
(2014) 02 J&K CK 0005

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 241/2014 and CMA No. 318/2014

Sunil Kumar

APPELLANT

Vs

State of JandK

RESPONDENT

Date of Decision : 19-02-2014

Acts Referred:

Food Safety and Standards Act, 2006 — Section 37
Prevention of Food Adulteration Act, 1954 — Section 10, 9

Citation : (2015) 3 Crimes 517 : (2014) 3 JKJ 410

Hon'ble Judges : Mohammad Yaqoob Mir, J

Bench : Single Bench

Advocate : Amrish Kapoor, Advocate for the Appellant

Judgement

Mohammad Yaqoob Mir, J.—Order No. MJ/SC/ADM/13-14/338-42 dated 25th January, 2014 where under petitioner has been placed

under suspension by respondent No. 2 (Commissioner, Municipal Corporation, Jammu) is sought to be quashed, with a further prayer for

restraining the respondent No. 2 from interfering with the performance of the duties of the petitioner as Food Safety Officer as appointed under

Food Safety and Standards Act, 2006. According to learned counsel for petitioner, respondent No. 2 is neither the appointing authority nor

disciplinary authority. Petitioner has been appointed as Food Inspector by the Government in exercise of powers conferred by Section 9 of the

Prevention of Food Adulteration Act 1954 vide SRO--39 notified on 19-01-2001, thereafter vide notification dated 08-12-2012, petitioner has

been appointed as Food Safety Officer by the Commissioner of Food Safety, J&K, Jammu in exercise of power conferred under Sub-Section (1)

of section 37 of Food Safety and Standards Act, 2006. Supporting this

contention, relied on the judgment, rendered in SWP No. 1707/2005

dated 29-04-2009 in case Parmod Kumar v. State of J&K and ors.

2. Respondent No. 2 has filed detailed objection wherein it has been specifically projected that the petitioner was appointed as Sanitary Inspector

on 13-09-1991 in the Respondent Corporation. On the recommendation of the Department Promotion Committee was appointed as food

Inspector on 11-12-2000. Earlier Food Inspectors and other officers were assigned the job of Food Inspectors under the Prevention of Food

Adulteration Act and thereafter on repeal of the said Act, they were appointed as Food Safety Officers under Food Safety and Standards Act,

2006, copy of the service book as annexed with the objections is reflective of the same position, therefore, petitioner for all purposes is the

employee of the Municipal Corporation, therefore, Respondent No. 2 is competent to place the petitioner under suspension.

3. While considering the rival submissions, it is quite clear that the petitioner has been appointed as Sanitary Inspector in the Municipal

Corporation, Jammu on 13-09-1991 then on the recommendation of the Department Promotion Committee has been promoted and appointed as

Food Inspector.

4. Under section 9 of the Prevention of Food Adulteration Act, 1954, the petitioner has been appointed as Food Inspector. Therefore, vide SRO

39, notified on 19-01-2001, the petitioner, as Food Inspector of Municipal Corporation, has been assigned local area of Jammu Municipal

Council where he was already posted as Food Inspector, same was required under the Prevention of Food Adulteration Act, so as to enable him

to perform the duties and to exercise the powers under section 10 of the said Act. Such appointment is not to be termed as fresh appointment.

5. In the year 2006, the Food Safety and Standards was enacted which was amended in the year 2008. With the commencement of the said Act,

the Prevention of Food Adulteration Act 1954 was repealed. With such repeal, SRO 39 notified on 19-01-2001 issued by Principal Secretary to

Government, Housing and Urban Development Department ceased to operate as a necessary corollary, the position of the petitioner remains as it

was prior to SRO 39, i.e. Food Inspector as his position was pursuant to his Promotion in Municipal Corporation in the year 2000 (11-12-2000).

6. Now in view of the powers conferred by Sub-section (1) of section 37 of Food Safety and Standards Act, 2006 vide notification dated 08-12-

2012, the Food Inspector of the various organization, Corporations including that of Municipal Corporation, Jammu have been appointed as Food

Safety Officer for local areas falling within their respective jurisdiction.

7. The position of the petitioner being Food Inspector of the Municipal Corporation, Jammu has not undergone any change so far control and

supervision of the Municipal Corporation, his claim that he has been appointed by the competent authority under Food Safety and Standard Act is

an argument in wilderness.

8. The attempt has been made to hoodwink the position of the petitioner as Food Inspector, as if appointed afresh or as if his services were

shifted/transferred.

9. The judgment dated 29-04-2009 rendered in SWP No. 1707/2005 in case Parmood Kumar v. State of J&K and others does not support the

contention of the learned counsel for the petitioner. In the reported judgment, it has been observed:

Appointment as Food Inspector under Prevention of Food Adulteration Act, 1954 was for a limited purpose so as to enable the petitioner to

exercise statutory powers under section 10 the said Act. Such appointment would not mean that the Corporation has lost its superintendence and

control over the petitioner.

10. The petitioner appears to have been under the misconception by projecting that he was appointed as Food Inspector under section 9 of

prevention of Food Adulteration Act by the Government vide SRO 39 dated 19-01-2001. Ignoring the position that he in fact has been promoted

as Food Inspector by the Respondent-Corporation in the year 2000 and it is because of that position he has been appointed as Food Inspector

under the prevention of Food Adulteration Act as was the requirement to enable him to exercise the powers under section 10 of the said Act.

11. Prevention of Food Adulteration Act, 1954 with the commencement of Food Safety and Standards Act 2006 stand repealed, the position of

the petitioner remains as it was prior to 19-01-2001 when SRO 39 was issued and it is in view of the same position, in exercise of powers

conferred by sub-section (1) of section 37 of Food Safety and Standards Act,

2006, vide notification dated 08-12-2012. Food Inspectors of various Organizations, Corporation and Directorate of Local Bodies of the J&K Sate have been appointed as Food Safety Officer for the local areas falling within there respective jurisdiction. Same has been done for implementing and enforcing the provisions of Food Safety and Standards as amended by the Act of 2008, so for all practical purposes, all such Food Inspectors belong to their parent department. Petitioner's department is Municipal Corporation, therefore, conditions of service including superintendence and control lie with the Municipal Corporation. The argument of the learned counsel for the petitioner that the commissioner Municipality is not a competent authority to place the petitioner under suspension is misconceived. On such count, order of suspension cannot be found fault with. Viewed thus, writ petitioner is misconceived, as such, is dismissed. No order as to costs.