

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.12.2019

CORAM

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No. 8223 of 2017
and WMP. No. 8978 of 2017

R.Vimalkanth

..Petitioner

Vs

1. Food Corporation of India
Rep. by its Executive Director (South)
Zonal Office
No.3, Haddows Road,
Chennai-600006.

2.The General Manager (Tamil Nadu)
Food Corporation of India
Regional Office,
No.8,Sathyamurthy Road,
Chetpet, Chennai-600031.

3.The General Manager (South)
Food corporation of India
Zonal Office
No.3, Haddows Road,
Chennai-600006.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring the action of the respondents in rejecting petitioner candidature for the post of Management Trainee (Technical), South Zone on the ground that the No Objection Certificate was submitted only at the time of interview and not before the last date of submission of application as illegal, arbitrary and contrary to law and consequently direct the respondents to appoint petitioner in the Post of Management Trainee (Technical) South Zone as he had scored 53.64 marks in the selection process and as the same comes within the main selected candidate List viz. at Serial No.10 with effect from the date when other selected persons were appointed.

For Petitioner : M/s. Balan Haridas
For Respondents : Mr S.Vijayakumar

ORDER

The prayer sought for in the Writ Petition is to declare the action of the respondents in rejecting petitioner candidature for the post of Management Trainee (Technical), South Zone on the ground that the No Objection Certificate was submitted only at the time of interview and not before the last date of submission of application as illegal, arbitrary and contrary to law and consequently direct the respondents to appoint petitioner in the Post of Management Trainee (Technical) South Zone as he had scored 53.64 marks in the selection process and as the same comes within the main selected candidate List viz. at Serial No.10 with effect from the date when other selected persons were appointed.

2. The brief facts of the case is stated as follows:

The writ petitioner is a graduate in M.Sc.(Agriculture). He joined as Assistant Grade-III on 28.10.2009 and promoted to the post of Assistant Grade-II (Technical) in June 2013 in the respondent corporation, at present working at Salem. The 1st respondent corporation had issued an Advertisement on 02.06.2015, inviting applications for recruitment to the post of Management Trainee(Technical). The writ petitioner applied for the said post. As per condition in the application, he made an application to issue 'No Objection Certificate' from the 2nd respondent, through proper channel on 03.06.2016. He was permitted to attend written examination without furnishing the No Objection Certificate, he was called for group discussion and thereafter he appeared for interview on 30.06.2016, at that stage, the writ petitioner obtained NOC from the 2nd respondent and submitted to the 1st respondent and secured 53.63 marks in the aforesaid selection. But unfortunately, the writ petitioner's name was not found in the final result, for the reason that the NOC was submitted, after closing date. Hence the 1st respondent rejected the selection of the writ petitioner for the post of Management Trainee(Technical). Challenging the same, the present writ petition is filed.

3. According to the learned counsel appearing for the writ petitioner, as per Clause 36 of the advertisement dated 02.06.2015, the departmental candidates are eligible to be appointed, subject to the possession of 'No Objection Certificate' from their employer, which shall be required to be sent/uploaded along with their essential enclosures in case of their shortlisting on the basis of the written examination at the designated address/website, which shall be informed/notified through the designated website. Accordingly, the petitioner has

submitted his NOC at the time of interview conducted by the 1st respondent corporation.

4. Further it is stated that the writ petitioner had secured 53.63 marks in the above said selection and his name was included within 10 selected candidates. The writ petitioner is an internal candidate, therefore, the respondent has to issue NOC within a time, so as to enable the writ petitioner to submit to the 1st respondent as per condition in the advertisement. But, the 2nd respondent had delayed the process of issuing NOC to the petitioner, despite it was recommended by the Area Manager of the respondent corporation. Therefore, the same cannot put against the writ petitioner and rejected the selection of the petitioner by passing impugned order which itself violates the Article 14 & 16 of the Constitution of India.

5. On the other hand, the learned standing counsel appearing for the respondent corporation has submitted that as per Clause 8 of the general information of the advertisement, the writ petitioner made declaration that he is in possession of NOC from the employer on or before the closing date of the advertisement which shall be required to be sent/uploaded along with other essential enclosures. Therefore as per the above clause of the advertisement, the writ petitioner was not in possession of NOC at the time of submitting his application. Therefore, the respondent has rightly rejected the writ petitioner's appointment to the post of Management Trainee (Technical).

6. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

7. The main arguments advanced by either side is with regard to Clause 8 & 36 of the advertisement issued by the respondent corporation dated 02.06.2015. Therefore, the same are useful to extract as follows;

Clause 8:

Employees of the Central/State Govt./Public Sector Undertakings and departmental candidates should apply online. Their candidature is subject to fulfillment of the essential eligibility criteria and ensure that they are in possession of 'No Objection Certificate' from their employer on or before the closing date which shall be required to be sent/uploaded along with other essential enclosures in case of their shortlisting on the basis of the written Test at the designated

address/website which shall be informed /notified through the designated website”

Clause - 36:

Departmental candidates may note that their candidature is subject to possession of 'No Objection Certificate' from their employer, which shall be required to be sent/uploaded along with other essential enclosures in case of their shortlisting on the basis of the written examination at the designated address/website, which shall be informed/notified through the designated website www.fcijobsportal.com.”

8. The writ petitioner has registered his application, through online on 02.06.2015 to the respondent. On the next day of registering his application on 03.06.2015, the writ petitioner has submitted an application for issuance of No objection certificate from the 2nd respondent. The Area Manager of the 2nd respondent corporation by his letter dated 05.06.2016, after scrutinisation, recommended the 2nd respondent to issue No Objection Certificate as there is no vigilance case or administrative action pending or contemplated against the writ petitioner. But the 2nd respondent has not furnished the No Objection Certificate on or before the closing date of application i.e on 02.07.2015.

9. Further, while scrutinizing the application of the petitioner, the respondent has not rejected the application of the petitioner on the ground of non production of No Objection Certificate, but permitted to attend for group discussion and interview. On receipt of communication from the 2nd respondent to attend the group discussion and interview, by shortlisting the candidates, the petitioner had attended the group discussion and interview. As per clause 36 of the advertisement, he produced the No Objection Certificate dated 27.04.2016 to the 1st respondent.

10. Admittedly, the said NOC was received from the respondents by the petitioner only on 27.04.2016 i.e after the closing date of application. It is true that the petitioner has not complied with the conditions as stipulated in the advertisement dated 02.06.2015, but the writ petitioner made his application to the 2nd respondent on 03.06.2015 and the said application was also recommended and forward for issuance of NOC by the Area Manager of the 2nd respondent, who is under control of the 1st respondent corporation.

11. The 3rd respondent in his counter affidavit, has stated that the writ petitioner applied for NOC on 03.06.2015 and asked to furnish the same on or before 02.07.2015 as per the terms and conditions of the advertisement No.4 of 2015 and declaration made by the writ petitioner, in his online application. But, the writ petitioner did not possess the NOC on the closing date of the application, in terms of the advertisement. The writ petitioner approached the Area Manager for issuance of NOC on the ground that he was shortlisted for group discussion and to attend for interview. Immediately, the same was processed and issued NOC dated 27.04.2016 by the 2nd respondent.

12. The 2nd respondent has filed the counter statement, wherein it has been stated that the delay is on the part of the 2nd respondent in issuing NOC to the petitioner, despite the recommendation made by the Area Manager. The respondent permitted the petitioner to attend the subsequent level of group discussion and interview based on the marks secured by the petitioner in the written examination. Therefore, the 2nd respondent being a subordinate officer to the 1st respondent had knowledge of submission of NOC to the 1st respondent. But failed to issue NOC within a time limit, which is a clear lapse on the part of the 2nd respondent. Therefore, the writ petitioner cannot be penalised for the mistake committed by the 2nd respondent, who is also under the employment of the 1st respondent corporation. Further, as per Clause 36 of the advertisement, the writ petitioner, who is a departmental candidate, has received his No Objection Certificate only on 27.04.2016 and produced the same before the 1st respondent at the time of shortlisting the candidates for the selection to the aforesaid post.

13. In the said circumstances, it is pertinent to mention here the similar case decided by the High Court of Punjab & Haryana at Chandigarh in CWP.No. 1327 of 2017, dated 08.05.2019, wherein the prayer of the petitioner therein was allowed on the ground that the petitioner cannot be faulted for non submission of NOC at the relevant point of time, when the delay was on part of the competent authority. Hence the relevant paragraph is extracted as follow;

" 3. Learned Sr. Counsel for the petitioner submits that the petitioner applied for No Objection Certificate on 29.07.2015. Reference is made to letter Annexure P-8, in which it is mentioned that the said certificate was prepared on 10.08.2015 and issued on 19.08.2015. Argument is that the petitioner is not to blame for non-submission of the No Objection Certificate.

4. Learned counsel for the respondents, on the other hand, submits that submission of No Objection Certificate was a requirement of the advertisement and since the petitioner did not comply with the said requirement, the respondent-Food Corporation of India had no other option but to reject his candidature.

5. The letter Annexure P-8 makes it abundantly clear that issuance of No Objection Certificate was approved by the competent authority on 10.08.2015 and was finally issued on 19.08.2015.

6. Thus, the petitioner can not be faulted for non-submission of the said document on or before the last date i.e. 14.08.2015. The respondent-Food Corporation of India was the employer as well as the agency demanding the submission of No Objection Certificate. For laxity on its part, the respondent cannot make the petitioner suffer.

7. Affidavit dated 07.05.2018 prepared by Sh. Pankaj Pandey, Assistant General Manager (Administration) shows that the vacancy for which the petitioner had applied still exists.

8. In view of the above, the writ petition is allowed. It is directed that the 2 of 3 CWP-1327- 2017(O&M) petitioner be appointed on the post for which, he had applied with effect from the date from which he would have been appointed had the dispute regarding the No Objection Certificate not arisen. He will also be paid all consequential benefits."

14. Insofar the present case in hand is concerned, as per Clause 36 of the advertisement, the writ petitioner has submitted the NOC at the time of group discussion and interview, immediately after receipt of the same from the 2nd respondent.

15. Therefore, the rejection of appointment to the petitioner, who is a departmental candidate by relying upon Clause 8 of the advertisement is not proper, since the instructions given in the said clause is for the candidates applying from other departments including the respondent department. Therefore the said Clause 8 shall be construed as only directory and not mandatory. Further, the Area Manager of the 2nd respondent recommended the first respondent for issuance of NOC to the petitioner within a time i.e. on

05.02.2016 itself. The 2nd respondent in their counter affidavit has also admitted the fact that due to the extraordinary circumstances, the NOC could not be issued within the prescribed time.

16. Therefore, by considering Clause 36 of the advertisement, the writ petitioner had applied for NOC on 03.06.2015 and requested to furnish the same on or before 02.07.2015, but the said NOC came to be issued to the writ petitioner only on 27.04.2016. After shortlisting the candidates, the respondent had called for the writ petitioner for group discussion and personal interview to be held on 30.09.2016 vide call letter dated 02.09.2016. The petitioner has also produced the NOC on the said date. In view of the above, it is clear that the writ petitioner was in possession of NOC before shortlisting the candidates and produced the same. Therefore, being a departmental candidate, the writ petitioner has complied with the conditions of Clause 36 of the advertisement, hence, rejection of selection and appointment by the 1st respondent by relying upon Clause 36 of the advertisement is also not acceptable.

17. Further, it is also to be noted that the writ petitioner has secured 53.63 marks in the above selection and comes under the zone of consideration in the selection list. The 2nd respondent in his affidavit dated 09.12.2019, has also admitted the fact that there is delay in pursuing the NOC application and furnishing to the writ petitioner. Now, the 1st respondent turned down to select the writ petitioner which is grossly illegal and without any justification.

18. Considering the decision cited supra and the facts and circumstances of the present case on hand, this Court is of the opinion that the 2nd respondent, who is the issuing authority of NOC and being a subordinate officer to the 1st respondent had knowledge of submission of NOC to the 1st respondent, but failed to issue NOC within a prescribed time to the writ petitioner and by considering Clause 36 of the advertisement, it is a lapse on the part of the 2nd respondent. Therefore, the writ petitioner cannot be faulted for the laxity committed by the 2nd respondent, who is also under the employment of the 1st respondent.

19. In view of the above, rejecting the writ petitioner's appointment by the respondents by relying upon Clause 8 of the advertisement is unjustifiable, as the same is not a mandatory, which can be construed only as directory as stated above. As far as Clause 36 of the advertisement is concerned, the writ petitioner, being a departmental candidate, was in possession of

NOC, before shortlisting the candidates and produced the same at the time of group discussion and personal interview. Therefore, this Court is of the opinion that there is no justification in rejecting the appointment of the writ petitioner by the first respondent by relying upon the said Clause 8 of the advertisement on the ground that NOC was obtained belatedly.

20. Therefore, in view of the discussions made above and considering the facts and circumstances of the case and the decision cited supra, it would be appropriate to direct the 1st respondent to appoint the writ petitioner in the said post.

21. Accordingly, The 1st respondent is directed to consider and issue appointment order to the writ petitioner, as Management Trainee (Technical), based on the marks secured by him, within a period of four weeks from the date of receipt of a copy of this order, if he is otherwise eligible.

22. In fine, the writ petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (C.S.IV)

/True Copy/

Sub Assistant Registrar

To

1. The Executive Director (South), Food Corporation of India
Zonal Office, No.3, Haddows Road, Chennai-600006.
2. The General Manager (Tamil Nadu)
Food Corporation of India, Regional Office,
No.8, Sathyamurthy Road, Chetpet, Chennai-600031.
3. The General Manager (South)
Food corporation of India, Zonal Office
No.3, Haddows Road, Chennai-600006.

+1 cc to M/s. Balan Haridas, Advocate Sr.No. 104965

+1 cc to M/s. S. Vijayakumar, Advocate Sr.No. 104690

AKM/14.02.2020/8P- 6C /

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