amit Mukherji, 2013 SCC OnLine Del 2049***, wherein it has been held that O.M. dated 01.05.1987 is to be construed to create legal fiction inasmuch as it provides for an automatic switch over to the Pension Scheme from the CPF Scheme unless the employee concerned opted out. Accordingly, the submission is that by creation of the said legal fiction by operation of O.M. dated 01.05.1987, the appellants and other direct recruits of the FCI were entitled to be given opportunity to give their option for switching over, which, in the instant case, has not been done and therefore, the impugned action on the part of the respondents cannot be justified.

10. Opposing the appeal, on the other hand, Mr. Manoj, learned counsel representing the FCI – respondent no.2, has vehemently argued that a bare perusal of the provisions contained in various clauses of the O.M. dated



01.05.1987 issued by the Department of Pension and Pensioners' Welfare, Government of India, reveals that the said provisions were not applicable to any PSU including the FCI unless the same was adopted by the PSU concerned or there was any such order or direction issued by administrative ministry under the aegis of which the concerned PSU functions.

11. Drawing our attention to the order dated 30.06.2015 passed by the Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution, Government of India, it has been contended on behalf of the FCI that the said order by the Government of India was passed in compliance of an order passed by Hon'ble High Court of Kerala, dated 21.11.2014, wherein the claim of the appellants was considered in detail and the same was rejected by giving reasons.

12. Countering the submission made on behalf of the appellants on the basis of the judgment of Hon'ble Supreme Court in the case of *S.L. Verma (supra)*, it has been argued that the said case related to the employees of BIS and the Regulation 16 of the BIS Regulations expressly provided that the employees thereof would be governed by Central Civil Services (Pension Rules), 1972 and therefore, the Hon'ble Supreme Court in the said judgment only gave effect to the legal fiction created by the O.M. dated 01.05.1987 in view of the said provision in the BIS Regulations. It is, thus, the contention on behalf of the FCI that the said judgment does not serve the cause of the appellants on account of absence of any such regulation applicable to the appellants akin to the Regulation 16 of the Regulations of the BIS.



13. Learned counsel representing the FCI has also drawn our attention to a document, which is available at page 213 of the instant LPA and reflects status of a complaint as on 19.06.2017. It has been argued that the said document clearly states that the O.M. dated 01.05.1987 was not applicable to PSUs. The submission made on behalf of the appellants in respect of the discriminatory treatment *vis-à-vis* the transferred employees has also been refuted by the learned counsel for the FCI stating that the transferred employees form a class distinct from the appellants for the reason that transferred employees prior to their absorption in FCI, were working as government employees in the food department and their absorption, thus, in FCI is to be governed by the provisions contained in Section 12A of the Act, 1964, whereas the conditions of service including payment of pension etc. in respect of the appellants is to be governed by the regulations framed by the FCI. The submission, thus, is that the fact that transferred employees were absorbed after the establishment of the FCI on transfer from government service, whereas the appellants were directly recruited by FCI under its own regime, is a reasonable criteria for distinguishing these two sets of employees and hence the plea based on Article 14 of the Constitution of India is not available to the appellants.

14. We have considered the competing submissions made by the learned counsel representing the respective parties and have also perused the records available before us on this intra-court appeal.

15. The learned Single Judge while passing the impugned judgment has framed certain issues and the issues are, (i) whether the appellants can claim pensionary benefits at par with the transferred employees as a matter of their



legal right, (ii) whether the O.M. dated 01.05.1987 applies to the direct recruits, either directly or by necessary implication, (iii) whether the denial of benefit of the pension scheme to the appellants is hit by Article 14 of the Constitution; and (iv) whether the order dated 30.06.2015, whereby the claim of applicability of Pension Scheme to the direct recruits has been rejected, will have any impact on the claim put forth by the appellants.

16. First of all, we may analyse what exactly was provided by the O.M. dated 01.05.1987. Based on such analysis, we will proceed to determine as to whether without the provisions of the said O.M. dated 01.05.1987 having been either adopted by the FCI or without there being any direction issued by the Food Ministry to the FCI to make available the opportunity to switch over from CPF Scheme to Pension Scheme, by virtue of O.M. dated 01.05.1987, the direct recruits are entitled to exercise their option of switching over.

17. The O.M. dated 01.05.1987 was issued in the background of certain recommendations made by the 4th Central Pay Commission. The subject of the said O.M. is changeover of the central government employees from CPF Scheme to Pension Scheme. From a perusal of the said O.M., it is, without any ambiguity, clear that the O.M. was issued for the benefit of central government employees.

18. As regards the submission made on behalf of the appellants based on Clause 6.1 of the said O.M. dated 01.05.1987, we may only observe that a perusal of the said provision itself shows that the order contained in the O.M. would apply to all civilian central government employees who were



subscribing, at the relevant point of time, to the CPF Scheme. The provision contained in the said clause which provides that in case of other contributory funds, the necessary orders will be issued by the respective administrative authorities would, in our considered opinion, mean that it was directed only in case of civilian central government employees and the said O.M. does not have any direct or indirect application to the employees of PSUs including the FCI. Clause 7.2 of O.M. dated 01.05.1987 has also been referred to by the appellants, according to which administrative ministries of the Government administering any CPF Scheme other than the CPF Rules (India), 1962 were also advised to issue similar orders in respect of CPF beneficiaries in consultation with the Department of Pension and Pensioners' Welfare. The said provision nowhere mandates that the option as was made available for switching over from CPF Scheme to Pension Scheme to the civilian central government employees was to be extended to the employees of the PSUs as well. The O.M. dated 01.05.1987 was issued for its application only in respect of central government employees who intended to switch over from CPF Scheme to pension scheme. Thus, we agree with the conclusion arrived at by the learned Single in the impugned judgment that the O.M. dated 01.05.1987 does not apply either directly or by necessary implication to the appellants.

19. At this juncture, we may deal with the issue raised by the appellants regarding their discrimination *vis-à-vis* the transferred employees. As already noticed above, the transferred employees, prior to their absorption in the services of the FCI, were working in the food department of the Government of India and their absorption took place in terms of the



statutory provisions contained in Section 12A of the Act, 1964 and therefore, they form a distinct and separate class from the appellants who were directly recruited by the FCI after its formation. As a matter of fact, the entry of appellants in the service was after formation of the FCI, whereas the transferred employees were initially appointed in the food department of the concerned ministry of the Government of India as government servants, however, later on, on establishment of the FCI under the Act, 1964 they were transferred and accordingly absorbed in the services of FCI in terms of the statutory scheme as provided for under Section 12A of the Act, 1964. Because of the marked difference in the process of their entry in the service of the FCI, the appellants form a class distinct from the transferred employees. This classification is based on a reasonable differentia on account of the difference in mode of the entry of the appellants and the transferred employees in the service of the FCI and hence, we are unable to agree with the submission made by learned counsel for the appellants that by not giving the benefit of switching over from CPF Scheme to Pension Scheme, they have been discriminated *vis-à-vis* the transferred employees.

20. The next submission made on behalf of the appellants is based on the alleged discrimination meted out to the appellants *vis-à-vis* the employees of other PSUs. Much emphasis was laid in this regard by the learned senior counsel for the appellants on the judgment in the case of *S.L. Verma (supra)* which was in relation to the employees of the BIS, the administrative ministry of which is also the ministry of the food. However, what distinguishes the case of the appellants from the case as discussed in *S.L. Verma (supra)* is that BIS Regulation 16 expressly provided that the



employees would be governed by the CCS (Pension) Rules, 1972, whereas so far as the employees of the FCI is concerned, no such provision in the form of either rules or regulations or even any administrative circular or O.M. exists. In this view, the appellants cannot claim any benefit of the judgment of *S.L. Verma (supra)* to assert that they have been discriminated vis-à-vis the employees of other PSUs.

21. Submission has also been advanced on behalf of the appellants referring to Section 6(2) of the Act, 1964 that any instructions issued by the government shall be binding on the FCI for the reason that as per the said provision the FCI shall be guided by such instructions on questions of policy as may be given to it by the central government. It has been contended by the learned senior counsel for the appellants citing *Food Corporation of India v. Bhanu Lodh, 2005 (3) SCC 618*, that questions of policy do not embrace only the organization of the FCI, its management and functions but also its employment policy, recruitment and other related matters.

22. So far as the law laid down in *Bhanu Lodh (supra)* is concerned, there cannot be any quarrel, however, the question in the light of what has been provided for under Section 6(2) of the Act, 1964 is as to whether the O.M. dated 01.05.1987 gave any instruction or direction to the PSUs which will include the FCI as well, to give the benefit of the said O.M. to its employees. We have already discussed this issue above and have concluded that the O.M. dated 01.05.1987 nowhere contains any instructions to any of the PSUs including the FCI to extend the benefit of the provisions of the said O.M. to their employees and accordingly, reliance placed by the learned senior counsel for the appellants on *Bhanu Lodh (supra)* is of no avail.



23. Similarly, the judgment cited by learned senior counsel for the appellants in *Amit Mukherji (supra)* also does not serve the cause being sought to be espoused by the appellants. A Coordinate Bench of this Court in *Amit Mukherji (supra)* while reflecting upon the provisions of the O.M. dated 01.05.1987 has observed that the said O.M. has already been construed by the Supreme Court as creating a legal fiction *i.e.*, an automatic switch over to the Pension Scheme from CPF Scheme unless the employee opted out. Here again we would like to record that the question in the instant case is not as to whether the O.M. dated 01.05.1987 created a legal fiction as a result of which there would be automatic switch over to Pension Scheme unless the employee concerned opted out, but the question is as to whether the O.M. dated 01.05.1987 either directly or indirectly applied to the employees of the FCI. In the preceding paragraphs, we, for the reasons given therein, have already held that the O.M. dated 01.05.1987 applies only in case of civilian employees of the central government and not in case of employees of any PSUs including the FCI and therefore, the judgment in *Amit Mukherji (supra)* also does not help the appellants.

24. We may also note that the submission made on behalf of the appellants that the O.M. dated 01.05.1987 contained instructions and directions to the PSUs which will include the FCI as well, to extend the benefit of giving opportunity to switch over from CPF Scheme to Pension Scheme, such argument is not only highly misconceived but is also belied by the decision of the central government itself as contained in the Order dated 30.06.2015 passed by the Government of India in the Department of Food



and Public Distribution, whereby the claim of the direct recruits was considered and denied.

25. The Order dated 30.06.2015, as already observed above, was passed in compliance of an order dated 21.11.2014 passed by Hon'ble High Court of Kerala. If we peruse the said Order dated 30.06.2015, what we find is that all the contentions raised by the appellants have been considered and repelled by the Government of India. The order clearly and unambiguously states that the Section 12(3)(b) of the Act, 1964 provides that the appointment, conditions of service and scales of pay, etc. of the employees of the FCI shall be such as may be determined by the regulations as may be framed by the FCI under the said Act, 1964 and since the appellants are directly recruited by the FCI, they are to be governed by the FCI Staff Regulations. It is also mentioned in the said Order dated 30.06.2015 that method of recruitment of the transferred employees and the direct recruits is quite different for the reason that the transferred employees were initially appointed in the erstwhile food department of Government of India and were governed by the Government of India's CCS Rules and therefore, they were extended the option to be governed either by the benefits available to the government employees or the terminal benefits available to the employees recruited by the FCI.

26. Paragraph 2.3 of the Order passed by the Government of India, dated 30.06.2015 clearly states that the O.M. dated 01.05.1987 is applicable to those central government employees who were governed by Government of India CPF (India) Rules, 1962 or any other CPF rules and since the direct recruits of the FCI were appointed by the FCI itself, they cannot be



considered at par with the central government employees. It has also been stated in the said Order that the CPF Scheme to which these direct recruits had been contributing, was administered by the FCI CPF Trust under the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 and therefore, the provisions contained in the O.M. dated 01.05.1987 are not applicable to such direct recruits. Thus, in absence of any instruction issued by the Government of India in any order including the O.M. dated 01.05.1987 to the PSUs including the FCI for extending the benefit of giving option to switch over from CPF Scheme to Pension Scheme, the provisions of the O.M. dated 01.05.1987 would not be applicable to the direct recruits. The view of the Government of India is rather contrary to what has been pleaded on behalf of the appellant in this regard as is reflected from a perusal of the contents of the Order dated 30.06.2015 which was passed in compliance of the order dated 21.11.2014 passed by Hon'ble High Court of Kerala.

27. In fact, there is nothing on record which can persuade us to opine that the O.M. dated 01.05.1987 applies to the FCI employees and therefore, any other argument raised by learned senior counsel for the appellants is rendered misconceived. The entire argument on behalf of the appellants appears to be based on a fallacious assumption that the O.M. dated 01.05.1987 issued by the Government of India is binding on FCI and, thus, is applicable to the appellants. The ground based on the alleged discrimination *vis-à-vis* the transferred employees as also the employees of the BIS (a PSU working under the aegis of the Department of Food, Government of India) is also not made out.



28. Further, the learned Single Judge has elaborately dealt with all the issues raised by the appellants and has concluded that the appellants were not entitled to the relief being claimed by them.

29. For the reasons aforesaid, we do not find any good ground to take a view different from the view taken by learned Single Judge in the impugned judgment dated 16.04.2026 passed in *W.P.(C) 7270/2019*.

30. Resultantly, the appeal fails, which is hereby dismissed.

31. Application(s), if any, stand disposed of.

32. There will be no order as to costs.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TEJAS KARIA)
JUDGE

AUGUST 20, 2026
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