

(2021) 08 DEL CK 0010

In the Delhi High Court

Case No : Civil Writ Petition No. 132 Of 2021

Devastotra Poddar & Anr.

APPELLANT

Vs

Food Safety And Standards Authority Of India & Ors

RESPONDENT

Date of Decision : 04-08-2021

Acts Referred:

Food Safety And Standard Act, 2006 — Section 92(1)

Citation : (2021) 08 DEL CK 0010

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Samrat Nigam, Abhimanyu A. Walia, Aditya Singla, Cheshta Jetly, Utsav Vasudeva, Abhinav Govind Jee, Shanker Raju, Nilansh Gaur

Final Decision : Disposed Of

Judgement

“

V. Kameswar Rao, J",,,

1. The present petition has been filed by two petitioners with the following prayers:,,

“The Petitioner therefore prays that this Honâ??ble Court may graciously be pleased to:,,

(a) Issue a Writ, Order or Direction for quashing and setting aside of the Result Notice dated 24.12.2020 qua the candidates to have been",,,

illegally appointed for the post of Assistant Director (Technical) as published by the Respondent No.1, Food Safety and Standards Authority",,,

of India.,,,

(b) Direct the Respondent No.1 to appoint candidates as per the Appointment Recruitment Notice No. DR-02/2019 dated 26.03.2019;,,

(c) To remove all the names of all the contractual employees of FSSAI, working as Technical Officer at pay Level 7 and level 8 from the list",,,

of candidates for the post of Assistant Director (Technical);,,

(c) Pass such other or further orders or directions as this Honâ??ble Court may deem just and appropriate in the facts and circumstances,,

of the case and in the interest of justice;,,

(d) costs.â??,,

2. In substance, the petition has been filed by the petitioners challenging the result notice dated December 24, 2020 whereby the respondents have",,,

selected / appointed 13 persons including the respondent Nos.3 to 12 to the post of Assistant Director (Technical). The petitioners have also,,

challenged the appointment of the respondent Nos.13 to 17 as Assistant Director (Technical). The petitioner No.1 has done Doctorate in Food,,

Technology from New Zealand and belongs to Scheduled Caste category. The respondent No.1 had issued an advertisement for filling up of various,,

posts including 13 posts of Assistant Director (Technical). The petitioner No.1 being eligible for the said post, had also applied as an outside direct",,,

candidate. Similarly, the petitioner No.2 meeting the eligibility conditions, who belongs to OBC category, had also applied for the post of Assistant",,,

Director (Technical). The respondent Nos.3 to 12 were working as a Technical Officers on contract basis with the respondent No.1. According to the,,

petitioners, the consolidated pay of the said respondent Nos.3 to 12 is aligned with pay level 7 or below.",,,

3. In terms of the advertisement, selection process for the post of Assistant Director (Technical) was through a Computer-Based Test (â??CBTâ??",,,

for short) followed by written examination and interview. The CBT was held on July 24, 2019. Similarly, the written examination was held on October",,,

10, 2020. A communication notice was published on November 10, 2020 by the respondent No.1 publishing provisionally list of successful candidates",,,

who were to be called for interview. The respondent No.1 conducted interview for 75 candidates. The result for the same was published on,,

December 24, 2020, wherein the names of respondent Nos.3 to 12 also features, and accordingly, they have been issued appointment letters to the",,,

post of Assistant Director (Technical).,,

4. It is the submission of Mr.Samrat Nigam, learned counsel for the petitioners

that the advertisement issued by the respondent No.1 for the post of",,,

Assistant Director (Technical) contemplated under heading Note-1 that out of the total experience of five years sought for the post of Assistant,,

Director (Technical), two years of experience should be in immediate lower pay level in central dearness allowance, which the respondent Nos.3 to 12",,,

did not have.,,

5. This according to him, was due to the fact that the respondent Nos.3 to 12 being contractual Technical Officers were working on consolidated pay",,,

aligned with pay level 7 which is in the pay band of Rs.44,900-1,42,400 with grade pay of Rs.4600/- whereas the immediate lower pay level in central",,,

dearness allowance of pay level 10 is pay level 9 in Rs.53,100-1,51,100 with grade pay of Rs.5400/-. In this regard, he has drawn my attention to the",,,

Food Safety and Standards Authority of India (Recruitment and Appointment) Regulations, 2018 (â??Recruitment Rulesâ??. for short) annexed by",,,

the respondent No.1 in its counter affidavit more specifically page 25 at Note 1 which according to him, clearly stipulates that it is the immediate lower",,,

pay level in the central dearness allowance as the eligibility condition for direct recruitment.,,

6. He submits that the Recruitment Rules are in vogue, need to be followed, Mr.Nigam contest, the stand taken by the respondent No.1 in its counter",,,

affidavit that the respondent Nos.3 to 12 have been considered for the post as the same is a post in technical cadre and the feeder post for Assistant,,

Director (Technical) is Technical Officer on which post respondent Nos.3 to 12 were working on contract basis, as untenable. In this regard, he has",,,

again drawn my attention to the Recruitment Rules to state that the Recruitment Rules contemplated, different eligibilities for promotion and direct",,,

recruitment to the post of Assistant Director (Technical). Since, the post of Assistant Director (Technical) for which the advertisement has been",,,

issued has to be filled through direct recruitment it is the eligibility as prescribed for making direct recruitment that need to be adhered to, that is Note",,,

1, out of five years of relevant experience two years of experience should be in immediate lower pay level in central dearness allowance. Admittedly",,,

the respondent Nos.3 to 12 do not have the experience of two years in immediate lower pay level in central dearness allowance i.e. pay level 9, even",,,

on consolidated basis. In support of his submission, Mr.Nigam has drawn my

attention to various provisions of the advertisement. It may not be",,
necessary for me to refer to them as I intend to deal with the same in my
findings below.,,

7. Mr. Aditya Singla, learned counsel for the respondent No.1 has reiterated the
stand taken by the respondent No.1 in its counter affidavit. It is his",,
submission that the Recruitment Rules have to be read in conjunction with the
advertisement issued by the respondent No.1 by drawing my attention,,
to page 39 of the paper book to draw my attention to Note 1 which states out of
five years of relevant experience, two years of experience should be",,
in immediate lower pay level in the central dearness allowance, which has been
made comparable with minimum annual cost to company of Rs.9.7",,
Lacs for last two years.,,

8. According to Mr.Singla, the advertisement render the respondent Nos.3 to 12
as eligible for being considered for the appointment to the post of",,
Assistant Director (Technical). That apart, he states, the feeder posts to Assistant
Director (Technical) is also Technical Officer which is in pay level",,
7, and the respondent Nos.3 to 12 who were working on contractual basis were
eligible for appointment.",,

9. Mr. Shanker Raju, learned counsel for the respondent Nos.13 and 14 would
contest the challenge to the appointment of the said respondents in the",,
writ petition by stating that there are no averments made by the petitioners in
the petition as to how the appointment of the respondent Nos.13 and 14,,
is illegal. That apart, he stated that the said respondents were working as
Consultants in pay level 10 and as such were eligible for being considered",,
and appointed as Assistant Director (Technical). He has drawn my attention to
various annexures filed by the said respondents along with their,,
counter affidavit.,,

Pay level,Pay Band,Grade Pay

Pay level 10,"56,100-1,77,500",5400

Pay level 9,"53,100-1,51,100",5400

Pay level 8,"47,600-1,51,100",4800

Pay level 7,"44,900-1,42,400",4600

(i)â??Master Degree from recognized University or Institution in
Chemistry or Biochemistry or Food Technology or Food Science &

Technology or Food & Nutrition or Edible Oil Technology or Microbiology or Dairy Technology or Agricultural or horticultural Sciences or Industrial Microbiology or Toxicology or Public Health or Life Science or Biotechnology or Fruit & Vegetable Technology or Food Safety & Quality Assurance

OR

PG Diploma of atleast one year duration in Food Safety or Food Science or Food Processing or Quality Assurance in Food sector or Dietetic and Public Health or Nutrition or Dairy Science or Bakery Science or Post Harvest Technology from a Govt. recognized University/ Institute with a condition that candidates who have completed these PG Diploma courses, must have studied anyone of following subjects at their Bachelor's degree level i.e. Chemistry or Biochemistry or Food Technology or Food Science & Technology or Food & Nutrition or Edible Oil Technology or Microbiology or Dairy Technology or Agricultural or horticultural Sciences or Industrial Microbiology or Toxicology or Public Health or Life Science or Biotechnology or Fruit & Vegetable Technology or Food Safety & Quality Assurance or Food Processing Technology or Fruit & Vegetable or Medicine or Veterinary sciences or Fisheries or Animal Sciences

OR

BE or B.Tech in Food Technology or Dairy Technology or Biotechnology or Oil Technology or Food Process Engineering or Food Processing Technology or Fruit & Vegetable Technology or Food Safety & Quality Assurance or Bachelor's degree (not less than four years duration) in Medicine or Veterinary sciences or Fisheries or Animal Sciences.

Desirable qualification:- Doctorate Degree in any of the aforesaid subjects And

(ii) five Years relevant experience.

Desirable: Graduate Aptitude Test Engineering or Council of Scientific and Industrial Research or Indian Council of Agricultural Research National Eligibility Test.

Note 1: Out of the total experience sought, two years of experience should be in immediate lower pay level in central dearness allowance, or equivalent industrial dearness allowance scale (as applicable) and in case of candidates working in private sector he or she shall be drawing minimum annual cost to company of Rs 9.7 lakh for last two years.

Note 2: Qualifications are relaxable at the discretion of the competent authority in the case of candidates otherwise well qualified.

Note3: The qualification(s) regarding experience is relaxable at the discretion of the competent authority in the case of candidates belonging to Scheduled Castes or Scheduled Tribes if at any stage of selection, the competent authority is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancy reserved for them.â??", "(i)â?? Master Degree from a recognized University

or Institution in Chemistry or Biochemistry or Food Technology or Food Science & Technology or Food & Nutrition or Edible Oil Technology or Microbiology or Dairy Technology or Agricultural or horticultural Science or Industrial Microbiology or Toxicology or Public Health or Life Fruit & Vegetable Technology or Food Safety & Quality Assurance or any other subject as approved by Food Authority from time to time

OR

PO Diploma of atleast one year duration from a recognized University or Institution in Food Safety

and Quality Assurance (under appropriate nomenclature) and approved by the Food Authority from time to time

OR

BE or B.Tech in Food Technology or Dairy Technology or Biotechnology or Oil Technology or Food Process Engineering or Food Processing Technology or Fruit & Vegetable Technology or Food Safety & Quality Assurance or Bachelor's degree (not less than four years duration) in Medicine or Veterinary sciences or Fisheries or Animal Sciences or any other subject as approved by Food Authority from time to time.

Desirable qualification:-

Doctorate Degree in any of the aforesaid subjects

And

(ii) five experience Years relevant

Desirable: Graduate Aptitude Test Engineering or Council of Scientific and Industrial Research or Indian Council of Agricultural Research National Eligibility Test.

Note 1: Out of the total experience sought, two years of experience should be in immediate lower pay level in central dearness allowance, or equivalent industrial dearness allowance scale (as applicable) and in case of candidates working in private sector he or she shall be drawing minimum comparable annual cost to company for last two years to be decided by the competent authority and shall be indicated in the

advertisement on each occasion.

Note2: Qualifications are relaxable at the discretion of the competent authority in the case of candidates otherwise well qualified.

Note3: The qualification(s) regarding experience is relaxable at the discretion of the competent authority in the case of candidates belonging to Scheduled Castes or Scheduled Tribes if at any state of selection, the competent authority is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancy reserved for them.",

satisfy the eligibility criteria. Their status as staff candidate shall be verified at the time of interview. A perusal of the advertisement and Recruitment,,

Rules would show that for the direct recruitment a candidate apart from having educational qualifications as stipulated therein must necessarily have,,

five years of relevant experience. The five years experience sought, should include two years of experience in immediate lower pay level in the",,,

central dearness allowance or equivalent industrial dearness allowance scale and in case of candidate working in private sector he or she shall be,,

drawing minimum comparable annual cost to company for the last two years to be decided by the competent authority and shall be indicated in the,,

advertisement on each occasion. Whereas the advertisement stipulated the same conditions except in case of candidates working in private sector he,,

or she shall be drawing minimum annual cost to company of Rs.9.7 Lacs for the last two years. No doubt, this stipulation has been incorporated to",,,

show the equivalent pay in private sector which commensurate the immediate lower pay level in central dearness allowance or equivalent industrial,,

dearness allowance scale, but, that stipulation shall not be applicable, as the respondent Nos.3 to 12, were working in FSSAI itself and not in a private",,,

company. In any case, the respondent No.1's case is not that, the respondent Nos.3 to 12 were drawing salary equivalent to pay level 9 for the",,,

last two years or that Rs.9.7 Lacs is equivalent to pay level 9.,,

22. In fact, point V on which reliance has been placed by Mr.Singla in support of his submissions that the respondent Nos.3 to 12 being contractual",,

Technical Officers could have applied for the post is also not appealing. The advertisement which I have reproduced above, stipulates that contractual",,

employees of FSSAI who are being given consolidated pay aligned with government pay structure are allowed to apply for similar post or one higher,,

post subject to other conditions of eligibility prescribed in the direct recruitment / advertisement, which means a contractual employee can be allowed",,

to apply for a similar post i.e. pay level 10 or one higher post i.e. to be in pay level 9 for applying to a higher post in pay level 10. If the plea is,,

accepted, then the experience of two years required in immediate lower pay level in the Note 1, shall lose its relevance, moreover, point V states",,

subject to the other conditions of eligibility prescribed in the direct recruitment advertisement, which means, the condition of lower pay level",,

needs to be satisfied, as the same is prescribed under direct recruitment and also in the advertisement.",,

23. Concedingly, none of the respondent Nos.3 to 12 have two years of experience in the immediate lower pay level in the central dearness allowance",,

i.e. pay level 9 even on consolidated basis. If that be so, they could not have been considered for appointment to the post of Assistant Director",,

(Technical). If they could not have been considered for the said post, they could not have been appointed.",,

24. Insofar as the appointment of respondent Nos.13 and 14 are concerned I agree with the submission of Mr.Raju that no specific averments as to,,

how their appointment is illegal have been spelt out by the petitioners in the writ petition. In fact, it is the case of the respondent Nos.13 and 14 that",,

they were working as Consultants on consolidated basis in pay level 10 and Mr. Raju in that regard has relied upon the existing pay scales and,,

corresponding pay level under the 7th Central Pay Commission annexure CA4 in support of his contention. This plea of Mr.Raju is not seriously,,

contested by Mr.Nigam.,,

25. The plea of Mr.Govind Jee that the petitioners are estopped from challenging the eligibility of the respondent Nos.3 to 12 is not appealing. Strictly,,

going by the terms of the Recruitment Rules for direct recruitment which are

statutory, the only conclusion that can be drawn is that for direct",,,

recruitment, a person needs to have five years of experience which includes two years in the immediate lower pay level in the CDA which is pay level",,,

9.,,,

26. The reliance placed by Mr.Govind Jee on the judgment in the case of Madan Lal and Ors. (supra) has no applicability in the facts of this case as,,

the appointment of the respondent Nos.3 to 12 being contrary to the Recruitment Rules, there cannot be any estoppel against law / regulations framed",,,

under a Statute.,,,

27. Similarly, the reliance placed by Mr.Govind Jee on the judgments in the case of Manish Kumar Sahi (supra), Madras Institute of Development",,,

Studies and Anr. (supra) and Ashok Kumar and Anr. (supra) on similar proposition of law also have no applicability.,,,

28. The plea of Mr.Govind Jee that, the lower post to Assistant Director (Technical) (in pay level 10) is that of Technical Officer (in pay level 7) and",,,

no posts exist between them in the FSSAI, is also not appealing. This I say so, as the Recruitment Rules with regard to Technical Officer",,,

contemplates grant of scale of pay levels 8 and 9 on completion of particular years of service. The pay level 9, is not alien to the Recruitment Rules.",,,

Even otherwise, the respondent No.1 could have amended the Recruitment Rules, with regard to direct recruitment, to include the pay level 7, in the",,,

zone of consideration.,,,

29. Further, it is not the case of the respondent No.1, that relaxation of experience was granted in favour of respondent Nos.3 to 12.",,,

30. Insofar as the judgment in the case of Babita Prasad & Ors. (supra) relied upon by Mr.Govind Jee in support of his submission that the Court,,

would not unsettle the settled position is concerned, the said submission is not appealing for the simple reason that this Court while issuing notice on the",,,

writ petition on January 13, 2021 has clearly stated that appointments made pursuant to the result dated December 24, 2020 to the post of Assistant",,,

Director (Technical) shall be subject to the outcome of the writ petition and this aspect has been clearly mentioned by the respondent No.1 in the,,

appointment letters issued to the respondent Nos.3 to 12. Hence, it cannot be said that the position of appointment of respondent Nos.3 to 12 is a",,,

settled one.,,

31. In view of my above discussion, the impugned result notice dated December 24, 2020, insofar as the selection of the respondent Nos.3 to 12 is",,

concerned, the same is held as illegal. The selection of the respondent Nos.3 to 12 is set aside. Consequently, their appointments are also set aside.",,

The respondent No.1 is within its right to prepare a fresh selection list for filling up the ten posts / vacancies which now arise in view of this order, as",,

per the selection criteria evolved by it and then proceed accordingly. The writ petition with regard to respondent Nos.13 to 17 is dismissed.,,

32. The petition is disposed of to the aforesaid extent. No costs.,,