

**(2014) 01 GAU CK 0009****Gauhati High Court****Case No:** Writ Petition (C) No. 1201 of 2008

Md. Moinul Haque

APPELLANT

Vs

The Food Corporation of India

RESPONDENT

**Date of Decision:** Jan. 28, 2014**Acts Referred:**

- Constitution of India, 1950 - Article 14 16

**Citation:** (2014) LabIC 1584**Hon'ble Judges:** Hrishikesh Roy, J**Bench:** Single Bench**Advocate:** M.A. Sheikh and Ms. J. Rahman, for the Appellant; P.K. Roy, SC, FCI, for the Respondent**Final Decision:** Disposed Off

### **Judgement**

Hrishikesh Roy, J.

Heard Mr. M.A. Sheikh, the learned Counsel appearing for the petitioner in all the 5 cases and the respondents are represented by Mr. P.K. Roy, the Standing Counsel for the Food Corporation of India (FCI). Since common issue is raised in all the 5 cases and consolidated arguments are heard together, all the cases are disposed of through the following order. For the sake of convenience, the facts in the WP(C) 1201/2008 are noted but the claims in all five cases in substance, arise out of similar facts.

2. The petitioner's father Md. Safi Miya was a handling labour at the Food Staff Depot (FSD), Dhubri of the FCI and in pursuant to the circular dated 3rd July 1996 (Annexure-1), whereby compassionate appointment for FCI labourers retiring on medical ground was proposed to be considered, the serving handling labour Md. Safi Miya applied for retirement on medical ground and requested for appointment of the petitioner as the handling labour in the resultant vacancy.

3. Similar applications for retirement on medical ground was filed by other handling labourers and through the office order dated 24.7.2002 (Annexure-4), the District Manager, Kokrajhar, FCI allowed the applicants to voluntarily retire on medical ground w.e.f. 31.7.2002. In the office order, the retirees were informed that appointment to next of their kin on compassionate ground will be considered subject to availability of vacancies and satisfaction of the financial criteria by the applicants. However when the claim for compassionate appointment of the kin of retired labourers were not being considered, the aggrieved aspirants have filed these cases seeking direction for their appointment on compassionate ground.

4. For the petitioners, advocate Mr. M.A. Sheikh submits that the fathers of the applicants applied for voluntary retirement on medical ground only with the understanding that their kin will be considered for compassionate appointment under the FCI's circular dated 3rd July 1996 (Annexure-1) and accordingly the petitioners seek direction on the FCI for necessary consideration.

5. However Mr. P.K. Roy, the Standing Counsel for the FCI submits that since fresh recruitment of labourers from open pool was effected through the scheme for appointment of the kin of serving labourers, there was great resentment among the local job aspirants. Moreover, giving appointment only to the kin of retired labourers was considered to be discriminatory and violative of Article 14 & 16 of the Constitution and therefore the matter was reviewed by the FCI. Subsequently through the Circular No. 5 of 2003 dated 4.3.2003, a decision was taken to put ceiling limit 5% for induction of labourers on compassionate ground. The Standing Counsel, FCI accordingly submits that because of the 5% quota stipulated for this category of applicants, unless vacancies are available, every applicant under this scheme may not get the benefit of appointment.

6. The respondents place reliance on the decision of the Delhi High Court in the WP(C) 7284/2008 (Rajpal Kumar v. Food Corporation of India) where the Court was considering claims for compassionate appointment for the kin of labourers who secured voluntary retirement on medical ground, to seek benefit of the FCI's circular dated 3.7.1996. In this case, the Court considered the other circulars where 5% quota was stipulated for compassionate category and after considering the law on the point, the Delhi Court held that when there is no vacancy available within 5% earmarked quota, appointment can't be claimed as of right on compassionate basis.

7. It further appears that the ceiling cap of 5% for compassionate category is being agitated before the National Industrial Tribunal, Kolkata in the I.D. Case No. 1/2005 and the Standing Counsel for the FCI Mr. P.K. Roy submits that if there is any variation in the quota arising out of this proceeding, the applicants will naturally be considered against the enhanced/reduced quota in the compassionate category.

8. The applications filed by the petitioners are yet to be considered and according to the FCI, because of the limited 5% quota in this category, all the pending applications can't be considered favourably. However the FCI is also of the view that subject to satisfying the criteria on economic parameters all the pending applications will be considered one way or the other, subject to availability of vacancies to the extent of ceiling limit for the compassionate category. In view of this, it is expected that the pending applications of the petitioners will be considered in *seriatim* unless priority consideration is found justified for some deserving claimant. It is ordered accordingly. With the above direction, the case stands disposed of without any order on cost.