

# SUPREME COURT OF INDIA

Food Corporation of India

Vs.

Nizamuddin

C.A.No.2627 of 2010

(R V Raveendran J.)

23.03.2010

## JUDGEMENT

### **R. V. Raveendran, J.**

1. Second respondent was an employee of the appellant - Food Corporation of India ('FCI' for short). His date of birth was 8.2.1943. On 16.2.1998, the second respondent gave a letter seeking retirement on medical grounds and appointment of his son on compassionate grounds. The said letter is extracted below:

“Sub: Retirement on medical grounds and appointment of son/close relatives on compassionate grounds.

I am working as H.L. in F.S.D. Chandari Depot in gang No.15. My health is not good. Physically I face difficulty in Sarder/ Manda/ Handling Labour/ Ancillary job. I, therefore request that the management may kindly retire me on medical grounds and at the same time give appointment to my Son/close relative Shri Md.Nizamudin aged 28.2.71 years, in place as F.S.D. Chandri in this depot, because there is no other 2 person in the family to look after us. He has promised to look after me and family after my retirement.”

[Emphasis supplied]

2. In pursuance of it, after medical examination FCI, by its letter dated 29.4.2000 permitted the second respondent to retire with effect from 30.4.2000. Nearly three years later, on 19.2.2003, the first respondent who is the son of second respondent submitted an application seeking compassionate appointment. A fortnight later, on 8.3.2003, the respondents filed a writ petition before the Allahabad High Court seeking a direction to FCI to appoint the first respondent on compassionate grounds. By interim order dated 13.3.2003, the High Court directed the competent authority under FCI, to pass a speaking order on the said application.

In pursuance of it the competent authority passed an order dated 13.3.2003 relevant portion of which is extracted below:

“With reference to the above subject, your application dated 19.2.2003 for appointment to the post of handling labour in FSD Chandari, Kanpur of the Food Corporation of India, has been considered sympathetically in the light of interim order dated 13.3.03 passed by the Hon'ble High Court of Allahabad and the judgment dated 2.8.2002 passed by the Hon'ble Allahabad High Court in Petition No.43714 of 2001 Raj Nath Yadav and others vs. F.C.I. and also the departmental rules and circulars.

FCI Headquarters, New Delhi issued circular No. IR/L/31(27)/87 dated 3.7.96 contemplating norms for retirement on medical grounds as well the grant of benefit of appointment on compassionate grounds to the dependent of such employee who, at the time of application, was less than 55 years of age.

Since Suleman, who was working as handling labour at FSD Chandari of F.C.I., had applied for retirement on medical grounds vide application dated 16.2.98, date of birth of the said employee, as per the record of the department, being 8.12.1943, the concerned employee had crossed the prescribed age of 55 years by about 2 days. This fact has been corroborated by you in your application dated 19.2.2003. Therefore, as per rules of the department, your application cannot be entertained and your appointment on compassionate grounds is not possible. Hence your application is hereby rejected.”

3. Subsequently, a learned Single Judge, by judgment dated 29.3.2005, dismissed the writ petition holding that the first respondent was not eligible for appointment in view of conditions of the circular dated 3.7.1996.

“However a Division Bench of the High Court allowed the appeal filed by the respondents by judgment dated 18.3.2007 purporting to follow the decision of this Court in *Food Corporation of India v. Ram Kesh Yadav*<sup>1</sup>. The said judgment is challenged in this appeal by special leave.

The question for consideration is whether first respondent is entitled to claim compassionate appointment under the relevant scheme.”

4. FCI by its circular dated 3.7.1996 extended the benefit of compassionate appointment to dependants of departmental workers who sought voluntary retirement on medical grounds subject to the following condition:

“The worker who seeks voluntary retirement on medical grounds should apply within the age limit of 55 years for the purpose of availing the benefits of compassionate appointment. The retirement on medical ground should be accompanied by medical certificate....”

The application for compassionate appointment had to be made in the prescribed form, within three months from the date of retirement.

Compassionate appointment was to be given only in deserving cases, that is, where there was no earning member in the family of the retired worker, or where it was found that the financial benefits which were available to the worker on retirement were not sufficient to meet the needs for running the family. The said scheme also provided that compassionate appointment was discretionary:

"Notwithstanding anything contained in the above, the compassionate ground appointment is not as a matter of right but purely at the discretion of the competent authority taking into account the circumstances and conditions of the family of the medically retired workers and also subject to availability of the vacancy."

5. The second respondent sought voluntary retirement on medical grounds on 16.2.1998, after completion of 55 years. As the Scheme provided that benefit under it was available only if the worker sought voluntary retirement on medical grounds before completing the age of 55 years, the application for compassionate appointment was liable to be rejected.

6. The High Court however held that the facts of the case were similar to the case of the applicant in Ram Kesh Yadav and having regard to the decision of this court in that case, the first respondent was entitled to 5 compassionate appointment. In Ram Kesh Yadav, legal position under the Scheme dated 3.7.1996 was explained thus:

"10. As rightly contended by FCI, the issue of voluntary retirement of an employee on medical grounds and the issue of compassionate appointment to a dependant of such retired employee are independent and distinct issues. An application for voluntary retirement has to be made first. Only when it is accepted and the employee is retired, an application for appointment of a dependant on compassionate grounds can be made.

Compassionate appointment of a dependant is not an automatic consequence of acceptance of voluntary retirement. Firstly, all the conditions prescribed in the scheme dated 3-7-1996 should be fulfilled.

Even if all conditions as per guidelines are fulfilled, there is no "right" to appointment. It is still a matter of discretion of the competent authority, who may reject the request if there is no vacancy or if the circumstances and conditions of the family of the medically retired worker do not warrant grant of compassionate appointment to a dependant. Therefore, the observation of the High Court in Nizamuddin that allowing the request of the employee for voluntary retirement on medical grounds and rejecting the application of the dependant for compassionate

appointment on the ground of non-fulfillment of conditions of scheme would amount to taking inconsistent stands, is clearly erroneous."

In the case of Ram Kesh Yadav, the composite application dated 26.4.1999 of the employee seeking voluntary retirement on medical grounds stated : "I desire to go on retirement on medical ground, if my above named son would be provided with an employment in my place as handling labour." In view of the peculiar wording of the letter seeking voluntary retirement this Court held that the aforesaid general principle will not apply and proceeded to hold as follows:

"14. When FCI accepted the offer unconditionally and retired the second respondent from service by office order dated 29-7-2000, it was implied that it accepted the conditional offer in entirety, that is the offer made (voluntary retirement) as also the condition subject to which the offer was made (appointment of his dependant son on compassionate grounds). In his application, the second respondent made it clear that he desired to retire voluntarily on medical grounds only if his son (the first respondent herein) was provided with employment. If FCI felt that such a conditional application was contrary to the scheme or not warranted, it ought to have rejected the application. Alternatively, it ought to have informed the employee that the compassionate appointment could not be given to his son because he (the employee) had already completed 55 years of age and that it will consider his request for retirement on medical grounds delinking the said issue of retirement, from the request for compassionate appointment. In that event, the employee would have had the option to withdraw his offer itself. Having denied him the opportunity to withdraw the offer, and having retired him by accepting the conditional offer, FCI cannot refuse to comply with the condition subject to which the offer was made."

But this Court made it clear that the above position was in an exceptional situation where the offer of voluntary retirement was inextricably interlinked and conditional upon his son being offered appointment and the employer accepted and acted upon the conditional offer. This Court however reiterated the general rule as follows :

"19. We have upheld the direction for grant of employment only because of the acceptance of an interlinked conditional offer. Where the offer to voluntarily retire and request for compassionate appointment are not interlinked or conditional, FCI would be justified in considering and deciding each request independently, even if both requests are made in the same letter or application. Be that as it may."

[emphasis supplied]

7. In this case the offer of voluntary appointment in the application was neither conditional nor interlinked. The words used are "I therefore request that the management may kindly retire me on medical grounds and at the same time give appointment to my son." It merely contains two requests 7 (that is permission to retire voluntarily on medical grounds and

request for appointment for his son), without any interlinking. Nor was the voluntary retirement conditional upon giving employment to his son. Therefore, Ramkesh Yadav will not apply. Each request had to be considered on its own merits with reference to the rules/scheme applicable. When so done it is clear that the first respondent will not be entitled to compassionate appointment.

8. We accordingly allow this appeal, set aside the judgment of the Division Bench and restore the order of the learned Single Judge dismissing the writ petition.

*<sup>1</sup>2007 (9) SCC 531*