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

+ **LPA 90/2019**

FOOD COPORATION OF INDIA Appellant

Through: Mr. Manoj, Advocate.

versus

AMIT CHHIKARA & ORS. Respondents

Through: Mr. Arun Bhardwaj, Advocate for
UOI.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VINOD GOEL

% **ORDER**
08.02.2019

CM APPLs. 6049/2019 & 6050/2019 (Exemption)

1. Exemption allowed, subject to all just exceptions.

CM APPL. 6051/2019 (delay)

2. For the reasons stated in the application, the delay in filing the appeal is condoned and the application is disposed of.

LPA 90/2019 & CM APPL. 6048/2019(Stay)

3. This appeal is directed against the judgment dated 3rd October 2018 passed by the learned Single Judge allowing W.P.(C) 10518/2018 filed by the Respondent.

4. The facts in brief are that pursuant to an advertisement issued by the Staff Selection Commission (SSC) on 29th November 2011 for recruitment of Assistant Grade III in the Food Corporation of India (FCI), the Respondent participated and was declared qualified on 18th August 2012.

5. On 14th June 2013 a Show Cause Notice (SCN) was issued to the Respondent alleging that he had been prima facie found guilty of malpractices in Papers I and II. Nevertheless, the said SCN did not contain any details or evidence in support of such allegation. On 17th June 2013, the Respondent replied to the SCN denying the allegations.

6. The learned Single Judge noted that a similar SCN was issued to one Sudesh Kumari which he successfully challenged before the Central Administrative Tribunal (CAT). The SSC then filed a writ petition i.e. W.P.(C) 9055/2014 in this Court which was dismissed by a Division bench (DB) by judgment dated 19th December 2014 in (***Staff Selection Commission v. Sudesh Kumari***). The DB upheld the judgment of the CAT on the ground that there was no evidence to support the allegation therein. The SLP filed against the above decision was dismissed by the Supreme Court on 19th July 2017.

7. The learned Single Judge in the impugned judgment noted that in light of the above developments, it would have been expected that the SSC would have gracefully accepted its error, withdrawn the SCN dated 14th June 2013 and appointed the Petitioner as an Assistant. However, it did not and the Respondent (who incidentally also went before the CAT in 2014 which

dismissed his petition for want of jurisdiction), after the decision in ***Sudesh Kumari***, filed W.P.(C) 10824/2017 in this Court. The said writ which was disposed of by a learned Single Judge on 6th December 2017 an order, the relevant portions of which read thus:

“3. Learned counsel for respondent-Staff Selection Commission submits that if the Reply to Show-cause Notice of 14th June, 2013 (Annexure P-1) has been received, then a decision thereon would be taken in light of this Court's Division Bench decision in *Sudesh (supra)*, which has been affirmed by Supreme Court vide its order of 19th July 2017, within a period of six weeks and its fate would be conveyed to petitioner within two weeks thereafter.

4. Let it be so done to enable petitioner to avail of remedies as available in law, if need be. It is clarified that respondent-Staff Selection Commission would be at liberty to issue another Show-cause Notice, if the facts and circumstances of this case so warrant.

5. With aforesaid directions, this petition is disposed of.

6. Copy of this order be given dasti to counsel for both the sides to ensure its compliance.”

8. Thereafter on 13th August 2018, the SSC passed an order, paras 4 and 7 of which are relevant and read thus:

"4. Whereas subsequent to the verdict of Hon'ble Supreme Court in the matter of Ms. Sudesh Kumari, the Commission decided to declare the withheld result of such candidates affected by Post Examination Analysis in FCI Examination, 2012 and other examinations conducted by the Commission:-

(a) Who had filed Court case before the date of dismissal of SLP in the Apex Court in the matter of Ms. Sudesh Kumari i.e. 19.07.2017 and the same was disposed of in their favour;

(b) Who had filed Court cases and had judgments in their favour before 19.07.2017 (which was not implemented by the Commission at that time) and are filing fresh OAs/MA after 19.07.2017 for revival of their cases;

(c) Cases which have been adjourned by Courts in view of pendency of SLP in Apex Court; and

(d) Cases in which the Commission has filed averments in the Court that action will be taken as per verdict in Ms. Sudesh Kumari case.

Whereas the Petitioner did not fall under any of the aforesaid four categories."

.....

7. And whereas, in the instant case, the OA No. 2430/2013 filed by the petitioner was dismissed by the CAT, PB. New Delhi on 15.12.2014 for want of jurisdiction and the petitioner filed the Writ Petition on 04.12.2017, i.e., after a gap of 5 years from the Examination and only after the dismissal of SLP in the matter of Ms. Sudesh Kumari on 19.07.2017. Therefore, his case has not been considered by the Commission for declaration of his withheld result."

9. As a result, for the second time, the Respondent had to approach this Court with W.P. (C) 10518 of 2018 in which the impugned order came to be passed. The learned Single Judge, observed, and in the view of this court rightly, as under:

"13. To my mind, the impugned order may border on contempt, especially in view of the law laid down by the Supreme Court in ***Baradakanta Mishra, Ex-Commissioner of Endowments v. Bhimsen Dixit (1973) 1 SCC 446***. It is incomprehensible, how, in the face of so many decisions of the Tribunal, this Court and the Supreme Court, (he Staff Selection Commission could arrogate, to itself, the authority to decide how to implement judicial orders passed by the Tribunal, this Court, and the

Supreme Court, and limit the implementation thereof to four categories of cases to which, alone, the benefit of the said judgments would be extended by it, which have been carved out by the SSC, on no discernible basis whatsoever."

10. Nevertheless the learned Single Judge examined the order dated 13th August 2018 on merits and found the conclusion of the FCI that the case of the Respondent did not fall in any of the four categories outlined in that order to be erroneous. The learned Single Judge was of the view that the Respondent "did fall under category D as conceptualized by the SSC in para 4 above." Accordingly, the SCN issued with the Respondent was set aside and the order dated 13th August 2018 in so far as it applied to the Respondent was also set aside. The Appellant was directed to appoint the Respondent as Assistant Grade III in the FCI within a period of three months.

11. Having heard learned counsel for the Appellant, this Court is of the view that the above conclusion of the learned Single Judge is the only one that could be arrived at in the facts and circumstances of the case. It suffers from no error, factual or legal.

12. Learned counsel for the Appellant then submitted that in terms of the impugned judgment of the learned Single Judge, the Respondent would get pay even for the period when he did not work.

13. The Court is unable to agree with the above submission. The learned Single judge has clarified that the Respondent would be entitled only "to

notional fixation of pay” and that “he shall not be entitled to any arrears”. Therefore, in terms of the order of the learned Single Judge, the Respondent would not get paid for the period he did not work. However, if as a result of the notional fixation of pay from the back date he gets a revised/higher pay for the period after the commencement of his employment in terms of the impugned order, then surely that cannot be denied to him.

14. Counsel for the Appellant relied on the Decision in *Sunaina Sharma v. State of J & K (2018) 11 SCC 413* to contend that seniority must be reckoned only from the date person enters into service. In the present case, the Respondent was kept out for no fault of his and had to come to the Court to secure justice. The impugned order granting the Respondent notional seniority and fixation of pay from the date of his erroneous removal, without any arrears of pay, is fully justified. The aforementioned decision which turned on its own facts is, therefore, of no assistance to the Appellant.

15. For the aforementioned reasons, the Court finds no ground made out to interfere with the impugned order of the learned Single Judge. The appeal is accordingly dismissed. The application is also dismissed.

S. MURALIDHAR, J.

VINOD GOEL, J.

FEBRUARY 08, 2019

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