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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 62/2020 & CM APPLs. 4141/2020, 4142/2020

FOOD CORPORATION OF INDIA Appellant
Through: Mr. Om Prakash, Mr. Gaurav
Vardhan Singh, Advocates

versus

SMT. SUNITA KUMARI & ANR Respondents
Through: Mr. Sanjay Sharawat, Advocate

% Date of Decision: 10th August, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present appeal has been filed against the judgment dated 15th November, 2019 passed by learned Single Judge in *W.P. (C) 10709/2017*, titled as "Smt. Sunita Kumari and Anr. Vs. Food Corporation of India". By way of the impugned judgment, learned Single Judge has quashed the two communications dated 20th September, 2017 and 31st October, 2017 issued by appellant. Learned Single Judge has further directed appellant herein to process the financial benefits in favour of respondents herein under the Stagnation Impact Amelioration Scheme, 2014 ("SIA Scheme") within 8 weeks, failing which the arrears shall attract interest @9% per annum till payment.

2. Facts of the case are that respondents were appointed in appellant Corporation to the post of Assistant Grade ("AG") – III (Accounts) on 22nd April, 1996 and 03rd April, 1997 respectively. Subsequently, they were



granted promotion to the post of AG – II (Accounts) on 29th December, 2003 and 30th December, 2003 respectively. Pursuant thereto, respondents joined the post of AG – II (Accounts) on 31st December, 2003.

3. Respondents were promoted to the post of AG – I (Accounts) and joined the post of AG – I (Accounts) unconditionally on 24th December, 2009. Thereafter, they were promoted to the post of Manager (Accounts) and they joined the said post without any reservation on 06th June, 2013.

4. Appellant vide Circular No. EP-09-2014-19 dated 08th October, 2014 introduced the SIA Scheme for the category – III and IV employees of appellant Corporation to provide additional increment and/or selection grade to the eligible employees on stagnation after completion of a specified number of years, i.e., 6, 12 and 20 years of regular service in the same post/pay scale. The said SIA Scheme came into operation w.e.f. 01st September, 2008. As per the said Scheme, an additional increment was to be given in the next higher pay scale to those employees who had reached the maximum of the scale in which they were stagnating.

5. Respondents vide their letter dated 08th August, 2016 requested for grant of increment in terms of the SIA Scheme alleging that the delay in issuing the promotion orders dated 29th December, 2003/ 30th December, 2003, thereby promoting them from AG – III (Accounts) to AG – II (Accounts), was not attributable to them. Due to the delay in issuance of their promotion orders to the post of AG-II (Accounts) in the year 2003 on account of delay in vigilance clearance, respondents were short of only seven days from completing their six years in the post of AG-II (Accounts). Since others got their promotion orders on 02nd December, 2003 as there was no delay in their vigilance clearance, respondents claimed additional



increment by stating that delay in their promotion in the year 2003 owing to delay in vigilance clearance was occasioned due to the administrative lapse/default of appellant Corporation.

6. The request of respondents for benefit under the said SIA Scheme was not found valid by the appellant and the same was declined by its reply dated 24th August, 2016. Subsequently, respondents sought information under Right to Information Act, 2005 (RTI Act). Pursuant thereto, appellant supplied the requested information vide its communication dated 20th September, 2017.

7. Respondent no.1 again made representation dated 05th October, 2017 to appellant in this regard. The said representation was duly replied by appellant vide its letter dated 31st October, 2017 thereby rejecting the representation of respondent no.1.

8. Respondents being aggrieved by the letters dated 20th September, 2017 and 31st October, 2017, approached this Court by way of filing a writ petition. By way of the impugned judgment dated 15th November, 2019, learned Single Judge allowed the writ petition filed by respondents herein thereby quashing the aforesaid communications and holding respondents herein entitled to the financial benefits under the SIA Scheme. Thus, the present appeal has been filed.

9. On behalf of appellant it is contended that the SIA Scheme was not in existence/operation prior to 01st September, 2008. Therefore, the benefits of the Scheme could not be extended to respondents for delay in vigilance clearance in the year 2003 when respondents joined the promoted post of AG – II (Accounts) on 31st December, 2003. It is further contended that there was no administrative lapse on the part of appellant Corporation for



the period when respondents joined the post of AG – I (Accounts) on 24th December, 2009. Therefore, reliance on Clause 22 of the SIA Scheme was totally misplaced, as the said Clause cannot be made applicable for granting relief for the period the Scheme was not in existence, i.e., for the period prior to 01st September, 2008. It is submitted that respondents were duly given promotions and thus, were not entitled to any financial benefit under the SIA Scheme.

10. On the other hand, learned counsel appearing for respondents submits that learned Single Judge has rightly granted the financial benefits to respondents under the SIA Scheme. It is submitted that the Zonal Promotion Committee had conducted its meeting on 13th November, 2003 for considering the promotion of AG – III (Accounts) for the panel of the year 2003. Pursuant thereto, several AG – III (Accounts) employees of the panel for 2003 including the respondents were granted promotions vide decision taken by it on 30th November, 2003, as a result of which they were promoted to the post of AG – II (Accounts). The formal office order conveying the above-said decision was issued by appellant on 02nd December, 2003 only in respect of 41 AG – III (Accounts). The said order did not contain the name of respondents herein. Appellant Corporation issued formal office order dated 29/30th December, 2003 vide which respondents and three other employees were granted promotion to the post of AG – II (Accounts). This delay in issuing the promotion order to respondents was on account of delay in receiving vigilance clearance from the Regional Office. Thus, it is contended that respondents cannot be prejudiced for the fault or negligence which is attributable to appellant Corporation. It is submitted that respondents are entitled to all the pecuniary benefits as are available to the



AG – II grade employees who were promoted vide office order dated 02nd December, 2003.

11. It is submitted by learned counsel for respondents that appellant vide its office order dated 20th May, 2016 had granted an additional increment on completion of six years of regular service to the eligible employees in the Grade of AG-II (Accounts) in terms of SIA Scheme. Thus, it is contended that a number of their juniors on the same post were granted the said benefit, while respondents herein were denied the said benefit. The reason for excluding respondents from the said benefit was not disclosed by appellant herein. Upon inquiry from appellant, it transpired that respondents were denied the benefit of SIA Scheme on account of non-completion of six years of regular service in the AG-II (Accounts) Grade since respondents had joined AG-II (Accounts) on 31st December, 2003 and then AG-I (Accounts) on 24th December, 2009. Practically, respondents were running short of 7 days in completing six years of regular service in the same grade.

12. It is contended that delay in issuing the office order dated 29/30th December, 2003 was not at all attributable to them and they could not be penalized on account of administrative lapses which occurred on the part of appellant.

13. We have heard learned counsel for the parties and have perused the record.

14. At the outset, this Court notes that appellant Corporation had introduced the SIA Scheme vide its Circular dated 08th October, 2014 for its category III and IV employees to provide additional increment and/or selection grade to the eligible employees who were stagnated on the same post/pay scale. Relevant clauses of the SIA Scheme that are material for the



present case read as under:-

“1. This Scheme will be called Stagnation Impact Amelioration Scheme (SIAS 2014) and will be effective from 01.09.2008.

2. This Scheme is in supercession of all existing Schemes which provide additional increment and/ or Selection Grade on stagnation after completion of specified number of years in a post/payscale to Category-III & IV employees of the Corporation.

3. An employee will be entitled for additional increments on each stage of Completion of 6,12 & 20 years period of 'Regular Service' in the same pay scale. However, in case of those employees who have reached the maximum of scale in which they are stagnating, additional increment will be given in the next higher pay scale.

4. The additional increment under this scheme will be allowed with effect from the day next to actual date of completion of 6, 12 & 20 years of service in the same scale.

.....

8. There shall be no change in the seniority, designation, category, classification or higher status on grant of additional increments under this Scheme.

.....

22. Benefit of additional increment will be available only to those who could not be promoted due to non-availability of vacancy in next promotional post or any administrative reasons on part of the Corporation.

.....

25. No stepping up of pay with regard to junior getting more pay than senior on account of pay fixation under ACP Scheme would be allowed. ”

15. Perusal of the SIA Scheme makes it clear that additional increment is granted to such employees who remained stagnated in the same post and had completed 6, 12 and 20 years of regular service in the same post/pay scale. It is also to be noted that the said Scheme came into operation with effect from 01st September, 2008. The said Scheme in Clause 4 provides that the additional increment will be allowed with effect from the day next to actual date of completion of 6, 12 and 20 years of regular service in the same scale. Further, Clause 22 of the said Scheme provides that the benefit of additional



increment will be available only to those who could not be promoted due to non-availability of vacancy in the next administrative post or due to any administrative reasons on the part of the appellant Corporation.

16. Facts on record clearly show that respondents herein were granted promotion to the post of AG-II (Accounts) on 29th December, 2003 and 30th December, 2003 respectively. Both respondents joined the said post of AG-II (Accounts) upon promotion on 31st December, 2003. Subsequently, respondents were promoted to the post of AG-I (Accounts) and joined the said promoted post on 24th December, 2009. Thereafter, respondents were also promoted to the post of Manager (Accounts) and joined the said post on 06th June, 2013. Thus, it is apparent that the claim of respondents for grant of benefit of additional increment for the period from 29th /30th December, 2003 to 24th December, 2009 is untenable. Respondents had not completed six years of regular service as AG-II (Accounts) and were promoted to the post of AG-I (Accounts) on 24th December, 2009 before completion of six years regular service as AG-II (Accounts). Hence, respondents were rightly not held eligible for the additional increment under the said Scheme by appellant Corporation. Letter dated 24th August, 2016 issued by appellant Corporation to respondent no.1 in this regard is reproduced as under:

“ **FOOD CORPORATION OF INDIA**
LOGO OF 50 YEARS **ZONAL OFFICE (N)**
FCI **A-2A-2B, SECTOR-24, NOIDA (U.P.)-201301**
PHONE NO.0120-2411608-619 FAX 2411565, 602

No.2(50)/2016-Misc./SIAS/E-8/NZ/Vol.1

Dated: 24.08.2016

// Grievance//

Mrs. Sunita Kumari
H.No. – 134,
Village + P.O. – Shanghu
Delhi-110040



Subject: With regard to additional increment under SIAS – Reg.

Sir,

Please refer to your application dated 08.08.2016, online registration no. PUFCl/P/2016/00039 dated 11.08.2016 received through Liaison cell, local dated 11/12.08.2016 on the subject cited above.

In this regard, it is informed that your name for grant of 6 years additional increment as AG.II(A/cs) under SIAS was placed in the ZPC meeting held on 01.09.2015. But declared “NOT ELIGIBLE” by the ZPC as you were not completed your 6 years service as AG.II (A/Cs). As per information provide by Delhi Region vide e-mail dated 1407.2015, your DOJ as AG.II (A/cs) is 31.12.2003 and further promoted as AG.I (A/Cs) on 24.12.2009, i.e., before completion of 6 years as AG.II (A/Cs), hence not eligible under SIAS.

As per SIAS Circular dated 08.10.2014 at point no.25, it is mentioned that “No stepping up of pay with regard to junior getting more pay than senior on account of pay fixation under SIAS Scheme would be allowed which is further clarified vide its amendment dated 30.04.2015 at point no.9 that “any stepping up arising out of implementation of SIAS-2014 are not allowed as per Clause 25 of the Scheme”.

In view of above, your pay cannot be fix at par with junior under SIAS being policy matter. This is for your kind information.

Yours faithfully,

*Sd/-
24/08/2016
Manager (E-8)
For General Manager (Admn.)”*

17. It is evident that the said Scheme came into operation only with effect from 01st September, 2008. Since the said Scheme was not in existence prior to 01st September, 2008, therefore, the provisions of the said Scheme could not have been extended for a period prior to the said date of 01st September, 2008. In view thereof, the plea of respondents for claiming benefit under the SIA Scheme for the period prior to 01st September, 2008 was correctly rejected by appellant. Letter dated 31st October, 2017 written by appellant



Food Corporation of India in this regard is reproduced as under:

*“FOOD CORPORATION OF INDIA
HEADQUARTERS, NEW DELHI*

Date 31.10.2017

No. 40(2)/ASK/LC/2017

Smt. Sunita Kumar, Manager (Accounts),

Shri Anil Kumar, Manager (Accounts)

Food Corporation of India

Headquarters, New Delhi.

Subject:- Joint representation dated 16.08.2017 of Smt. Sunita Kumar M(A/cs) and Shri Anil Kumar, M(A/Cs), FCI, Hqrs regarding Non-Grant of additional increment under SIAS-2014.

Sir,

Please refer to your representation dated 16.08.2017. In this context It is to inform you that above representation was forwarded to the Zonal Office (North), NOIDA for necessary action. The Zonal Office (North), NOIDA has replied to your representation as under;

As per OM No. E.P. -09-2014-19 dated 08.10.2014, the benefit of additional increment will be given only to those employees who could not be promoted either due to non-availability of vacancy in next promotional post or due to any administrative reasons on part of the Corporation.

The Zonal Office (North) has further intimated that the representationist/employees were promoted on 30.11.2003 as per ZPC meeting dated 13.11.2003 for Panel of 2003, and Panel of 2003 is the same which was given to senior and junior. If the officials are promoted in the year 2004 and are given Panel of 2003, they could be granted benefit of notional pay. Now, as per para No. 22 of OM dated 08.10.2014, giving the benefit to Shri Anil Kumar and Smt. Sunita Kumari would not be proper because from the date of their Assistant Grade-I (Accounts) dated 24.12.2009 the period is less than six years and, it is clear from para No. 4 of OM dated 08.10.2014 that as per this scheme additional increment in same pay scale would be given from the next date after actually completing 6,12, & 20 years service.

Yours

-sd-

Manager (Liaison Cell)

For AGM (Liaison Cell)”

18. This Court is further of the opinion that Clause 22 of the SIA Scheme is not attracted in the present case and reliance upon the said clause on behalf of respondents is totally misplaced. Firstly, there was no



administrative default/delay in vigilance clearance on the part of appellant at the time of granting promotion to respondents to the post of AG-I (Accounts) on 24th December, 2009 from the post of AG-II (Accounts). Secondly, the SIA Scheme was not in existence prior to 1st September, 2008. Therefore, Clause 22 or any provision of the Scheme cannot be stretched to grant benefit to the respondents for the period when the Scheme was not even in existence.

19. The delay in vigilance clearance for promotion to the post of AG-II (Accounts) was relevant, if at all, at the time of promotion of respondents from the post of AG-III (Accounts) to AG-II (Accounts) i.e. between 22nd April, 1996/3rd April, 1997 when respondents joined as AG-III (Accounts) to 29th/30th December, 2003 when respondents joined the post of AG-II (Accounts) upon promotion. At that point of time, in the year 2003 when there was delay in vigilance clearance of respondents, the SIA Scheme was not even operational. Therefore, no benefit could have been granted to respondents for a period prior to 01st September, 2008, when the said SIA Scheme was not even in existence. The benefit of Clause 22 of the SIA Scheme could not have been granted to respondents by applying the same in a retrospective manner for a period even before the Scheme in question came into existence.

20. Reliance by the learned Single Judge upon the reply dated 28th September, 2016 given by appellant under the RTI Act is totally misplaced. The said communication reads as under:-

*“No. 2/29/RTI/E.II/NZ
Smt. Sunita Kumari,
H.N. 134, Village &*

Dated: 28.09.2016



*Post Office, Singhu,
Delhi-110004.*

Sub: Information under RTI Act 2005-Reg.

Sir,

Please refer to your RTI application dated 31.08.2016 received in this office on 05.09.2016 seeking information under RTI Act 2005.

In this regard, it is informed that your name was not included in the promotion order no. 139/2003/E.IX dated 02.12.2003 due to pending Vigilance clearance from RO Delhi.

Further, on receipt of the vigilance clearance from RO Delhi your case for promotion to the post of AG.II (A/Cs) was processed and accordingly promotion order to the post of AG.II (A/Cs) was issued vide this office order no. 160/2003/E.IX dated 29/30.12.2003.

The first Appellate Authority in this regard is GM (NZ)

Yours faithfully

(Kausik)

Dy. Genl. Manager (Pers.)/C.P.I.O."

21. Reading of the aforesaid communication dated 28th September, 2016 shows that the same pertained to information with respect to issuance of vigilance clearance at the time of granting promotion to respondents on the post of AG-II (Accounts) on 29th / 30th December, 2003. The information provided vide the said communication pertains to the period when the SIA Scheme was not even in existence. Therefore, no relief could have been granted to respondents on the basis of communication dated 28th September, 2016.

22. Facts and documents on record clearly show that at the time of joining the post of AG – II (Accounts) on 31st December, 2003 by respondents, the SIA Scheme was not in existence. The said Scheme was introduced by appellant Corporation only subsequently vide its Circular dated 08th October, 2014 and was made operational w.e.f. 01st September, 2008. Therefore, learned Single Judge erred in applying the provisions of the SIA



Scheme for a period prior to the coming into existence of the said Scheme. The benefit granted by learned Single Judge to respondents is clearly contrary to the Scheme. When respondents had not completed 6 years of regular service as AG – II (Accounts) and were promoted to the next post as AG – I (Accounts) before completion of 6 years regular service as AG – II (Accounts), they were clearly not eligible for benefit of additional increment for the period they spent in service as AG – II (Accounts)

23. The SIA Scheme makes provision for providing additional increments to the eligible employees after each stage of completion of 6, 12, and 20 years of regular service in the same pay scale. Since respondents did not fulfill the eligibility criteria as prescribed under SIA Scheme, the benefit of additional increment cannot be granted to respondents contrary to the said Scheme. The claim of respondents was justly and validly not found eligible by appellant. Further, this Court notes that non-grant of an additional increment to respondents had no bearing on their promotions and they got their due promotions on time, as the SIA scheme dealt only with additional increment to eligible employees as per the criteria laid therein.

24. In view of the aforesaid detailed discussion, it is held that the impugned judgment dated 15th November, 2019 passed by the learned Single Judge in *W.P.(C) 10709/2017* cannot be sustained. The present appeal is accordingly allowed. Pending applications are also accordingly disposed of.

MINI PUSHKARNA, J

MANMOHAN, J

AUGUST 10, 2023/au/c