

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

WP(C). No.18787 of 2013 (W)

PETITIONER(S):

**A.V.SAJEEV,
ASSISTANT GRADE-I (DEPOT),
NOW WORKING AS MANAGER (DEPOT) ON DEPLOYMENT
FOOD CORPORATION OF INDIA, MULAGUNNATHUKAVU,
TRICHUR DISTRICT-680581.**

**BY ADVS.SRI.P.K.SURESH KUMAR (SR.)
SMT.M.R.SREELATHA**

RESPONDENT(S):

- 1. THE FOOD CORPORATION OF INDIA,
REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR,
FOOD CORPORATION OF INDIA, HEADQUARTERS,
NEW DELHI-110001.**
- 2. THE EXECUTIVE DIRECTOR (SOUTH),
FOOD CORPORATION OF INDIA, ZONAL OFFICE, CHENNAI-6.**
- 3. THE GENERAL MANAGER, FOOD CORPORATION OF INDIA,
REGIONAL OFFICE, THIRUVANANTHAPURAM-695001.**
- 4. UNION OF INDIA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
MINISTRY OF PERSONAL, PUBLIC GRIEVANCE & PENSION,
DEPARTMENT OF PERSONAL AND TRAINING, NEW BLOCK
NEW DELHI-110001.**

ADDITIONAL RESPONDENT IMPLEADED:

- 5. MINISTRY OF CONSUMER AFFAIRS,
FOOD AND PUBLIC DISTRIBUTION, GOVERNMENT OF INDIA,
KRISI BHAVAN, NEW DELHI,
REPRESENTED BY ITS SECRETARY.
(ADDL. R5 IS IMPLEADED AS PER ORDER DATED 29/01/2014 IN IA NO.
1317 OF 2014.)**

**R4 BY ADV. SRI.P.PARAMESWARAN NAIR, ASG OF INDIA
R1 & R3 BY ADVS. SRI.RENI ANTO KANDAMKULATHY
BY ADVS.SRI.M.R.ANISON
SMT.S.KARTHIKA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PETITIONER(S)' EXHIBITS:

- P1- TRUE COPY OF THE NOTIFICATION INVITING APPLICATION FOR FILLING UP BACKLOG SC, ST AND OBC VACANCIES ISSUED BY THE 2ND RESPONDENT DATED 11-01-1995.**
- P2- TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER DATED 02-02-1995.**
- P3- TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DATED 20-11-2009.**
- P4- TRUE COPY OF THE COMMUNICATION SENT BY THE 2ND RESPONDENT TO THE ASST. GENERAL MANAGER (ZE) NEW DELHI DATED 27-04-2010.**
- P5- TRUE COPY OF THE COMMUNICATION DATED 04-02-2010 ISSUED BY THE 2ND RESPONDENT.**
- P6- TRUE COPY OF THE COMMUNICATION DATED 13-04-2012 ISSUED BY THE 1ST RESPONDENT.**
- P7- TRUE COPY OF THE COMMUNICATION DATED 11-07-2012 ISSUED BY THE INFORMATION OFFICER.**
- P8- TRUE COPY OF THE COMMUNICATION DATED 31-07-1995 ISSUED BY THE 1ST RESPONDENT.**
- P9- TRUE COPY OF THE ORDER DATED 13-08-2012 ISSUED BY THE FIRST APPELLATE AUTHORITY.**
- P10- TRUE COPY OF THE OFFICE ORDER DATED 21-05-2013 ISSUED BY THE 3RD RESPONDENT.**
- P11- TRUE COPY OF THE RELEVANT PAGES OF FCI STAFF REGULATION 1971 AS AMENDED UP TO 30-09-2012.**
- P12- TRUE COPY OF THE OFFICE MEMORANDUM DATED 26-07-2011 ISSUED BY THE UNDER SECRETARY OF GOVERNMENT OF INDIA.**
- P13- TRUE COPY OF THE OFFICE MEMORANDUM DATED 30-12-2010 ISSUED BY THE GOVERNMENT OF INDIA.**
- P14- TRUE COPY OF LETTER DATED 05-06-2013 ISSUED BY THE 2ND RESPONDENT.**

RESPONDENT(S)' EXHIBITS:-

- R2(A):- TRUE COPY OF COMMUNICATION DATED 27.8.94.**
- R2(B):- COPY OF LETTER DATED 31.7.1995.**
- R2(C):- COPY OF ORDER DATED 21.8.1995.**
- R2(D):- COPY OF COMMUNICATION DATED 15.9.95.**
- R2(E):- COPY OF LETTER DATED 12.10.95.**

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/True Copy/ P.A to Judge

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.18787 of 2013

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Dated this the 9th day of February, 2015

JUDGMENT

The relief sought for in this writ petition is for a direction to respondents 1 to 3, to fill up all backlog vacancies of OBC in the cadre post of Assistant Manager Depot (now Manager Depot) notified as per Ext.P1 circular without any further delay.

2. The petitioner belongs to Hindu-Ezhava (OBC) community. He entered service as Assistant Grade-III in respondent corporation on 9.5.1983. After a long period of 17 years' service in the entry cadre post, he was promoted to Assistant Grade-II (Depot) post with effect from 30.7.2011.

3. The petitioner alleges that by circular dated 11.1.1995, the second respondent invited applications to fill up the backlog vacancies of OBC/SC/ST for various posts, including that of Assistant Managers (Depot) now re-designated as Manager Depot by direct recruitment. The petitioner applied for the same. Pursuant to Ext.P1 notification, the respondents filled up all backlog

vacancies of SC/ST. However, no steps were taken to fill up the backlog vacancy available to OBC.

4. From 1995 onwards continuously upto 2011, the 4th respondent have been issuing instructions after instructions to all statutory authorities and Central Government organizations to fill up the backlog reserved vacancies of OBC/SC/ST as is evident from Exts.P12 and P13; so alleges the petitioner. The petitioner further points out that he being the senior most qualified person working in the feeder post and eligible for promotion to the post of Manager (Depot), has already been appointed as Manager (Depot) on additional charge for a period of 89 days and his term of deployment was extended upto 30.7.2013. According to him, as per clause 11 of FCI Staff Regulation 1971, (Ext.P11), the respondent corporation is bound to confer reservation benefits provided to SC/ST and other communities as directed by the Government from time to time while making appointment in the service of the respondent corporation. According to the petitioner, the arbitrary action and deliberate lapses on the part of the respondents have already resulted in denying petitioner's right for being promoted to the post of Manager (Depot) from 1995

onwards. It is with this background, the petitioner has approached this Court.

5. In the detailed counter affidavit filed by the respondents, it was contended that the zonal office (south) vide Ext.R2(D) fax letter dated 15.9.1995 requested the Food Corporation of India, Headquarters, New Delhi to confirm whether the restriction imposed was applicable for recruitment under special drive as ordered by headquarters vide letter dated 22.8.1994. In response to that, the Food Corporation of India, Headquarters vide Ext.R2(E) telex dated 12.10.1995 intimated that it has been decided that in case where approval of the Board of Directors for filling up the vacant posts by fresh/direct recruitment has been obtained and the offer of appointment has been issued, such cases need not be reopened. However, the case where appointment orders are yet to be issued/selection process not yet over, the instructions of the Headquarters in the light of Government order dated 21.8.1995 may be awaited and no fresh recruitment may be made until further orders.

6. It was contended that thus, the application of the petitioner could not be considered under existing policy of Government of

India at the relevant point of time. It is further stated that mere application for appointment by itself does not confer any right on the petitioner for appointment as held by the judicial pronouncement of Hon'ble High Court/Supreme Court of India. It was further stated that the vacancies for OBC category were initially published vide advertisement dated 26.1.1995. But, subsequently the decision to fill up SC/ST vacancies only were communicated by FCI, Headquarters vide D.O.letter No.18-19/1995/LC dated 31.7.1995. Thus, the post reserved form SC/ST under direct recruitment quota as on 31.12.1994, were alone carried forward and filled up the backlog post under special recruitment drive 1995-06. Further no approval for filling up of OBC was communicated and, therefore, the application of the petitioner for the post of Assistant Manager (Depot) under OBC category was not considered.

7. It was further contended that Ext.P8 would reveal that the Board of FCI has relaxed the ban on recruitment for filling up of direct recruitment quota posts for category-II upto 31.12.1994 reserved for SC/ST/OBC. This does not per-se amount to filling up of backlog vacancies of OBC. Further the G.O.I in OM dated

19.11.2008 noted the existence of backlog vacancies of OBC and directed to fill up the backlog vacancies through special recruitment drive for the first time.

8. It was further stated that deployment of a senior most assistant to the post of Manager is only an interim arrangement made for functioning of the organisation upto the time till a regular candidate joins or 89 days whichever is earlier. But, in due course, as per seniority, he may become regular manager as a result of seniority promotion. As such, the 89 days' deployment cannot be clubbed with seniority promotion or with the direct recruitment and this deployment do not have any relevance in this case.

9. It is stated that in terms of Department of Personnel and training (DoPT) OM dated 8.9.1993 and 13.1.1995, reservation for OBC is applicable to the civil posts and services under the G.O.I to be filled through direct recruitment only and reservation for OBC is not applicable to the promotions. It was further stated that in the year 1995, G.O.I/Ministry of Personnel, Public Grievances and Pension had launched a special recruitment drive to fill up the backlog vacancies reserved for SC/STs. Accordingly, appointing authorities in FCI had been directed to fill up the backlog vacancies

reserved for SC/STs. identified on 31.3.1995 under a fixed time schedule. Hence, it is clear that the said drive was launched to fill up the backlog vacancies reserved form SC/STs. Only. Further as per GOI/DoPT instructions, a special recruitment drive (2008-09) to fill up the backlog vacancies reserved for the SC/ST/OBC under direct recruitment quota and SC/ST promotion quota existing as on 1.11.2008 was launched in FCI during 2009.

10. It is further stated that the Ministry of Consumer Affairs Food & Public Distribution vide letter dated 10.1.2011 has forwarded the copy of DoPT OM dated 30.12.2010 wherein DoPT had desired that all the backlog vacancies reserved for SC/STs. and OBCs. to be filled under special recruitment drive 2008-09 (identified as on 1.11.2008) should be filled by 30.6.2011. It is further stated that the promotion in the south zone is done strictly as per contents of FCI Staff Regulations 1971 and as per the HQ instructions in force. They submitted that 75% of the total sanctioned posts are filled by way of promotion. It was further contended that the petitioner could have applied in the direct recruitment quota under OBC category if he fulfills the criteria.

11. I have heard the learned senior counsel for the petitioner and the learned standing counsel for the respondent corporation.

12. Admittedly, the petitioner is the senior most qualified person to appointed to the post of Manager (Depot) which commenced from the year 1995. According to the petitioner, that was thwarted by the inaction on the part of the respondents.

13. By Ext.R2(A), the respondent corporation had instructed all zonal officers to fill up all direct recruitment vacant quota posts in respect of Category-II upto 31.12.1994 reserved for SC/ST, which was issued in relaxation to the ban of fresh recruitment, approved by the board of directors of the respondent corporation. Later, though Ext.R2(B) was issued, it did not mention that only the vacancies of SC/ST to be filled up. In Ext.R2(B) it is stated that with respect to the recruitment of OBC quota the board had already relaxed the ban. So, there was no ban in recruitment of OBC quota at that time. Now, the respondents have deliberately took Ext.R2 (C) as a shield to protect their misdeed.

14. Had there been a restriction to fill up the vacancies by fresh recruitment, the respondents could not have filled up the vacancies for SC/ST quota. As a single notification was issued for

filling up of SC/ST quota and the OBC quota, they ought not have segregated the SC/ST quota and OBC quota. Since the respondent corporation has filled up the SC/ST quota based on Ext.P1 notification, they ought to have made appointments for OBC quota also. It is relevant to note that Ext.R2(C) does not impose restrictions to fill up OBC quota. It was a special drive which the respondents were least interested to implement the same. The net result was that the opportunity of the petitioner and other similarly situated persons were denied.

15. There was failure on the part of the respondent corporation to fill up the backlog vacancies of OBC. Since vacancies were vacant, the respondents deployed persons like the petitioner having longer service and experience. Lack of regular managers occurred due to lack of promotion and appointment in due course. The learned senior counsel for the petitioner would point out that the person now deployed were having 30 to 35 years' service and whenever promotion takes place they would be the eligible candidates to occupy those posts.. There cannot be any hesitation to hold that Ext.P1 notification was intended to maintain the cadre strength of employees belonging to the marginal section. Had

Ext.P1 notification was implemented in letter and spirit, the petitioner could have been selected and he would have been got appointment because he was qualified and eligible. Therefore, the respondents are bound to make good the loss sustained by the petitioner.

16. Therefore, this Court feels that the matter requires a re-look by the respondents and to facilitate the same, it is only just and proper to permit the petitioner to approach the respondents with a proper representation.

Therefore, the writ petition is disposed of directing the petitioner to make a representation before the first respondent, Food Corporation of India, with a copy to the Head Quarters of the Corporation within two weeks from today. In the event of filing such a representation, the same shall be considered and disposed of the Food Corporation of India in the light of what has been stated above, within a period of two months thereafter, after affording the petitioner an opportunity of being heard.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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