

(1993) 07 GAU CK 0008

Gauhati High Court

Case No: Civil Rule Nos. 1407, 1535, 1395, 1318, 1537, 1536 and 1538 of 1988, 711 of 1990 and 1813 of 1989

Food Corporation of India
Employees Union, Guwahati
(Civil Rule No.1407 of 1988);

APPELLANT

Vs

Food Corporation of India and
Ors.

RESPONDENT

Date of Decision: July 15, 1993

Citation: (1994) 1 GLJ 18

Hon'ble Judges: J.N.Sarma, J

Bench: Single Bench

Advocate: S.S.Goswami , R.Borbora, P.K.Goswami, A.C.Borbora, Advocates appearing for Parties

Judgement

1. All these Civil Rules raise the common question of law and facts and as such these are taken up together for hearing and a common judgment is passed in all the Civil Rules.

2. The Civil Rule No. 1407 of 1988 has been filed by the Food Corporation of India Employees" Union (Regional Committee, Assam) through its General Secretary Shri Pradip Phukan. The grievances of the petitioners are that the action of the respondents in making mass deployment of employees in higher posts and their continuing retention in such higher posts on deployment basis should be declared illegal and unconstitutional and the subsequent order of reversion dated 11,8.1988 vide Annexure E to the application should be quashed and further writ to be issued directing the respondents as follows :

(i) Regularise and/or promotion to the employees who are on deployment in higher posts and who have meanwhile become eligible for regular promotion and to make such regularisation with effect from the date of their deployment.

(ii) Pay to all the deployed employees the pay scales applicable to the respective next higher posts on which they have been serving with effect from the date of such respective deployment.

(iii) Pay all other allowances, increments and other benefits applicable to the posts on which the deployed employees have been working with effect from the date of their joining such posts.

(iv) Pay the revised rate of deployment allowances with effect from 1.4.79 to all such deployed employees who have been paid at the old rate[^] without prejudice to their rights in the instant case.

3. The facts of the case are as follows : The respondent Corporation has framed the Food Corporation of India (Staff) Regulations, 1971 (hereinafter called the Regulations for the sake of brevity). The Regulations embody the various terms and conditions governing the services of the employees of the Corporation,

4. The Regulation 3 of the Regulations broadly classifies the various posts in the Corporation into 4 categories namely Categories I, II, III and IV. Regulation 4 has fixed/prescribed the separate units for the purpose of appointment, seniority, promotion, reversion and retrenchment of posts falling under different categories. As per Regulation 4 in respect of all category II and category III posts, the unit is the zone and as such promotion, seniority etc of category II and III posts are on zonal basis. The cadres of the Corporation are as follows :

1. Special cadre 7. Accounts cadre
2. Administrative cadre 8. Data processing cadre
3. Godown cadre 9. Legal cadre
4. Technical cadre 10. Engineering cadre ;
5. Movement cadre 11. Miscellaneous cadre
6. Planning and research cadre

These cadres are shown in Appendix I to the Regulations. Each such cadre is maintained separately and independently for the purpose of recruitment, pay scale, seniority and promotion of various posts in the cadre. The Appendix I to the Regulations enumerates the various posts under all the four categories in each cadre, the scale of pay, mode of recruitment/promotion, minimum continuous officiation required to become eligible for promotion etc. in respect of all posts.

5. The post of Assistant Manager in the various cadres is the immediate and the next higher post to Assistant Grade I. The Assistant Manager is filled through 25% direct recruitment and 75% by promotion from amongst Assistant Grade I. For the purpose of regular promotion, an Assistant Grade I becomes eligible after serving for 3 years. Similarly, the Assistant Grade I is filled through 100% promotion from

amongst the persons serving as Assistant Grade II who have completed 3 years of service as Assistant Grade II. The posts of Assistant Grade II are filled up through 100% promotion from amongst the Assistant Grade III employees completing 3 years of service. The Assistant Grade III are filled up through 70% direct recruitment and 30% promotees from category IV employees completing 3 years of service in category IV.

6. The Regulation 77 gives the scale of pay applicable to various posts in the Corporation and those are indicated in column 3 of the table in Appendix I to the Regulations. Regulation 79 provides for commencement of pay in the posts. Regulation 7 provides for various modes of appointments in the service of Corporation. Regulation 7(1) provides for regular appointments and Regulation 7(3) provides for guidelines for ad hoc appointments. Regulation 10 provides for promotion to various posts in the Corporation. The procedures for promotion are as follows :

(i) Promotion shall be made on the basis of seniority subject to fitness in respect of nonselection posts indicated in Appendix I of the Regulations.

(ii) Promotion in respect of selection posts indicated in Appendix I of the Regulations shall be made on the basis of meritcum seniority being considered only when the merit of contending candidates is approximately the same.

(iii) All promotions shall be considered by a Promotion Board duly constituted for this purpose and shall be regulated by the general instructions to be issued by the Board of Directors from time to time. Regulation 16 gives the guidelines for determination of seniority of the employees of the Corporation.

7. From the various provisions of the Regulations it will be crystal clear that apart from the various modes of regular appointment, promotions; the Regulations also provide for temporary or ad hoc appointments/promotions. However, under Regulation 7 (3) no temporary appointment can be made for a period beyond one year.

8. The Regulations does not provide for a term or provision such as "deployment". On 25.1.74 the Corporation issued a circular which is at Annexure A to the writ application and the subject is as follows : "Category II, III and IV posts filled up by deployment of persons holding lower posts." It was stated in the circular inter alia that appointment by deployment to higher post was contemplated only to meet the exigency of nonavailability of persons possessing the requisite experiences of 3 years continuous service in the next below post, and the deployment allowance was fixed as follows :

(i) Deployment within Category IV Rs. 10/PM

(ii) Deployment against posts of AG II, AG I ... Rs. 20/ PM

(iii) Deployment against post of Asstt. Manager ... Rs. 25/ PM

It is stated in the circular that only when regular promotion to a particular higher post cannot be made because of nonavailability of persons having requisite service experience in the immediate lower post, deployment is permissible. The said circular further clarified that the vacancies would, however, be filled by deployment of persons in accordance with their seniority. The circular further states that deployment has to be purely on temporary basis pending availability of persons on regular basis.

9. Subsequently, on 9.11.79 by another circular which is at Annexure B to the writ application, the rates of deployment allowances were revised and this circular has further stated that deployment has to be made for not more than 180 days and deployment allowance would be admissible upto a maximum of 180 days, during which period, all efforts should be made to fill up the posts on regular basis and when the post cannot be filled up within 180 days, the matter should be referred to the Head Office for approval for extension of period of deployment beyond 180 days. These two circulars make it clear that deployment to a higher post is permissible only as a stopgap arrangement and this measure is never contemplated when there are regular, eligible and experienced incumbents in the next below posts so as to be absorbed in the vacant posts through regular promotion.

10. The grievance of the petitioners is that the Corporation have been resorting to the practice of filling up various posts in different categories in large numbers by putting on persons from the respective next below posts, on the so-called "deployment" basis and this has been persistently done even though all such deployed employees are otherwise eligible for regular promotion with some of them becoming eligible even much before their deployment.

11. It is stated by the petitioners Union that all these deployed employees have been shouldering all responsibilities attached to a higher post and there is no break in their services and the members of petitioner Union continued on deployment basis for years together in respective higher posts and even on deployed basis they have been transferred from place to place within the region and at times and even outside the region. These deployed employees were also given additional charges apart from the charges attached to the higher posts in which they have been deployed for years.

12. The petitioners state that in most of the cases the deployed employees have been serving for 3/4 years and in certain cases as long as for a period of 14 to 15 years. But these employees have never been regularised in their respective posts where they have been on deployment. It is further stated by the petitioner that in spite of paying the deployment allowance to the employees in the deployment basis have not been given the pay applicable to that particular post.

13. In paragraph 21 of the writ application, the petitioners have given instances how the employees of the petitioners union have been exploited by the Corporation. The petitioners submit that deployment system adopted by the Corporation does not come within four corners of the Regulations and this also is unfair, inequitable, unjust and improper tactics and more so, it is nothing, but an exploitation, harassment and victimisation of the employees of the Corporation. The Corporation have all along been getting the service of the employees in the higher posts, but they have not been regularised and even they have not been paid the scale of the higher posts. Subsequently, by Annexure E, 18 persons were sought to be reverted to the original posts. Hence, this writ application under Article 226 of the Constitution of India. Stay was granted by this Court of Annexure 18 and the employees are continuing in the posts.

14. I have heard Sri AC Borbora, learned counsel for the petitioners union. An affidavit in opposition has been filed on behalf of the Corporation. But none appeared for the Corporation at the time of hearing.

15. Sri Borbora, learned counsel for the petitioners submits as follows :

(i) That deployment as resorted to by the Corporation is without authority of law and against the Regulation.

(ii) The deployment which was to be for a period of 180 days was continued beyond that period and thereafter also no regularisation was made as required by law.

(iii) The deployment allowance which is being paid by the Corporation is nothing, but an exploitation of the employees and it is absolutely unfair. The Corporation has subjected the employees to harassment, victimisation and exploitation.

16. In AIR 1992 SC 2130 (State of Haryana & others vs. Piara Singh & others), the Supreme Court formulated the law on the question of role of Court in service matter and what should be the guiding principle regarding regularisation of service. That was a case regarding the regularisation of the ad hoc/temporary employees and numbers of workers establishment to the daily wagers, casual labourers and those engaged temporarily in temporary schemes. In paragraph 10 of the judgment the Supreme Court pointed out as follows : "Ordinarily speaking, the creation and abolition of a post is the prerogative of the executive. It is the executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making Rules under the proviso to Art. 309 of the Constitution or (in the absence of such Rules) by issuing Rules/instructions in exercise of its executive power. The Court comes into the picture only to ensure observance of fundamental rights, statutory provisions, Rules and other instruction, if any, governing the conditions of service. The main concern of the Court in such matters, is to ensure the Rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also

means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. It is for this very reason, it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long the Court presumes that there is need and warrant for a regular post and accordingly directs regularisation."

17. In this case, the Supreme Court considered 3 decisions i.e. AIR 1990 SC 883 (The Dharwad District PWD Literate Daily Wages Employees Association & others vs. State of Karnataka & others; AIR 1990 SC 2228 (Jacob vs. Kerala Water Authority). In 1990 (2) SCC 396; AIR 1990 SC 883 (supra), the Supreme Court in paragraph 4 of the judgment quoted the decision of the earlier case of Randhir Singh vs. Union of India reported in (1982) 1 SCC 618 wherein the Supreme Court pointed out that though the Constitution has not expressly declared equal pay for equal work, but it is certainly a constitutional goal as has been pointed out in some of the judgments of this Court. Directive Principles have to be read into the Fundamental Rights as a matter of interpretation :

" . These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay."

In (1988) 1 SCC 122 (Daily Rated Casual Labour under PNT vs. Union of India & others) the Supreme Court pointed out as follows :

"Accordingly, the Union of India and other respondents are directed to pay wages to the workmen who are employed as casual labourers belonging to the several categories of employees in the Posts and Telegraphs Department at the rates equivalent to the minimum pay in the pay scales of the regularly employed workers in the corresponding cadres but without any increments with effect from February 5, 1986 on which date the first of the above two petitions, namely, Writ Petition No.302 of 1986 was filed. The petitioners are entitled to corresponding dearness allowance and additional clearness allowance, if any, payable thereon. Whatever other benefits which are now being enjoyed by the casual labourers shall continue to be extended to them."

In (1990) 2 SCC 396 (Dharwad District PWD Literate Daily Wage Employees Association & others vs. State of Karnataka & others) the Supreme Court pointed out that:

"Usually there should be equal pay for equal work, to provide security for service by regularising casual employment within a reasonable period have been unanimously

accepted as a constitutional goal to our socialistic polity." In AIR 1987 SC 490 [Telecommunication Research Centre Scientific Officers (Class 1) Association & others vs. Union of India & others], the Supreme Court was considering whether there was any justification not to pay the special allowance to the direct recruitments as against those who were engaged to work in the centre by transfer. The Supreme Court pointed out that both these classes officers have the same work and as such are entitled to the same pay. In AIR 1979 SC 979 (State of Madhya Pradesh & another vs. Laxmishankar Mishra) the Supreme Court pointed out that if a person works for the requisite period in the earlier category and in the officiating capacity, both the period will be taken into account to decide the period of service rendered for being considered for higher promotion. In the instant case, on the facts on above back drop, it is found that the employees have been deployed for a long period and they are not being regularised nor they are paid the salary of the higher posts. I find that this practice of deployment resorted to by the Corporation is absolutely illegal and without authority of law. Such deployment was resorted to on the basis of the circular stated above. But deployment continued in violation of the circulars, the deployment was done in a mass scale against the spirit and tenor of the circular. The case for due promotion of the employees were not considered as required by Regulations. Though the employees discharged the functions of higher posts, they were not paid the salary of higher scale. The employees were exploited taking advantage of their helplessness. The Corporation did not function as a model employer, the provisions of the Regulation were not followed in its proper spirit. The actions of the Corporation are against the laws laid down by the Apex Court of the land and against their own Regulations. Executive Instructions can be issued to fill up the gap/gaps in service Regulations, but these instructions cannot nullify or run counter to the service Regulations, but that is what has exactly happened in the instant case. In the "Institutes of the Emperor Justinian" written in AD 535 as an introduction to for the students to the Roman Law the opening sentence is Render each man his due. As pointed out by Lord Denning in his book "What Next in the Law" Justinian's opening sentence have come down the centuries. They express the moral and philosophical basis of jurisprudence for all time. Denning's translation of Justinian is justice is the constant and perpetual purpose of rendering each man his due.

18. As such I give the following directions to the Corporation :

(i) Regularise and/or give promotion to the employees who are on deployment in higher posts and who have meanwhile become eligible for regular promotion and to make this regularisation within a period of 2 months from the date of receipt of this order. Their promotion will be deemed to be effective from the date on which their promotions are due. This direction will apply to all the petitioners in the Civil Rules mentioned above as well as to the other employees similarly situated.

(ii) Mass deployment of the employees in higher posts and their continued retention in such higher posts on deployment basis resorted to by the Corporation is illegal and the Corporation is directed to stop it immediately. The Corporation if it is interested may make arrangement for ad hoc or officiating appointment in the higher posts as provided in the Regulations itself.

(iii) The Corporation will not revert any of the employees deployed in a higher post without considering their cases for promotion if they are otherwise suitable.

(iv) The Corporation will pay the revised rate of deployment allowances to the employees with effect from 1.4.79.

19. With the above directions, the Civil Rule is allowed. By virtue of this order passed in the Civil Rule ie Civil Rule No. 1407 of 1988, the other Civil Rules also stands disposed of in similar terms. I leave the parties to bear their own costs.