

Dr Rashi Bankar vs Jawaharlal Nehru University Through ... on 27 July, 2022

Author: Rekha Palli

Bench: Rekha Palli

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 27.07.2022

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W.P.(C) 9632/2022

DR RASHI BANKAR

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Through: Mr. Abhik Chimni, Mr.Ch. Anime
Prusty and Ms. Moksha Sharma, Advs.

versus

JAWAHARLAL NEHRU UNIVERSITY THROUGH ITS VICE

CHANCELLOR & ORS.

..... Respondent

Through: Mr.Navdeep Singh and Mr. Samrat
Anand, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The petitioner has approached this Court assailing the order dated 17.05.2022 passed by the respondents, whereby despite a No Objection Certificate (NOC) having been issued to the petitioner on 12.11.2021 for appearing in the interview for the post of Assistant Director (Technical) in the Food Safety and Standard Authority of India (FSSAI) with a specific condition that in case she is selected, she will be relieved as per the relevant rules, the petitioner has now been informed that she cannot be relieved by the respondents' on account of the acute shortage of staff in the respondent no.2/JNU, School of Physical Sciences.

2. The petitioner was appointed to the post of Senior Technical Assistant in the respondent no.2/school on 26.06.2015. On 06.10.2021, the FSSAI issued a circular inviting applications for filling up various posts in its organization through transfer on deputation (including short term contract) on foreign service terms. On 03.11.2021, the petitioner, desirous of applying for the post of Assistant Director, (Technical), forwarded her application to respondents seeking a No-objection certificate.

3. The respondent no.2 forwarded the petitioner's request to respondent no.3 and the said respondent, while forwarding the petitioner's application to the Assistant Director, FSSAI, clearly stated that in case she was selected for appointment to the post of Assistant Director(Technical) in FSSAI, she would be relieved from the services of the university as per applicable rules. The

petitioner was also issued an NOC by respondent no.3 stating therein that the said respondent had no objection to the petitioner applying in FSSAI on a deputation basis.

4. The petitioner appeared in the interview and was selected for the aforementioned post. Consequently, on 28.04.2022, the petitioner made a request to the respondent no.2 for relieving her from the post of Senior Technical Assistant. The said request was, however not accepted by the respondent no.2 compelling the petitioner to make a representation to FSSAI on 11.05.2022 seeking extension of time in joining her duties as the Assistant Director (Technical), which extension had been granted to her till 30.06.2022.

5. Soon thereafter, the respondents issued the impugned letter on 17.05.2022 informing the petitioner that she cannot be relieved from her duties on account of acute shortage of staff in the respondent no.2. It is in these circumstances that the petitioner has approached this Court.

6. In support of the petition, Mr. Abhik Chimni, learned counsel for the petitioner submits that the respondents' decision in not relieving the petitioner is wholly arbitrary as the respondents, having issued the NOC in favour of the petitioner as late as on 12.11.2021, had clearly stated that they had no objection to the petitioner applying for the post of Assistant Director (Technical). The respondents cannot, therefore now be permitted to urge that on account of any purported shortage of staff in respondent no.2, the petitioner cannot be relieved for joining FSSAI on deputation. He submits that the petitioner is a young lady belonging to the Scheduled Caste category, who with the dint of her hard work has succeeded in getting this lifetime opportunity of joining a post in the Pay Level 10 [56100-177500/-], which is much higher than her present Pay Level 6 [35400-112400]-where she is presently working with the respondents.

7. He submits that the reliance placed by the respondents on the communication dated 18.10.2021 issued by the University Grants Commission(UGC), whereby the UGC had directed all the universities to not advertise/fill-up any non-teaching posts, to urge that the respondents have a shortage of staff that cannot be filled, is wholly misplaced. He contends that not only was the petitioner issued the NOC after the receipt of the aforesaid letter from the UGC, but even otherwise, the respondents have been selectively releasing other persons to join on deputation for which he refers to the reply received by the petitioner under the Right to Information Act, 2005. From the said reply received by the petitioner on 14.07.2022, it is evident that the respondents had, as recently as, on 01.11.2021, relieved one Md.Sabir Chauhan, who was working as a Section Officer to join a post in another organization on deputation basis.

8. Without prejudice to his aforesaid submissions, Mr. Chimni submits that the reliance of the respondents on the UGC circular dated 18.10.2021 to contend that there was a complete ban on recruitment is also misplaced. The circular dated 18.10.2021 is based on an earlier communication dated 06.09.2002 wherein the UGC had made it clear that in cases, where any institution faces acute shortage of staff, the concerned school/university can approach the UGC seeking requisite relaxation so that the work of the institution concerned does not suffer.

9. He, therefore contends that the conduct of the respondents in not relieving the petitioner is malafide which is apparent from the fact that the respondents have not even stated as to what is the change in circumstances between the date of issuance of NOC and the order refusing to relieve the petitioner. He therefore prays that the writ petition be allowed.

10. On the other hand, Mr. Navdeep Singh, learned counsel for the respondents opposes the petition by reiterating the stand taken in the counter affidavit that there being an acute shortage of staff in respondent no.2, the respondents are justified in not relieving the petitioner to join FSSAI on deputation. He submits that the petitioner, being an employee of the respondents cannot claim that she must be relieved to join another organisation on deputation as a matter of right, even if there is a shortage of staff in the respondent no.2. At the time of issuance of NOC itself, the petitioner was informed that in case she is selected in FSSAI, she would be relieved from only as per the applicable rules.

11. Having considered the submissions of the learned counsel for the parties and perused the record, I find that while the respondents do not deny that the petitioner was issued the NOC on 10.11.2021 by which time the circular dated 18.10.2021 had been received from the UGC. Their primary contention, however is that once there is an acute shortage of staff in the respondent no.2 and therefore the petitioner cannot be relieved from her existing post so as to allow her to join a post in FSSAI so as to advance her career prospects by giving a go-bye to the interests of the respondent no.2. It is further contended that, in case, the petitioner is so desirous in joining the post of Assistant Director (Technical), it is always open for her to resign from the services of the respondents and join FSSAI.

12. I may first examine the respondents' plea that the petitioner can resign and then join FSSAI. In order to appreciate this plea, it would be apposite to refer to the circular dated 06.10.2021 issued by the FSSAI, a perusal whereof makes it evident that the post of Assistant Director (Technical) in FSSAI can be filled only on transfer on deputation basis. The relevant extracts thereof read as under-

"No. E-12017/3/2021-HR-FSSAI Food Safety and Standards Authority of India A Statutory Authority under Ministry of Health & Family Welfare, Govt.

of India (HR Division) FDA Bhavan, Kotla Road, New Delhi-110 002 06 October, 2021 CIRCULAR- DEP-0112021 Subject: Filling up of various posts in the Food Safety and Standard Authority of India through transfer on deputation (including short term contract) on foreign service terms- reg.

The Food Safety and Standards Authority of India (FSSAI) is an autonomous statutory Authority set up under the Food Safety and Standards Act, 2006 for laying down science-based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption.

FSSAI proposes to fill-up various positions from officers holding regular position in 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 on transfer on deputation (including short-term contract) on foreign service terms basis as per the details contained in Annexure-I. Applicants fulfilling the eligibility criteria & having relevant experience, etc may apply online on the link available on the FSSAI website i.e. www.fssai.gov.in commencing from 08 October 2021 to 07 November 2021.

XXX The period of deputation would be initially for three years. Further extension beyond three years would be subject to performance evaluation in the organization. The terms of deputation including pay of the officials selected on deputation will be governed by provisions laid down in the Department of Personnel and Training's Office Memorandum No. 6/8/2009- Estt. (Pay II) dated 17th June, 2010 and other orders/guidelines issued in this regard from time to time. The period of deputation, in case of employees already on deputation in another ex-cadre post including the period of deputation held immediately preceding this appointment in the same or some other organization/Department shall not exceed five years. The maximum age limit for appointment on deputation shall be 56 years on the last day of receiving the applications.

The vacancies shown in the advertisement are indicative which may increase or decrease. The Food Authority reserves the right not to fill up all or any of the vacancies or to cancel the advertisement at any stage.

Circular for deputation issued vide No. E-12017/0112020-HR (Vol-111) dated 30 September 2021 be treated as cancelled.

-digitally signed-

(Madan Kumar Jha) Assistant Director (Recruitment) assistant director-
hr@fssai.gov.in Tel. 011-23214135

13. In the light of the aforesaid provision in the advertisement, that the post of Assistant Director (Technical) can be filled by transfer on deputation, the respondent's plea that the petitioner can resign and then join the FSSAI, cannot be accepted. It is evident that in case the petitioner were to resign, she would, despite possessing the requisite qualifications, be per se rendered ineligible for being appointed as an Assistant Director (Technical) in FSSAI. In the event of her resignation from respondent no.2, the petitioner would not only be losing her job but will also simultaneously be ineligible for appointment to the post of Assistant Director (Technical) in FSSAI.

14. Once it is admitted that the NOC was issued after the issuance of the UGC circular, it was incumbent upon the respondent to at least demonstrate as to why despite having forwarded the petitioner's application on 12.11.2021, she cannot now be relieved to join the FSSAI on deputation.

The respondents have failed to show how the strength of the staff has reduced in this 6 months period. The bald statement of the respondents that there is a shortage of staff therefore, cannot be accepted, more so when there is no justification whatsoever for having granted permission to Md.Sabir Chauhan, to go on deputation on 01.11.2021 when there was an acute shortage of staff in the respondent no.2. There is also merit in the petitioner's submission that in case the respondents were facing any difficulty on account of the purported shortage of staff, they could, in terms of the circular dated 06.09.2002, approached the UGC, for permission to appoint additional staff. The respondents, having not done so, cannot discriminate against the petitioner by taking a bald plea of acute shortage of staff.

15. I may also note that the petitioner is only seeking to join a Government Organisation and not any other private concern or MNC, where she will be working for the welfare of general public. The petitioner, who is a young lady aged 36 years, belonging to Scheduled Caste category and holding a Doctorate in Chemistry, is, in my view, justified in aspiring to progress in her career and should not be deprived of opportunity where her pay level will increase substantially. In fact the respondents, as a model employer, ought to promote such employees to enable them to fulfil their aspirations, more so when they are women belonging to the category of Scheduled Caste.

16. For the aforesaid reasons, the writ petition deserves to succeed and is accordingly allowed. The impugned communication dated 17.05.2022 issued by the respondent is quashed and the respondents are directed to issue the requisite relieving letter to the petitioner by 28.07.2022 so as to enable her to join the post of Assistant Director(Technical) in FSSAI on deputation by 30.07.2022.

REKHA PALLI (JUDGE) JULY 27, 2022 sr