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ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO No. 939 of 2011

**THE WORKMEN OF FOOD CORPORATION OF INDIA
Versus
UNION OF INDIA AND ORS.**

BEFORE:

The Hon'ble JUSTICE ANIRUDDHA ROY

Date : 6th July, 2022.

Appearance:

Mr. Barnamoy Basak, Adv.
...for the petitioner

Mr. Rajesh Upadhyay, Adv.
for the respondent No.1

Mr. Prabir Kr. Choudhuri, Adv.
...for the respondent No.3

The Court :- This writ petition has been filed assailing the impugned award dated January 3, 2011 passed by the **CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, KOLKATA** in **Reference No.51 of 1999**.

The writ petitioner had been working as casual workers with their employer, namely, the Food Corporation of India (FCI).

Since there had been a long standing demand from various trade unions as well as FCI Mazdoor Union, for regularization of casual daily rated workers engaged in FCI who had rendered services to the

establishment for a substantial period of time, the FCI management decided to absorb those casual daily rated workers engaged prior to May 2, 1986 and names of the eligible workers were invited from different depots and offices of FCI and a complete list of left out cases were called from the District Manager (P.D.). A meeting was held on the issue at the office of the Regional Labour Commissioner (Central), New Delhi between the said trade union and the management of FCI. In course of the discussion it was expressed that casual workers engaged prior to May 2, 1986 and in service on the date of discussion would be regularized in terms of the **Circular No.EP-1(4)-85-Vol.II dated May 6, 1987** and also expressed that the other casual workers in categories III and IV appointed after May 2, 1986 and completed 240 days continuous working should also be regularized. The FCI management would have no justification in retrenching the said workmen appointed on or after May 2, 1986. It was further claimed that in exercise of unfair labour practice, the FCI management terminated services of six casual workmen and those were effected by an order dated May 1, 1998 and were reinstated on May 19, 1998. The trade union by its letter dated June 12, 1998 raised an industrial dispute before the Regional Labour Commissioner (Central), Kolkata for regularization of the said casual workers and the management of the FCI was also called upon to submit their written reply. Both sides were called for a joint discussion on October 14, 1998. Immediately preceding that date, on October 13, 1998 the said six casual sweepers were engaged by an ugly display of unfair labour practice by

ignoring all obligations and statutory liabilities imposed upon the management of FCI under the provisions of the Industrial Disputes Act, as claimed by the trade union.

Subsequently the process for regularization was undertaken by the FCI Management. In a written communication/reply dated July 26/27, 1998 addressed to the Assistant Labour Commissioner (Central), Kolkata, the FCI Management stated as under:-

“As it appears sl. No. 1 and 2 amongst the casual sweepers said to have engaged initially on and from 8.6.1984 and 1.12.1985 that is before the cut off date of regularization of casual workers as per FCI. H..circular being it prior to 2.5.86. But as reported the material fact was not timely been forwarded to the higher authorities for processing the cases the names of those two casual sweepers might have been deleted from the list of the person already absorbed and regularized. The particular two cases are therefore required to be dealt with separately on which the undersigned is pursuing.”

Finally the conciliation process failed which was undertaken by the FCI management. Being aggrieved thereby the trade union preferred a reference bearing No.51 of 1999 before the Central Government Industrial Tribunal, Kolkata in which the impugned award was passed.

Mr. Barnamoy Basak, learned Counsel appearing for the writ petitioner, submitted that in view of the long standing working

relationship between the said casual workmen and the employer, a legitimate expectation had accrued in favour of the casual workers for being regularized. Despite repeated attempts being made, negotiation and conciliation being held the FCI management did not regularize the said casual workers. He submits that the impugned award had not taken consideration of all the relevant facts and law on the subject as a result the right of the writ petitioner being regularized in their respective employment was denied.

Mr. Prabir Kumar Choudhuri, learned Counsel appearing for the FCI, submits that the conciliation failed on just and cogent ground and the regularization could not have taken place in view of the provisions laid down under the said circular dated May 6, 1987 as also in terms of the provisions laid down under clause 9 of the **FCI Staff Regularization, 1971**.

Mr. Prabir Kumar Choudhuri, learned Counsel, further submits that the petitioners were never appointed at all by the FCI management in any manner. No pay slip was generated in the names of the writ petitioners. In such view of the matter relying upon the decision of the Hon'ble Supreme Court in the matter of **Secretary, State of Karnataka & Others –Versus- Uma Devi (3) & Others** reported at **(2006) 4 SCC 1** and in a judgement delivered by a Division Bench of this Court in the matter of **Food Corporation of India versus Central Government Industrial Tribunal, Asansol and Others** delivered in **FMA No.2345 of 2005, CAN No.8685 of 2007 and CAN NO. 4726 OF 2008**. Mr.

Prabir Kumar Choudhuri, learned counsel, submitted that, the petitioners not being at all qualified to get regularized, cannot claim any right as they were never employed in any capacity by the FCI management. Thus, he submits that the impugned award passed by the Industrial Tribunal does not suffer any perversity or infirmity and should not be interfered with.

After hearing the learned Counsel for the parties and on perusal of the records, it appears to this Court that, the impugned award passed by the Tribunal is very cryptic. The points which have been taken before this Court by Mr. Choudhuri were not argued before the Tribunal and as such there was no reflection in the finding of the Tribunal on those factual submissions.

In the written statement filed on behalf of the FCI management verified on December 6, 2000 before the Industrial Tribunal the following stand was taken:

...

“8. That the FCI management decided to absorb and/or regularize those casual workers engaged prior to 2.5.1986 and the name of (1) Smt. Lakshmi Debi and (2) Sri Rajesh Dhanuk were forwarded for regularization.

9. That the District Manager had confessed that initially the casual sweeper were engaged for a period of 15 to 20 days a month which subsequently increased to 24 days a month as the establishment is not having adequate number of conservancy

sweepers as a result of which the services of the casual sweepers became unavoidable.”

.....

Such stand of the FCI management was also not taken into consideration by the Industrial Tribunal in its impugned award. This is a glaring perversity on the face of the impugned award.

From the communication dated July 26/27, 1998 made by the FCI management before the Assistant Labour Commissioner (Central) as stated above, it appears that, the management was in the process of regularization of similarly placed casual workers but the names of some of the casual workers might have been deleted from the list of the person already absorbed and regularized and those deleted persons' case was decided to be dealt with separately.

In paragraph 17 of the impugned award it was recorded that it had already been discussed that there was an effort on the part of the FCI management for those casual sweepers for getting them regularized and a proposal thereto had been made to their higher authority and the matter is still pending in the executive level.

While exercising the power of judicial review over an impugned award passed by a tribunal, the jurisdiction of a writ court is very limited. In the instant case, it is not the case where either of the parties alleged that the industrial tribunal while passing the impugned award, had acted without jurisdiction or there was any violation of natural justice. However, on a close scrutiny of the impugned award, it appeared

to this court that, an error in exercising of its jurisdiction by the industrial tribunal was apparent on the face of the impugned award. Thus, the writ court, should intervene in a judicial review.

When the case of the casual workers for their regularization being the subject matter under Reference No. 51 of 1999 was taken up by the FCI Management, the management was under obligation to decide the issue with reasons and to intimate such reasoned decision to such casual workers. This was not done by the FCI Management and the proposal was pending before the executive level at the relevant point of time. Such casual workers had a right to know their fate with a reasoned decision to be taken by the FCI Management. The Industrial Tribunal while passing the impugned award despite being aware of such fact, had failed to consider the same. From the impugned award it is not clear whether any such reasoned decision had already been taken at the executive level of the FCI Management and communicated to the respective casual workman. It was the duty of the industrial tribunal to ascertain that first, before taking a decision in the reference. In failing to do so the industrial tribunal had failed to exercise its jurisdiction and passed the impugned award by committing a jurisdictional error.

Since this Court has not gone into the merits of the case the judgments referred to above relied upon by the respondents are not required to be discussed at this stage.

In view of the above discussions and reasons **the impugned award dated January 03, 2011 stands set aside and quashed.**

The FCI Management is directed to and must take a reasoned decision on the issue for regularization of the subject casual workmen after giving an opportunity of hearing to such casual workmen whose causes were espoused through the said Reference No. 51 of 1999 either to themselves or through their authorized representative or representatives and to pass a reasoned decision on the issue and intimate the same to the said casual workmen and also their authorized representative/representatives, if any.

The entire exercise as directed above must be carried out by the FCI Management through its appropriate authority within a period of four months from the date of communication of this order and the casual workmen should be intimated with the reasoned order positively within a further period of two weeks from the date of the reasoned order to be passed by the FCI Management.

In the event the casual workmen whose cause were the subject matter in Reference No. 51 of 1999 would be aggrieved with the said reasoned decision, they would be at liberty to challenge the same and all points would be available to them for agitating their grievance before the appropriate forum in accordance with law.

It is further made clear that this Court has not gone into the merits of the writ petition or the merits of Reference No. 51 of 1999 in which the impugned award was made by the industrial tribunal and accordingly all points would be kept open for the casual workmen and/or parties to agitate in accordance with law, if they are aggrieved by the said reasoned order to be passed by the FCI management.

This is an old writ petition of 2011. Since no affidavit-in-opposition was called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

On the above terms this writ petition **WPO No. 939 of 2011** stands allowed.

There shall, however, be no order as to costs.

(ANIRUDDHA ROY, J)

snn.