

19.09.2024
Court No.13
Item No.35
pk

**F. M. A. 870 of 2015
CAN 2 of 2024
CAN 3 of 2024**

Food Corporation of India and others
Vs.
Sukumar Santra (since deceased) represented by
Kanchan Santra and another

Mr. Devajyoti Barman,
Ms. Sanjukta Basu Mallick
... for the appellants.

Mr. Debasis Nandi,
Mr. Kumaresh Dalal
... for the respondents.

Re: CAN 3 of 2024 (Sec.5)

- 1.This is an application filed under Section 5 of the Limitation Act, 1963 for condonation of delay in filing the restoration application.
2. Having heard the learned Advocate appearing on behalf of the respective parties, as also considering the statements made in the said application, we are satisfied with the grounds indicated explaining delay in preferring the restoration application.
3. The application for condonation of delay being CAN 3 of 2024 is, thus, allowed and disposed of.
4. There will be, however, no order as to costs.

In Re: CAN 2 of 2024 (Restoration)

1. Sufficient grounds are available to explain the absence of the petitioner and/or his Counsel on 20.11.2023.

2. The said order is recalled and the writ petition is restored to its original file and number.
3. Accordingly, CAN 2 of 2024 is disposed of.
4. There will be, however, no order as to costs.

Re: FMA 870 of 2015

1. The instant appeal is directed against judgement and order dated 18.03.2014 passed by a Single Bench of this Court in W.P. No. 17220 (W) of 2005.

2. The brief facts relevant to the case are that the respondent/writ petitioner Sukumar Santra was appointed by the appellant, on compassionate grounds. His mother Dharmadasi Santra, who was an employee of FCI, had retired on medical grounds.

3. The petitioner joined service and was examined by the District Medical Officer, South 24 Parganas on 16.01.1988 and was certified as fit.

4. On 27.03.1998 a private Medical Doctor has certified that the petitioner is suffering from Leprosy for the last 12 to 14 years. In another certificate dated 1st October, 1999 the same Doctor submits that the petitioner was suffering from Leprosy for the last 20 years. A third certificate issued by the same Doctor on 28.08.2005 certified

that the petitioner was suffering from Leprosy for the last 18 years and still is under treatment.

5. It is, therefore, abundantly clear that the petitioner was not medically fit to have been appointed in the FCI in any capacity whatsoever.

6. Curiously, there is another twist in the whole story of the petitioner's appointment. Against the respondent/ Sukumar Santra's identity card, one Arun Mullick, son of Sanatan Mullick was performing duties as labour at FSD Dharmatala Godown, Kolkata.

7. It appears from the complaint of the FCI to the S. P., Howrah and the records that the said Arun Mullick continued to perform the services as "Handling Labour" for Sukumar Santra for a substantial period of time. The said Arun Mullick subsequently died on 30th August, 1998 in a railway accident.

8. The friends and relatives of Arun Mullick and Sukumar Santra, disclosed in all matters of investigation and police that Arun Mullick was in fact Sukumar Santra.

9. There appears to be a clear case of fraud, conspiracy to pass off Arun Mullick as Sukumar Santra. The most likely reason therefore must have been that Sukumar Santra being affected by

Leprosy could not have discharged any duties with the FCI.

10. In those circumstances, Sukumar Santra could not have been appointed on compassionate ground or under any category by the FCI. He could not have rendered any service to the FCI by reason of Leprosy.

11. Somebody else, Arun Mullick rendered services in the name of Sukumar Santra. The question of any payment or relationship between Sukumar Santra and FCI does not and cannot arise.

12. When the employment itself is fraudulent, the question of any voluntary retirement therefrom does not and cannot arise. The claim of Sukumar Santra's son for compassionate employment is equally ridiculous and baseless.

13. Since Sukumar Santra died during the pendency of the writ petition, his wife Kanchan Santra has been carrying on the litigation. At the instance of the Single Bench, sum of Rs.5,000/- has been paid to Kanchan Santra which the FCI are restrained from recovering on humanitarian ground.

14. The appeal of the FCI is allowed. The impugned judgement and order dated 18.03.2014

passed by the Single Bench in W. P. No. 17220(W) of 2005 shall stand set aside.

15. F. M. A. 870 of 2015 is allowed and disposed of.

16. In view of disposal of the appeal, connected applications are also disposed of.

17. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)