ORDER SHEET

OD-6

WPO NO. 1274 OF 2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

MALAY BHATTACHARJA
Versus
FOOD CORPORATION OF INDIA AND ANR.

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date : 20th June, 2022

Appearance:
Mr. Soumya Majumder, Adv.
Mr. Kisor Ray, Adv.
Mr. Sanjukta Dutta, Adv.
For petitioner
Mr. Debajyoti Barman, Adv.
Ms. Sanjukta Basu Mallick, Adv.
For respondents

The Court : The petitioner, a retired employee of Food Corporation of India (in short FCI), has filed this writ petition, inter alia for a direction upon the respondents to pay arrears of salary from 20th November, 2006 to 31st October, 2015 along with accrued interest.

The petitioner says that at the time when he joined FCI i.e. on 20th October, 1983, the petitioner was governed by the Central Dearness Allowance (CDA) pay pattern. Subsequently, the respondent employer in compliance with the order of the Hon'ble Supreme Court of India, shifted the petitioner from FCA pay pattern to Industrial Dearness Allowance (IDA) patter of pay. The petitioner says that on being superannuated on 30th November, 2015, the petitioner was shown to be covered by CDA pay pattern and not the IDA pay pattern in contravention of FCI's own circular dated 7th December, 2011.

The petitioner says that there will be certain arrears if the petitioner's salary prior to his retirement is calculated under IDA pattern instead of CDA pattern. The petitioner is seeking implementation of the IDA pay pattern as per the own decision taken by FCI and payment of arrears on that basis.

On behalf of FCI it is submitted by showing two writ petitions filed before the Delhi High Court and two before the Punjab and Haryana High Court to persuade this Court that the issue of conversion from CDA to IDA is a matter under consideration before the said two High Courts.

After perusing the writ petitions filed before the Punjab & Haryana High Court respectively in Civil Writ Petition No. 20603 of 2014 and in Mohan Singh Vs. Food Corporation of India as also the orders passed by the Delhi High Court in Civil Writ Petition No.3365 of 2012 and Civil Writ Petition No. 7659 of 2011, I do not find any cogent reason for keeping the writ petition pending till the issue is decided by the Delhi High Court or Punjab & Haryana High Court in view of the reliefs claimed.

In the writ petitions being Writ Petition (Civil No.) 7659 of 2011 and those Mohan Singh (supra), Civil Writ Petition No. 20603 of 2014 the main challenge is the circular dated 30th September, 2011. The circular was issued according to FCI following the ratio laid down in a Supreme Court judgment.

The orders passed in the writ petition are orders in personam and they no way bind the petitioner. In any event the challenge in the writ petition in hand and those writ petitions filed before the Punjab & Haryana High Court and Delhi High Court are on different issues. In the instant case petitioner is seeking payment by implementing the decision contained in the circular dated 30th September, 2011 FCI has to defend its circular being under challenge before Delhi and Punjab & Haryana High Courts. So at the present there is no conflict between FCI's policy and the petitioner's claim. The petitioner has waited for 7 years from his retirement for his claim to be accepted and paid by FCI. The petitioner has made several representations which all remain unresolved. The petitioner should not be made to wait till the decision from Delhi High Court and Punjab & Haryana High Court for recovering the benefits as per the existing policy of FCI.

Allowing affidavits to be filed by FCI will not throw any further light in the matter inasmuch as no factual statement in the instant writ petition requires to be dealt with by filing an opposition. The facts are few in the instant writ petition and the same are fairly admitted. These factual matters, therefore, are not required to be dealt with by filing an affidavit.

In the aforesaid facts and circumstances, I dispose of this writ petition without calling for affidavits by directing FCI to make payment of the arrears of salary, if any, to the petitioner for the period between 20th November, 2006 to 31st October, 2015 by applying the IDA pay pattern instead of CDA pay pattern in five instalments. The first of such instalments shall commence on 15th July, 2022 and thereafter on 10th of each successive month till the entire amount is paid.

The petitioner, however, shall have to refund any excess payment that may have received by the petitioner on IDA pay pattern being implemented instead of CDA pay pattern. In the event, the circular dated 30th September, 2011 is ultimately set aside, and the petitioner is to be treated as an employee covered by CDA pattern, any excess payment made to the petitioner under IDA pay pattern will be recovered from the petitioner without any further act. Nothing further remains to be adjudicated.

The petitioner shall be entitled to claim interest after the entire principal amount, if any, by implementation of IDA pay pattern instead of CDA pay pattern provided there is no change in such pay pattern in the meantime.

(ARINDAM MUKHERJEE, J.)

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