

**SUPREME COURT OF INDIA**

Food Corporation of India

Vs.

Bhartiya Khadya Nigam Karmchari Sangh

C.A.No.7268 of 2002

(D.K. Jain and Anil R. Dave JJ.)

13.01.2012

**JUDGMENT**

**D.K. JAIN, J.:**

1. Challenge in these appeals is to the judgment dated 23rd May, 2002, rendered by a Division Bench of the High Court of Jammu and Kashmir at Jammu in S.W.P No. 1470 of 1994. By the impugned judgment, while declaring Circular No.40 of 1985, dated 29th July, 1985, which accorded monetary incentives to in-service employees of the Food Corporation of India (for short the FCI) for acquiring higher qualifications, as discriminatory, the High Court has directed that if any benefit under the said Circular has been given to any employee, it shall be withdrawn.

2. Since both the appeals, one by the FCI and the other by the Bhartiya Khadya Nigam Karamchari Sangh (for short the Karamchari Sangh), arise out of the same judgment, the same are being disposed of by this common judgment. We may however, note that the FCI is aggrieved by the impugned judgment as a whole, whereas the Karamchari Sangh impugns the direction relating to the denial of the incentives to other employees, possessing same qualifications.

3. The material facts, giving rise to the appeal are as follows:- The FCI was set up with the objective of safeguarding the interest of the farmers, distribution of food grains throughout the country and to maintain a satisfactory level of food grain stocks to ensure national food security. The Food Corporation of India Act, 1964, became effective w.e.f. 17th December 1964. Section 45 of the said Act empowers the FCI to make regulations for regulating the appointment, conditions of service

and scales of pay of its officers and employees. Resultantly, the Food Corporation of India (Staff) Regulations, 1971, were made and came into effect from the year 1971.

4. With a view to ensure a desired degree of efficiency and mobility in the administration and management of its affairs, the FCI, vide Circular No.40 of 1985, dated 29th July, 1985, introduced a scheme providing for incentives to its employees on acquiring additional qualifications during their service in the FCI. The Circular provided for grant of two increments to employees in their respective pay scales on acquiring such professional degrees and diplomas as were mentioned in the Circular. Subsequently, another Circular No. 72 of 1986, dated 14th November, 1986, was issued, extending the benefit of one special increment to in-service employees who acquire one year diploma course in any professional subject as mentioned in the Circular.

5. The afore-mentioned Circulars were complimented by Circular No. 58 of 1987, dated 24th August, 1987, which clarified that the increments shall only be in the form of a personal pay to an official till his promotion to the next higher grade, which shall be subsequently absorbed in the basic pay at the time of pay fixation for the promoted post.

6. The Circular of 1985 was challenged by one Shri. V.K. Tandon, vide S.W.P. No. 1146 of 1986, on the ground that it resulted in discrimination between in-service employees acquiring additional qualification and the persons recruited by the FCI already possessing the prescribed additional qualification. The High Court of Jammu and Kashmir, vide order, dated, 13th October, 1992, while allowing the intervention application of the Karamchari Sangh, allowed the petition and directed that the writ petitioner be granted two additional increments under the said Circular. Letters Patent Appeal against the said judgment came to be dismissed on the ground of delay. Nonetheless, the Zonal Office of the FCI, vide letter dated 19th May, 1994, notified that the aforesaid judgment was a judgment in personam.

7. Probably, the said clarification prompted the Karamchari Sangh to file the writ petition (W.P. No.1470 of 1994) in which the impugned judgment has been delivered. As aforesaid, the High Court has held that, the said Circular is discriminatory and violative of Article 14 of the Constitution of India, 1950 (for short the Constitution) and has directed the FCI not to give effect to the Circular and to withdraw any incentives, if already given to the employees in furtherance of the said Circular. Hence, the appeal by the FCI. The nub of the grievance of the Karamchari Sangh in their appeal (C.A. No.6878/2003) is that having held the said

Circular to be discriminatory, the High Court ought to have directed grant of similar incentives to other employees as well.

8. Mr. Ajit Pudussery, learned counsel appearing on behalf of the FCI, vehemently urged that the said Circular was constitutionally valid and in consonance with the established principles of law, inasmuch as the employees already working in the FCI, with lower professional qualifications as compared to those who already had higher qualification at the time of initial recruitment are a class by themselves and therefore, there was no question of any discrimination between the two differently placed set of employees. It was submitted that the objective sought to be achieved by providing incentive to the already recruited employees with lower qualifications was to motivate them to acquire higher qualifications in various fields while in service, which would not only benefit the employee concerned but also the FCI in the long run. It was thus, stressed that the classification adopted by the FCI had a rational nexus with the objective sought to be achieved and therefore, was not discriminatory, offending Article 14 of the Constitution. In support of the proposition that the beneficiaries of the said incentive being a class by themselves; there being no parity between grant of incentives to in-service employees, who acquire the prescribed qualifications and denial of the same to the employees recruited with higher qualification; the Circular does not result in discrimination, the learned counsel placed reliance on the decisions of this Court in *State of M.P. and Anr. Vs. Shakri Khan*<sup>1</sup>; *United Bank of India Vs. Meenakshi Sundaram and Ors.*<sup>2</sup>, and *H.P. Gupta and Anr. Vs. Union of India and Ors.*<sup>3</sup>.

9. Per Contra, Mr. Ashok Mathur, learned Counsel appearing on behalf of the respondents, argued that the said Circular was clearly discriminatory, inasmuch as the incentive under the said Circular was denied to one set of employees and granted to another set of employees, governed by the same service conditions and possessing such prescribed additional qualifications. Commending us to the decisions of this Court in *Food Corporation of India Ors. Vs. Ashis Kumar Ganguly Ors.*<sup>4</sup> and *B. Manmad Reddy Ors. Vs. Chandra Prakash Reddy Ors.*<sup>5</sup>, learned counsel urged that, irrespective of the educational qualifications, all employees in a particular grade got 1 (1996) 8 SCC 648 2 (1998) 2 SCC 609 3 (2002) 10 SCC 658 4 (2009) 7 SCC 734 5 (2010) 3 SCC 314 integrated into one class and therefore, there could be no discrimination amongst them in the matter of grant of incentives.

10. The short question that falls for consideration is, whether grant of incentives only to the in-service employees of the FCI, who acquire professional qualifications after entering in service and denial of the same to those who had

acquired the same professional qualifications before entering the service is invalid in law, being violative of Articles 14 and 16 of the Constitution?

11. It is trite law that Article 14 of the Constitution, which enshrines the principle of equality, is of wide import. It guarantees equality before the law and equal protection of the laws within the territory of India. It implies right to equal treatment in similar circumstances, except in cases where the two persons form a separate and distinct class and such classification is a reasonable one based on intelligible differentia having nexus with the object sought to be achieved. (See: State of West Bengal Vs. Anwar Ali Sarkar<sup>6</sup> and John Vallamattom Anr. Vs. Union of India<sup>7</sup>).

12. Before examining the issue at hand on the touchstone of the aforesaid principle envisaged in Article 14 of the Constitution, it 6 (1952) SCR 284 7 (2003) 6 SCC 611 would be apposite to refer to the relevant portions of the Circular dated 29th July, 1985. These read as follows:

1. The Food Corporation of India, since its inception, has been pursuing the policy of Management Development by providing suitable training facilities both within the Corporation as well as by nominating its employees to short-term professional courses, work-shops, seminars, conferences etc. organized by leading management institutions in India and abroad.

2. These efforts can get an uplift and possibly be supplemented to a great extent by the involvement of its employees in acquiring professional management qualifications on their own. In order, therefore, to fill the basic gaps to acquire knowledge, the matter has been under consideration for introducing suitable incentive scheme for motivating the employees of the Corporation to encourage them to acquire professional qualifications for rapid career advancement and enabling the Corporation to build a reserve of qualified professionals from within to back up key positions and to improve the overall performance and efficiency of the organization. This will further create an atmosphere of professionalism in the working of the Corporation. With this end in view it has been decided with the approval of the Board of Directors to introduce the following incentive scheme with effect from 1st April, 1984.

3. The following courses of study have been approved for grant of the two increments as indicated in subsequent pages.

(A) .....

(B) High professional qualifications viz. MBA, ACA, AMIE, LLB, BL, ACS etc. All the above courses (Diplomas/Degrees) should be at least of two years duration.

4. The following are the details of the scheme for grant of incentive:-

**ELIGIBILITY:**

All regular employees of the Corporation would be eligible for benefit under the Scheme subject to the following terms and conditions:-

(i) The scheme would apply to all regular employees of the Corporation except deputationists/those employed on contract basis/casual or on tenure basis.

(ii) Employees covered under (i) above should have acquired or may acquire higher professional qualifications from recognised institutions/Universities during the course of their service in the FCI with prior permission from the competent authority of the Corporation. The acquisition of said qualification should be useful to the Corporation in its operations.

(iii) .....

(iv) .....

(v) .....

(vi) .....

(vii) .....

(viii) .....

(ix) In cases where the employees, who join the higher post under direct recruitment and where for such higher post the prescribed minimum qualification is the same as acquired by the employee while in the lower post, the incentive already granted to him/her in the lower

post would not be allowed to continue on his/her appointment to the higher post.

INCENTIVE ADMISSIBLE:

Employees fulfilling the eligibility conditions referred to above would only be entitled to the benefits under the scheme. The incentives offered under this Scheme would be in the form of two special increments as 'personal pay', to be merged in pay at the time of promotion to the next higher grade. This incentive would be admissible only on written orders by the competent authority on merit of each case. The incentive in the form of two increments would be granted starting from first day of the following month when the employee concerned has been declared to have passed the listed Courses or the date of enforcement of this scheme whichever is later.

ENTITLEMENT:

In order to overcome the administrative difficulties and financial implications in implementation of the Scheme with retrospective effect covering all the cases of eligible employees who might have acquired such higher management or professional qualifications prescribed in this Scheme once or more than once in the past and might be holding higher post on promotion or direct recruitment within the Corporation, the employees would be entitled to the incentive under this scheme with effect from 1.4.1984 only. Eligible employees would be entitled to draw incentive increments at the rates applicable to their present pay scales. Arrears of incentive increments shall be payable. In the case of past cases, eligible employees should apply within six months from the date of the Scheme is circulated. In case of employees who may acquire any of the above qualifications hereafter, they may apply as and when they acquire the higher qualifications in the prescribed Proforma enclosed.

.....

13. It is manifest from a bare reading of the above-mentioned portions of Circular that the fundamental objective of the Circular is to provide an incentive to the in-service employees in order to motivate and encourage them to acquire professional qualifications in various courses, spelt out in the Circular, for their career

progression and at the same time enable the FCI to build a reserve of qualified professionals from within the organisation to back up key positions. Evidently, the incentive will not only improve their overall performance and efficiency in the organisation, but also, in the final analysis would strengthen the management with the advent of an atmosphere of professionalism in the FCI.

14. Our attention was also drawn to Circular No. 27 of 2000, dated 11th September, 2000, empowering the competent authorities to grant higher start/advance increments to newly recruited employees at par with the pay drawn in their previous employment before joining the FCI. It is therefore, plain that the provision to grant extra benefit to a new recruit possessing higher qualifications was already in existence. It is also pertinent to note that the said Circular and the benefit which is sought to be given under any of the Circulars, referred to above, is not assailed by the respondents. Their only grievance is that there is no justification in depriving the persons, who already possess the higher qualifications from the benefit of extra incentives, which are being granted to the in-house employees.

15. We are of the opinion that bearing in mind the aforesaid fact situation and the objective sought to be achieved by issuance of the said Circular, there is substantial merit in the stand of the FCI. The classification adopted by the FCI is between an employee obtaining a higher qualification after joining service and an employee who already possessed such qualification before joining the service. As aforesaid, the main purpose of this classification is to grant an incentive to the employees already in service in the FCI to motivate them to acquire higher qualifications for their own benefit as well as of their employer viz. the FCI. We are convinced that the classification sought to be made by the FCI between the two sets of employees bears a just and rational nexus to the object sought to be achieved by introducing the said incentive scheme. Judged from this point of view, in our opinion, grant of the incentive in relation to the in-service employees, in no way amounts to discrimination between the in-service employees and the employees recruited with higher qualification, offending either Articles 14 or 16 of the Constitution, particularly when the incentive is in the form of a special increment as 'personal pay' to be merged in pay at the time of promotion to the next higher grade and thus, having no bearing on the inter-se seniority and/or to the future promotion to the next higher grade.

16. The decisions of this Court in B. Manmad Reddy Ors. Vs. Chandra Prakash Reddy Ors. (supra) and Food Corporation of India Ors. Vs. Ashis Kumar Ganguly Ors. (supra), on which reliance was placed by learned counsel for respondents are clearly distinguishable on facts inasmuch as these decisions deal

with cases relating to employees being classified into separate categories for the purpose of promotion on the basis of the source from which they were drawn and increments being given only to the Central Government employees on being absorbed into the corporation respectively, which is not the case here. However, it is important to note that in both these cases, it was observed that the doctrine of equal pay for equal work is not an abstract doctrine. Article 14 of the Constitution permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who are left out. Courts should interfere with the administrative decisions pertaining to pay fixation and pay parity only when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors.

17. At this juncture, it would be profitable to refer to the decision of this Court in H.P. Gupta and Anr. (supra), which is on all fours to the fact situation in the present appeal. In the said case, grant of two advance increments to Telecom Officers who acquired Engineering degree while in service and not to those who possessed such degree at the time of joining the service was held to be constitutionally valid. Dealing with a similar controversy, the Court observed as follows: The object of giving two advance increments to those officials who did not possess degree in Engineering before joining the service, is only to encourage them to get such a degree so that they could improve themselves while in service. When that object is satisfied, the contentions that there should be equality in the matter of payment of salary or other emoluments or that there should be parity in the matter of giving increments, cannot be accepted. It is true that in such a situation, certain anomalies may arise in specific cases when the official who has acquired degree in Engineering subsequent to joining of service may get higher salary though junior to those who possessed the qualification of degree in Engineering even at the time of joining the service. There cannot be perfect equality in any matter on an absolute scientific basis and there may be certain inequities here and there. If the classification is correct and serves a particular purpose, the same is not to be judicially interfered with.

We deferentially concur with the observations in the afore-extracted passage.

18. For the view we have taken above, we deem it unnecessary to deal with the contentions urged on behalf of the parties in C.A. No. 6878 of 2003, praying for extension of the said incentive to the employees recruited with higher qualifications.

19. In view of the foregoing discussion, the decision of the High Court, holding the said Circular to be discriminatory and in violation of Articles 14 and 16 of the Constitution cannot be sustained. Consequently, C.A. No. 7268 of 2002, filed by the FCI is allowed and C.A. No.6878 of 2003 preferred by the Karamchari Sangh is dismissed. However, in the facts and circumstances of the case, we leave the parties to bear their own costs throughout.