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W.P.No.9050 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.9050 of 2022 and
WMP.Nos.10147, 10148 & 17643 of 2022

1.Lalu Naik Kethavathu
2.Hema Madhavi Sapparapu
3.Palanivel.K
(2nd petitioner dismissed as withdrawn vide order
dated 20.09.2022 made in WP.No.9050 of 2022 ... Petitioners

Vs.

1.The Secretary,
Government of India, rep. Food Corporation of India,
Ministry for Consumer Affairs, Food & Public Distribution
Department of Food and Public Distribution,
Krishi Bhavan, New Delhi 110 001
2.Food Corporation of India,
Rep. By the Chairman and Managing Director,
Headquarters, No.16-20,
Bhagarkambha Lane, New Delhi 110 001
3.The Executive Director(Personnel)
Food Corporation of India,
Headquarters, No.16-20,
Bhagarkambha Lane, New Delhi 110 001
4.The Executive Director(South),
Food Corporation of India,
Zonal Office (South), No.3,
Haddows Road, Chennai 600 006



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- 5.The Deputy General Manager(Personnel),
Food Corporation of India,
Zonal Office (South), No.3,
Haddows Road, Chennai 600 006
- 6.The Assistant General Manager(Personnel),
Food Corporation of India,
Zonal Office (South), No.3,
Haddows Road, Chennai 600 006
- 7.Lakshmi PriyankaK.S
- 8.Kristi Pati RaghuRam
- 9.Leena Susan Ganta
- 10.Edukondalu Kummari
- 11.China Babu Dandasi
- 12.Ramkrishna Naidu Setti
- 13.Gunta Prasad
- 14.Biranwar Niranjana Indraraj
- 15.Palli Upendra Rao
- 16.Deepthi.B
- 17.Suresh Guddala
- 18.Karunakar B
- 19.Sudaman Korra
- 20.Chadalawaa Jaswanth Kumar
- 21.Srinivas Rao Bojjagani
- 22.Bhaskar Rao Taamda

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the third respondent vide letter No.EP.7(1)/2016/ Pt dated 13.01.2022 and consequential order of the sixth respondent vide letter No.RPI/2(2)/2021 dated 25.03.2022 and the consequential order of the



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fourth and sixth respondents in the office order 22/RPI/2022 dated 08.04.2022(Uploaded in the official website on 13.04.2022) and quash the same and accordingly direct the respondents to follow the existing settled seniority of the petitioners and direct the respondents to promote the petitioners to the post of Manager(Tech) against panel year 2022 based on the present seniority list of Assistant Grade I (Technical) as on 01.01.2022 was circulated by FCI, ZO(S), Chennai.

(Prayer amended as per order dated 22.01.2024 made in WMP.No.10144 of 2022 in WP.No.9050 of 2022)

For Petitioners : M/s.Dakshayani Reddy,
Senior Counsel
for M/s.Suneetha

For Respondents
For R1 : Mr.M.Karthikeyan,
Senior Panel Counsel

For R2 to 22 : No appearance

ORDER

This writ petition has been filed challenging the order of the third respondent dated 13.01.2022 and consequential orders dated 25.03.2022 & 08.04.2022.



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2. Respondents 1 to 6 / Corporation had issued notification dated 31.10.2009 calling for applications for appointment to the post of Assistant Grade-III (Technical). The petitioners and the respondents 7 to 22 had applied for the same and they were selected to the said post. The petitioners had joined as Assistant Grade-III (Technical) in the month of November 2010, whereas respondents 7 to 22 who had taken part in the very same recruitment, were issued appointment orders on 22.02.2011 and they had joined in the Corporation on 26.02.2011 and 28.02.2011. Seniority list for the post of Assistant Grade-III (Technical) was published in the year 2011 by the Corporation, where the petitioners were shown as juniors and sixteen others who had joined the services on 22.02.2011 were shown as seniors. The next avenue for promotion for the post of Assistant Grade-III (Technical) is Assistant Grade-II (Technical). The individual ought to have completed three years of service in the post of Assistant Grade-III (Technical) for being eligible for appointment to the post of Assistant Grade-II (Technical). Completion of three years should be as on last day of December of the preceding year of the panel year. Since the petitioners were appointed in



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the month of November 2010, after completion of three years, they were promoted to the post of Assistant Grade-II (Technical) in the panel year 2014 by the proceedings dated 30.09.2014. Respondents 7 to 22 who were appointed in the month of February 2011, had not completed three years of service as on December 2014. Hence, they were granted promotion in the panel year 2015.

2.1 In the panel of Assistant Grade-II (Technical) for the year 2016 to 2018, the petitioners were shown as seniors and 16 others who joined belatedly were only shown as juniors. The next avenue for promotion is to the post of Assistant Grade-I(Technical), for which again three years of experience as Assistant Grade-II (Technical) is mandatory. Accordingly, the petitioners were all promoted to the post of Assistant Grade-I (Technical) for the year 2018 immediately after completion of their three years service in the post of Assistant Grade-II (Technical). However, their juniors were promoted in the year 2019 as Assistant Grade-I (Technical). In the seniority list drawn in the post of Technical Assistant Grade-I for the years 2020 to 2022, the petitioners were shown



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as seniors to respondents 7 to 22 since they were juniors. So far as the service conditions of the petitioners, the same are governed by the Food Corporation of India (Regulation), 1971. The amendment was brought to Appendix I of the FCI(Staff Regulation), 1971 as follows:

"Where juniors who have completed their qualifying/eligibility services are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such or two years, whichever is less, and have successfully completed probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying /eligibility service".

2.2 Accordingly, those seniors who were not considered for promotion due to the shortage of requisite qualification / eligibility service should also be considered for promotion along with their juniors provided that they have more than half of such qualification / eligibility service. After seven years, the request of the petitioners ought to have made to respondents 1 to 6 to rectify the seniority and they have issued the impugned clarification stating that respondents 7 to 22 are not direct



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recruits officials shall be deemed to have been given promotion with effect from the date of their juniors. In the absence of any rule and in the absence of any relaxation with respect to the experience, qualification, retrospective seniority to the individual cannot be granted, that too ignoring the settled rights and seniority of the petitioners. The next avenue for promotion from the post of Assistant Grade-I (Technical) is to the post of Manager(Technical). Since clarification issued in favour of respondents 7 to 22, the petitioners are deprived of their right for promotion to the post of Manager (Technical). While pending the writ petition, the impugned communications were implemented and respondents 7 to 22 were notionally promoted to the post of Assistant Grade-II (Technical) from Assistant Grade-III (Technical) with effect from the date of the petitioners' promotion and they were placed above the petitioners. They were also notionally promoted to the post of Assistant Grade-I(Technical) from the post of Assistant Grade-II (Technical) with effect from the date of the petitioners' promotion and accordingly, they were placed above the petitioners' in the panel for promotion to the post of Manager Technical.



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3. Respondents 1 to 6 filed counter, which revealed that the respondents 7 to 22 were issued appointment orders to the post of Assistant Grade-III (Technical) on 06.11.2010 and on receipt of the same, they had submitted their acceptance letters on various dates. However, they were appointed to the post of Assistant Grade-III (Technical) only in the month of February 2011 i.e. after three months from the appointment of the petitioners. Therefore, they were not given equal opportunity for joining in the post of Assistant Grade-III (Technical) as given to the petitioners. Aggrieved by the delay on the part of the administration, respondents 7 to 22 had raised dispute with Assistant Labour Commissioner, for which by its proceedings dated 12.04.2021 called for a meeting on 27.04.2021 between the Management and the representatives of the Union for reconciliation. Accordingly, the Union submitted a representation thereby requested to consider the date of reporting of Assistant Grade-III (Technical) with effect from the date of the acceptance of appointment. Accordingly, their request was considered and they were notionally promoted to the post of Assistant Grade-II and Grade-I and they were placed above the petitioners in the



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panel. Respondents 7 to 22 also filed counter and filed vacate stay petition stating that they had taken the very same stand.

4. The learned Senior Counsel appearing for the petitioners submitted that after a period of nearly seven years, respondents 7 to 22 raised dispute challenging the seniority. In fact, the petitioners were promoted to the post of Assistant Grade-II in the year 2014 whereas respondents 7 to 22 were promoted to the post of Assistant Grade-II in the year 2015. Subsequently, the petitioners were promoted to the post of Assistant Grade-I (Technical) in the year 2018, whereas respondents 7 to 22 were promoted to the post of Assistant Grade-I in the year 2018-2019. Subsequently, the seniority list in the post of Technical Assistant Grade-I for the years 2020-2022 were published, in which the petitioners were shown as seniors. Therefore, having been accepted their promotion to the post of Assistant Grade-II and Grade I in the year 2015 and 2018 respectively, after period of seven years, they raised dispute about their seniority list. Admittedly respondents 7 to 22 had no eligibility for promotion to the post of Assistant Grade-II in the year 2014 since they



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did not complete their three years of service as Assistant Grade-III (Technical). Likewise, they are not eligible to promotion to the post of Assistant Grade-I from Assistant Grade-II in the year 2017 since they did not complete their three years of service as Assistant Grade-II (Technical). Therefore they are not eligible to be notionally promoted to the post of Assistant Grade-II in the year 2014 and Assistant Grade-I in the year 2017.

5. In support of her contention, the learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***R.Prabha Devi and Others Vs. Government of India*** reported in ***(1988) 2 SCC 233***, wherein the Hon'ble Supreme Court of India considered the question of the validity or rule providing for fixation of seniority between the direct recruits and promotees in the grade of Section Officer on the basis of quota reserved and direct recruits and held that the prescription of quota becomes necessary to work out a scheme constituting a service manned by both the direct recruits as well as promotees. Such a scheme is unexceptionable and seniority based upon



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the rota is also not open to attack. The scheme does not appear to be arbitrary and the rules and regulations to give effect to the scheme are not *ultra vires* either Article 14 or 16 of Constitution of India. Therefore, the *inter se* seniority of direct recruit and promotee, Section Officers on the basis of quota-rota rules has been held to be valid. This does not mean that direct recruits who are senior to the promotees are entitled to be considered for promotion to a higher post even though they do not fulfil the eligibility qualification specified in the rule framed by the rule making authority.

6. The above case is squarely applicable to the case on hand. Though respondents 7 to 22 were seniors as per the selection list, admittedly they had joined in the post of Assistant Grade-III only in the month of February 2011, whereas the petitioners had joined in the post of Assistant Grade-III (Technical) in the month of November 2010. The next avenue of promotion is Assistant Grade-II, for which they should have completed three years of service as Assistant Grade-III. It is the eligibility for promotion to the next post. Therefore, the third respondent



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ought not to have considered the request made by respondents 7 to 22 to promote to the post of Assistant Grade-II (Technical) as per their selection list. Insofar as the petitioners are concerned, the learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Shiba Shankar Mohapatra Vs. State of Orissa*** reported in ***(2010) 12 SCC 471***, wherein it is held as follows:

31. The Tribunal ought to have dismissed the case of Parsuram Sahu (supra) only on the ground of delay and the laches, as the applicant approached the Tribunal at the verge of his retirement and after getting two promotions while the other parties have got three promotions. In the said case, the private respondents have not considered it proper to contest the case because both of them were likely to superannuate just thereafter on attaining the age of retirement. Undoubtedly, the said judgment and order has not been challenged by anybody and it attained finality but that remained the judgment in personem. More so, there is nothing on record to show as to whether the said applicant Parsuram Sahu could ever get any relief from the State Government.

32. The O.A. filed by Shri Sudhir Chandra Ray, had similar facts as in Pursuram Sahu's case. While



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deciding the said application the Tribunal itself had taken note of the facts that promotions had been made 8-9 years ago prior to issuance of the combined gradation list in 1999. It is evident from the impugned judgment that Shri Sudhir Chandra Ray joined as SI(g) on 4.1.1973. He was promoted to the rank of Inspector with effect from 12.3.1991. We are of the considered opinion that the said application ought to have been rejected by the Tribunal only on the ground of delay and laches. The High Court has also not dealt with this issue, however, it goes to the root of the cause. Such an inordinate delay cannot be ignored particularly when the issue of delay has been pressed in service before this Court.

35. The other original application filed in Sudhir Chandra Ray's case was liable to be dismissed only on the ground of delay and laches and we dismiss the same. The High Court has set aside the direction issued by the Tribunal directing the State Authorities to prepare the gradation list of SI(St) and SI(g) in accordance with the dates of passing out of the Sub-Inspector training course. This part of the order has not been challenged by anybody and thus, this part of the order has attained finality, therefore, the said part of the order does not require any interference in either of these appeals. So far



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as the appeals arising out of writ petition nos.1233/06, 2878/06, 3424/06 and 5637/06 are concerned, stand allowed to that extent and the remaining part of the direction contained in paragraph 9 of the judgment stand set aside.

36. So far as the appeal arising out of writ petition no.426/06 which has arisen from the judgment and order of the Tribunal in OA No.203/2001 is concerned, the relevant facts thereof, have not been taken into consideration either by the Tribunal or by the High Court and the matter has been decided making reference to the facts of other connected cases. Thus, in view of the above, we set aside the judgment and order of the High Court in Writ Petition No.426/06 only to the extent of the last part of the order, namely, "if it is found that promotion of a Sub-Inspector was not considered before consideration of Sub-Inspector placed below him in the seniority list, his promotion shall be considered with effect from the date of promotion of his junior in case he had fulfilled minimum eligibility criteria for promotion at the time of consideration of his junior". The first part of the order contained in paragraph 9 as already explained hereinabove has attained finality, thus, does



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not require any interference. The High Court is requested to decide the case to that extent only taking into consideration the law as explained hereinabove including the issue of delay and the facts involved in that case expeditiously.

7. Admittedly respondents 7 to 22 raised dispute in respect of their seniority after period of seven years, that too after their promotion to the post of Assistant Grade-II (Technical) and Assistant Grade-I (Technical) in the year 2015 and 2018 respectively. They raised industrial dispute only in the year 2021 before the Assistant Labour Commissioner, Vijayawada. Therefore, the claim of respondents 7 to 22 ought not to have been considered due to laches on the part of them.

8. In view of the above, the impugned order of the third respondent dated 13.01.2022 and consequential orders dated 25.03.2022 & 08.04.2022 are set aside and the writ petition is allowed. Respondents 1 to 6 are directed to place respondents 7 to 22 as per their original promotion to the post of Assistant Grade-II (Technical) and Assistant Grade-I (Technical) and restore their seniority below the petitioners.



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Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

22.01.2024
(2/2)

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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To

- 1.The Secretary,
Government of India, rep. Food Corporation of India,
Ministry for Consumer Affairs, Food & Public Distribution
Department of Food and Public Distribution,
Krishi Bhavan, New Delhi 110 001
- 2.The Chairman and Managing Director,
Food Corporation of India,
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G.K.ILANTHIRAIYAN, J.

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