**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**W.P.(S) No.6592 of 2017**

Ramawatar Kumar Chandravansi, son of Sri Jagdish Ram, Handling Labour Gang no.6, FSD, Ranchi, Dist. Ranchi, resident of Village-Dhadhar, PS and PO-Sikandra, Dist.-Jamui **... Petitioner**

**-Versus-**

1.Food Corporation of India, through its Managing Director, Bihar, Patna, PO +PS-Patna, District-Patna

2.Sr. Regional Manager, Food Corporation of India, Regional Office, PO and PS -Ranchi, Pin no.834001, Dist. Ranchi(Jharkhand)

3.Assit.Manager (D) FCI, FSD, PO and PS-Ranchi, Dist.-Ranchi, Pin no.834001(Jharkhand)

4.District Manager, F.C.I. Ranchi, PO and PS-Ranchi, Pin no.834001 (Jharkhand) **... Respondents**

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**CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

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For the Petitioner : Mrs. M.M. Pall, Advocate

For the Respondents : Mr. Nipun Baxi, Advocate

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**9/15.12.2020** Heard Mrs. M.M. Pall, the learned counsel for the petitioner and Mr. Nipun Bakshi, the learned counsel for the respondents.

2. This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

3. Mrs. Pall, the learned Senior counsel appearing on behalf of the petitioner at the outset submits that it appears that inadvertently the application of the petitioner' father dated 22.03.2003 has not been

annexed with the writ petition. This application was considered by the co-ordinate Bench in earlier round of litigation at page 32. She submits that the said document has been e.mailed with a copy to Mr. Nipun Baxi. Let it be taken on record.

4. The petitioner has preferred this writ petition for quashing the part of order dated 23.08.2017 whereby it has been observed that the case of the petitioner shall be considered when the turn of the petitioner will come.

5. The father of the petitioner namely, Jagdish Ram was a regular employee of the respondent-FCI and he was working with the Food Storage Depot of F.C.I during 2001-2002. When the health condition of the petitioner's father deteriorated, he applied for his retirement in the year 2003 on medical ground and for employment to his eldest son on compassionate ground. The Assistant Manager (D) F.C.I. vide order dated 28.01.2003 directed the father of the petitioner to be examined by the Chief District Medical Officer (Civil Surgeon) and to submit the medical certificate for considering the employment of his son on medical ground and the father of the petitioner was medically examined by the Chief Medical Officer/Civil Surgeon and a report was submitted to that extent for necessary action. The affidavit was called for from the father of the petitioner and undertaking was also taken by the respondent FCI for the purpose of employment of the petitioner on compassionate ground. The father of the petitioner applied for retirement on medical ground at the age of 53 with a request to provide employment to the son of the petitioner. The application of the father of the petitioner is brought on record as Annexure-1 to the writ petition. It is stated that the father of the petitioner was also made a representation dated 22.03.2003 before the Senior Regional Manager, FCI, Regional Office, Ranchi stating therein that he is unable to do handling work due to incapability of carrying 100 K.G Bag so

voluntarily he wants to retire on medical ground with condition that his son could be provided with employment in his place.

6. Mrs. M.M. Pall, the learned Senior counsel for the petitoner submits that the case of the petitioner is fully covered in view of the circular dated 03.07.1996 contained in page-27 of the writ petition. She submits that in view of clause 7 of the said circular employment was required to be provided to the petitioner within three months. She further submits that the petitioner took retirement conditionally and in view of the said condition the respondent FCI was required to provide the compassionate appointment which has not been done in the case of the petitioner. To buttress her argument, she relied in case of "***Food Corporation of India v. Ram Kesh Yadav"***, reported in ***(2007) 9 SCC 531*** . Paragraph nos.10, 11 and 12 of the said judgment are quoted hereinbelow:

> "***10.*** *As rightly contended by FCI, the issue of voluntary retirement of an employee on medical grounds and the issue of compassionate appointment to a dependant of such retired employee are independent and distinct issues. An application for voluntary retirement has to be made first. Only when it is accepted and the employee is retired, an application for appointment of a dependant on compassionate grounds can be made. Compassionate appointment of a dependant is not an automatic consequence of acceptance of voluntary retirement. Firstly, all the conditions prescribed in the scheme dated 3-7-1996 should be fulfilled. Even if all conditions as per guidelines are fulfilled, there is no "right" to appointment. It is still a matter of discretion of the competent authority, who may reject the request if there is no vacancy or if the circumstances and*

*conditions of the family of the medically retired worker do not warrant grant of compassionate appointment to a dependant. Therefore, the observation of the High Court in Nizamuddin that allowing the request of the employee for voluntary retirement on medical grounds and rejecting the application of the dependant for compassionate appointment on the ground of non-fulfilment of conditions of scheme would amount to taking inconsistent stands, is clearly erroneous.*

*11. But on facts, this case is different. The second respondent's application dated 26-4-1999 was a composite application for conditional voluntary retirement on medical grounds, subject to appointment of his son in his place. The application specifically stated that he desired to go on retirement on medical grounds if his son was provided with employment in his place. The second respondent had thus clearly indicated that if employment on compassionate ground was not provided to his son, he was not interested in pursuing his request for retirement on medical grounds. FCI ought to have informed the employee that he could not make such a conditional offer of retirement contrary to the scheme. But for reasons best known to itself, FCI did not choose to reject the conditional offer, but unconditionally accepted the conditional offer. There lies the catch.*

*12. When an offer is conditional, the offeree has the choice of either accepting the conditional offer, or rejecting the conditional offer, or making a counter-offer. But what the offeree cannot do, when an offer is conditional, is to accept a part of the offer which results in performance by the offeror and then reject the condition subject to which the offer is made."*

7. She further submits that due to laches on the part of the respondent FCI the petitioner is suffering and she submits that a wrong doer should not be allowed to take undue advantage of their own default. To buttress her argument, she relied in "***Kusheshwar Prasad Singh v. State of Bihar"*** reported in ***(2007) 11 SCC 447***. Paragraph nos.11 and 13 of the said judgment are quoted hereinbelow:

> "***11.*** *The learned counsel for the respondent authorities supported the orders and submitted that they were right in holding that since no final notification under Section 11(1) was issued, the proceedings could not be said to have been concluded and in view of amendment in 1981, action could be taken under Section 32-B of the Act and the appellant had no right to make grievance against it.*
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> ***13.*** *The appellant is also right in contending before this Court that the power under Section 32-B of the Act to initiate fresh proceedings could not have been exercised. Admittedly, Section 32-B came on the statute book by Bihar Act 55 of 1982. The case of the appellant was over much prior to the amendment of the Act and insertion of Section 32-B. The appellant, therefore, is right in contending that the authorities cannot be allowed to take undue advantage of their own default in failure to act in accordance with law and initiate fresh proceedings."*

8. She submits that a new ground is being taken by the respondent FCI in view of further circular dated 04.03.2003 whereby it has been stated 5 % of the vacancies earmarked for direct recruitment and after coming into force the circular there has not been any vacancy. She submits that this 2003 rider will not apply in the case of the petitioner in

view of the fact that father of the petitioner took voluntarily conditional retirement(VRS) and she submits that since this was conditional it was required to be followed in view of clause -7 of the circular of 1996. She submits that this is the second round of litigation and petitioner has earlier moved vide W.P.(S) No.2393 of 2008 which was after considering all the facts as argued by her, the writ Court has disposed of the writ petition directing the respondent FCI to consider the case of the petitioner taking into consideration the reported judgment in "***Food Corporation of India v. Ram Kesh Yadav"*** referred above. She submits that thereafter the reasoned order has been passed which is not in accordance with the direction issued. She submits that by the impugned order the respondents have decided to implement the said order. She further submits that so far as supplementary counter affidavit is concerned with regard to dying cadre it is not applicable in the present case as it is well settled provision of law that any circular will not apply with retrospective effect. She submits that the case of the petitioner is of the year 2004 for that circular has come in the year 2020. She further submits that the case of the petitioner is fully covered in view of the judgment rendered by the Division Bench in L.P.A No.150 of 2014 and a judgment of the Hon'ble Supreme Court in Civil Leave Petition vide Civil Diary No.8963 of 2020 contained at page 15 of the rejoinder of the petitioner i.e. reply to the second supplementary counter affidavit.

9. Per contra Mr. Nipun Baxi, the learned counsel for the respondent FCI submits that the case of the petitioner has been considered in right direction. He submits that the 1996 circular has been supplemented by the circular of 2003 whereby 5% rider for the vacancy for appointment on compassionate ground has been made applicable. He submits that 1996 circular is also made effective with supplement of 2003

circular. He further submits that so far as compassionate appointment is concerned that must be in terms of the scheme. He submits that compassionate appointment is not a right but it is a concession made for such appointment. He further submits that so far earlier round of litigation is concerned, it was directed to consider the case of the petitioner if there is no any legal impediment. He submits that 5% criteria by way of circular of 2003, there is legal impediment on implementing it that is why the reasoned order has been passed in the right direction. He submits that the petitioner is at sl.no.24 of the compassionate appointment list and there are only 8 vacancies and in view of subsequent development it is decided by the competent authority to make that department as dying cadre. The case of the petitioner has not been considered. He submits that in view of the scheme, the petitioner is not entitled for compassionate appointment. He relied in case of "***Indian Bank v. Promila***", reported in ***(2020) 2 SCC 729***. Paragraph 20 and 21 of the said judgment are quoted herein below:

> "***20.*** *We have to keep in mind the basic principles applicable to the cases of compassionate employment i.e. succour being provided at the stage of unfortunate demise, coupled with compassionate employment not being an alternate method of public employment. If these factors are kept in mind, it would be noticed that the respondents had the wherewithal at the relevant stage of time, as per the norms, to deal with the unfortunate situation which they were faced with. Thus, looked under any Schemes, the respondents cannot claim benefit, though, as clarified aforesaid, it is only the relevant Scheme prevalent on the date of demise of the employee, which could have been considered to be applicable, in view of the judgment of this Court in Canara Bank. It is not for the courts to*

*substitute a Scheme or add or subtract from the terms thereof in judicial review, as has been recently emphasised by this Court in State of H.P. v. Parkash Chand.*

***21.*** *We may have sympathy with the respondents about the predicament they faced on the demise of Shri Jagdish Raj, but then sympathy alone cannot give remedy to the respondents, more so when the relevant benefits available to the respondents have been granted by the appellant Bank and when Respondent 1, herself, was in employment having monthly income above the benchmark."*

10. He further submits that compassionate appointment requires to be followed in view of the scheme. He relied in the case of "***State of H.P. v. Shashi Kumar"*** reported in ***(2019) 3 SCC 653*** . Paragraph nos.18 and 22 of the said judgment are quoted hereinbelow :

"***18.*** *While considering the rival submissions, it is necessary to bear in mind that compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles which accord with Articles 14 and 16 of the Constitution. Dependants of a deceased employee of the State are made eligible by virtue of the policy on compassionate appointment. The basis of the policy is that it recognises that a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service. It is the immediacy of the need which furnishes the basis for the State to allow the benefit of compassionate appointment. Where the authority finds that the financial and other circumstances of the family are such that in the*

*absence of immediate assistance, it would be reduced to being indigent, an application from a dependent member of the family could be considered. The terms on which such applications would be considered are subject to the policy which is framed by the State and must fulfil the terms of the policy. In that sense, it is a well-settled principle of law that there is no right to compassionate appointment. But, where there is a policy, a dependent member of the family of a deceased employee is entitled to apply for compassionate appointment and to seek consideration of the application in accordance with the terms and conditions which are prescribed by the State.*

***22.*** *Specifically in the context of considering the financial circumstances of the family of the deceased employee, several judgments of this Court have elaborated on the principles to be followed."*

11. He further submits that so far as clause -vii of the circular is concerned that is three months rider is for making application on compassionate ground.

12. On these background and going through the submission of the learned counsel for the parties, the Court has perused the material on the record. It is admitted position that in view of the circular of 1996 the application was required to be made within three months. For the sake of brevity, the said clause is being quoted hereinbelow :

*"vii) Application for such compassionate grounds appointment shall be made within 3 months from the date of retirement and this period may be relaxed by the competent authority in exceptional and deserving cases."*

13. It is also an admitted position that the father of the petitioner

applied for VRS with certain condition and the condition was that he will accept the VRS if his son will be provided appointment on compassionate ground. This fact has not been denied by the respondent FCI and this aspect of the matter has been considered by the Hon'ble Supreme Court in the case of *"Food Corporation of India" (supra).* In paragraph no.10 of the said judgment, the same circular was also discussed by the Hon'ble Supreme Court. In the impugned order while deciding the representation of the petitioner pursuant to the order passed by this Court in W.P.(S) No.2393 of 2008, the competent authority has held that this petitioner is entitled for compassionate appointment. In paragraph no.12 of the writ petition it is mentioned that the case was heard time to time and the respondents were directed to place the detail scheme for compassionate appointment on medical ground and compliance thereof, the respondents filed additional couner affidavit and the scheme has been brought on record. The said additional counter affidavit brought on record is annexed as Annexure-3 to the writ petition and in rebuttal of paragraph no.12, it has been said in the counter affidavit that it is a matter of record. So far as the judgment relied by the learned counsel for the respondent is concerned, it is well settled proposition of law that compassionate appointment is a concession and not a right, however, in the case in hand, the retirement was conditional and the VRS was provided conditionally and this aspect of the matter has been considered by the Hon'ble Supreme Court in case of *Food Corporation of India* (supra). The judgment relied by the learned counsel of the respondents also suggest that the relevant scheme prevalent on the date of demise of the employee will apply. Thus, it is not a case of the respondent that the petitioner has not applied on time. Due to the delay on the part of the respondents, the petitioner may have suffered in view of clause (iv) of 1996 scheme but this is not due to

laches on the part of the petitioner. So far as the dying cadre argument is concerned in view of supplementary counter affidavit filed by the respondent FCI, it is not applicable in the case of the petitioner as the case of the petitioner is of the year 2004 and that cannot be treated with retrospective effect. So far as the judgment relied by Mrs. Pall, the learned Senior counsel in L.P.A and Civil Appeal (supra) are concerned, those are the judgments and based on for the laches on the part of BCCL and considered the NCWA of BCCL and after that order has been passed. The subsequent circular has not applied in the case of the respondent. It is helping to some extent to the petitioner. So far the Special Leave Petition is concerned, for the laches of the BCCL that order has been passed which has been dismissed with cost and the facts of the case in hand is on different footing and the Court is not inclined to impose the cost. Thus, this order is not helping the petitioner.

14. As a cumulative effect of the above discussion, particularly considering the conditional VRS provided to the father of the petitioner and in view of the judgment of Hon'ble Supreme Court in *Food Corporation of India* (supra), the writ petition succeeds.

15. Accordingly, the impugned part of the order dated 23.08.2017 is quashed.

16. The respondent FCI is directed to provide employment to the petitioner within 8 weeks from the date of receipt /production of the copy of this order.

17. The writ petition [W.P.(S) No.6592 of 2017] stands allowed and disposed of.

**(Sanjay Kumar Dwivedi, J.)**

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