

Sonika Kumari & Ors. vs Devastotra Poddar And Ors on 11 April, 2023

Author: Satish Chandra Sharma

Bench: Chief Justice, Subramonium Prasad

Neutral Citation Number: 2

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment reserved on: 13.03.2023.
% Judgment delivered on: 11.04.2023.

+ LPA 253/2021
SONIKA KUMARI & ORS. ..
versus
DEVASTOTRA PODDAR AND ORS ..

+ LPA 286/2021
VINITA VERMA & ORS. ..
versus
DEVASTOTRA PODDAR & ORS. ..

+ LPA 288/2021 and C.M. No. 27637/2021
FOOD SAFETY AND STANDARDS
AUTHORITY OF INDIA ..
versus
DEVASTOTRA PODDAR & ORS. ..

+ LPA 309/2021
APOORVA SRIVASTAVA & ANR. ..
versus
FOOD SAFETY AND STANDARDS
AUTHORITY OF INDIA THROUGH ITS
CHIEF EXECUTIVE OFFICER AND ORS ..

MEMO OF APPEARANCE:

Mr. Ajit Kumar Sinha, Senior Advocate with Mr. Govind J
Mr. Abhinav & Ms. Parul Dhurve, Advocates for the Appell
LPA 253/2021.

Mr. Varun Chandiok, Advocate for the Appellants in LPA
Mr. Rajshekhar Rao, Senior Advocate with Mr. Aditya Sin
Ms. Mehrunissa Anand, Advocates for FSSAI.

Mr. Samrat Nigam, Mr. Abhimanyu Walia, Mr. Karmanbir Si
Md. Qamar, Advocates for Respondents No.1 & 2.

Mr. Rajesh Gogna, CGSC with Ms. Priya Singh, Advocate f
Respondent No.4 in LPA 253/2021.

LPA 253/2021, 286/2021, 288/2021 & 309/2021

Signature Not Verified
Digitally Signed
By: BHUPINDER SINGH
ROHELLA
Signing Date: 11.04.2023
17:53:17

Neutral Citation Number: 2023:DHC:2456-DB

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
JUDGMENT

SATISH CHANDRA SHARMA, C.J.

1. The facts of the case reveal that the underlying Writ Petition was preferred by Respondent Nos. 1 & 2 in LPA 253/2021, being aggrieved by the appointment of the present Appellants to the post of Assistant Director (Technical) in the service of the Food Safety and Standards Authority of India (hereinafter to be referred as „FSSAI).
2. The Respondent Nos. 1 & 2/ writ petitioners made a prayer for quashment of appointments of candidates appointed illegally to the post of Assistant Director (Technical) published vide Result Notice dated 24.12.2020.
3. The undisputed facts of the case reveal that the Appellants herein were contractual employees working as Technical Officers at Pay Level-7 and Pay Level-8 in the service of FSSAI.
4. An advertisement was issued on 26.03.2019 by the FSSAI inviting applications for the post of Assistant Director (Technical), Technical Officer and other posts.
5. The Respondent Nos. 1 & 2 applied for the posts advertised along with other persons pursuant to the advertisement and as per the recruitment rules and the terms and conditions of the advertisement, for appointment to the post of Assistant Director (Technical), a candidate was required to have Neutral Citation Number: 2023:DHC:2456-DB total 5 years of experience out of which 2 years was mandatorily in immediate lower Pay Level in Central Dearness Allowance or equivalent Industrial Dearness Allowance Scale.
6. The process of selection took place and the contention of the Respondent Nos. 1 & 2 in the Writ Petition was that in spite of them being qualified for the post in question, they have not been appointed to the said post, on the contrary, employees who were in Pay Level-7 working on contractual basis have been issued appointments. It was argued before this Court that the contractual employees, who were backdoor entrants have been favoured by the appointing authority by appointing them to the post of Assistant Director (Technical) and their services were regularized de-hors the recruitment rules by giving them direct appointment ignoring the dictum laid down in the case of Secretary, State of Karnataka & Others Vs. Umadevi & Others, AIR 2006 SC 1806 :

(2006) 4 SCC 1.

7. The Learned Single Judge has allowed the Writ Petition and has set aside the appointment order of the Appellants herein who were contractual employees and who have been appointed by way of direct recruitment to the post of Assistant Director (Technical).

8. The order dated 04.08.2021 passed by the Learned Single Judge allowing the Writ Petition as contained in Para Nos. 20 to 32 is reproduced as under:

□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:

Neutral Citation Number: 2023:DHC:2456-DB □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 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 □' 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 Neutral Citation Number: 2023:DHC:2456-DB 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 Neutral Citation Number: 2023:DHC:2456-DB 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 Neutral Citation Number: 2023:DHC:2456-DB 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.

9. The present LPAs are arising out of the aforesaid order.

Neutral Citation Number: 2023:DHC:2456-DB

10. The Appellants before this Court being aggrieved by the order passed by the Learned Single Judge, by which their appointments have been set- aside, have filed this present LPA and their contention is that their appointments have been made strictly in consonance with the recruitment rules of 2018 and also in consonance with the advertisement dated 26.03.2019, and, therefore, there

was no occasion for the Learned Single Judge to set aside their appointment orders. They submit that their appointment has been set aside on an erroneous interpretation of the relevant clauses of the advertisement.

11. The Appellants have also argued before this Court that Technical Officers in the Pay Level-7 are entitled to participate in the process of selection for the post of Assistant Director (Technical) as Technical Officer's Pay Level is the entry Level post for direct recruitment and for promotion to the post of Assistant Director (Technical). It has been stated that the Learned Single Judge has erred in law and facts in holding that only Officers who were in Pay Level-9 were eligible to be considered for appointment to the post of Assistant Director (Technical), and, therefore, the order passed by the Learned Single Judge deserves to be set aside.

12. It has also been vehemently argued before this Court that the Appellants fulfilled the requisite qualification for the post of Assistant Director (Technical). They were contractual employees receiving a consolidated pay equivalent to the Officers in Pay Level-7 and, therefore, they were rightly permitted to participate in the process of selection and they have proved their worth by finding a place in the merit list.

Neutral Citation Number: 2023:DHC:2456-DB

13. A prayer has been made for setting aside the judgment delivered by the Learned Single Judge.

14. Learned Counsel for the Appellants has vehemently argued before this Court that in light of the judgment delivered in the case of Madan Lal and Ors. Vs. State of J&K and Ors., (1995) 3 SCC 486, as the Writ Petitioners have participated in the process of selection and have not been selected, they could not have challenged the process of selection once the selection was over, and, further reliance has been placed on judgments delivered in the cases of Manish Kumar Shahi Vs. State of Bihar and Others, (2010) 12 SCC 576, Madras Institute of Development Studies and Another Vs. K. Sivasubramaniam and Others, (2016) 1 SCC 454, and Ashok Kumar and Another Vs. State of Bihar and Others, (2017) 4 SCC 357 in support of this contention.

15. Learned Counsel for the Appellants have vehemently argued before this Court that the mandatory qualification under the recruitment rules of 2018 for the post of Assistant Director (Technical) was relaxed by Memorandum dated 26.11.2020. The Office Memorandum dated 26.11.2020 provides that for the post of Assistant Director (Technical), Officers in Pay Level-7 were eligible to apply for the post in question and Pay Level-7 was treated as the immediate lower pay-scale. The Office Memorandum which was brought to the notice of this Court while the arguments were going on, is reproduced as under:

□OFFICE MEMORANDUM Subject: Clarification on scrutiny of documents the posts of Assistant Director, Deputy Manager, Assistant Director Neutral Citation Number: 2023:DHC:2456-DB (Tech), Administrative Officer against DR-02/2019-Immediate lower pay level reg.

The undersigned is directed to refer to O.M.NO.E- 12013/01/2019-HR dated 20.11.2020 vide which Scrutiny Teams were constituted for scrutiny of documents of the candidates called for documents verification and interview for the posts of Assistant Director, Deputy Manager, Assistant Director (Tech), Administrative Officer against Advt. No. DR- 02/2019.

2. It has been decided that Immediate Lower pay Level as mentioned in the advertisement shall be interoperated as under:

Ser No.	For Post	Immidate pay level	Lower
1.	Assistant director	Pay Level-8	
2.	Deputy Manager and Assistant Director (Tech)	Pay Level-7	
3.	Administrative Officer	Pay Level-6	

3. Scrutiny Teams shall interperate immidate Lower pay level mentioned in advertisement as per para 2 above. Previous cases already scrutinized shall be rechecked and list of candidates found eligible on above criteria shall be furnished to HR Division.

(Praful Ranjan) Deputy Director(HR)"

16. The aforesaid Office Memorandum also forms part of the written submissions submitted by the Appellants.

17. The Appellants have also placed reliance upon a judgment delivered in the case of Maharashtra Public Service Commission Vs. Sandeep Shriram Warade & Ors. (2019) 6 SCC 362. It has been vehemently argued that the essential qualifications for an appointment to a post are for the employer to decide. It has been stated that it is the employer who is best suited to decide the requirement which a candidate must possess according to the needs of the Employer and the nature of the work.

Neutral Citation Number: 2023:DHC:2456-DB

18. Learned Senior Counsel Sh. Ajit Kumar Sinha has vehemently argued before this Court that it is not the job of the Court to lay down conditions for appointment to a particular post or to look into the terms and conditions of qualifications prescribed in the advertisement, and it is for the employer to lay down conditions of eligibility.

19. This Court has heard Learned Counsels for the Parties at length and perused the record as well as the judgment relied upon by Learned Counsels for the Parties.

20. The undisputed facts of the case reveal that the Appellants before this Court were contractual employees. They were receiving the consolidated pay in Pay Level-7 and

they were working as Technical Officers in the services of FSSAI.

21. The facts of the case further reveal that an advertisement was issued inviting applications for the post of Assistant Director (Technical) as well as other posts. Clause 6A of the advertisement issued on 26.03.2019, furnishing all minute details in respect of the vacancies so advertised is reproduced as under:

□A. Details of Posts

1. The FSSAI invites applications from eligible candidates for the posts mentioned below on direct recruitment basis. The total number of vacancies shown below may vary as per administrative exigencies:-

Post Name of Post Age Limit as No. of Vacancies Code (Pay Level) on closing Total Category wise Vacancy date of application Neutral Citation Number:
2023:DHC:2456-DB 01 Assistant Director 35 5 UR-4, OBC(\$)-1 (Pay Level-10) 02 Assistant Director 35 15 UR-8, OBC(\$)-3, SC-2, ST-1, (Technical) EWS-1 (Pay Level-10)

04 Technical Officer 30 130 UR-55, OBC(\$)-35, SC-19, (Pay Level-7) ST-9, EWS-12 05 Central Food Safety 30 37 UR-18, OBC(\$)-9, SC-5, ST-

	Officer (Pay Level-7)			2, EWS-3
06	Administrative Officer (Pay Level-8)	30	2	UR-2
07	Assistant (Pay Level-6)	30	34	UR-16, OBC(\$)-9, SC-4, S 2, EWS-3
08	Junior Assistant Grade-I (Pay Level-4)	25	7	UR-5, OBC(\$)-1, SC-1 (Out of the total posts, post is reserved for Ex- servicemen)
09	Hindi Translator (Pay Level-6)	30	2	UR-2
10	Personal Assistant (Pay Level-6)	30	25	UR-13, OBC(\$)-6, SC-3, S 1, EWS-2
11	Assistant Manager (IT) (Pay Level-7)	30	5	UR-4, OBC(\$)-1
12	IT Assistant (Pay Level-6)	30	3	UR-3
13	Deputy Manager (Pay Level-10)	35	6	UR-5, OBC(\$)-1
14	Assistant Manager (Pay Level-7)	30	4	UR-3, OBC(\$)-1

22. The minimum qualifications/ work experience for the post of Assistant Director (Technical) as per the advertisement is reproduced as under:

"Name of Post - Assistant Director (Technical) Educational and other qualifications

(i) ☐ Master Degree from a recognized University or Neutral Citation Number: 2023:DHC:2456-DB 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 Neutral Citation Number: 2023:DHC:2456-DB 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 9.71akh for last two years. Note2: Qualifications are relaxable at the discretion of the competent authority in the case of candidates otherwise well qualified.

Note 3: 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.

"

23. The statutory recruitment rules governing the service conditions in the FSSAI have been framed by the FSSAI in exercise of its powers conferred on it by Clause A of Sub-Section 2 of Section 92 read with sub-Sections 2 and 3 of Section 9 of the Food Safety Standards Act, 2006 with the prior approval of the Central Government and have been notified on 01.10.2018 known as Food Safety and Standards Authority of India Recruitment and Neutral Citation Number: 2023:DHC:2456-DB Appointment Regulations, 2018 (hereinafter to be referred as "Recruitment and Appointment Regulations, 2018").

24. The Competent Authority to frame and notify the Rules with the approval of Central Government is the FSSAI, which is defined under Section 3(m) of the Food Safety and Standards Act, 2006. The definition of the Food Authority as defined under Section 3(m) of the Food Safety and Standards Act, 2006, is reproduced as under:

□□Food Authority means the Food Safety and Standards Authority of India established under Section 4;"

25. Sections 4 and 5 of the Food Safety and Standards Act, 2006, which deals with establishment of FSSAI and its composition are reproduced as under:

□4. Establishment of Food Safety and Standards Authority of India.--(1) The Central Government shall, by notification, establish a body to be known as the Food Safety and Standards Authority of India to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The Food Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The head office of the Food Authority shall be at Delhi.

(4) The Food Authority may establish its offices at any other place in India.

5. Composition of Food Authority and qualifications for appointment of its Chairperson and other Members.--(1) The Neutral Citation Number: 2023:DHC:2456-DB Food Authority shall consist of a Chairperson and the following twenty-two members out of which one-third shall be women,

namely:--

(a) seven Members, not below the rank of a Joint Secretary to the Government of India, to be appointed by the Central Government, to respectively represent the Ministries or Departments of the Central Government dealing with--

(i) Agriculture,

(ii) Commerce,

(iii) Consumer Affairs,

(iv) Food Processing,

(v) Health,

(vi) Legislative Affairs,

(vii) Small Scale Industries, who shall be Members ex officio;

(b) two representatives from food industry of which one shall be from small scale industries;

(c) two representatives from consumer organisations;

(d) three eminent food technologies or scientists;

(e) five members to be appointed by rotation every three years, one each in seriatim from the Zones as specified in the First Schedule to represent the States and the Union territories;

(f) two persons to represent farmers' organisations;

(g) one person to represent retailers' organisations.

(2) The Chairperson and other Members of the Food Authority shall be appointed in such a manner so as to secure the highest standards of competence, broad range of relevant expertise, and shall represent, the broadest possible geographic distribution within the country.

(3) The Chairperson shall be appointed by the Central Government from amongst the persons of eminence in the field of food science or from amongst the persons from the administration who have been associated with the subject and is either holding or has held the position of not below the rank of Secretary to the Government of India.

Neutral Citation Number: 2023:DHC:2456-DB (4) The Chairperson and the Members including part-time Members other than the ex officio Members of the Food Authority may be appointed by the Central Government on the recommendations of the Selection Committee.

(5) The Chairperson of the Food Authority shall not hold any other office.

26. The regulations were framed by FSSAI, and the regulations provide for qualification of posts and method for promotions and appointment in respect of posts which finds place in the schedule.

27. Regulation 4 of the Recruitment and Appointment Regulations, 2018 deals with classification of posts and the same is reproduced as under:

"

Sl. Description Classification of posts.

No. 1 Post of Level 10 in pay matrix or above Group ☐ A 2 Post of Level 6 to Level 9 in pay matrix Group ☐ B 3 Post of Level 1 to Level 5 in pay matrix Group ☐ C "

28. Regulation 16 and 17 which deals with Selection and Power of relaxation reads as under:

☐ 16. Selection-

(1). Appointment to the posts shall be made through Selection Committees as specified in the Schedule.

(2). The panel recommended by the Selection committee shall be valid for one year. If no selection is made from the panel within a period of one year, a fresh Selection committee shall be constituted to prepare a fresh panel. Such a committee may also consider the names of the persons in the earlier panel.

Neutral Citation Number: 2023:DHC:2456-DB (3). The minimum educational qualifications and experience for candidates recruited through this process shall be as specified in the Schedule, but the minimum period of experience may be relaxed in the case of candidates possessing expertise in highly specialized disciplines, provided it is so recorded in writing by the Selection Committee. The provision of relaxation shall be incorporated in the vacancy circular or advertisement.

17. Power of relaxation, - The power to relax any of the provisions of these regulations shall lie with the Central Government.

29. The aforesaid Statutory Provision of law makes it very clear that for the purposes of selection, it is mandatory for the candidate to possess the minimum education qualification and experience provided for the post in question as per the schedule and the power to grant relaxation lies only with

the Central Government.

30. The Schedule appended to the Recruitment and Appointment Regulations, 2018 provides for educational and other qualifications required for promotion as well as for direct recruitment and the manner and method in which a post has been filled up.

31. The post of Assistant Director (Technical) finds place at Serial No. 18 and the relevant extract of the Schedule dealing with the post of Assistant Director (Technical), reads as under:

o*(20 General Pay Select 35 (i) □Master Degree from a N Two (i) 60% For promotion: Select N) Central Level ion Years recognized University or o Year by ion ot Service, 10 Institution in Chemistry or s promot 80% from Com A Group-A (Rs.56, Biochemistry or Food ion Technical mittee pp Non 100- Technology or Food failing Officer in Level shall lic Ministerial 1,77,50 Science & Technology or which 7(Rs.44,900- consi ab

o) Food & Nutrition or Edible deputat 1,42,400) with st of - le Oil Technology or ion three years' Microbiology or Dairy (includi service in the (i) Technology or Agricultural ng grade rendered Chief Neutral Citation Number: 2023:DHC:2456-DB or horticultural Sciences or short- after Execu Industrial Microbiology or term appointment tive Toxicology or Public contrac thereto on a Office Health or Life Science or t)or regular basis r, Biotechnology or Fruit & absorpt and Food Vegetable Technology or ion Safety Food Safety &Quality 20% from and Assurance or any other (ii) CFSO in Level Stand subject as approved by 40% by 7 (Rs.44,900- ards Food Authority from time to direct 1,42,400) with Autho time. recruit three years' rity of ment service in the India OR grade rendered -

PG 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 Years relevant
experience

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

Neutral Citation Number: 2023:DHC:2456-DB Note 1: Out of the total juniors who rity of experience sought, two have already India years of experience should completed such -

be in immediate lower pay qualifying or Mem level in central dearness eligibility ber.

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	service For deputation (Including Short Term Contract) or absorption: Officers of the Central Government or State Governments or Union Territories or Universities or Recognized Research Institutions or Public Sector Undertakings or Semi-Government, Statutory or Autonomous Organisations : (a)(i) Holding analogous post on regular
Note2: Qualifications are relaxable at the discretion of the competent authority in the case of candidates otherwise well qualified.	
Note 3: 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 basis in the number of candidates from parent cadre or these communities department; or possessing the requisite experience are not likely to be available to fill up the (ii) with two vacancy reserved for them. years regular service in the grade rendered after appointment thereto on a regular basis in the Pay Level 8 or equivalent in the parent cadre or department; or

(ii) With three years regular service in the grade rendered after appointment thereto on a regular basis in the Pay Level 7 or equivalent in the parent cadre or Neutral Citation Number: 2023:DHC:2456-DB department; or

(iii)with eight years regular service in the grade rendered after appointment thereto on a regular

basis in the Pay Level 6 or equivalent in the parent cadre or department and

(b) Possessing the educational qualification prescribed for direct recruitment under column

32. The Recruitment and Appointment Regulations, 2018 provide for the essential qualification and desirable qualification for the post of Assistant Director (Technical) and the advertisement read with Recruitment and Appointment Regulations, 2018 reflect that for direct recruitment a candidate must possess the educational qualifications provided under recruitment rules and 5 years of relevant experience.

33. The Recruitment and Appointment Regulations, 2018 and the advertisement also provide that out of the 5 years experience, 2 years experience is mandatory in immediate lower pay level in the Central Dearness Allowance or equivalent Industrial Dearness Allowance Scale, and, in case of a candidate working in private sector, he/ she shall be drawing minimum comparable annual cost to the Company for the last 2 years to be decided by the competent authority and shall be enacted in the advertisement on each occasion.

Neutral Citation Number: 2023:DHC:2456-DB

34. Undisputedly, the Appellants were contractual employees and they were paid monthly contractual amount in Pay Level-7. The different Pay Levels for the Organization from Pay Level-10 to Pay Level-7 are detailed 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

35. It is pertinent to note that as per the Recruitment and Appointment Regulations, 2018 for upgradation from Level-7 to Level-8, and from Level- 8 to Level-9, an employee is required to complete 3 years, and 6 years of service respectively and only in that case an employee is eligible and is granted upgradation to Pay Level-8 and Pay Level-9 respectively. Meaning thereby, the qualification prescribed under the Recruitment and Appointment Regulations, 2018, by no stretch of imagination, provides that a Technical Officer who is at Pay Level-7 is entitled to apply for the post of Assistant Director which is in Pay Level-10.

36. The Appellants who were purely contractual employees and who were not even receiving regular Pay Scale as per Pay Level-7 have been shown undue favor by the organization by permitting them to participate in the process of appointment in respect of Level-10 Post for reasons best known to the employer.

Neutral Citation Number: 2023:DHC:2456-DB

37. Learned Counsel for the Appellants has placed heavy reliance upon the Office Memorandum dated 26.11.2020 and his contention is that as per the aforesaid Office Memorandum for the post of Assistant Director (Technical), the immediate lower pay level shall be Pay Level-7.

38. This Court is of the considered opinion that such a relaxation could have only be given by the Central Government, as under Regulation 17, the power lies with the Central Government to relax any provisions of the Regulation. The Director (HR) is not the Central Government nor FSSAI under the Food Safety and Standards Act, 2006, and, therefore, the Office Memorandum issued on the subject which was brought to the notice of this Court by the Learned Counsel does not help the Appellants in any manner.

39. Learned Counsel for the Appellants has placed heavy reliance upon a judgment delivered in the case of Pradeep Kumar Rai Vs. Dinesh Kumar Pandey, (2015) 11 SCC 493. It has been argued that in the aforesaid case, it has been held that where an executive action of the State is challenged, the Court must tread with caution and should not over-step its limit.

40. In the present case, the Learned Single Judge has not at all over- stepped its limit in any manner. In fact, the Learned Single Judge has rightly arrived at a conclusion holding that the appointments made by the Organization were contrary to the statutory provisions governing the field i.e. Recruitment and Appointment Regulations, 2018.

41. Heavy reliance has also been placed upon in the case of Bedanga Talukdar Vs. Saifudaullah Khan, (2011) 12 SCC 85, and Paragraph 29 of the aforesaid judgment read as under:

Neutral Citation Number: 2023:DHC:2456-DB ¶29. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant Statutory Rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the Rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Article 14 and 16 of the Constitution of India."

42. This Court has carefully gone through the aforesaid judgment. However, in the present case, the statutory rules cannot be given a go-by, and the statutory rules do not provide for appointment to

the post of Assistant Director (Technical) from persons who are Pay Level-7 Officers, that too who are working on a contractual basis. The Appellants are not at all qualified as per the Recruitment and Appointment Regulations, 2018, and, therefore, the judgment does not help the Appellants in any manner.

43. Heavy reliance has also been placed upon the judgment delivered in the case of Ramjit Singh Kardam and Others Vs. Sanjeev Kumar and Others, 2020 SCC OnLine SC 488. It has been stated that the Hon ble Neutral Citation Number: 2023:DHC:2456-DB Supreme Court has held that after participating in the process of selection, a candidate is stopped from challenging the selection process. Paragraph 36 of the aforesaid judgment reads as under:

¶36. The proposition that a candidate, who participates in a selection without a demur taking calculated chance to get selected cannot turn around and challenge the criteria of selection and the constitution of the selection committee is well settled. The appellants have placed reliance on judgment of this Court in Madan Lal v. State of J&K, (1995) 3 SCC 486; K. A. Nagamani V. Indian Airlines, (2009) 5 SCC 515; Manish Kumar Shahi V. State of Bihar, (2010) 12 SCC 576; Madras Institute of Development Studies V. K. Sivasubramaniam, (2016) 1 SCC 454 and Ashok Kumar V. State of Bihar, (2017) 4 SCC 357."

44. This Court has carefully gone through the aforesaid judgment and the facts of the present case are distinguishable from the aforesaid judgment. In the present case, the Appellants are not at all fulfilling the qualifications prescribed under the recruitment rules and, therefore, a person who does not hold the qualifications prescribed under the recruitment rules does not have a right to hold the post and his appointment can very well be challenged by a person who is unsuccessful in the process of selection. Therefore, the judgment relied upon again does not help the Appellants in any manner.

45. Learned Counsel for the Appellants has also placed reliance upon a judgment delivered in the case of Babita Prasad and Others Vs. State of Bihar and Others, 1993 (3) SCC 268 and the contention is that the contractual employees who were in Pay Level-7 have been appointed to the post of Assistant Director (Technical) and the equity is in their favour and, therefore, their appointment should not be disturbed.

Neutral Citation Number: 2023:DHC:2456-DB

46. This Court has also gone through the judgment delivered in the case of Babita Prasad (Supra), and the facts remain that this Court is dealing with cases of those persons who have been selected de-hors the statutory provisions governing the field and, therefore, the Learned Single Judge has rightly held that the Appellants do not fulfill the requirement under the regulations governing the field.

47. The question of the Appellants continuing on the said post, on the basis of their selection to the post of Assistant Director (Technical) does not arise, as they were contractual Technical Officers in Pay Level-7 and for the purposes of appointment to the post of Assistant Director (Technical), the

lower position is certainly of Pay Level-9 and it can never be Pay Level-7 as argued before this Court and before the Learned Single Judge.

48. This Court does not find any reason to interfere with the order passed by the Learned Single Judge and the present LPAs are accordingly dismissed.

(SATISH CHANDRA SHARMA) CHIEF JUSTICE (SUBRAMONIUM PRASAD) JUDGE APRIL 11, 2023 aks