

Devastotra Poddar & Anr. vs Food Safety And Standards Authority Of ... on 4 August, 2021

Equivalent citations: AIRONLINE 2021 DEL 1186

Author: V. Kameswar Rao

Bench: V. Kameswar Rao

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: August 04, 2021

+ W.P.(C) 132/2021

DEVASTOTRA PODDAR & ANR.

..... Petitioner

Through: Mr. Samrat Nigam and
Mr. Abhimanyu A. Walia, Advs.

versus

FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA &
ORS.

..... Respondents

Through: Mr. Aditya Singla, Ms. Cheshta Jetly
and Mr. Utsav Vasudeva, Advs. for
R-1
Mr. Abhinav Govind Jee, Adv. for R-9
Mr. Shanker Raju and Mr. Nilansh
Gaur, Advs. for R-13 & R-14

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

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

"The Petitioner therefore prays that this Hon'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.

W.P.(C)132/2021 Page 1

(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 Hon'ble Court may deem just and appropriate in the facts and circumstances of the case and in the interest of justice;

(d) costs."

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 W.P.(C)132/2021 Page 2 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 ('CBT' 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 W.P.(C)132/2021 Page 3 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 ('Recruitment Rules', 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 W.P.(C)132/2021 Page 4 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 W.P.(C)132/2021 Page 5 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.

10. Mr. Govind Jee, learned counsel for the respondent No.9 submits, the petitioners at the time of applying for the concerned post did not choose to agitate the issue concerning eligibility of contractual employees (Technical Officer) for the concerned post at pay level 10 even though, it can be clearly found from details of the posts advertised, that the immediate lower pay in the relevant department was that of Technical Officer only.

11. According to him, once a candidate participates in a selection without demur taking a calculated chance to get selected, they cannot turnaround and challenge the criteria of selection. He relied upon the judgment in the case of Madan Lal and Ors. v. State of J&K and Ors., (1995) 3 SCC 486. On similar proposition, he has relied upon the judgment in the case of Manish Kumar Sahi v. State of Bihar and Ors., (2010) 12 SCC 576, Madras Institute of Development Studies and Anr. v. K. Sivasubramaniyan and Ors., (2016) 1 SCC 454 and Ashok Kumar and Anr. v. State of Bihar and Ors., (2017) 4 SCC 357.

12. He further submits that the present petition is not maintainable as in the petition, the petitioners have alleged W.P.(C)132/2021 Page 6 irregularities in a fairly conducted selection process, that too, at a stage when selection is complete and successful candidates are discharging their duties.

13. Further, on perusal of "Note 1" under column elucidating the 'Minimum Educational Qualifications / Work Experience' provided in the advertisement, that out of the total experience sought by the organization from the candidates for the post of Assistant Director (Technical), two years should have been 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 Lacs for the last two years. However, sticking narrowly to the said portion of the advertisement to determine the bracket of eligible candidates would be a gross error in judgment.

14. That apart, the post being technical post requiring special domain knowledge and the respondent No.1 was well aware to the situation where many otherwise eligible and qualified candidates possessing adequate work experience in the relevant field would stand unfairly excluded.

15. He submitted that the lower pay level to pay level 10 is pay level 7. There exist no other pay levels between the aforesaid posts. Post at pay level 8 was introduced for the first time purportedly through the notification of 2019. Post at pay level 9 neither existed nor was it advertised in the notification in question. He submits that the respondent No.1 was conscious of the existing pay level vis-à-vis employees working in the W.P.(C)132/2021 Page 7 organization. Therefore, to rectify this anomaly, the respondent No.1 adopted an inclusive approach and carved out the eligibility for its Technical Officers (Contractual) by introducing Note 2 under the column of concerned post at page 11, point V, VI and point 'j' under the heading 'GENERAL INSTRUCTIONS' on a combined reading, it can be easily inferred that the respondent No.1 never intended to give a pedantic and literal interpretation to the term 'immediately lower pay level' so as to mean level 9. If this was not the case, the respondent No.1 would have immediately rejected the application and cancelled the candidature of its contractual Technical Officers. But the fact remains, they were allowed to sit in exam and were also successful for appointment. Hence, it is a case where this Court would not

unsettle the settled position. In this regard, he has relied upon the judgment in the case of Babita Prasad & Ors. v. State of Bihar & Ors., 1993 Supp. (3) SCC 268.

16. He concluded his arguments by submitting, that the respondent No.1 being an autonomous statutory body which performs governmental functions of a specific nature, to discharge such functions, it requires candidates with specific skill and qualification and the respondent No.1 is well within its right to publish the recruitment notification and prescribe the eligibility criteria as per the need and requirement of the organization. He seeks the dismissal of the petition.

17. Having heard the learned counsel for the parties, at the outset I may state that on January 13, 2021 notice was also issued to respondent Nos.3 to 17. The said respondents have been W.P.(C)132/2021 Page 8 served as is clear from the affidavit of service filed by the counsel for the petitioners. Though, the respondent Nos.13 and 14 are represented in these proceedings and have filed their counter affidavit, none of the other respondents have appeared and filed their pleading except respondent No.9 on whose behalf submissions have been made by Mr. Govind Jee which have been already noted above.

18. At the outset, I may state that Mr.Nigam has only made one submission which is noted above. The short issue which arises for consideration is whether for making appointment to the post of Assistant Director (Technical) on direct recruitment basis, can a contractual employee drawing pay in pay level 7, be considered. The Recruitment Rules as filed by the respondent No.1 at annexure A-I shows that the same have been framed under sub-section (1) of section 92 of the Food Safety and Standard Act, 2006 duly notified on October 01, 2018 and as such statutory in nature.

19. To answer the issue, it is necessary to reproduce the relevant part of the advertisement / Recruitment Rules on which much of the arguments of the counsel for the parties, revolved. The same is the educational and other qualifications stipulated for the posts of Assistant Director (Technical). I also highlight the relevant pay levels in the central dearness allowance as under:

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

W.P.(C)132/2021

Qualification for direct recruitment as per the advertisement

(i)"Master Degree from recognized University or Institution in Chemistry or Biochemistry or Food Technology or Food Science & Technology or Food & Nutrition or Edible Oil

Page 9

Educational and other qualifications required for direct recruits as per the recruitment rules

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

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

W.P.(C)132/2021

sciences or Fisheries or Animal
Sciences"

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 atleastone 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

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

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

in the case of candidates belonging to competent authority in the case Scheduled Castes or Scheduled of candidates belonging to W.P.(C)132/2021 Page 11 Tribes if at any stage of selection, the Scheduled Castes or Scheduled competent authority is of the opinion Tribes if at any state of that sufficient number of candidates selection, the competent from these communities possessing

authority is of the opinion that the requisite experience are not likely sufficient number of candidates to be available to fill up the vacancy from these communities reserved for them." possessing the requisite experience are not likely to be available to fill up the vacancy reserved for them.

(emphasis supplied)

20. That apart, learned counsel for the parties have also relied upon the point V and VI, of the Recruitment Advertisement Notice No.DR-02/2019 dated March 26, 2019 published by respondent No.1, which are reproduced as under:

"V. The contractual employees of FSSAI who are being given consolidated pay aligned with government pay structure are allowed to apply for the similar post or one higher post subject to the other conditions of eligibility prescribed in the direct recruitment advertisement. In case of contractual employees from other Govt. bodies, the applicant will have to submit whenever required to do so a certificate from their present employer stating that their consolidated pay is aligned with the particular government scale in their department. VI. All persons on contract in the services of the Authority on the date of notification of the Recruitment Regulations shall be eligible for weightage in selection process. The weightage shall W.P.(C)132/2021 Page 12 be given on two parameters viz. number of years of service rendered in the Authority (30% weightage) plus Performance Appraisal (70% weightage). The performance appraisal shall be done by a committee nominated by Appointing Authority. The weightage as above shall be added at the first level of selection as applicable to each post and the total combined weightage on account of both parameters (i.e. no. of years of relevant experience plus Performance Appraisal) should not exceed 10% of the total score for the entire selection process."

21. They also relied upon the clause 'j' which stipulates the posts are also open to the employees of Food Authority (staff candidates) who 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 W.P.(C)132/2021 Page 13 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 W.P.(C)132/2021 Page 14 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 W.P.(C)132/2021 Page 15 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 W.P.(C)132/2021 Page 16 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.

V. KAMESWAR RAO, J

AUGUST 04, 2021/aky