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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	19.12.2023
Pronounced on	22.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.10070 of 2022
and
W.M.P.No.2778 of 2023

K.Thangaraj

...Petitioner

Vs.

- 1.The Chairman,
Food Corporation of India,
16-20, Barakhmka Lane,
New Delhi – 110 001.
- 2.The Executive Director (Zone),
Food Corporation of India,
Zonal Office (South), No.3, Haddows Road,
Chennai – 600 006.
- 3.The General Manager,
Food Corporation of India,
Zonal Office, No.3, Haddows Road,
Chennai – 600 006.
- 4.The General Manager (PE),
Food Corporation of India, Head Office,
16-20, Barakhmka Lane,
New Delhi – 110 001.

...Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Mandamus, directing the 1st respondent to dispose of the appeal dated 27.09.2021 on merits, considering the communication sent by the 6th respondent dated 04.06.2008 to the petitioner and also based on the agreement entered upon between the FCI Management and SC & ST Welfare Association dated 08.05.2008.

For Petitioner : Mr.S.Arokia Mani Raj

For Respondents : Mr.C.K.Chandrasekar

ORDER

Heard Mr.S.Arokia Mani Raj, learned counsel for the petitioner and Mr.C.K.Chandrasekar, learned counsel for the respondents.

2.1. The petitioner herein, while serving as a Watchman in the Food Corporation of India (FCI), was levelled with charges that he had participated in a demonstration conducted by the SC/ST Employees Welfare Association, under Regulation 58 of the FCI Staff Regulations, through a charge memo dated 09.12.1999. Based on the proven charges, he was removed from service on 05.06.2000. Thereafter, based on his representations, he was reinstated back into service, through a letter dated 18.06.2003. However, the period of his suspension, during the disciplinary proceedings, from 24.09.1999 to



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28.05.2000, was originally treated as 'non-duty' and subsequently modified on 03.10.2005 as leave of the kind due, instead of non-duty.

2.2. Based on his further representation, the suspension period from 24.09.1999 to 30.11.1999 was regulated as Earned Leave; 01.12.1999 to 23.08.2000 as L.H.P.; and 24.08.2000 to 01.07.2003 as EOL, through an order dated 14.12.2005. Thereafter, the FCI SC/ST Employees Welfare Association had submitted various representations, based on which, both the Corporation and the Association had entered into a bilateral settlement on 08.05.2008. As per Clause 2 of the settlement, the absence period of the affected employees during the agitation period, which was originally treated as leave period, was mutually agreed to be converted as 'on duty' and the dues, if any arising out of such conversion, was agreed to be refunded to them. The terms of the bilateral settlement covers the case of the petitioner herein also.

2.3. In the meantime, when a similarly placed staff of FCI was reinstated and his suspension period was regularized as duty period, the petitioner had filed a Writ Petition in W.P.No.38305 of 2005 on the ground of



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discrimination. Pending the Writ Petition, FCI had sent a letter to the petitioner on 04.06.2008, stating that in view of the bilateral agreement between the Corporation and the Association, the petitioner was advised to withdraw the Writ Petition, with a reciprocal promise that the regularization of his leave period between 25.09.1999 and 30.06.2003 would be treated as 'duty period'.

2.4. Accordingly, the Writ Petition came to be withdrawn on 18.06.2008. In spite of the withdrawal, the respondents had failed to regularize the suspension period as duty period and therefore, several representations were sent by him to the management addressing his grievances. In response to one of such representations, the General Manager (South), through his letter dated 20.01.2012, had addressed the FCI, Head Quarters, New Delhi, for reconsideration of the decision and to treat the petitioner's absence period as 'duty period', as was done in the case of similarly placed employees. Since there was no further development thereafter, the petitioner had preferred a Writ Petition in W.P.No.12474 of 2013 and by an order dated 06.10.2020, the matter was remanded back to the FCI for reconsideration, in the light of the recommendation of the General



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Manager dated 20.01.2012.

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2.5. Consequently, the petitioner's claim was once again rejected on 13.07.2021, by stating that the gravity of the charges against the petitioner, are more severe than the other staff members, whose suspension period was treated as duty period; the petitioner's case for reinstatement was considered sympathetically on a mercy petition, as a special case; the case of the petitioner does not fall under the Disciplinary and Appeal Regulations of FCI; and that the petitioner is not entitled for salary for the period between 24.09.1999 and 01.07.2003, since he was removed from service at that point of time and reinstated thereafter.

2.6. Aggrieved against the said order, an appeal was preferred on 27.09.2021 to the Chairman/Managing Director of FCI. Since the appeal was not disposed of within a reasonable time, the petitioner has filed the present Writ Petition. In the meantime, the petitioner had retired from service on 31.01.2013.

3. Though the prayer sought for in the present Writ Petition is only for



an issuance of Writ of Mandamus with a direction to the 1st respondent to dispose of the appeal on merits, I have taken into account the various illegalities committed by the respondents in dealing with the regularization of the petitioner's suspension period and when realised that the respondents have flouted their own promise and have also selectively discriminated the case of the petitioner, no useful purpose would be served by directing the respondents to dispose of the petitioner's appeal expeditiously.

4. Expressing this view, both the counsels for the petitioner, as well as the respondents were heard.

5. The learned counsel for the petitioner submitted that in the case of identically placed persons, the respondents have regulated their suspension period as duty period, but have disregarded the petitioner's case. He further submitted that based on the promise made by the respondents in their letter dated 04.06.2008 to withdraw the Writ Petition in W.P.No.38305 of 2005, for the purpose of regulating the petitioner's leave period as duty period, he had also withdrawn the Writ Petition and therefore, the respondents cannot now go back on their own words. He also placed reliance on the agreement entered



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into between the FCI and the Employees Association.

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6. Per contra, the learned counsel for the respondents/Corporation placed reliance on the averments made in the counter affidavit and submitted that the gravity of the charges against the petitioner were more severe than the other employees and therefore, the issue of discrimination will not arise. He also submitted that the petitioner was reinstated back into service on sympathetic consideration and since he had not worked for FCI from 24.09.1999 to 01.07.2003, during which period he was removed from service, he cannot seek for regularization of the suspension period.

7. I have given careful consideration to the submissions made by the respective counsels.

8. After the petitioner's suspension period was ordered to be treated as leave, both the FCI and the Employees Association had entered into an agreement on 08.05.2008, whereby it was mutually agreed that the leave period of the affected employees during the agitation period will now be converted as 'on duty' and the monetary benefits towards such conversion will



also be refunded to them. The said agreement was signed between the office bearers of the SC/ST Employees Welfare Association and the management representatives. This bilateral agreement is in the nature of an agreement under Section 18(1) of the Industrial Disputes Act, 1947. If at all the management intends to retract from the agreement terms, the same can be done only by executing a fresh agreement between the parties, by altering the originally agreed terms. In the absence of the same, both the parties are bound by the terms of this settlement agreement. After the agreement was entered into between the FCI and the Association, the members of the Association, whose suspension period were not regulated as duty period, would have been on a legitimate expectation that the benefits of the terms of the agreement would be extended to them. Contrary to such expectations, no further action was initiated by the FCI thereafter in this regard.

9. Apart from legitimate expectations, the FCI had also subsequently written a letter to the petitioner on 04.06.2008, promising to treat his leave period between 25.09.1999 and 30.06.2003 as duty period, on condition that he withdraws the Writ Petition in W.P.No.38305 of 2005. The relevant portion of the letter reads as follows:-



“It is to inform that a Joint discussion held between the Zonal Management and SC/ST Employees Welfare Association representatives on 8/5/08 at Zonal Office, Chennai and certain decisions were taken on the long pending issues pertaining to SC/ST officials during the discussion. Accordingly, MOM has been signed by both the Management and SC/ST Employees Welfare Association representatives and agreed to settle 5 demands including regularization of the absent period of the affected employees during agitation period which were treated as leave period, will not be converted to 'On duty'. (A Copy of the Minutes is enclosed for information.)

As stated in your representation 4/4/05, it is therefore advised to withdraw the Court Case vide W.P.No.38305/2005 filed by you in connection with regularization of leave period between 25/9/1999 to 30/6/2003 as 'Duty Period' against FCI and inform to this office with material evidence for taking further necessary action in this regard.”

10. It is based on this promise that the petitioner had also withdrawn the Writ Petition on 18.06.2008, with a fond hope that FCI would honour their promise and regulate his leave period. However, the petitioner's request



was put in red tape and the earlier mutual agreement and the promise made by FCI were kept aside.

11. The petitioner herein had brought to the notice of the respondents about the regularization of the suspension period as duty period for similarly placed persons, namely P.Vadivel, T.Subramanian and K.Munusamy. This fact is not disputed by the respondents. The only reason attempted to be given by the respondents is that the gravity of the charges, for which the petitioner was proceeded with, was more severe than that of the others and hence not comparable.

12. I am not in agreement with the reasoning adopted by the respondents in denying the benefits given to similarly placed persons. After the FCI had taken a decision to treat the suspension period as leave period, a mutual agreement was entered into between them to treat such period as duty period. It is in terms of this agreement that the other similarly placed employees were given the benefit. It is too late for the respondents to assail back to the facts, which were prior to the agreement, by referring to the gravity of the charges. As a matter of fact, the charge against all the affected



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employees, including the petitioner, is that they had participated in an agitation. While that being so, I am unable to comprehend as to how these cases can be, in any manner, distinguishable from each other. Even assuming that the charge against the petitioner was severe in nature, the respondents themselves have condoned the alleged act of misconduct against the petitioner, by withdrawing the punishment of removal from service and reinstated the petitioner and thereafter regulated the period of suspension as leave period. It is too late in the day to make a reference to the gravity of the charges for the sake of denying the mutually agreed terms for regulating the petitioner's suspension period. Thus, such an objection would amount to hostile discrimination.

13. The Hon'ble Supreme Court of India, in the case of ***State of Uttar Pradesh Vs. Arvind Kumar Srivastava*** reported in ***2015 (1) SCC 347***, has held that in service jurisprudence, when one set of employees are given a relief, the same requires to be extended to others, who require such benefits and in the absence of the same, it would amount to discrimination. The relevant portion of the order reads as follows:-

“22.1. Normal rule is that when a particular set of



employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.”

14. This apart, when the respondents themselves, through their letter dated 04.06.2008, had promised the petitioner that his leave period would be regularized as duty period, if he withdraws the Writ Petition in W.P.No.38305 of 2005, retracting from such a promise letter would be opposed to the principle of promissory estoppel.

15. In the case of ***Anil Joshi and Others Vs. State of Himachal Pradesh and Others*** reported in ***(2015) 12 SCC 669***, the Hon'ble Supreme Court had held that a plea of promissory estoppel can be set up by a person



against the State only when he is able to prove with adequate evidence that the State had promised him in writing in express terms to grant specific benefit and acting upon such promise, he has altered his position. While observing so, it was further held that in such a situation, the State cannot be allowed to go back to the promise made to such person and he can enforce the promise made to him.

16. In the case of ***State of Jharkhand and Others Vs. Brahmputra Metallics Ltd., Ranchi and Another*** reported in ***2020 SCC OnLine SC 968***, the doctrine of promissory estoppel was also dealt with, in the following manner:-

“33. This Court has given an expansive interpretation to the doctrine of promissory estoppel in order to remedy the injustice being done to a party who has relied on a promise. In Motilal Padampat [Motilal Padampat Sagar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409 : 1979 SCC (Tax) 144], this Court viewed promissory estoppel as a principle in equity, which was not hampered by the doctrine of consideration as was the case under the English law. This Court, speaking through P.N. Bhagwati, J., (as he was then), held thus : (SCC p. 430, para 12)



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“12. ...having regard to the general opprobrium to which the doctrine of consideration has been subjected by eminent jurists, we need not be unduly anxious to protect this doctrine against assault or erosion nor allow it to dwarf or stultify the full development of the equity of promissory estoppel or inhibit or curtail its operational efficacy as a juristic device for preventing injustice. ... We do not see any valid reason why promissory estoppel should not be allowed to found a cause of action where, in order to satisfy the equity, it is necessary to do so.””

17. Thus, when a promise was made by FCI, calling upon the petitioner to withdraw the Writ Petition as a pre-condition for regulating his leave period, they would be estopped from giving up their promise, as laid down in the aforesaid decisions of the Hon'ble Supreme Court.

18. Furthermore, when such a promise is made, the petitioner would also have been under a legitimate expectation, after he had withdrawn the Writ Petition, believing that the promise of regulation of the leave period would be extended to him. The doctrine of legitimate expectation has also been dealt with in several decisions of the Hon'ble Supreme Court. In FCI's own case before the Hon'ble Supreme Court, a three Judge Bench in the case of ***Food Corporation of India Vs. Kamdhenu Cattle Feed Industries***



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reported in **(1993) 1 SCC 71**, had held that the denial of legitimate expectation leads to violation of Article 14 of the Constitution of India. The

relevant portion of the judgment reads as follows:-

“7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law : A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is ‘fairplay in action’. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of



arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.”



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19. Thus, to sum up the illegality committed by the respondents in dealing with the case of regularization of the petitioner's leave period, they had not only infringed the doctrine of promissory estoppel, but had also failed to satisfy the legitimate expectation of the petitioner, after they had promised to give the benefit, on withdrawal of the Writ Petition. These are not mere irregularities, but gross illegalities, which also violate Article 14 of the Constitution of India.

20. In view of the same, it would be appropriate that the relief sought for in the present Writ Petition is moulded and the respondents be directed to regularize the petitioner's leave period as “on duty”. Such a decision is also taken consciously, in view of the fact that no fruitful orders could be passed in the appeal preferred by the petitioner before the Chairman/Managing Director of FCI, since they themselves have subsequently rejected the petitioner's claim at their level itself.

21. For all the foregoing reasons, there shall be a direction to the respondents to forthwith pass orders, regulating the petitioner's leave period



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between 25.09.1999 and 30.06.2003 as “duty period”, within a period of two

(2) weeks from the date of receipt of a copy of this order. Such orders shall also extend monetary and other service benefits, to which the petitioner may be entitled to, owing to this regularization.

22. In the result, the Writ Petition stands allowed. No costs.

Consequently, connected miscellaneous petition is closed.

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Index:Yes

Neutral Citation:Yes

Speaking order

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- To
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Food Corporation of India,
16-20, Barakhmka Lane,
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M.S.RAMESH,J.

hvk

**PRE-DELIVERY ORDER MADE IN
W.P.No.10070 of 2022**

22.03.2024