* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) No. 18944/2006

% **19th February, 2015**

R.B.CHAUHAN ..... Petitioner

Through: Mr. Puran Mal Saini, Adv.

versus

FOOD CORPORATION OF INDIA & ANR. ..... Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, petitioner, the erstwhile employee of the respondents/Food Corporation of India, seeks the relief of being granted pensionary benefits along with interest.

2. The facts of the case are that the petitioner was originally the employee of the Ministry of Food, Government of India, and his services were transferred to the respondents/Corporation in the year 1966 under Section 12A of the Food Corporations of India Act, 1964(hereinafter

referred to as 'the Act'). Petitioner in terms of the Act had to apply for his option for converting the Contributory Provident Fund (CPF) entitlement to a pensionary entitlement but the petitioner did not do so. Petitioner had one more opportunity when the respondent issued its Circular dated 11.01.1977 on amendment of Section 12A of the Act entitling a fresh option to be exercised to the transferee employees within a period of six months. Admittedly, the petitioner again did not exercise the option in time. The relevant portion of this Circular dated 11.1.1977 reads as under:-

> "THE FOOD CORPORATION OF INDIA
>
> 16-20 BARAKHAMBA LANE
>
> NEW DELHI
>
> No. 13-1/74-EP   Dated: 11th Jan., 1977
>
> CIRCULAR
>
> Subject :- Amendment of Selection 12-A of the Food Corporation's Act, 1964- Exercise of fresh option by Food transferee employees in terms of such section 4 (A).
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>
> 1 The provisions of Section 12-A of the Food Corporation's Act, 1964 have been amended with a view to give a fresh opportunity to the Food transferee employee to exercise an option to be governed :-
>
> a) by the scale of pay applicable to the post held by him under the Government immediately before the date of transfer or by the scale of pay applicable to the post under the corporation to which he is transferred,
>
> b) by the leave, provident fund, retirement or other terminal benefits admissible to employees of the Central Government in accordance with the rules and orders of the

Central Government as amended from time or the leave, provident fund or other terminal benefits admissible to the employees of the Corporation under the regulations made by the corporation under this Act.

2. A text of the ordinance promulgated by the President to amend the Food Corporations' Act, 1964 is enclosed herewith as Annexure 'A'. The amended provisions inter-alia provide for the following :-

i) All serving employees in respect of whom formal orders of transfer to FCI have been made will exercise the option afresh within a period of six months from the date of the ordinance, irrespective of whether they had or had not exercised option earlier. (sub-section 4A (a) of the Ordinance).

Sd/-

(V.P. KAPOOR)

JOINT PERSONNEL MANAGER

To :

1. All Zonal /Sr. Regional /Regional/District Managers, FCI.
2. Joint Manager (PO), FCI, Calcutta /Madras/Kandla/Vizag.
3. Regional Director (Food), Calcutta /Madras/ Bombay.
4. Joint Manager, (Engg-II) Project Wing, FCI, New Delhi.
5. Principal, CTI, FCI, New Delhi.
6. Unit Manager, Nutro Food Unit, FCI, Ujjain.
7. Unit Manager, Maize Mill, NIT, FCI, Faridabad.
8. Joint Manager (Estt.), FCI, Head Office, New Delhi.
9. PS to Chairman/M.D.
10. PA to CCM / PM / JPM.

11. Dy. Manager (Ros. Coll) in Head Office. Ho May please ensure that immoddato action is taken to implement the above instructions. The receipt of the progress report preseribed above may also be wanted and the position put upto me.
12. All Heads of Division in the Head Office.
13. DM (E.I) DM (E.II) / DM (Pension Cell) in the Head Office.
14. BIF (3 copies).
Copy for information to :-

1. Sh. Bakshi Ram, Dy. Secretary, Min. Of Agri, & Irrigation, (Department of Food), New Delhi with ref. to his letter No. A, 38020/1/74-FC-III dated the 7th Jan, 1977.
2. The secretary, Food Corporation of India, Head Office, New Delhi for further necessary action."

3. Not only, the petitioner did not apply within a period of six months in terms of the Circular of the respondents dated 11.01.1977, petitioner has in fact admittedly received the CPF benefit from the respondents/ FCI totalling to Rs.2,42,931/- without any protest. CPF benefit is an alternative to pensionary benefits and thus an employee cannot claim and receive pensionary benefits once he has received the CPF benefit.

4(i) Counsel for the petitioner argued that the petitioner was not informed of his rights to exercise such an option, however, nowhere does the Circular require that each employee must be individually informed of the Circular. Ordinarily it is sufficient if an employer has given notice to the employees by pasting of the Circulars on the Regular Notice Board. This Court therefore refuses to accept the lame excuses given by the petitioner for failing to exercise such an option in terms of the relevant Circular dated 11.01.1977 in terms of which hundreds and thousands of employees of the respondent have exercised option of pensionary benefits by surrendering the CPF benefits.

(ii) Also, it is required to be noted that in the present case, exercise of option was in terms of a statutory amendment to the Act, and the petitioner therefore cannot plead ignorance of law.

5. I asked the counsel for the petitioner as to whether the petitioner, while receiving a sum of Rs.2,42,931/- had received the CPF amount under protest and there is any document to show that the petitioner has received an amount of CPF without prejudice, however the counsel for the petitioner could give no reply to the court's query. Of course, receiving the amount without prejudice, in any case, would not have made any difference in view of the fact that the petitioner had never exercised the option in terms of the Circular dated 11.01.1977.

6. Therefore, the petitioner has no case whatsoever of any legal entitlement for claiming pensionary benefits as the petitioner had neither exercised the option and also because the petitioner has already received a sum of Rs.2,42,931/- towards provident fund.

7. I may state that this Court also would not have territorial jurisdiction and this petition was liable to be dismissed on account of lack of territorial jurisdiction because the petitioner retired in the year 1988 from Faridkot in Punjab and the relevant authorities at Faridkot in Punjab would have passed orders with respect to the pensioner, but since I have decided the case on merits I am not deciding the case on the aspect of lack of territorial jurisdiction.

8. In view of the above, there is no merit in the petition and the same is therefore dismissed. No costs.

FEBRUARY 19, 2015 **VALMIKI J. MEHTA, J.**
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