

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 01.10.2020

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS.3255 & 5761 OF 2013

All India Food Corporation of India
Non-Pensioned-cum-Senior Citizens
Retirees' Association
rep. By its Secretary
Shop No.8, Ishwaryam Complex
New No.67, Brindavan Street
West Mambalam, Chennai 600 033.

... Petitioners in
both petitions

- Vs -

1. The Union of India
rep. By its Secretary
Ministry of Consumer Affairs
Government of India
Krishi Bhawan, New Delhi 110 001.

2. The Food Corporation of India
by its Chairman & Managing Director
Food Corporation of India (Hqrs.)
16-20, Barakamba Lane
New Delhi 110 001. ... Respondents in both petitions

W.P. No.3255 of 2013 filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the respondents to grant the benefit of 'Liberalised Pension' to the petitioner Association members being the retired employees of FCI, under the 2nd respondent herein at par with the similarly placed employees of the Central Government and its Organisations.

W.P. No.5761 of 2013 filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the respondents 1 and 2 to implement Assured Career Progression Scheme with effect from 1.1.1996 as per Fifth Pay Commission Report and in conformity and in accordance with the judgment of the Supreme Court made in 2008 (5) SCC 100 and consequently grant benefits, monetary benefits accumulated and accrued forthwith to the members of the petitioner Association.

For Petitioner : Mr. S.R.Sundaram

For Respondents: Mr. N.Rajan for R-1
Mr. M.Karthikeyan for R-2

COMMON ORDER

The petitioner association is an association of retired employees of the Food Corporation of India (for short 'FCI') and while W.P. No.3255 of 2013 has been filed for the grant of liberalised pension at par with the employees of the Central Government, W.P. No.5761 of 2013 has been filed for implementation of the Assured Career Progression with effect from 1.1.96 as per the 5th Pay Commission Report and in conformity with the judgment of the Hon'ble Supreme Court in 2008 (5) SCC 100.

2. It is averred that the employees of the Food Corporation of India (for short 'FCI') are governed by the Staff Regulation Act and the employees recruited prior to 1971 are governed by the Central Civil Service Rules. The period between 1965 and 1973 the pay scales of the employees of FCI were better than the employees of the Central Government. The 2nd respondent adopted the pay scales prescribed by the 3rd Pay Commission to the Central Government Employees in the year 1974. Till 1983, the employees of FCI whether transferees/deputation from Food Department or direct recruits were governed by the Central Government Dearness Allowance pattern of pay scales and other allowances and were equal and at par with the employees of the Central Government. While the transferred employees were given option to avail pension and its benefit at the time of retirement as applicable to Central Government employees in terms of Regulation 12 of the Act, whereas such benefit was denied to directly recruited employees. The 2nd respondent has framed the FCI Contributory Provident Fund Regulation u/s 45 of the Act. Whiles, in the year 1983, the Government of India directed the respondent to switch over to Industrial Pattern of Dearness Allowances to its employees of category 3 & 4 with effect from August, 1983. Challenging the unilateral action, petition was filed before the Hon'ble Supreme Court in W.P. No.485/1989 and Contempt Petition No.109/1989 in which the Hon'ble Supreme Court granted relief holding that the right of the employees as on 1.1.1989 would stand protected and they would continue to receive the Central Dearness Allowance pattern and option was given to them to choose. Accordingly, the members of the petitioner Association were receiving Central Government Pay Scales with Dearness Allowance and also the pay scales on the basis of the respective Pay Commissions. The Hon'ble Supreme Court of India, in the decision in D.S.Nakara -

Vs - Union of India (AIR 1983 SC 183) and Pensioners' Association Ex-Assam Oil Officers & Ors. - Vs - Union of India (2004 (3) SCC 265) has held that the liberalised pension scheme is for the benefit of the employees, who form a homogeneous mixture and cut off date in retirement cannot be the basis for giving them the benefit of pension. they cannot be divided on the basis of the retirement date . The above said decision squarely applies to the case of the members of the petitioner Association and, therefore, in order to avail such benefit, the petitioner Association made representation for implementation of the liberalised pension scheme on the basis of the above order in Nakara's case (supra). However, the benefit of the said decision has not been extended to them, resulting in the filing of the present above writ petition.

3. Insofar as W.P. No.5761 of 2013 is concerned, the case of the petitioner Association, in addition to the above facts narrated, is that, the members of the petitioner association has put in more than 27 to 29 years of service, but they have not enjoyed the fruits of promotion, except for one, but employees, who had worked in other cadres have enjoyed more promotional benefits and, therefore, not giving promotional avenue to the petitioner is sheer discrimination and in this regard, the decision of the Hon'ble Supreme Court in the case of Food Corporation of India & Ors. Vs - V.Prashotam Bansal & Ors. (2008 (5) SCC 100), is squarely applicable and, therefore, it is prayed that the petitioners be also granted the benefits of Assured Career Progression as provided for in the 5th Pay Commission with effect from 1.1.96.

4. Learned counsel appearing for the petitioner submitted that in order to avail the benefit of liberalised pension as also the assured career progression to the association members on par with similarly placed employees of the Central Government, representation was submitted, which has not seen the light of the day at the hands of the respondents and, therefore, it would suffice if a direction is issued to the respondents to consider the claim of the members of the petitioner Association in terms with the decision of the Hon'ble Apex Court Nakara's case, Ex-Assam Oil Officers case and Prashotam Bansal's case (supra), within a reasonable time as may be fixed by this Court.

5. Learned counsel appearing for the respondents, while taking this Court through the gist of the counter filed by the respondents denying the averments of the petitioner Association, however, fairly conceded that in view of the limited relief sought for, this Court may pass appropriate orders directing the respondents to consider and dispose of the representation submitted by the petitioner Association for grant of liberalised pension and assured career progression in terms with the orders

passed by the Hon'ble Supreme Court in Nakara's case, Ex-Assam Oil Officers case and Prashotam Bansal's case (supra), if applicable to the members of the petitioner Association, within a time frame to be fixed by this Court.

6. This Court paid its undivided attention to the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.

7. The facts in issue are not in dispute. Equally, the decisions in Nakara's case and Ex-Assam Oil Officers case (supra) relating to grant of liberalised pension and also Prashotam Bansal's case (supra) relating to grant of assured career progression are also not disputed. The crux of the issue is that the petitioner Association aver that the said decisions would cover the members of the petitioner Association for which representation has been submitted by the petitioner Association for consideration and grant of the benefits. In view of the limited relief sought for, this Court, without venturing into the merits of the issue, directs the petitioner Association to submit a copy of the representation along with a copy of this order within a period of four weeks from the date of receipt of a copy of this order and on receipt of the same, the respondents are directed to consider the representation in the light of the decision of the Hon'ble Supreme Court in Nakara's case and Ex-Assam Oil Officers case for grant of liberalised pension and Prashotam Bansal's case (supra) for grant of assured career progression to the members of the petitioner Association, if applicable to the members of the petitioner Association, and dispose of the same in accordance with law within a period of three months thereafter.

8. These writ petitions are disposed of with the aforesaid directions. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

सत्यमेव जयते

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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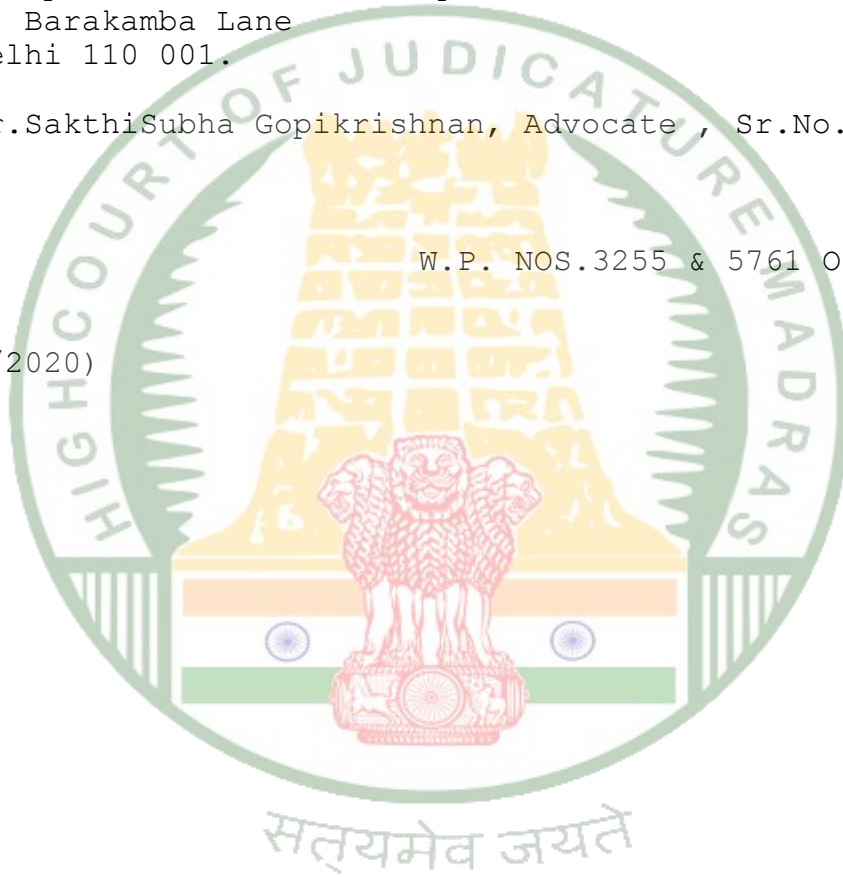
1. The Secretary to Government
Ministry of Consumer Affairs
Government of India
Krishi Bhawan, New Delhi 110 001.

2. The Chairman & Managing Director
Food Corporation of India (Hqrs.)
16-20, Barakamba Lane
New Delhi 110 001.

+2cc to Mr.SakthiSubha Gopikrishnan, Advocate , Sr.No.32680,32679

W.P. NOS.3255 & 5761 OF 2013

PVS (CO)
RMP (05/11/2020)



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