



W.A(MD)No.713 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

W.A(MD)No.713 of 2024

R.Vijay

... Appellant/Petitioner

VS.

- 1.Union of India,
Represented by its Secretary,
Ministry of Health and Family Welfare,
Nirman Bhavan,
New Delhi-110 011.
 - 2.Food Safety and Standards Authority of India,
Represented by its Director (Recruitment),
FDA Bhawan, Kotla Road,
New Delhi-110 002.
 - 3.Food Safety and Standards Authority of India,
Represented by its Administrative Officer (HR),
FDA Bhawan, Kotla Road,
New Delhi-110 002.
 - 4.The Assistant Director (HR),
Food Safety and Standards Authority of India,
Represented by its Administrative Officer (HR),
FDA Bhawan, Kotla Road,
New Delhi-110 002.
- ... Respondents/Respondents



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PRAYER : Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 08.11.2023 made in W.P(MD)No.20572 of 2021.

For Appellant	: Mr.T.Aswin Rajasimman
For Respondents	: Mr.K.Govindarajan Deputy Solicitor General of India for R.1
	: Mr.Su.Srinivasan for R.2 to R.4

JUDGMENT

[Judgment of the Court was made by R.SURESH KUMAR, J.)

This Writ Appeal has been directed against the order passed by the Writ Court, dated 08.11.2023 made in W.P(MD)No.20572 of 2021.

2.That the respondents 2 to 4 ie., Food Safety and Standards Authority of India, in short, 'FSSAI', had invited applications from eligible candidates for appointment to the post of Technical Officer. The appellant/writ petitioner, one of the candidates, who made an application, the selection process went on, he ultimately had been selected and appointed by order, dated 28.06.2021. Since he had been doing a P.G. course at that time, he had requested to extend the time for joining his



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service. However, on 08.11.2021, his appointment was cancelled on the ground that he did not hold the required or essential qualification on the cut-off date ie., on 25.04.2019 and on that ground since his appointment was cancelled by order, dated 08.11.2021, aggrieved over the same, he filed the said Writ Petition, which was also dismissed by the learned Judge through the impugned order, as against which, this Appeal has been directed.

3.Heard the learned counsel appearing for the petitioner, the learned Deputy Solicitor General appearing for the first respondent and the learned counsel appearing for the respondents 2 to 4.

4.The last date of receipt of the application was 25.04.2019 ie., cut off date that means on that date, the candidate who made the application must have the required qualification. Insofar as the appellant/writ petitioner is concerned, he has completed the Degree in B.Tech (Food Process Engineering) from the Tamil Nadu Agricultural University and his mark statement had been issued stating that he commenced the course on 31.07.2015 and completed the course only on 27.04.2019. Therefore, he became qualified with the said qualification only



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on 27.04.2019, whereas the last date fixed by the respondents as a cut-off date to have the necessary qualification for applying for the post was 25.04.2019.

5.Since there has been two days delay, after the cut-off date, the appellant/writ petitioner has completed the qualification, based on which, his selection itself is bad, accordingly, though mistakenly, an earlier appointment order had been given on 28.06.2021, which has been cancelled by order dated 08.11.2021.

6.Insofar as the essential educational qualification of any post for which an application called for by a recruiting agency is concerned, a candidate who makes such an application must have such a qualification on or before cut-off date.

7.If any candidate does not hold the qualification on the cut-off date and subsequently if he has acquired the qualification, he or she may not be entitled to seek for such appointment, of course, on the basis of selection, pursuant to such a qualification he acquired after the cut-off date.



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8.This proposition since has been well settled, invoking the same, the learned Judge having found the factual matrix that the appellant/writ petitioner since admittedly has acquired the qualification only on 27.04.2019 ie., two days after cut-off date his selection was found to be not in consonance with the instructions or regulation to that effect. Therefore, they had justification to cancel the said appointment and therefore, the cancellation order of the appointment since has been issued on 08.11.2021 that has been accepted by the learned Judge in the order impugned. We do not find any error in the approach of the learned Judge and the conclusion reached by him, as admittedly the appellant/writ petitioner since has qualified only on 27.04.2019 and the authorities ie., the respondents have not extended the time for making the application beyond 25.04.2019, he did not have the qualification on the cut-off date ie., on 25.04.2019, therefore, he is not entitled to be included in the selection process. If at all any wrong selection that has been made which should be rectified by cancelling the said order and that has been done on 08.11.2021 by the respondents, through the order impugned before the Writ Court, therefore, it is justifiable to sustain the said impugned order, dated 08.11.2021. Hence, the rejection made by the Writ Court by rejecting the



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said Writ Petition through the impugned order is also to be sustained.

Hence, we are not inclined to interfere with the said order passed by the Writ Court through the impugned order.

9.But at the same time, it is submitted by the learned counsel appearing for the appellant/writ petitioner that, the first respondent under the regulations especially Regulation 17 of the Food Safety and Standards Authority of India (Recruitment and Appointment) Regulations, 2018, is having the power to relax any of the provisions of the regulations under the heading 'Power of relaxation', which states that the power to relax any of the provisions of these regulations shall lie with the Central Government ie., the first respondent herein.

10.In order to relax the two days belated qualification acquired by the appellant/writ petitioner, as he has been selected and appointed since he has to make a representation to the first respondent Central Government and he wants such a representation to be considered by invoking Regulation 17 by the first respondent, we feel that while dismissing this Writ Appeal, liberty can be given to the appellant/writ petitioner to give such representation to the first respondent for giving such relaxation under



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Regulation 17 by taking into account the peculiar facts and circumstances where the application of the appellant/writ petitioner having been accepted, processed and had been selected and appointment order also since had been given on merits on 28.06.2021, therefore the power of relaxation shall very well be exercised by the first respondent on the representation to be submitted by the appellant/writ petitioner, within a period of two weeks from today. If such a representation is given, the same shall be considered as indicated above and orders shall be passed by the first respondent within a period of eight weeks thereafter.

11. With these observations, this Writ Appeal is disposed of. However, there shall be no order as to costs.

[R.S.K.,J.] [G.A.M.,J.]
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NCC : Yes / No
Index : Yes / No
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R.SURESH KUMAR,J.
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ORDER MADE IN
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