

The State Of Madhya Pradesh vs S.P. Shrivastava on 4 December, 2023

Author: Chief Justice

Bench: Ravi Malimath, Vishal Mishra

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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE RAVI MALIMATH,
CHIEF JUSTICE
&
HON'BLE SHRI JUSTICE VISHAL MISHRA
ON THE 4th OF DECEMBER, 2023
WRIT APPEAL No. 1629 of 2023

BETWEEN: -

1. THE STATE OF MADHYA PRADESH, THROUGH
THE PRINCIPAL SECRETARY, HEALTH AND
FAMILY WELFARE DEPARTMENT, VALLABH
B H AWAN , M AN TR ALAYA, 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)
4. MUNICIPAL CORPORATION BHOPAL THROUGH
ITS COMMISSIONER, MUNICIPAL
CORPORATION, BHOPAL (MADHYA PRADESH)

(BY SHRI S.S. CHAUHAN - GOVERNMENT ADVOCATE)

AND

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

.....APPELLA

(BY SHRI R.K. VERMA - SENIOR ADVOCATE WITH SHRI RAM MURTI

.....RESPOND

TIWARI - ADVOCATE)

Signature Not Verified
Signed by: PREMSHANKAR
MISHRA
Signing time: 12/5/2023
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This appeal coming on for admission this day, Hon'ble Sh
Ravi Malimath, Chief Justice passed the following:
ORDER

Heard learned counsels on delay.

2. There is a delay of 423 days in filing the appeal. The reason assigned is that after the order was passed by the learned Single Judge, the representation of the petitioner was considered. Taking note of the representation, the office of the Drawing and Disbursing Officer of the Food Safety Department, forwarded the record pertaining to the file of the petitioner to the Food Safety Officer, Head Office, Bhopal, who forwarded the same to the Senior Food Safety Officer. On 20.07.2022 it was forwarded to the Deputy Secretary who on 16.08.2022 recorded that the file and the record pertaining to the case of the petitioner be sent over to the Law Department for necessary action. On 09.09.2022 the Additional Secretary, Law Department opined that the decision with regard to filing the writ appeal challenging the legality and validity of the order dated 22.04.2022 passed in W.P. No.25419 of 2019 may be taken at the concerned departmental level. Thereafter the file was once again transferred to the office of the Controller, Food and Medicine Department, Bhopal. On 25.11.2022 it was observed that the concerned department has directed that a legal opinion as regards the feasibility of the writ appeal against the impugned order be sought from the office of the Advocate General. On 17.01.2023 it was deemed appropriate to direct the office of the CMO, Food and Drugs Administration, Department of Public Health and Family Welfare, Jabalpur to file a petition against the said order. Thereafter instant appeal was filed.

3. On considering the reasons, we are of the view that the appellants have explained the delay that has occasioned at every stage. On considering the reasons assigned, we are of the view that the reason assigned constitutes a sufficient cause. Hence, I.A. No.14846 of 2023 is allowed. The delay in filing the writ appeal is condoned.

4. Being aggrieved by the order dated 22.04.2022, passed by the learned Single Judge in W.P. No.25419 of 2019 in quashing the impugned notifications, the State is in appeal.

5. The plea of the State is that the impugned notifications issued by the State wherein earlier the petitioner was permitted to work as a Food Safety Officer within the limits of the Municipal Corporation was withdrawn by the subsequent notification vide Annexure P-19. The same was sought to be challenged. The learned Single Judge went into the interpretation of Section 37(2) of the Food Safety and Standards Act, 2006 (hereinafter referred to as "the Act of 2006") as well as Rule 2.1.3 of the Food and Safety Standards Rules, 2011 (hereinafter referred to as "the Rules of 2011"). Thereafter he came to the view that Section 37(2) of the Act of 2006 is discretionary. That Rule 2.1.3(2) of the Rules of 2011 is to be read along with Section 37 harmoniously and, therefore,

the petitioner who was appointed as a Food Inspector under the Act can be appointed as a Food Safety Officer. As a consequence whereof, the writ petition was allowed and the notifications vide Annexures P-18 and P-19 were quashed.

6. On considering the reasons, we are of the view that appropriate interference is called for. Even if the order of the learned Single Judge is to be considered, the ultimate finding recorded by the learned Single Judge is to the effect that the qualification of the petitioner entitles him to be appointed as a Food Safety Officer under the said Act, therefore, we do not find any ground to interfere with the said reasoning. However, what has to be noticed is a fact of the eligibility of the petitioner to be appointed as a Food Safety Officer. An eligibility does not translate itself into a right of the petitioner to claim a particular post. Even though he is eligible to hold the post, that does not mean that the employer namely the State is bound to comply with the order appointing him as a Food Safety Officer. The discretion is accorded to the State in terms of Section 37(2) which clearly indicates that 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. Under these circumstances, we do not find any right of the writ petitioner has been infringed.

7. Consequently, the writ appeal is allowed. The order dated 22.04.2022 passed by the learned Single Judge in W.P. No.25419 of 2019 is modified to the extent of setting aside the order passed by the learned Single Judge, wherein the impugned notifications dated 22.11.2019 vide Annexure P-18 and Annexure P-19 were quashed, are hereby set aside. Rest of the order sustains.

(RAVI MALIMATH)
CHIEF JUSTICE

psm