

# Pooja Puri vs Food Safety And Standard Authority Of ... on 20 April, 2022

**Author: V. Kameswar Rao**

**Bench: V. Kameswar Rao**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 326/2021 & CM APPL. 816/2021

POOJA PURI

.....  
Through: Mr. Yeeshu Jain, Ms. Jy  
Ms. Surbhi Arora, Advs.

versus

FOOD SAFETY AND STANDARD AUTHORITY OF INDIA AND  
OTHERS

..... Respo  
Through: Mr. Aditya Singla and Mr. Adhishw  
Suri, Advs. for R1.  
Mr. Ankur Sood, Ms. Romila Mand  
and Mr. Arnab Chatterji, Advs.  
R2.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO  
ORDER

% 20.04.2022

1. This petition has been filed by the petitioner with the following prayers:-

"It is, therefore, in these facts and circumstances, it is most humbly prayed before the Hon'ble Court to:

a) Call for the records of the present case and issue a writ of mandamus thereby directing the respondents to grant the petitioner the applicable benefits in age relaxation and weightage in selection criteria as per recruitment rules and to hold a supplementary interview for the petitioner and/or;

b) Pass any other or further order which the Hon'ble Court deem fit and proper to secure the ends of justice."

2. In substance, the petitioner is seeking a direction that she should be given age relaxation and weightage in selection criteria as per recruitment rules and to hold supplementary interview for the post of Deputy Manager.

3. The advertisement was issued on March 26, 2019 by the respondent No.1 for various posts including post of Deputy Manager. It may be stated here that the relevant clause of the advertisement, on which reliance is being placed by the petitioner is at page 82 which reads as under:-

"(ii) Persons working on the rolls of FSSAI on contract basis on the date of notification of Recruitment Regulations (RRs) and continuing in the services of Authority on the closing date of direct recruitment advertisement are uniformly allowed to apply for any post, if they have not attained the age of 50 Years on the closing date of advertisement on direct recruitment by relaxing the maximum age criteria. In addition to the above, persons who have attained the age of 50 years on the closing date of advertisement on direct recruitment may be given age relaxation of atleast as much period as they have served in FSSAI. This age relaxation will be allowed only upto maximum of three attempts across all categories of posts applied for where age relaxation is being allowed."

4. It is the case of the petitioner and so contended by Mr. Yeeshu Jain, learned counsel for the petitioner, that the petitioner having applied for the post of Deputy Manager and having cleared both Part A and Part B examination securing 184 marks in Part A and 65 % in Part B, was not called for the interview. The FSSAI / respondent No.1 had declared the result of provisionally successful candidates but the name of the petitioner could not be found in the list.

5. The petitioner made a representation dated November 27, 2021, to respondent No.1 but no reply was given. A further representation was made on December 07, 2020 to the respondent No.1 when she was assured that her representation would be answered and she would be provided with a supplementary interview. Finally it transpired that on December 24, 2020 the FSSAI declared the result against the post of Deputy Manager, wherein two persons have been shown as successful and four other persons have been put in the waiting list. He submits that though the petitioner is overage, but in view of the stipulation as noted above, the petitioner being an employee working on contractual basis with respondent No.1, is entitled to the benefit of age relaxation and also the benefit of the years of service she has put in the FSSAI.

6. Mr. Jain in support of his submission has primarily relied upon an office note dated August 27, 2018, of the CEO of the respondent No.1 FSSAI, vide which the petitioner was given the duties in the Library of the FSSAI. (Annexure R-8 to the rejoinder)

7. On the other hand, Mr. Aditya Singla, learned counsel appearing for the respondent No.1 FSSAI would submit that FSSAI is a statutory body established under the Food Safety and Standards Act, 2006 ('Act', for short). During the initial years after the establishment of the respondent No.1, few employees had joined it, in terms of Section 90 of the Act to manage its various functions.

8. The respondent No.1 employed human resources through deputation from government and/or PSUs and/or autonomous bodies, by outsourcing some services and also through renewable contracts. The Food Safety and Standards Authority of India (Recruitment and Appointment)

Regulations, 2018 came into force on October 01, 2018. However, prior to the enforcement of the aforesaid regulations, many employees continued to work for years for the respondent No.1 on contractual basis and have become overage as per the age eligibility criteria for government employment. In the aforementioned scenario, the said employees were allowed age relaxation and weightage through Regulation 11(5) of the Recruitment Regulations. Such age relaxation and weightage as provided under the Regulation 11(5) of the Recruitment Regulations was only applicable/given to such employees who were working with the Respondent No.1 on contract basis on the date of notification of the Recruitment Regulations i.e., October 01, 2018.

9. Mr. Singla also states that respondent No.1 entered into a tripartite agreement dated May 31, 2017 with respondent No.2 to create a joint collaboration project/initiative namely, the Food Fortification Resource Centre, i.e., the Respondent No.3. On October 01, 2017, the petitioner was engaged by respondent No.2 as a Consultant-Coordinator on contract basis for the role of Documentation Officer. She was engaged for a period of 12 months commencing from October 01, 2017 till September 13, 2018. The petitioner's contract was extended by respondent No.2 on October 01, 2018 for a period of one year commencing from the said date till September 30, 2019 and subsequently on September 16, 2019 for a period of 11 months commencing from October 01, 2019 till August 31, 2020. On September 01, 2020, the petitioner was deputed by respondent No.2 to respondent No.3 in terms of Article 5 (B) of the aforesaid tripartite agreement. The petitioner was working as Consultant in the role of Documentation Officer in FFRC and her contract was till August 31, 2021. He states that the petitioner was an employee of respondent No.2 and not of respondent No.1. Though the petitioner was over aged she deliberately with mala fide intention applied for the post of Deputy Manager, in response to the advertisement dated March 26, 2019 issued by respondent No.1. She concealed the fact that she was a contractual employee of respondent No.2 and knowingly misrepresented herself in her online application by wrongly indicating herself being a contractual employee of Respondent No.1, in order to wrongly avail the benefit of age relaxation and to appear in the examination for the said post. The said information came to the notice of respondent No.1 when the online declaration data of the candidates was received for grant of weightage to contractual employees and accordingly, the petitioner was not permitted to appear in the interview, as she was not entitled to age relaxation. Mr. Singla also states that advertisement is very clear and categorical inasmuch as if the information furnished by the candidate in the online application is false/incorrect, his/her candidature will be cancelled and he/she will not be allowed to appear in the interview/further stages of recruitment and can be removed from service without notice. Mr. Singla also highlights the fact that later on September 01, 2020 the petitioner was appointed in the FFRC, a Centre constituted in terms of the tripartite agreement between respondent No.1 and respondent No.2, being the funding authority. According to Mr. Singla, even this appointment in Food Fortification Resource Centre, respondent No.3 would not enure to the benefit of the petitioner, as it is not an appointment under respondent No.1 FSSAI. He states that the reliance placed by Mr. Jain on the notesheet at Annexure R-8 to the rejoinder is not an appointment in respondent No.1 FSSAI. Vide note sheet it was decided, the petitioner who was a Documentation Officer of FRRC shall assist the work at the Library and nothing more. In fact, the note sheet is very clear, it proceeds on the premise that the petitioner is a Documentation Officer of FRRC. He also states the plea of Mr. Jain that the charge in the Library of FSSAI was given pursuant to the orders of the CEO of FSSAI is also misconceived argument inasmuch as the CEO of FSSAI was

also the Chairman of the Management Committee of FFRC.

10. That apart the stipulation of which benefit is being sought by the petitioner is in terms of a statutory regulation 11(5) of the Recruitment Regulations which clearly states that the benefit would enure only to the employees working in the authority on contract basis on the date of notification, i.e., October 1, 2018. The said regulation reads as under:-

"Direct Recruitment: -

(1) (a) The vacancies which are to be filled up shall be widely advertised as per extant government instructions;

(b) The Applications not received by the last date mentioned in the advertisement or which are from candidates who do not satisfy the conditions laid down shall be liable to be summarily rejected:

Provided that the competent authority may extend the time given for receiving the applications.

(2) The candidates possessing the educational qualifications and experience as specified in the Schedule and other provisions under these regulations shall be eligible for direct recruitment through selection process. The competent authority may at its discretion, where it considers desirable, also stipulate whether written examination or interview or both to be a part of the selection process. (3) The competent authority, at its discretion, may maintain a panel of names suitable candidates as per recommendations of the Selection Committee. Any such panel of names, if prepared and maintained, shall remain valid for period of one year or for such extended period as the competent authority may specify from the date of its approval.

(4) If a department candidate is selected for appointment to any of the posts by Direct Recruitment, the post shall be considered to be filled by the Direct Recruitment.

(5) With the approval of Food Authority, all persons on contract in the services of the Food Authority on the date of notification of these regulations may be permitted a relaxation in the upper age limit specified for direct recruitment and may be given weightage in selection for being engaged in the work of the Food Authority."

11. The said regulation being a statutory regulation cannot be implemented in favour of the petitioner who was not an employee of FSSAI. He seeks dismissal of the writ petition.

12. Counsel appearing for the respondent No.2 would also contest the writ petition by stating that the said respondent is not concerned with the examination/selection process under the regulations

conducted by the respondent No.1. The FFRC is a collaboration/ initiative in the area of Food Fortification, implemented under the framework of an agreement dated May 31, 2017 between FSSAI, Tata Trusts and The India Nutrition Initiative (TINI).

13. It was envisaged in the agreement, that FFRC be ultimately institutionalised as a separate legal entity but that has not happened thus far. Respondent No.1 was responsible to provide physical space and infrastructure for the FFRC in the initial phase and after such period as may be decided by the FSSAI. FFRC was housed at the space provided by FSSAI at its offices in New Delhi. Respondent No.2 also agreed to provide manpower support to FFRC. To this end, the Trust engaged on contractual basis, several individuals, including the petitioner herein and assigned/deputed them to work especially for FFRC project. The selection, contractual appointment, assignment/deputation of resource persons for the FFRC was done in terms of Article 2(M) of the Agreement read with Article 1(H) and 5(B) of the Agreement. The petitioner was an FFRC specific staff contractually engaged by the Trust on October 10, 2017 as a Consultant Coordinator. Her selection was endorsed by the Management Committee of FFRC. She was deputed/assigned by the Trust to work for the FFRC project at the respondent No.1 offices in New Delhi. The Petitioner's initial contract was for a period of 12 months. The contract was thereafter extended/renewed by the Trust in October 2018 and then again in October 2019 for a term of 12 months and 11 months respectively. The payment of professional fees/compensation to the Petitioner as stipulated under the contract, was made by the Trust. With effect from September 01, 2020, the man power including the petitioner who were earlier contractually engaged and paid for by the Trust were assigned to be directly engaged by the FFRC and paid out of FFRC's budget. With effect from September 01, 2020, the Petitioner ceased to be on contract with the Trust.

14. Having noted the submissions made by the learned counsel for the parties, the only issue which arises for consideration is whether the petitioner is entitled to the benefit of Regulation 11(5) as stipulated in the advertisement which I have referred above. The answer to this issue has to be in the negative. This I say so, because the petitioner's appointment on contract basis was not in FSSAI, the authority i.e., respondent No.1. The facts has noted above, clearly demonstrate vide tripartite agreement entered between the parties, i.e., respondent Nos.1 and 2, a centre came into existence, which is the respondent No.3. The FFRC is not FSSAI.

15. The funding for the centre was being done by the respondent No.2. The respondent No.2 appointed the petitioner as a Consultant Co-ordinator. She continued to work under the Trust, respondent No.2 till August 31, 2020. Later, she was appointed in FFRC with effect from September 01, 2020. The advertisement against which the petitioner applied was issued on March 26, 2019 when petitioner continued to be an employee of the Trust though working at the FFRC centre. The petitioner, though could have applied against the advertisement as an outside candidate but could not have sought the benefit of age relaxation/weightage. This is in view of a clear stipulation in the advertisement.

16. This stipulation in the advertisement is in view of a Regulation 11(5) of the recruitment regulations, which I have reproduced above, which clearly contemplates that all persons who were working on contract basis in the service of the food authority i.e., FSSAI on the date of notification

of the regulations may be permitted relaxation in the upper age limit specified for direct recruitment and may be given weightage in selection. Similar is the provision in the advertisement. So, on the date of notification of the recruitment regulations the petitioner was not an employee of the authority. Rather on the date of notification of the recruitment regulations dated October 01, 2018, the petitioner was an employee of respondent No.2. Hence, she could not have been given the age relaxation/weightage of the service performed.

17. The only plea of Mr. Jain is by relying upon note dated August 27, 2018. I agree with the submission of Mr. Singla that the note itself recognises that the petitioner is Documentation Officer of FFRC and she is being given additional work to assist in the Library in addition to her substantive duties at FFRC. The note cannot be construed as an appointment in FSSAI. There is a process which need to be followed for making an appointment in any organisation, more so when it is a statutory body like FSSAI, which includes, advertisement, selection process followed by appointment letter which are missing in this case before she was given duties in the Library. The look after duties cannot be construed as an appointment in FSSAI. The petitioner is not entitled to the benefit of age relaxation as sought.

18. I do not see any merit in the petition, the same is dismissed. No Costs.

In view of the order passed in the petition, this application is also dismissed.

V. KAMESWAR RAO, J APRIL 20, 2022/ds