

FOOD CORPORATION OF INDIA

A

v.

F.C.I. DEPUTATIONIST ASSOCIATION AND ORS.

AUGUST 29, 1996

[K. RAMASWAMY, B.L. HANSARIA AND S.B. MAJMUDAR, JJ.]

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*Service Law :*

*Deputationists—Absorption of after 18 years—Fitment of in pay-scale—Though made to discharge duties of the post of Assistants Grade-II they were sought to be absorbed in Assistant Grade-III—Order set aside by Single Judge and upheld by Division Bench of the High Court—On appeal held, having had the employees on deputation, having had them absorbed and asking them discharge the duties of the post of Assistant Grade-II for well over 18 years, it would be highly unjust and arbitrary to deny them of the scale attached to the post of Assistant Grade-II—High Court was right in giving the direction to absorb them in the post of Assistant Grade-II—Hence no interference called for.*

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CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)  
No. 16416 of 1996.

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From the judgment and Order dated 12.6.96 of the Calcutta High Court in F.M.A. No. 376 of 1992.

H.K. Puri for the Petitioner.

S.K. Nandy for the Respondents.

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The following Order of the Court was delivered :

The petitioners are challenging the order of the Division Bench of the Calcutta High Court dated June 12, 1996 made in F.M.A. No. 376/92. The admitted position is that while the respondents were working as Sub-Inspectors in the Food Department of the Government of West Bengal, they were taken on deputation to the petitioner-Corporation. They were made to discharge the duties of the post of Assistants Grade-II. Admittedly, they had worked for more than 18 years in those posts. While absorbing them, question which arose was in which scale of pay they were

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A to be fitted. In terms of paragraph 7 of the Corporation's circular bearing No. 9-1/87-EP (Pt. 1), dated 23.9.1988, the respondents were sought to be absorbed in Assistant Grade-III. The respondents challenged the fitment in the writ petitions. The learned single Judge, after consideration of the entire material recorded as under.

B "From the pleadings adduced by the parties, it appears before this Court that because of continuous satisfactory service for 18 years on "deputation", the petitioners having discharged the function of Assistant Grade II, at the time of absorption the petitioners are not entitled to be treated in a discriminatory fashion by absorbing them in Assistant Grade III, as it has been done in the facts of the present case, and, as such, in any view, the writ petition is entitled to succeed and the impugned decision dated September 22, 1988, in so far as item No. 7 is concerned deciding to absorb the writ petitioners in Assistant Grade-III with effect from July 1, 1984, is set aside."

D The Division Bench had also concurred with the conclusion reached at by the the learned single Judge thus :

E "From the pleadings of the parties it also appeared that because of continuous satisfactory service for about 18 years on deputation, the deputationists have been discharging the functions of Assistant Grade-II at the time of absorption and accordingly they were entitled to pay scale of Assistant Grade-II at the pay scale of Rs. 380-640. We do not find any reason to interfere with the order and judgment passed by the learned trial judge and accordingly we affirm the decision of the learned trial judge that the appellant should confer the pay of the post of Assistant Grade-II carrying the pay - scale of Rs. 380 - 640 to the said deputationist as they were discharging the functions of Assistant Grade-II at the time of such absorption."

G It would thus be clear that the respondents had discharged the duty of the posts as Assistants Grade-II for over 18 years and odd. Admittedly, the scale of pay of Assistants Grade-II is Rs. 300-685. Consequentially they are entitled to be absorbed in the scale of pay attached to the post of H Assistants Grade-II.

It is contended by Shri H.K. Puri, learned counsel for the petitioners, that since in the Corporation there was no equivalent post of Sub-Inspectors, which posts the respondents had held in the State Government service, the post in the Corporation carrying the equivalent scale of pay is of Assistant Grade-III; necessarily they are to be fitted into the scale of pay payable to Assistants Grade-III and that, therefore, the High Court was not right in its conclusion that para 7 of the above circular was arbitrary and in ordering pay scale meant of Assistant Grade-II. We find no force in the contention. Having had the respondents on deputation and having had them absorbed in their service and the respondents having discharged the duties of the post of Assistant Grade-II for well over 18 years and odd, it would be highly unjust and arbitrary to deny them of the scale of pay attached to the post of Assistant Grade-II. Therefore, the learned single judge and the Division Bench were right in giving the direction. We do not find any error of law for interference.

The S.L.P. is accordingly dismissed.

G.N.

Petition dismissed.