

L Shivamurthy vs The State Of Karnataka on 6 March, 2023

Bench: G.Narendar, M.G.S. Kamal

- 1 -

WP No. 10050 of 2021
C/W WP No. 49950 of 2018
WP No. 49957 of 2018

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 6TH DAY OF MARCH, 2023
PRESENT
THE HON'BLE MR. JUSTICE G.NARENDAR
AND
THE HON'BLE MR. JUSTICE M.G.S. KAMAL
WRIT PETITION NO. 10050 OF 2021 (S-KSAT)
C/W
WRIT PETITION NO. 49950 OF 2018 (S-KAT),
WRIT PETITION NO. 49957 OF 2018 (S-KAT)

IN WP NO.10050/2021

BETWEEN:

1. L SHIVAMURTHY
S/O SRI LAKSHMINARASIAH,
AGED ABOUT 51 YEARS,

Digitally
signed by C
HONNUR SAB
Location: High
Court of
Karnataka

WORKING AS SENIOR FOOD SAFETY OFFICER,
OFFICE OF THE DESIGNATED OFFICER,
FOOD SAFETY AND STANDARD

DEPARTMENT,
PUBLIC HEALTH INSTITUTE,
BRUHATH BENGALURU
MAHANAGARA PALIKE,
EAST ZONE, BENGALURU-01.

2. K CHANDRASHEKHAR,
S/O SRI D C KALAI AH,
AGED ABOUT 50 YEARS,
WORKING AS
SENIOR FOOD SAFETY OFFICER,
OFFICE OF THE FOOD SAFETY
COMMISSIONERATE,

- 2 -

WP No. 10050 of 2021

C/W WP No. 49950 of 2018

WP No. 49957 of 2018

PUBLIC HEALTH INSTITUTE,
SHESHADRI ROAD, K R CIRCLE,
BENGALURU-01.

...PETITIONERS

(BY SRI. SUBRAMANYA BHAT M., ADVOCATE)
AND:

1. THE STATE OF KARNATAKA
DEPARTMENT OF HEALTH AND
FAMILY WELFARE SERVICES,
BY ITS PRINCIPAL SECRETARY,
NO.105, 1ST FLOOR,
VIKAS SOUDHA, BANGALORE-01.
2. THE COMMISSIONER
FOOD SAFETY AND
STANDARDS DEPARTMENT,
PUBLIC HEALTH INSTITUTE,
SHESHADRI ROAD, K R CIRCLE,
BANGALORE-01.
3. THE COMMISSIONER
DEPARTMENT OF HEALTH AND
FAMILY WELFARE, ANANDA RAO CIRCLE,
BENGALURU-09.
4. THE DESIGNATED OFFICER,
DEPARTMENT OF FOOD SAFETY
AND STANDARDS DEPARTMENT,
BBMP EAST ZONE, BENGALURU-01.
5. THE JOINT DIRECTOR (LABS),
PUBLIC HEALTH INSTITUTE,
SHESHADRI ROAD, K R CIRCLE,
BANGALORE-01.

...RESPONDENTS

(BY SRI. R.SUBRAMANYA, AAG A/W
SMT. SHILPA S.GOGI, HCGP FOR R1 TO R5.)

-3-

WP No. 10050 of 2021

C/W WP No. 49950 of 2018

WP No. 49957 of 2018

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF
THE CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT OF
SEARCH CERTIORARI, OR ANY OTHER APPROPRIATE WRIT,

ORDER OR DIRECTION QUASHING THE ORDER DATED
20/10/2020 PASSED BY THE HON'BLE KSAT IN APPLICATION
NO.1021 AND 1022/2018 PRODUCED AS ANNEXURE-C, AS THE
SAME SUFFERS FROM ERRORS APPARENT ON THE FACE OF
THE RECORDS ETC.

IN WP NO.49950/2018

BETWEEN:

1. MR. SOMESH OLEKAR
S/O LAKSHMAPPA,
AGED 39 YEARS,
FOOD SAFETY OFFICER,
O/O DESIGNATED OFFICER,
FOOD SAFETY AND STANDARD DEPARTMENT,
DISTRICT SURVIVALENCE, OFFICE COMPOUND,
MECHGON DISTRICT, HOSPITAL COMPOUND,
SHIVAMOGGA-577201
R/AT KUMMUR TALUK,
BYADAGI DISTRICT, HAVERI-581101.
2. SRI. HARAPANAHALLI KOTRESHAPPA
S/O H.PARAMESHWAPPA
AGED ABOUT 46 YEARS,
WORKING AS FOOD SAFETY OFFICER,
OFFICE AT THE DESIGNATED OFFICER,
FSSA, CG HOSPITAL COMPOUND,
DAVANAGERE DISTRICT-577001.
3. M.P.KUSAMMANAVAR
S/O PUTTAPPA
AGED ABOUT 43 YEARS,
FOOD SAFETY OFFICER,
OFFICE OF THE DESIGNATED OFFICER,
FSSA, CG HOSPITAL COMPOUND,
DAVANAGERE DISTRICT-577001.

-4-

WP No. 10050 of 2021
C/W WP No. 49950 of 2018
WP No. 49957 of 2018

4. PARAMESHWAR
S/O KALLAPPA MATHPATI,
AGED ABOUT 44 YEARS,
FOOD SAFETY OFFICER, SINDNOOR,
FOOD SAFETY AND
STANDARD DEPARTMENT,
RAICHUR DISTRICT-581106.

5. H.O.MAHENDRAIAH
S/O OMKARAIHAH
AGED ABOUT 49 YEARS,
FOOD SAFETY OFFICER,
TALUK HEALTH OFFICE
GOVERNMENT HOSPITAL PREMISES,
KADUR TALUK,
CHICKMAGALUR DISTRICT-577116.
6. SURESH K K
S/O KRISHNAPPA,
AGED ABOUT 44 YEARS,
FOOD SAFETY OFFICER
M.G.M.HOSPITAL PREMISES,
MUDIGERE TALUK,
CHIKMAGALUR DISTRICT-577132.
7. SMT. DAKSHAYANI S BADIGER,
W/O MANJUNATH,
OFFICE OF THE DESIGNATED OFFICER,
FSSA DEPARTMENT, MYSORE,
NAGAMMA HOSPITAL CAMPUS,
MYSORE-570001.

...PETITIONERS

(BY SRI. NISHANTH A V., ADVOCATE)
AND:

1. STATE OF KARNATAKA
REP BY PRINCIPAL SECRETARY TO GOVERNMENT,
DEPARTMENT OF HEALTH AND FAMILY AFFAIRS,
VIKASA SOUDHA,
BENGALURU-01.

- 5 -

WP No. 10050 of 2021
C/W WP No. 49950 of 2018
WP No. 49957 of 2018

2. THE COMMISSIONER,
FOOD SAFETY AND
STANDARD DEPARTMENT,
K.R.CIRCLE, BENGALURU-560009.
3. THE COMMISSIONER
HEALTH AND FAMILY WELFARE SERVICES,
ANAND RAO CIRCLE,
BENGALURU-560009.

...RESPONDENTS

(BY SRI. R.SUBRAMANYA, AAG A/W
SMT. SHILPA S.GOGI, HCGP FOR R1 TO R3.)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DTD. 25.9.2018 PASSED BY THE KARNATAK STATE ADMINISTRATIVE TRIBUNAL IN APPLICATION NUMBERS 3999 TO 4011/2017 VIDE ANNEXURE-A IN SO FAR AS PETITIONER CORRECT AND CONSEQUENTLY SET ASIDE THE ORDER DTD. 30.6.2017 PASSED BY THE R-2 VIDE ANNEXURE-A12 ETC.

IN WP NO.49957/2018

BETWEEN:

1. MR H S NAGARAJU
S/O H. SIDDAIAH,
AGED ABOUT 53 YEARS,
WORKING AS SENIOR FOOD SAFETY OFFICER,
OFFICE OF THE DESIGNATED OFFICER,
FOOD SAFETY AND STANDARD DEPARTMENT,
D.H.O.OFFICE COMPOUND, MANDYA.
2. SRI. K.RAVIKUMAR
S/O KEMBAIAH N
AGED ABOUT 46 YEARS
WORKING AS FOOD SAFETY OFFICER,
OFFICE OF THE DESIGNATED OFFICER,
FOOD SAFETY AND STANDARD DEPARTMENT

- 6 -

WP No. 10050 of 2021
C/W WP No. 49950 of 2018
WP No. 49957 of 2018

PUBLIC HEALTH INSTITUTE
BENGALURU RURAL DISTRICT,
SESHADRI ROAD, BENGALURU-560001.

3. SRI. ANJANEYA BAIKAR
S/O JANARDHAN BAIKAR
AGED ABOUT 37 YEARS,
WORKING AS FOOD SAFETY OFFICER,
OFFICE OF THE DESIGNATED OFFICER
FOOD SAFETY AND STANDARD DEPARTMENT
DC OFFICE COMPOUND,
YADGIRI, YADGIRI DISTRICT.
4. SRI. SRINIVASA
S/O SIDDIAH
AGED ABOUT 45 YEARS,
WORKING AS FOOD SAFETY OFFICER,
OFFICE OF THE DESIGNATED OFFICER,

FOOD SAFETY AND STANDARD DEPARTMENT,
BEHIND GOVERNMENT HOSPITAL,
CHAMARAJNAGARA.

5. SRI.S.UDAYAKUMAR
S/O SHIVASHANKARAIHAH
AGED ABOUT 47 YEARS,
WORKING AS FOOD SAFETY OFFICER,
OFFICE OF THE DESIGNATED OFFICER
FOOD SAFETY AND STANDARD DEPARTMENT
PUBLIC HEALTH INSTITUTE
BENGALURU URBAN DISTRICT,
SESHADRI ROAD, BENGALURU-560001.
6. SRI.A.SREENIVASALU
S/O A VENKATARAMAPPA (LATE)
AGED ABOUT 43 YEARS,
WORKING AS FOOD SAFETY OFFICER,
OFFICE OF THE DESIGNATED OFFICER
FOOD SAFETY AND STANDARD DEPARTMENT
ROOM NO.GB-10, ZILLA ADALITHA BHAVANA,
SIDLAGHATTA ROAD,
CHIKKABALLAPURA.

- 7 -

WP No. 10050 of 2021
C/W WP No. 49950 of 2018
WP No. 49957 of 2018

7. SRI. N.H. THIRUMALESH
S/O LATE N. HANUMANTHAPPA
AGE 48 YEARS,
WORKING AS FOOD SAFETY OFFICER,
OFFICE OF THE DESIGNATED OFFICER
FOOD SAFETY AND STANDARD DEPARTMENT
OLD DHO OFFICE COMPOUND,
CHITRADURGA.

...PETITIONERS

(BY SRI. NISHANTH A V., ADVOCATE)
AND:

1. STATE OF KARNATAKA
REP. BY PRINCIPAL SECRETARY TO GOVERNMENT,
DEPARTMENT OF HEALTH AND FAMILY AFFAIRS,
VIKASA SOUDHA, BENGALURU-560001.
2. THE COMMISSIONER
FOOD SAFETY AND STANDARD DEPARTMENT,
K.R.CIRCLE, BENGALURU-560009.
3. THE COMMISSIONER
HEALTH AND FAMILY WELFARE SERVICES,

ANAND RAO CIRCLE, BENGALURU-560009.

...RESPONDENTS

(BY SRI. R.SUBRAMANYA, AAG A/W
SMT. SHILPA S.GOGI, HCGP FOR R1 TO R3.)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF
THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE
ORDER DTD 25.9.2018 PASSED BY THE KARNATAKA STATE
ADMINISTRATIVE TRIBUNAL IN APPLICATION NUMBERS 3667
TO 3676 OF 2017 VIDE ANNEXURE-A SO FAR AS THE
PETITIONERS CONCERNED AND CONSEQUENTLY AND SET
ASIDE THE ORDER DTD 30.6.2017 PASSED BY THE R-2 VIDE
ANNEXURE-A16 ETC.

THESE PETITIONS, COMING ON FOR PRELIMINARY
HEARING, THIS DAY, G.NARENDAR J., MADE THE FOLLOWING:

-8-

WP No. 10050 of 2021
C/W WP No. 49950 of 2018
WP No. 49957 of 2018

ORDER

Heard the learned counsel for the petitioners Sri Subramanya Bhat M. in W.P. No.10050/2021, the learned counsel Sri Nishanth A.V. in W.P. No.49950/2018 and W.P. No.49957/2018 and the learned Additional Advocate General for the respondent/State.

2. The facts giving rise to the instant writ petitions is the order of the Tribunal passed in Application Nos.1021 & 1022/2018 preferred by the petitioners in W.P. No.10050/2021 and by the applicants in Application Nos.3999 to 4011/2017 in W.P. Nos.49950/2018 and by the applicants in Application Nos.3667 to 3676/2017 in W.P. No.49957/2018.

3. The applicants in Application Nos.1021 & 1022/2018 had prayed for the following reliefs:-

i. "Call for records pertaining to the Service Records of the Applicants, peruse the same and set-aside Notice Dated 18-01-2018 bearing No.Am/Aa/23/2017-18 issued by fourth respondent vide Annexure A-11. & Notice dated 07-12-2017 bearing No.SaAaSam/FSSA/C/85/2017-18 issued against the second Applicant issued by fifth respondent vide Annexure A-12 in the interest of justice and equity;

ii. Issue a writ of certiorari quashing the order dated
30-06-2017 bearing
No.SaAasam/FSSA/C/08/2017-18 as the said

order is basis for recovery proceedings passed by second respondent Vide Annexure A-15 only in so far as the applicants are concerned in the interest of justice and equity.

iii. Issue a writ of mandamus directing the Respondents to continue to pay the existing pay- scale i.e., Rs.21,600/- to Rs.40,050/- which is already fixed and received by the applicants;

iv. Direct the Respondents to extend the new pay scale as per C & R to the posts held by the applicants i.e., Rs.22,800/- to Rs.43,200/- and consequently release the arrears of salary from 01-06-2013, in the interest of justice and equity."

4. The applicants in Application Nos.3999 to 4011/2017 had prayed for the following reliefs:-

- 10 -

(i) "Issue writ of certiorari or any other appropriate writ, order or direction quashing the order dated:

30.06.2017 in No.SaaASam/FSSA/C/08/2017-18 issued by Respondent No.2 as per Annexure - A-

12	and	order	dated	03.07.2017	in
No.SaaASam/FSSA/C/08/2017-18				passed	by
respondent	No.4	as	per	Annexure-13	
respectively.					

(ii) Issue writ of mandamus or direction directing the

respondents to continue the services of the applicants as Food Safety Officers/Senior Food Safety Officers with the pay scales attached to their posts.

(iii) Issue any other writ or order or direction that deems fit to grant in the circumstances of the case in the interest of justice and equity."

5. The applicants in Application Nos.3667 to 3676/2017 had prayed for the following reliefs:

(a) "Issue a Writ of Certiorari or any other appropriate writ or order to quash the G.O bearing No. Sa.Aa.Shan/FSSA/C1/08/2017-18 dated 30.6.2017 passed by the second respondent which has been produced as Annexure-A-16, as the said order is illegal,

- 11 -

arbitrary, unjust, irrational and without application of mind apart from being in contrary to the

Rules and in violation of the Articles 14,16 and 21 of the Constitution of India; and

(b) Issue a writ of mandamus or any other order or direction, directing the respondents, particularly, the second respondent to extend the pay scale of Rs.22800-43200/- to the first applicant and the pay scale of Rs.20000-38300/- the applicants No.2 to 6 as per the Rules called Health and Family Welfare Services (Food Safety Standard Department) (Recruitment) Rules, 2015 dated 5.1.2017 published in Karnataka Gazette dated 6.1.2017 and to extend all consequential benefits subsequent to quashing of the impugned order, in the interest of justice and equity; and

(c) Grant such other writ, order or direction as this Hon'ble Tribunal may deem fit to grant under the facts and circumstances of the case including cost of this application, in the interest of justice and equity."

6. The fact which acted as a catalyst for the applicants to rush to the Tribunal for succor is the proceedings of the respondent whereby, they sought to withdraw the pay scale attached to the post of Senior Food

- 12 -

Safety Officers and also the further action sought to be initiated by the respondent to recover the alleged excess amounts said to have been paid to the applicants. The facts are not in dispute.

7. The fact remains that all the applicants along with others were earlier on the rolls of the department of Health and Family Welfare and thereafter, on the enactment of the Food Safety Act and creation of posts there under and with a view to ensure implementation of the enactment, several of the officers who were earlier on the rolls of the Health and Family Welfare department were deputed to the various posts created under C & R Rules of the Food Safety department. One such post was that of the Senior Food Safety Officer (Grade-II) in the pay scale of Rs.21,600-40,500/-.

8. Initially, by a notification dated 25.08.2008, produced as Annexure-A2, certain persons, both in the post of Junior Health Assistant and Junior Health Inspector came to be selected as Food Inspectors for the purposes of

- 13 -

Prevention of Food Adulteration Act, 1954 (for short 'PFA Act'). The place of work and the area of operation also came to be earmarked.

9. Thereafter, the respondent No.1 issued a notification dated 30.07.2011 under the Food Safety and Standards Act, 2006 (for short 'FSS Act') and preamble reads as under:

"D°ÁgÀ ,ÄÄgÀPÀëvÉ ªÄÄvÄÄÛ UÄÄtªÄÄlÖ PÄAiÉÄÝ 2006£ÄÄß gÁdåzÀ°è
C£ÄÄµÁ×£ÄUÉÆ½,Ä®Ä PÄAiÉÄÝAiÄÄ ,ÉPÄë£ï-37 gÀ£ÄéAiÄÄ F PÉ¼ÄV£Ä

QjAiÄÄ/»jAiÄÄ DgÉÆÄUÄâ ,Ä°ÁAiÄÄPÄgÄ °ÄÄzÉÝ °ÉÆAçgÄÄªÄªÄgÄÄ£ÄÄß
CªÄgÄÄUÄ¼ÄªÄÄÆ® °ÄÄzÉÝAiÄÄ PÄvÄðªÄâzÄ eÉÆvÉUÉ "D°ÁgÄ
,ÄÄgÄPÄävÁ CçüPÄj" (Food Safety Officer) JAzÄÄ CªÄgÄÄUÄ¼ÄªÄ°ÄÄzÉÝAiÄÄ
JzÄÄgÄÄ ,ÄÆa¹gÄÄªÄ YÄæzÉÄ±ÄUÄ¼ÄªÄªÄ!ÜAiÄÄ°è PÁAiÄÄðªªÄð»,Ä®Ä
vÄPÄëtçAzÄ eÁjUÉ §gÄÄªÄAvÉ °ÁUÄÆªÄÄÄAç£Ä DzÉÄ±ÄzÄªÄgÉUÉ
£ÉÄ«Ä,Ä¯ÄVzÉ."

Whereby, officers in the post of Junior and Senior Health Inspectors of the department came to be given certain additional charge of the office of Food Safety Officer with a view to implement the FSS Act. A reading of the

- 14 -

notification or a close perusal of the notification would reveal that the officers of Junior and Senior Health Inspectors have been allotted certain areas in which jurisdiction the said officers are to exercise the authority of the Food Safety Officer under the FSS Act. Subsequently, another notification came to be issued by the Food Safety Commissioner and Commissioner, Health & Family Welfare Services by the notification bearing No.HFW 70 (V) CGM 2010, Bangalore dated 05.08.2011. Under the notification dated 05.08.2011, the preamble, reads as under:-

"In exercise of the powers conferred by sub section (1) of Section 37 of the Food Safety and Standards Act, 2006 (34 of 2006), the Commissioner of Food Safety, Government of Karnataka hereby appoints and notify the following persons Specified in column (3) of schedule below as whole time Food Safety Officers for the Local areas specified in column (5) and (6) of the schedule with immediate effect."

10. Thereafter, by a notification dated 20.03.2013 (Annexure-A5) the posts and eligibility qualification and method of selection came to be notified. The post of Senior Food Safety Officer is listed at serial No.10 and in

- 15 -

the 4th column the pay scale attached to the said post is detailed. Thereafter, by a notification dated 05.01.2017 the recruitment rules for the Food Safety and Standards Department came to be framed under a notification bearing No.HFW 397 CGE 2014, Bengaluru dated 05.01.20217. The rules called the Health and Family Welfare Services (Food Safety and Standards Department) (Recruitment) Rules, 2015 came to be published and came into force from the date of publication of the Official Gazette Annexure-A13 and the said notification also details the various posts, method of recruitment and minimum qualifications attached to the posts. Rule 5 provided for deleting the posts mentioned in Rule 3 which were originally created and attached to the parent department of Karnataka Health and Family Welfare Services and Karnataka Public Health Services and which were transferred to the Food Safety and Standards Department. Rule 3 provides for the transfer of the said post and rule 4 provides for seniority, leave and etc. in respect of those absorbed into the Food Safety and

- 16 -

Standards Department under the 2011 Rules and consideration of their services for the purposes of seniority, leave, pay and pension under the 2017 Rules.

11. In this background, the Department of Health and Family Welfare initiated steps to deduct certain sums said to have been paid in excess to the salary attached to the post or re-fix the salary according to the pay scale, attached to the post of Junior and Senior Health Inspectors. The exercise was initiated by the department on the assumption, that the applicants and others similarly situated, continued as officers of the parent department of the Health and Family Welfare and they were merely discharging additional charge of Food Safety Officer in terms of the notification No.AKuKa 70(V) CJM 2010 dated 30.07.2011. The said action of the respondent department came to be resisted by the applicants and others on the short ground that they were appointed as whole time officers of the Food Safety and Standards Department and hence, the attempt to reduce the pay

- 17 -

scale to that of the Health Inspector of the department of origin was impermissible and that they are entitled to the salary attached to the post of Food Safety Officers.

12. The learned Additional Advocate General would submit that the intention of the Government was only to place them on deputation and that the names of the petitioners continues on the rolls of the parent department of Health and Family Welfare department and in that view of the matter, their claim for payment of salaries, as attached to the post of the Food Safety Officers, under the Food Safety and Standards Department is impermissible. That though several posts came to be transferred as evidenced by the Rules of 05.01.2017, the fact remains that the posts have not been filled up by the absorption of the present applicants and other officers who are similarly situated.

13. It is the contention of the learned Additional Advocate General that the orders passed by the Commissioner, Food Safety and Standards Department on

- 18 -

05.08.2011 will not clothe them with any rights and that their migration is not in accordance with law and that the notification dated 05.08.2011 has to be read in the context of the notification dated 30.07.2011.

14. Per contra, the learned counsel for the petitioners would vehemently contend that they have been regularly appointed to the post of Food Safety Officers and that the appointment is by the competent authority and further more, the proceedings of respondent No.1 dated 21.12.2013 would clearly demonstrate that respondent No.1 has consciously distinguished between the Health Inspectors and Officers, who have undergone training in Food Safety and has re-designated the posts as 'Senior' and 'Junior' Food Safety Officer and in that view, they would contend that the proceedings of the respondents impugned before the Tribunal is wholly unsustainable in law.

15. We have perused the Notification dated 05.08.2011. The Preamble in the Notification reads that

- 19 -

the Notification is issued by the Commissioner of Food Safety in exercise of the powers conferred on him under sub-section (1) of Section 37 of the FSS Act and in exercise of the powers conferred, he thereby 'appoints' and 'notifies' the following persons specified in Column No.3 of schedule as whole time Food Safety Officers for the Local Areas specified in Column Nos.5 and 6. Section 37 of the FSS Act, reads as under:-

"37. Food Safety Officer.-(1) The Commissioner of Food Safety shall, by notification, appoint such persons as he thinks fit, having the qualifications prescribed by the Central Government, as Food Safety Officers for such local areas as he may assign to them for the purpose of performing functions under this Act and the rules and regulations made thereunder.

(2) The State Government may authorise any officer of the State Government having the qualifications prescribed under sub-section (1) to perform the functions of a Food Safety Officer within a specified jurisdiction."

16. A bare reading of the provision would clearly reveal that the competent authority to appoint Food Safety

- 20 -

Officer is the Commissioner and the Notification is issued in exercise of the powers conferred on him under the provisions of sub-section (1) of Section 37 of the FSS Act. The said Notification is faulted by learned Addl. Advocate General, who would contend that the applicants and others similarly situated as them, have not undergone any process of selection. The answer to the said contention does not lie far to seek. The Rules of 2017, more particularly, Rule 6 states that, such appointments that have been made till the date of the enactment of the Rules shall stand validated.

17. In that view of the matter and in view of our discussion hereinabove and in the background of the Notification dated 05.08.2011, we have no hesitation to hold that the petitioners have been appointed by the competent authority in exercise of its powers conferred on it under Section 37 of the FSS Act. The Notification clearly uses the words 'appoint' and 'notify', which is the language employed in the enactment also. If it was merely a

- 21 -

deputation then we do not find the need for the competent authority to issue a Notification under the relevant provision under the Act which empowers him to issue orders of appointment, namely, Section 37 of the FSS Act. In view of the language of Section 37 of the FSS Act, we cannot but hold that the Notification dated 05.08.2011 ought to be read as an order of appointment by the

competent authority. It is also not in dispute that the applicants and others similarly situated as them have been discharging duties and functions attached to the post of Food Safety Officer.

18. In that view of the matter, it cannot be gainfully argued that they are not entitled to salary attached to the post. In that view of the matter, the order of the Tribunal denying the salary as attached to the post of Food Safety Officer, in our opinion, is unsustainable and warrants interference. Hence, we proceed to pass the following:-

ORDER

i) The writ petitions are partly allowed.

- 22 -

ii) The orders of the Tribunal rendered in Application Nos.1021 and 1022/2018 dated 20.10.2020, Application Nos.3999 to 4011/2017 dated 25.09.2018, Application Nos.3667 to 3676/2017 dated 25.09.2018 are set-aside.

iii) Respondents shall reconsider the applications as a representation and pass appropriate orders in accordance with law and consequently, pay the applicants such Salary as attached to the post of Food Safety Officer.

It is made clear that despite the discussion made herein above and in view of the fact that no prayer for declaration of appointment having been sought, the observations with regard to the appointments are clarified as not conclusive and it is open for the respondents to take such action as is permissible under law, in the event, respondents come to the conscious decision that the applicants are not appointed to the post of Food Safety Officer in accordance with the FSS Act.

- 23 -

The petition stands ordered accordingly. There shall be no order as to costs.

Sd/-

JUDGE Sd/-

JUDGE CHS/dn