

**2023 STPL(WEB) 28 SC
SUPREME COURT OF INDIA**

(KRISHNA MURARI AND SANJAY KUMAR JJ.)

**WORKMEN THROUGH THE JOINT SECRETARY (WELFARE),FOOD CORPORATION
OF INDIA EXECUTIVE STAFF UNION**

Appellant

VERSUS

**EMPLOYER IN RELATION TO THE MANAGEMENT OF THE FOOD CORPORATION
OF INDIA & ANR.**

Respondents

Civil Appeal No. 4152 of 2023(@ Special Leave Petition (C) No. 3656 of 2021) With Civil Appeal No. 4153 of 2023(@ Special Leave Petition (C) No. 13620 of 2021)-Decided on 3-7-2023

Labour Law, Industrial Dispute

Industrial Disputes Act, 1947, Section 2(oo), 25F – Labour Law - Absorption - Retrenchment – Casual workers –Reinstatement – Absorption in regular service - Management of FCI filed a writ petition challenging the Award passed by the Tribunal but having secured conditional interim relief therein, the management chose to implement the impugned Award though it was under no compulsion to do so -Management did not stop short at just reinstating the workmen in service but went further and absorbed them in regular service - Such absorption in service was not at all required under the interim order dated 05.08.1999 and was, therefore, squarely attributable to the will and volition of the management of FCI itself - In effect, the management of FCI, be it for whatever reason, chose to acquiesce with and accept the Award in its entirety, though it made such compliance subject to the result of the writ petition - Having allowed the workmen to put in regular service to its own benefit for over two decades, the management can no longer claim an indefeasible right to continue with and canvass its challenge to the Award, merely because it made its compliance with the Award conditional long ago - In the light of their absorption in regular service, these workmen, who may have otherwise opted for employment opportunities elsewhere, altered their position and remained with the FCI - Having placed them in that position, it is no longer open to the management of FCI to seek to turn back the clock - Appeal filed by the Executive Staff Union of FCI, on behalf of the workmen, accordingly allowed and the judgment passed by the Division Bench of the High Court liable to be set aside - In consequence, the order passed by the learned Judge and the Award passed by the Central Government Industrial Tribunal restored – Appeal filed by FCI liable to be dismissed.

(Para 16 to 18)

JUDGMENT

Sanjay Kumar, J.-Leave granted.

2. Arising out of the very same judgment dated 17.12.2020 passed by a Division Bench of the Jharkand High Court in L.P.A. No. 80 of 2019, these two appeals are amenable to a conjoined disposal.

3. By order dated 12.01.1996 issued under Section 10(1)(d) of the Industrial Disputes Act, 1947, the Ministry of Labour, Government of India, referred the industrial dispute raised by the Executive Staff Union of Food Corporation of India, espousing the cause of 21 casual workers, for adjudication. It was transferred to the Central Government Industrial Tribunal No. 2, Dhanbad (hereinafter, ‘the Tribunal’), and taken on file as Reference No. 128 of 1996. The schedule of the reference set out the dispute for resolution as under:

‘Whether the action of the management of Food Corporation of India, Patna, retrenching the services of S/Sh. Sashi Shankar and 20 others (list enclosed) is justified and legal? If not, what relief the concerned workmen are entitled to?’

4. One witness each was examined before the Tribunal by both sides. Exhibits M1 to M7 were marked by the management of Food Corporation of India (FCI) while Exhibits W1 to W12 were marked on behalf of the workmen. Upon considering the pleadings and evidence, the Tribunal found that the 21 workmen in question were engaged as casual workers by the FCI at Patna and their retrenchment was void, as they were neither given notice nor paid compensation. Further, having found that an earlier Award directing reinstatement and regularization in service of casual workers was upheld by the High Court, the Tribunal opined that these 21 workmen should also be regularized in service as vacancies in Class IV posts were available. However, taking note of the fact that the workmen had not rendered services for a long time, the Tribunal restricted their entitlement to back wages. In consequence, the Tribunal passed Award dated 18.03.1997, holding that the action of the management of FCI in retrenching the services of these workmen was not justified and directed the management to reinstate them and regularize their services in Class-IV posts with effect from 10.05.1990, i.e., the date of their retrenchment, and to pay them 75% of their back wages, within a time frame.

5. Aggrieved by the said Award, the management of FCI filed CWJC No. 953 of 1998 (R) before the Jharkhand High Court. Interim stay of the Award was granted in the writ petition on 05.08.1999, subject to the FCI continuing to pay the full wages last drawn by the workmen. Thereupon, the management started paying each of them ₹507 per month, claiming that they were entitled only to minimum wages. Disputing this, the workmen instituted contempt proceedings in MJC Case No. 371 of 2000. This contempt case was disposed of on 12.05.2000, holding that if the management failed to comply with the condition in the stay order dated 05.08.1999 within two weeks, it would automatically stand vacated and the workmen would be entitled to take steps for implementation of the Award. The management thereupon issued Orders dated 10/17.11.2000, 24/26.11.2000 and 27.11.2000, implementing the Award. The workmen were absorbed in regular service and paid 75% of their back wages from 10.05.1990 up to 18.03.1997 and full wages, applicable to Class IV, for the period thereafter. This compliance was made subject to the final outcome of the writ petition.

6. However, a learned Judge of the Jharkhand High Court dismissed CWJC No. 953 of 1998 (R), vide order dated 01.11.2018. The learned Judge affirmed the finding of the Tribunal that the workmen concerned had worked in the FCI at Patna for 240 days in the preceding 12 months and were then stopped from doing so without complying with the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947. Further, the learned Judge noted that the management did not controvert the claim of the workmen that similarly situated persons had been regularized in service pursuant to the earlier order passed by the High Court and it did not cite any factor to distinguish the cases of the workmen in question from those of the workmen so regularized. Having said so, the learned Judge observed that a casual employee who worked for 240 days in the preceding calendar year would only be entitled to reinstatement in service, if his termination from service is without notice or compensation in lieu thereof, as provided under Section 25F of the Industrial Disputes Act, 1947, and he would not be entitled to seek regularization in service. However, as the management had chosen to comply with the impugned Award, without abiding by the condition imposed in the interim order passed in the writ petition, and as the workmen concerned had been availing the benefit of the impugned Award for more than 18 years, the learned Judge opined that it would cause great hardship to them if the position was changed at that stage. The learned Judge, accordingly, dismissed the writ petition, upholding the Award in its entirety.

7. The matter was thereupon carried in appeal by the management before a Division Bench of the Jharkhand High Court in LPA No. 80 of 2019. By judgment dated 17.12.2020, the Division Bench modified the order under appeal, by quashing the Award to the extent that it directed regularization of the services of the workmen. This modification was made on the ground that such relief could not be sustained when there was no term of regularization in the reference of the industrial dispute. The

Division Bench disposed of the appeal by setting aside the order of the learned Judge declining to interfere with the Award in so far as it directed regularization of services, but left untouched the direction to pay 75% of the back wages.

8. Both sides are in appeal before this Court against the judgment of the Division Bench. The Executive Staff Union of FCI filed an appeal on behalf of the workmen concerned, aggrieved by the denial of regularization of their services, while the management of FCI is in appeal against the direction of reinstatement and payment of 75% of the back wages to the said workmen. While issuing notice on 08.03.2021 in SLP (C) 3656 of 2021 filed on behalf of the workmen, this Court directed that operation of the Division Bench judgment shall remain stayed. Contempt Petition (C) No. 366 of 2021 was instituted alleging disobedience to this stay order and the same was disposed of with certain observations on 26.07.2022.

9. Significantly, para 12 of the impugned Division Bench judgment dated 17.12.2020 records that the learned counsel for the management of FCI did not assail that part of the Award whereby directions were given for reinstatement and payment of back wages to the extent of 75% and that the management was aggrieved by the Award pertaining to regularization. In fact, the grounds raised by the management in its appeal before the Division Bench related mostly to the aspect of regularization of the services of the workmen and there was only a passing reference to the issue of reinstatement. In any event, in the light of the clear recording by the Division Bench that the management was not assailing the Award to the extent of directing reinstatement in service and payment of back wages, it is not open to the management to raise the same before this Court. The appeal filed by the management of FCI raising these issues is, therefore, liable to be dismissed on that short ground.

10. As regards the appeal filed on behalf of the workmen, the only issue raised therein is as to the regularization in service of those workmen and the legality of the Award to the extent of granting such relief. At this stage, we may note that though the learned Judge himself concluded that there should not have been an order of regularization in service by the Tribunal, he chose not to interfere therewith as the workmen, in the meanwhile, had rendered regular service for about 18 years and interference at that stage would be harsh upon them. On the other hand, the Division Bench held that once the Court comes to the conclusion that a wrong order was passed, it would be its sovereign duty to rectify such mistake rather than perpetuate the same. The Division Bench, however, did not consider the decisive features that had weighed with the learned Judge while upholding the Award of the Tribunal, viz., the fact that the management of FCI chose to fully implement the Award during the pendency of the writ petition and the fact that the workmen availed the benefit thereof for 18 years. In this regard, the Office Order dated 24/26.11.2000 issued by the management, in compliance with the Award, is of relevance. It reads as under:

‘THE FOOD CORPORATION OF INDIA

DISTRICT OFFICE: NORTH GANDHI MAIDAN (GAYA)

Ref: No. Estt.10[C/L-Cum-Class-IV]/2000/1927

24/26.11.2000

OFFICE ORDER

In pursuance of Award dated 18.03.1997 in I.D. Case No.128/96 by CGIT Dhanbad, interim Order dated 5.8.1999 passed in CWJC No.953/98[R] and subsequent order dated 12.05.2000 passed in MJC No. 371/2000 by the Hon’ble the High Court, Patna, Ranchi and in compliance of Sr. Regional Manager, FCI, Patna Office Order No.Esst.30[88]/94-Vol.II dated 10.11.2000, the following Ex.Casual Workmen are hereby re-instated w.e.f., 10.05.90, in the Cat.IV [Watchman].

They are entitled to 75% of full back wages from 10.05.1990 to 18.03.1997 and thereafter full wages of Cat.IV. Further, the above order is subject to the out-come of the CWJC No.953/98 pending before the Hon'ble High Court, Patna, Ranchi Bench. They are directed to report for duty within 10[Ten] days from the date of receipt of this order.

Srl. No. Name

1. Sri Sashi Shankar.

.....

21. Sri Ajoy Kumar.

Sd/

District Manager[I/c]'

11. Thereafter the management of FCI issued a corrigendum on 27.11.2000, which is of great significance. The corrigendum reads thus:

‘THE FOOD CORPORATION OF INDIA

REGIONAL OFFICE, PATNA-1

REF:NO.ESTT.30[88]/94-VOL.-II

DATED:27.11.2000

CORRIGENDUM

In the office order issued under reference of even no. dated 10/17.11.2000 regarding re-instatement of S/Sri Shashi Shankar and 20 others Casual workers of FSD, Chandauti, the word “re-instated” as mentioned in line 6 of the said Office Order may be read as “absorbed”

Sd/-

Regional Manager ...'

12. Notably, all that was required of the management of FCI, as per the interim order dated 05.08.1999 in CWJC No. 953 of 1998 (R), was that it should pay the full wages last drawn by the workmen concerned, pending the disposal of the said writ petition, in due compliance with Section 17B of the Industrial Disputes Act, 1947. Thereafter, the final order dated 12.05.2000 passed in MJC Case No. 371 of 2000 only put the management on notice that if it failed to comply with the conditional stay order within two weeks, the said order would stand vacated and the workmen would be at liberty to seek implementation of the Award. Faced with this situation, the management of FCI could have paid the wages last drawn to the workmen concerned after ascertaining the same. That would have sufficed for continued subsistence of its interim protection during the pendency of the writ petition. However, the management of FCI did not choose to adopt this course of action. In its wisdom, the management not only reinstated the workmen concerned, under the Office Orders dated 10/17.11.2000 and 24/26.11.2000, but went one step further and issued the Corrigendum dated 27.11.2000, ‘absorbing’ the said workmen in regular service. In effect, the management of FCI voluntarily chose to implement the Award in its totality, despite the conditional interim protection afforded to it in the writ petition.

13. The feeble plea of the management of FCI that it was compelled to comply with the Award, under the threat of contempt, cannot be accepted as the contempt proceedings in MJC Case No. 371 of 2000

were closed on 12.05.2000 itself, long prior to issuance of the orders of 'reinstatement' and 'absorption' in November, 2000. Having committed itself to this course of action on its own, albeit by making it subject to the result of the pending writ petition, the question that arises is whether the management of FCI can be permitted a volte-face at this late stage. Pertinently, there is no evidence of the management at least seeking expeditious disposal of the writ petition after complying with the Award, making it subject to the result thereof. In fact, the management merrily allowed the situation to continue for 18 long years, till the dismissal of the writ petition in November, 2018.

14. Given this factual scenario, we are of the opinion that the learned Judge of the Jharkhand High Court was perfectly justified in dismissing the writ petition on the grounds that he did, thereby upholding the Award.

15. In *Union of India and others vs. N. Murugesan and others* [(2022) 2 SCC 25], this Court pointed out that the phrases 'approbate' and 'reprobate' mean that no party can be allowed to accept and reject the same thing, as the principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate, that is, a person cannot be allowed to have the benefit of an instrument while questioning the same. It was noted that an element of fair play is inbuilt in this principle and it is a species of estoppel dealing with the conduct of a party.

16. In the case on hand, the management of FCI filed a writ petition challenging the Award passed by the Tribunal but having secured conditional interim relief therein, the management chose to implement the impugned Award though it was under no compulsion to do so. As pointed out hereinbefore, the management did not stop short at just reinstating the workmen in service but went further and absorbed them in regular service. Such absorption in service was not at all required under the interim order dated 05.08.1999 and was, therefore, squarely attributable to the will and volition of the management of FCI itself. In effect, the management of FCI, be it for whatever reason, chose to acquiesce with and accept the Award in its entirety, though it made such compliance subject to the result of the writ petition. Its somnolence, thereafter, in taking timely measures for expeditious disposal of the writ petition compounded the matter further, leading to the passing of 18 long years, which conclusively weighed with the learned Judge and, in our considered opinion, rightly so. A party to a proceeding cannot be permitted to challenge the same but thereafter abide by it out of its own free will; garner benefit from it; get the opposite party to effectively alter its position; and then press its challenge after the passage of a considerable length of time.

17. Having allowed the workmen to put in regular service to its own benefit for over two decades, the management can no longer claim an indefeasible right to continue with and canvass its challenge to the Award, merely because it made its compliance with the Award conditional long ago. In the light of their absorption in regular service, these workmen, who may have otherwise opted for employment opportunities elsewhere, altered their position and remained with the FCI. Having placed them in that position, it is no longer open to the management of FCI to seek to turn back the clock. Unfortunately, these crucial aspects were lost sight of by the Division Bench, while dealing with the management's appeal. In that view of the matter, we are not inclined to alter the position obtaining for over two decades, by accepting the legally weighty but essentially pedantic view taken by the Division Bench, ignoring the factual position.

18. The appeal filed by the Executive Staff Union of FCI, on behalf of the workmen, is accordingly allowed and the judgment dated 17.12.2020 in LPA No. 80 of 2019, passed by the Division Bench of the Jharkhand High Court, is set aside. In consequence, the order dated 01.11.2018 passed by the learned Judge in CWJC No. 953 of 1998 (R) and the Award dated 18.03.1997 passed by the Central Government Industrial Tribunal No.2, Dhanbad, in Reference No.128 of 1996, are restored, subject to the observations in the order dated 26.07.2022 passed by this Court in Contempt Petition (C) No. 366 of 2021 in SLP (C) No. 3656 of 2021.

The appeal filed by the management of FCI is dismissed.

Pending I.A.s, if any, in both appeals shall stand closed.

Parties shall bear their own costs.
