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SUPREME COURT ON RETRENCHMENT

A. Introduction

The Supreme Court of India (“**SC**”), in the *Food Corporation of India Executive Staff Union* case,¹ held that an employer cannot challenge an award ordering reinstatement after reinstating the workman and absorbing them for over two decades.

B. Brief Facts

1. In 1996, the Ministry of Labour referred an industrial dispute regarding termination of 21 casual workers (“**Workmen**”) presented by the Executive Staff Union (“**Union**”) of the Food Corporation of India (“**FCI**”) to the Central Government Industrial Tribunal No. 2 in Dhanbad, Bihar (“**Tribunal**”).
2. The dispute was whether the retrenchment carried out by FCI in Patna was lawful and justified. If not, the reference aimed to ascertain what monetary compensation the Workmen were entitled to.
3. The Tribunal found the retrenchment unlawful due to lack of notice and retrenchment compensation and ordered reinstatement, regularization from the date of retrenchment (10.05.1990), and payment of 75% back wages for the workers within a specified timeframe.
4. FCI challenged before the High Court of Jharkhand (“**HC**”) and obtained interim stay with the condition that FCI must continue paying the full wages last drawn by the Workmen.
5. However, FCI started paying them a lower amount, claiming it was the minimum wage. In response, the workmen initiated contempt proceedings. The HC decided that if FCI did not comply with the condition in the stay order within two weeks, the stay would be automatically lifted, and Workmen could seek the implementation of the Tribunal’s award subject to the outcome of the main petition.
6. Thereafter, the main petition was also dismissed by HC, and it upheld the order of Tribunal observing that FCI was not compliant with Section 25-F² of the Industrial Disputes Act, 1974 (“**Act**”). However, it clarified that a casual employee working 240 days in a year is entitled to reinstatement but not necessarily regularisation of services.
7. FCI appealed to the Division Bench, which modified the previous order by quashing the part of the award that ordered regularisation.
8. Both Union and FCI appealed before the SC. The Union contested the denial of regularisation, while FCI appealed against the direction for reinstatement and the payment of 75% of back wages.

C. SC’s Judgment & Reasoning

1. The SC had granted interim stay on the operation of the order of the Division Bench.
2. It allowed the petition filed by the Union, dismissed the petition filed by FCI and the alterations to order of Tribunal made by the Division Bench and held that: *“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.”*³

¹*Food Corpn. of India Executive Staff Union v. Employer in Relation to the Management of the Food Corpn. of India*, 2023 SCC OnLine SC 757.

² Conditions precedent to retrenchment of workmen.

³ Paragraph 17 of the Judgement.

3. It relied on an earlier decision⁴ earlier and reiterated that: “...[T]he phrases ‘approve’ 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 approve 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.”⁵

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⁴ *Union of India v. N. Murugesan*, (2022) 2 SCC 25.

⁵ Paragraph 15 of the Judgement.