

S.P. Shrivastava vs The State Of Madhya Pradesh on 22 April, 2022

Author: Vishal Dhagat

Bench: Vishal Dhagat

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W.P. No.25419/2019

IN THE HIGH COURT OF MADHYA PRADESH AT
JABALPUR
BEFORE
HON'BLE SHRI JUSTICE VISHAL DHAGAT
ON THE 22 OF APRIL, 2022
WRIT PETITION No. 25419 OF 2019

Between:-

S.P. SHRIVASTAVA S/O LATE N.N.
SHRIVASTAVA, AGED ABOUT 55
YEARS, OCCUPATION: HEALTH
OFFICER (NOTIFIED AS FOOD
SAFETY OFFICER) R/O LIG 19,
NEAR STOP NO. 5 R.S.S. MARG.
SHIVAJI NAGAR, BHOPAL
(MADHYA PRADESH).

.....PETITIONER

(BY SHRI R.K. VERMA, SENIOR ADVOCATE WITH MS. ANJALI
SHRIVASTAVA, ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH
THROUGH THE PRINCIPAL SECRETARY
HEALTH AND FAMILY WELFARE
DEPARTMENT, VALLABH BHAWAN
MANTRALAYA BHOPAL (MADHYA
PRADESH).
2. COMMISSIONER FOOD SAFETY AND
CONTROLLER FOOD AND DRUGS
ADMINISTRATION IDGAH HILLS,
BHOPAL (MADHYA PRADESH).
3. DESIGNATED OFFICER CUM DEPUTY
DIRECTOR FOOD AND DRUGS
ADMINISTRATION, 1250 HOSPITAL
BHOPAL (MADHYA PRADESH).

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W.P. No.25419/2019

4. MUNICIPAL CORPORATION BHOPAL

THR. ITS COMMISSIONER, MUNICIPAL
CORPORATION BHOPAL (MADHYA
PRADESH).

.....RESPONDENTS

(BY SHRI JUBIN PRASAD, PANEL LAWYER)

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This petition coming on for admission this day, the court passed the
following:

ORDER

Petitioner has filed this writ petition under Article 226 of the Constitution of India making a prayer for quashing of order dated 22.11.2019 passed by Deputy Secretary, Public Health and Family Welfare Department, Government of Madhya Pradesh, Bhopal and notification dated 22.11.2019 contained in Annexure P/18 and P/19 and prayer was made that petitioner may be permitted to work as Food Safety Officer within limits of Municipal Corporation, Bhopal.

2. By impugned order dated 22.11.2019, Deputy Secretary, Public Health and Family Welfare Department directed Controller, Government Press Madhya Pradesh, Bhopal to publish notification regarding cancellation of earlier notification dated 22.02.2014, by which petitioner-S.P. Shrivastava was conferred powers under Section 37(2) of Food Safety and Standards Act, 2006 read with Rule 2.1.3(2) of Food Safety and Standards Rules, 2011 authorizing him to act as Food Safety Officer within local areas.

3. Shri R.K. Verma, learned Senior Counsel appearing for petitioner submitted that petitioner is substantially holding the post of Health Officer in Municipal Corporation, Bhopal. Vide notification dated 22.02.2014 passed by Department of Public Health and Family Welfare, petitioner was notified as Food Safety Officer for local areas within his jurisdiction to perform functions and duties of Food Safety Officer. Vide order dated 02.06.2014, petitioner was restrained to carry out duties Food Safety Officer as he was not having appropriate training. Petitioner challenged said order in W.P. No. 8485/2014. Said writ petition was disposed of vide order dated 25.07.2014 directing the respondents to send petitioner for training so that he can acquire requisite qualification. Petitioner acquired appropriate training and thereafter, vide order dated 26.08.2014 passed by Deputy Director, Food and Drugs, petitioner was authorized to work as Food Safety Officer in Municipal Corporation, Bhopal. Powers of petitioner was withdrawn by order of Joint Controller, Foods and Drugs Madhya Pradesh dated 23.07.2016. Said order was challenged in appeal and same was set aside by order dated 22.01.2018 passed by Upper Secretary, Public Health and Family Welfare Department, Government of Madhya Pradesh. Vide impugned order dated 22.11.2019 and proposed notification dated 22.11.2019, earlier notification dated 22.02.2014 was canceled and petitioner was denotified from post of Food Safety Officer. It is submitted that order dated 22.11.2019 and proposed notification dated 22.11.2019 is arbitrary and illegal and same was passed without giving any opportunity of hearing to petitioner. It is submitted that petitioner is holding requisite qualification as per Rule 2.1.3 of Food Safety and Standards Rules, 2011 for being appointed as Food Safety Officer and therefore, impugned order and notification be quashed and petitioner be permitted to work as Food Safety Officer within local areas of Municipal Corporation, Bhopal.

4. Counsel appearing for the respondents/State opposed the aforesaid prayer and submitted that proposed notification has already been published on 22.11.2019 and notification dated 22.02.2014 has been quashed. It is submitted that petitioner is substantially holding the post of Health Officer, Municipal Corporation, Bhopal and petitioner is an employee of Municipal Corporation and not an employee of State Government. Section 37(2) of Food Safety and Standard Act, 2006 confers power to State Government to authorize any officer of the State Government as Food Safety Officer. It is submitted that petitioner was not officer of State Government therefore, petitioner cannot act as Food Safety Officer and notification dated 22.02.2014 was rightly ordered to be canceled and petitioner has rightly been denotified as Food Safety Officer. It is further submitted that no opportunity of hearing was required to be afforded to petitioner. Petitioner has no vested right to be authorized to act as Food Safety Officer. Petitioner has no right to claim himself to be Food Safety Officer. In view of aforesaid submission, Panel Lawyer appearing for the State made a prayer for dismissal of writ petition.

5. Heard the counsel for the petitioner as well as respondents.

6. Section 37 of the Food Safety and Standards Act, 2006 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."

7. Rule 2.1.3 of the Food Safety and Standard Rules 2011 provides as under :-

"2.1.3 : Food Safety Officer:-

1. Qualification: - Food Safety Officer shall be a whole time officer and shall, on the date on which he is so appointed possesses the following:

(i) a degree in Food Technology or Dairy Technology or Biotechnology or Oil Technology or Agricultural Science or Veterinary Sciences or Bio-Chemistry or Microbiology or Masters Degree in Chemistry or degree in medicine from a recognized University, or

(ii) any other equivalent/recognized qualification notified by the Central Government, and

(iii) has successfully completed training as specified by the Food Authority in a recognized institute or Institution approved for the purpose.

Provided that no person who has any financial interest in the manufacture, import or sale of any article of food shall be appointed to be a Food Safety Officer under this rule.

2. On the date of commencement of these Rules, a person who has already been appointed as a Food Inspector under the provisions of Prevention of Food Adulteration Act, 1954, may perform the duties of the Food Safety Officer if notified by the state/Central government if the officer fulfils such other conditions as may be prescribed for the post of Food Safety Officer by the State Government.

3. State Government may, in cases where a Medical Officer of health administration of local area has been performing the function of food Inspector under the Prevention of Food Adulteration Act, 1954, assign the powers and duties of Food Safety Officer to such Medical Officer in charge of health administration of that area.

Provided further that the persons appointed under clauses 2 and 3 above, shall undergo a specialized training laid down by the Food Authority within a period of two years from the commencement of these rules."

As per said Rules, a person who has already been appointed as a Food Inspector under the provisions of Prevention of Food Adulteration Act, 1954 or a Medical Officer of health administration of local area, who has been performing the function of Food Inspector under the Prevention of Food Adulteration Act, 1954 may be assigned the powers and duties of Food Safety Officer.

8. Petitioner has categorically stated that he was appointed as Food Inspector under provisions of Prevention of Food Adulteration Act, 1954 vide notification dated 13.07.1994. On going through notification dated 13.07.1994 contained in Annexure P/20, it is clear that the petitioner was Sanitary Inspector and he was appointed as Food Inspector. Rule 2.1.3(2) of Food Safety and Standard Rules, 2011 provides that a person who has already been appointed as Food Inspector under the provisions of Prevention of Food Adulteration Act may perform the duties of Food Safety Officer if the officer fulfills such other conditions as may be prescribed for the post of Food Safety Officer by the State Government. As per Section 37 of Food Safety and Standards Act, State Government may authorize any officer of State Government having qualification to perform functions of Food Safety Officer within a specified jurisdiction. Section 37(2) uses the word 'may' and not 'shall' therefore, Section 37(2) is discretionary. Rule 2.1.3(2) is to be read alongwith Section 37(2) harmoniously therefore, petitioner, who is appointed as Food Inspector under Act of 1954, can be appointed as Food Safety Officer.

9. Writ petition is allowed and notification dated 22.11.2019 contained in Annexure P/18 and P/19 are quashed.

(VISHAL DHAGAT) JUDGE vkt VINOD KUMAR DN: c=IN, o=HIGH COURT OF MADHYA PRADESH, ou=HIGH COURT OF MADHYA PRADESH, postalCode=482001, st=Madhya Pradesh, 2.5.4.20=502f56362111056e3584ca82279e5efd816766cb7c5a1f490 a5ca63b1116883f, TIWARI p s e u d o n y m = 0 6 4 3 7 5 E 0 3 9 E E C A A F 4 9 2 B 2 C 2 C 6 0 6 0 7 6 E 4 2 0 E 1 6 3 D 2 ,

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