

In the High Court at Calcutta

Civil Appellate Jurisdiction

Appellate Side

The Hon'ble Justice Subrata Talukdar

&

The Hon'ble Justice Lapita Banerji

MAT 520 of 2021

With

CAN No.4 of 2022

Mina Begum & Ors. (Replacing Kazi Sirajur Rahaman

(Deceased)

Vs.

Food Corporation of India & Ors.

For the Appellant : Mr. Animesh Mookherjee

For the Respondent Nos.1-4 : Mr. Prabir Kumar Chaudhuri

Heard on : 04/07/2022

Judgment on : 25/08/2022

Lapita Banerji, J:- This appeal and application arises out of an Order dated November 18, 2019 (Impugned Order) passed by an Hon'ble Single Judge of this Court in W.P. 14356 (W) of 2014. By the Impugned Order, the Hon'ble Single Judge held that since the Respondents/Food Corporation of India (FCI) have confirmed the service of the writ petitioner with effect from May 12, 1990 and consequently taken steps for pay fixation, no further order was required to be passed in the Writ Petition. It was further held that in the event, the writ petitioner was aggrieved by the deemed date of confirmation, he would be at liberty to challenge the same before the appropriate authority.

2. The admitted facts in this appeal are as follows:

- (a) The writ petitioner/predecessor-in-interest of the appellants was a casual employee of the respondent No.1/FCI since May 24, 1983. Admittedly, he was employed on Monday to Friday basis, without any exception. Saturdays and Sundays were excluded from his service. The writ petitioner would invariably receive an appointment letter on Monday morning to continue with his employment till Friday.
- (b) After 2 years of his employment, the writ petitioner made representations to the FCI to be absorbed as a permanent employee. Since the representations of the writ petitioner

went unheeded, he filed a Writ Petition being Civil Order No. 15956(W) of 1985 before this Hon'ble Court.

- (c) An Hon'ble Single Bench of this Court by its Order dated January 12, 1987 directed the FCI/respondents to confirm the writ petitioner's appointment with immediate effect. Such directions were to be complied with, within a period of 6 weeks.
- (d) The said directions were passed even though the writ petitioner was appointed on a "no-work-no-pay basis". The Hon'ble Single Judge did not place reliance on the declaration signed by the writ petitioner, whereby, he accepted his appointment as strictly casual in nature and also the rate of payment.
- (e) The respondent/FCI challenged the Order dated January 12, 1987 in appeal. By an Order dated January 12, 1989 passed by a Coordinate Bench of this Hon'ble Court, the Order of the Hon'ble Single Bench was upheld. The Learned Counsel appearing for Food Corporation of India also acquiesced to the suggestion made by the Co-ordinate Bench as fair. The FCI was directed to offer employment on regular

basis as directed by the Learned Single Judge subject, however, to the condition that if he was convicted in the pending criminal proceedings, it would be open to the respondents/FCI to take appropriate proceedings against him in accordance with law.

- (f) An offer of appointment was issued by the respondents/FCI on May 5, 1989, wherein, the writ petitioner was offered the post of a Typist. He was to be kept on probation for a period of one year from the date of his joining i.e. May 12, 1989. The writ petitioner accepted the said offer without demur and started working from May 12, 1989.
- (g) After accepting the said post of a Typist the writ petitioner worked continuously till his retirement in November, 2019.
- (h) The writ petitioner's wife had lodged a criminal complaint against him under Section 498A of the Indian Penal code and the same was registered as Case No.8 at P.S. Suri on November 6, 1987. The said criminal case was pending when the Judgment was passed by a Coordinate Bench on January 12, 1989 and therefore, finds reference in the said Order. By a Judgment dated June 5, 1998, the writ

petitioner was convicted by the Chief Judicial Magistrate and sentenced to 2 years of rigorous imprisonment and also a fine of Rs.2,000/- in the criminal case. The writ petitioner was acquitted by the Hon'ble High Court at Calcutta by a Judgment and Order dated November 15, 2006 passed in C.R.R. No.1712 of 2001. In 2012, an S.L.P. was filed by his wife before the Hon'ble Supreme Court of India.

- (i) The Special Leave Petition, which was filed, was disposed of by the Hon'ble Supreme Court in favour of the writ petitioner in 2014.
- (j) The contention of the FCI is that the disposal of the criminal case was informed to the respondents/FCI on December 19, 2018 when the writ petitioner submitted his representation for confirmation to the post of Typist. After receipt of the said intimation of the disposal of the criminal case, the respondents/FCI confirmed the service of the writ petitioner with effect from May 12, 1990. The said fact will appear from the communication dated January 4, 2019 issued by the Deputy General Manager (Personnel) FCI. It was however contented on behalf of the writ petitioner that after

the acquittal in 2006, the FCI was informed of the same in 2007 and a prayer for confirmation was made.

- (k) The writ petitioner was superannuated from his service in November, 2019. The entirety of contributory provident fund (CPF), gratuity and Final Leave Encashment benefits were handed over to him considering that his date of deemed confirmation was May 12, 1990. The respondent/FCI also fixed the revised pay scale in terms of H.Q.I. Circular No. HQ-09-2019-17 dated October 11, 2019.

3. Mr. Mookherjee appearing for the writ petitioner/substituted appellants argued that since the Hon'ble Single Bench's Order dated January 12, 1987 has been confirmed by an Hon'ble Coordinate Bench on January 12, 1989, the writ petitioner's service should be deemed to be confirmed from May 24, 1983 (the date on which he joined as a casual employee and not from May 5, 1989). The writ petitioner claimed arrears of salary based on fixation of his pay scale from May 24, 1983 and not from May 4, 1989. He claimed that under directions of this Hon'ble Court, the writ petitioner was entitled to the same.
4. The writ petitioner made several representations through his Advocates for fixation of pay and release of such arrears. He submitted that

representations through various Advocates on May 19, 1992, February 22, 2004, June 7, 2010 for fixation of pay, seniority and arrears of salary from May 24, 1983 were made but went unheeded by the FCI.

5. Mr. Chaudhuri, appearing for the respondents/FCI argued that pursuant to the direction given by this Hon'ble Court, the writ petitioner was offered an appointment by a letter dated May 5, 1989. The writ petitioner joined his services on May 12, 1989 without any protest/demur. Therefore, he did not discharge regular service in the post of Typist before May 12, 1989 and no financial benefits can be given for any prior period. The writ petitioner after having accepted all the retiral benefits was abusing process of law by agitating that his employment be regularized from May, 1983, when he joined as a casual worker, notwithstanding the fact that the same was impermissible in law. The writ petitioner chose not to protest since 1989 when he was offered the employment and after enjoying the benefits for several years, came at a much delayed stage to assail the date of confirmation of the regular employment. As such, the writ petition and consequently the appeal were not maintainable and the appeal should be dismissed in limine. The writ petitioner has sought to cause mischief by his purported claim of absorption as a regular employee since 1983.

6. Having considered the rival submissions of the parties and the materials placed on record, this Court finds:

- (i) The writ petitioner was appointed as a casual employee on May 24, 1983.
- (ii) The writ petitioner's employment was confirmed by an Hon'ble Single Judge vide an Order dated January 12, 1987. The directions were to be complied within 6 weeks from the date of the Order. Therefore, the deemed date of confirmation of the employment of the writ petitioner could not have been later than February 23, 1987.
- (iii) A Coordinate Bench of this Hon'ble High Court confirmed the Order of the Hon'ble Single Bench by an Order dated January 12, 1989. The said Order of the Coordinate Bench was accepted by the respondent/FCI. No appeal was preferred therefrom.
- (iv) Therefore, the Order of the Hon'ble Single Bench, which directed confirmation within a period of 6 weeks from the date of the Order, attained finality. The writ petitioner's employment was deemed to be confirmed latest by February 23, 1987.

- (v) The offer of appointment dated May 5, 1989, by which the writ petitioner was appointed and also kept in purported probation for a period of one year, cannot be relied on by the respondent/FCI to deny the fixation of pay, consequential seniority and arrears of pay since February 23, 1987. Whether or not the writ petitioner informed the respondent/FCI about his acquittal in the criminal proceedings prior to 2018 or made any representation in that regard, cannot stand in the way of granting benefits that the writ petitioner was legally entitled to pursuant to the Order dated January 12, 1987.
- (vi) The writ petitioner's claim for fixation of pay, seniority and arrears of pay from 1983, when he admittedly worked as a casual worker, is unsustainable. The writ petitioner's right to be confirmed as a regular employee crystallized pursuant to the Order dated January 12, 1987. The said Order was directed to be complied with within a period of 6 weeks. No retrospective effect was given to the employment/service of the writ petitioner by the Hon'ble Single Bench. In the circumstances, the writ petitioner has failed to establish any legal right for absorption/regularization since May 24, 1983.

- (vii) Apart from the Affidavit-in-Opposition filed by the respondent/FCI, the Court called for a written instructions (WI) on behalf of the respondents /FCI.
- (viii) Unfortunately, nothing much is comprehensible from the said written instructions (WI) filed by the Assistant General Manager (Personnel) dated 8/10th June, 2022, apart from the fact that the writ petitioner/substituted appellants came at a belated stage and, therefore, should be denied any relief. Since, the writ petitioner did not discharge his regular service from January 12, 1987, it was contented that he could not be given service benefits from that date.
- (ix) No valid reason was shown by the said written instructions (WI) as to why the offer letter was belatedly issued in May, 1989 instead of January/February, 1987. The FCI failed to give any plausible reason/explanation as to why the writ petitioner should be made to bear the brunt of the negligence (inadvertent or otherwise) on the part of the FCI in failing to give the writ petitioner the benefits, at least from February 23, 1987. The WI merely reiterated the stand taken in the opposition and also incorrectly stated that the benefits of the probationary period were granted pursuant to previous litigations.

- (x) The FCI admitted in the opposition affirmed on its behalf on May 11, 2022 that the writ petitioner's service was confirmed on May 12, 1989 and he was entitled to the benefits from the said date. The Hon'ble Single Judge recorded in the Impugned Order dated November 18, 2019 that the deemed confirmation was from May 12, 1990 as per the FCI. Neither in the opposition nor in the WI has it been explained why despite admitting that the confirmation was from May 12, 1989 the benefits were sought to be given to the writ petitioner from May 12, 1990 i.e. 1 year after the admitted date of confirmation.
7. In the light of the discussions above, this Court holds that the writ petitioner was entitled to fixation of pay/seniority/arrears of pay at least from February 23, 1987, if not from 6 weeks before, pursuant to the Order dated January 12, 1987.
8. The FCI/Respondents are directed to calculate the arrears based on notional seniority from February 23, 1987 and release the arrears within 6 weeks from the date of this Order. The writ petitioner was not entitled to fixation of pay/seniority/arrears of pay since May 24, 1983 as claimed by him and the substituted appellants. The Impugned Order dated November 18, 2019 is **set aside** to that limited extent and the appeal

being **MAT 520 of 2021** along with **CAN No. 4 of 2022** are **partially allowed** to such extent. Pursuant to the Order Dated June 6, 2022 **CAN 5 of 2022** was already **allowed** even though the application no. does not find reference in the last order.

9. There shall be no order as to costs.
10. Parties shall be entitled to act on the basis of a server copy of the order placed on the official website of the Court.
11. Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Subrata Talukdar, J.)

(Lapita Banerji, J.)

Later:-

Learned Counsel for the F.C.I. prays for extension of time to execute the terms of this order.

Accordingly, time is extended by three months from this date, as prayed for.

I agree.

(Subrata Talukdar, J.)

(Lapita Banerji, J.)