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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 22nd August, 2024

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W.P.(C) 10890/2022 & CM APPL. 31696/2022

DR. PHANI KUMAR P

.....Petitioner

Through: Petitioner in person.

versus

FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA
AND ORS

.....Respondents

Through: Mr. Rakesh Chaudhary and Ms.
Tanvi, Advocates for R-1.Mr. Vipul Sharma and Mr. Chirag, Advocates for
R-2 and R-3.

Mr. Abhimanyu Walia, Advocate for R-4.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India assailing the impugned notice issued in May, 2022 by Respondent No.1/Food Safety and Standards Authority of India (FSSAI) as well as the result notice dated 22.06.2022 *qua* the candidates appointed to the post of Deputy Director (Technical). Declaration that Petitioner is eligible for appointment to the post of Deputy Director (Technical) in terms of the Advertisement dated 16.04.2021 is sought with a consequential direction of appointment to the said post.

2. Factual matrix to the extent necessary and as averred in the writ petition is that an Advertisement was issued by FSSAI on 16.04.2021



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inviting applications for direct recruitment to various posts including 11 posts of Deputy Director (Technical) in various categories viz. *UR-5, SC-01, ST-01, OBC(S)-03, EWS-01*. Being qualified and having the requisite educational qualifications and experience as per the terms of advertisement, Petitioner applied for the post of Deputy Director (Technical) in SC category and appeared in the written examination on 25.07.2021 and secured 46 marks out of 100, which was higher than the cut-off marks of 44 in the Unreserved category and 34 in the SC category. Despite this, Petitioner's name did not figure in the list of candidates called for interview.

3. It is averred that vide email dated 21.05.2022, Petitioner sought reasons for not calling him for the interview and was informed by FSSAI by an email dated 30.05.2022 that he was ineligible as he lacked the requisite 2 years' experience in the desired Pay Level-10/Cost to Company ('CTC') of 11 lacs in the last two years. Responding to this, Petitioner sent an email dated 01.06.2022, clarifying that he possessed the requisite experience as had worked for 4 years and 4 months in National Health Mission ('NHM') under the Ministry of Health and Family Welfare (MH&FW) in PB-3 with Rs.65,000/- per month as consolidated pay and was employed with a private organization Tejesco Techsoft Pvt. Ltd. from the year 2020 and had more than 11 lacs CTC in one year. On 22.06.2022, FSSAI declared the final result and selected 10 candidates and this compelled the Petitioner to file the present writ petition.

4. Petitioner, who appears in person submits that there is no dispute that he meets the criteria of educational qualification and the only reason to declare him ineligible is that he does not possess the requisite experience stipulated in 'Note-1' under the experience column in the advertisement,



which provides that ‘*Out of the total experience sought, two years of experience should be in immediate lower pay level (Pay Level 10) in central dearness allowance, or equivalent industrial dearness allowance Scale (as applicable) and in case of candidates working in private sector he or she shall be drawing annual Cost To Company (CTC) of Rs.11 Lakhs for last two years.*’. By email dated 02.06.2022, FSSAI informed the Petitioner that he was not fulfilling the criteria of drawing annual CTC of Rs.11 lacs in the last 2 years and was thus ineligible, which was a misreading of *Note-1* in the Advertisement.

5. Petitioner argues that under *Note-1* two years’ experience, out of the total experience of 9 years, was required to be in the immediate lower pay level (Pay Level-10) in Central Dearness Allowance (CDA), or equivalent Industrial Dearness Allowance scale (as applicable) and in case of candidates working in private sectors, annual CTC of Rs.11 Lakhs for last two years, was the requirement. Petitioner was working with NHM, which is under MH&FW and vide certificate dated 07.06.2022, NHM certified that Petitioner had worked with the said organization for 4 years and 4 months from 20.11.2015 to 31.03.2020 at a monthly remuneration of Rs.65,000/- and his pay was aligned with PB-3 (Rs.15,600-39,100/-). Once Petitioner fulfilled the criteria of two years experience in Pay Level-10/PB-3, he was not required to meet the condition of Rs.11 lacs CTC per annum for two years, which was an alternative requirement.

6. It is further argued that initially the candidature of the Petitioner was rejected on the ground that he did not fulfill the requirement of drawing annual CTC of Rs.11 lacs for last two years, but now mischievously a new ground has been set up as an afterthought that the certificate substantiating



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that Petitioner's pay was aligned to Pay Level-10 was furnished by the Petitioner after the last date of receipt of applications. This ground is wholly misplaced because firstly, Petitioner had along with his application submitted his experience certificate showing the emoluments drawn by him, which aligned to Pay Level-10 and secondly, FSSAI had in response to Petitioner's email dated 06.06.2022 addressed to CEO, sent an email on 07.06.2022 asking him to furnish any Government order/documents in support of his plea that while working in NHM his pay was aligned to PB-3/Pay Level-10 and pursuant thereto the Petitioner had furnished a certificate on 09.06.2022 issued by NHM on 07.06.2022, certifying that Petitioner was working as PIP consultant with NHM for 4 years and 4 months and his pay was aligned to Pay Level-10. Therefore, once FSSAI had itself called upon the Petitioner on 07.06.2022 i.e. after the cut-off/last date, to furnish additional documents it cannot take a plea that the certificate was received after the last date of receipt of applications.

7. Learned counsel for FSSAI *per contra* argues that in the Advertisement issued by FSSAI on 16.04.2021 the requisite experience for the post of Deputy Director (Technical) was stipulated and it was further provided in *Note-1* that out of the requisite experience of 9 years, candidate was required to possess two years' experience in immediate lower Pay Level i.e., Pay Level-10 in CDA or equivalent IDA Scale, as applicable, and those working in private sector should be drawing annual CTC of Rs.11 lacs in the last two years. Last date of receipt of the applications was extended upto 07.02.2022. Petitioner was not eligible to be called for the interview as at the time of verification of his experience documents, it was found that he did not fulfill the criteria of drawing annual CTC of Rs.11



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lacs per annum in the last two years and was accordingly informed vide emails dated 30.05.2022 and 02.06.2022, after he sought the reason of his ineligibility.

8. It is further submitted that Petitioner again wrote an email on 03.06.2022 but did not submit any proof of having work experience on a post in Pay Level-10 CDA, as claimed by him. On 06.06.2022, Petitioner made a complaint to the CEO, FSSAI and in response thereto, FSSAI replied to the email on 07.06.2022 asking him to furnish documents, if any, but this was a mistake and an inadvertent error, due to heavy load of emails sent in the usual course of business and Petitioner cannot take advantage of this email. It is argued that cut-off date in an advertisement is sacrosanct and candidates have to fulfill the eligibility criteria and furnish the requisite documents in support thereof before the cut-off date. Documents cannot be accepted after the cut-off date as this would be unfair to those whose documents were not accepted after the cut-off date.

9. Learned counsel for private Respondents have a common ground that they have been duly selected with scores higher than the Petitioner and possess the requisite experience and educational qualifications and thus their selection cannot be challenged by the Petitioner, who is himself ineligible. Respondents have been working after due selection and it would be iniquitous to cancel their appointments at this stage, even assuming for the sake of argument that Petitioner was eligible. Respondent No.3/ Monica Puniya scored 54.71 marks and Respondent No.4/Vaidehi Sanjay Kalzunkar scored 65 marks, which are higher than the Petitioner who scored 46 marks and both belong to unreserved category. Respondent No.2/Nagendernath Chiluvuru scored 43 marks and belongs to SC



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Category as the Petitioner. Appointments of the private Respondents, who are qualified and more meritorious than the Petitioner, cannot be disturbed at the instance of the Petitioner.

10. Heard learned counsels for the parties and examined their submissions.

11. Broadly understood, case of the Petitioner is that he was eligible in all respects when he applied against the open advertisement dated 16.04.2021 for the post of Deputy Director (Technical) as he possessed the requisite educational qualifications and the experience and had furnished documents in support thereof. Misconstruing *Note-1*, FSSAI rejected the candidature of the Petitioner on the ground that he did not fulfill the criteria of drawing annual CTC of Rs.11 lacs in last two years, glossing over the fact that he fulfilled the alternate criteria of having two years experience in Pay Level-10 in CDA Scale, for which he had given an experience certificate reflecting the consolidated salary on which he had worked in NHM for 4 years and 4 months. Petitioner also urged that he had submitted the experience certificate with the application before the last date of receipt of applications but FSSAI had not accepted the same as proof of required experience and after correspondence with the Petitioner, FSSAI called upon the Petitioner vide its email dated 07.06.2022, to furnish the proof of his experience, which the Petitioner provided on 09.06.2022 and thus FSSAI cannot take a position that the experience certificate was received after the cut-off date. Stand of the FSSAI, on the other hand, is that Petitioner was not found eligible during document verification as he did not possess the requisite experience of drawing annual CTC of Rs.11 lacs in the last two years and it was mentioned in the advertisement that before applying, candidates should



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ensure that they fulfill the eligibility criteria for the post in question and eligibility will be determined at the final stage i.e., document verification or interview and if any candidate did not satisfy the eligibility criteria, his candidature would be cancelled. Petitioner did not furnish any document in support of his pay alignment to Pay Level-10 CDA or equivalent IDA upto the last date i.e., 07.02.2022 as the certificate initially given by him only reflected his last pay drawn as Rs.65,000/- (consolidated) in NHM and Rs.92,500/- per month with Tejesco Techsoft Pvt. Ltd. and his candidature was thus rightly rejected. The second certificate allegedly showing the pay alignment to Pay Level-10 in CDA scale was given on 09.06.2022, which was past the extended cut-off date.

12. There is no dispute in the present case with respect to the educational qualification of the Petitioner and the moot point for consideration is whether he fulfills the experience criteria stipulated in the Advertisement dated 16.04.2021 for the post of Deputy Director (Technical). It is an undisputed position that the requisite experience for the said post was 9 years experience of working in the fields mentioned in paragraph A(ii) of the advertisement. It is equally undisputed that *Note-1* further qualified the required experience and provided that out of the total experience of 9 years, two years experience should be in immediate lower pay scale (Pay Level-10) in CDA or equivalent IDA Scale (as applicable) and in case of candidates working in private sector he/she should be drawing annual CTC of Rs.11 lacs for last two years. For ease of reference, *Note-1* is extracted hereunder:

“Note 1: Out of the total experience sought, two years of experience should be in immediate lower pay level (Pay Level 10) in central dearness allowance, or equivalent industrial dearness allowance Scale (as



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applicable) and in case of candidates working in private sector he or she shall be drawing annual Cost To Company (CTC) of Rs.11 Lakhs for last two years.”

13. It is a common ground between the parties that last date for acceptance of application was extended upto 07.02.2022. As per FSSAI's own case set forth in the counter affidavit, Petitioner had submitted an experience certificate indicating that he was working with NHM at a consolidated pay of Rs.65,000/- as PIP Consultant from 20.11.2015 to 31.03.2020 as also the monthly pay of Rs.92,500/-, on which he was working with a private sector company as Project Coordinator from 01.05.2020 to 30.04.2021. FSSAI did not accept this as requisite experience in terms of the advertisement and treating the Petitioner ineligible, did not call him for interview *albeit* indisputably he scored 46 marks out of 100 in the written examination, which was above the cut-off marks in the SC category, in which he had applied.

14. The first question that arises for consideration is whether Petitioner fulfills the experience criteria as per *Note-1* in the advertisement. A plain reading of *Note-1*, which is unambiguous, shows that a candidate was required to fulfill any one of the two experience criteria mentioned therein: (a) two years experience in Pay Level-10 in CDA or equivalent IDA Scale; or (b) Rs.11 lacs CTC per annum in last two years, if the candidate was in a private sector. Clearly, if a candidate had experience of working for two years in a post carrying a pay scale/pay band aligned to Pay Level-10 in CDA scale, he/she was not required to fulfill the criteria of annual CTC of Rs.11 lacs and *vice versa*. Both requirements were in the alternative and not combined and significantly this position is now accepted by FSSAI in the



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counter affidavit. However, for some unknown reason, Petitioner was declared ineligible on the ground that he did not meet the requirement of drawing annual CTC of Rs.11 lacs in last two years, overlooking that he had worked in NHM, a Government of India undertaking for 4 years and 4 months in PB-3 and his pay was aligned to Pay Level-10 and thus he was not required to fulfill or meet the alternate condition of 11 lacs CTC, which was for candidates working in private sectors. The open advertisement did not restrict the applicants to any specific class/category i.e. Government/PSU/Autonomous body or private sector and hence a candidate fulfilling either of the two criteria under *Note-1* was eligible. Rejection of the candidature of the Petitioner on ground of lack of 11 lacs CTC criteria for two years, cannot be sustained.

15. The only other question that needs to be decided is whether the Petitioner can be ousted on the ground that his second certificate was submitted on 09.06.2022. Averments in the counter affidavit and the documents filed by the Petitioner show that along with the original application itself, Petitioner had submitted an experience certificate reflecting that he had been working with NHM for 4 years and 4 months on a consolidated pay of Rs.65,000/- per month. FSSAI did not accept this certificate as there was no specific endorsement that the pay was aligned to Pay Level-10 in CDA scale or equivalent IDA scale. Upon a misunderstanding of the import of this certificate, FSSAI did not call the Petitioner for interview *albeit* from the consolidated monthly pay it was easily discernable that it was assigned to Pay Level-10 CDA scale. This by itself is sufficient to hold that the impugned action declaring the Petitioner ineligible, was both arbitrary and illegal. Be that as it may, when the



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Petitioner sought reasons for his alleged ineligibility and correspondence ensued between the parties, FSSAI sent an email to the Petitioner on 07.06.2022 asking him to furnish Government orders/documents to substantiate that his pay was aligned to Pay Level-10 in CDA pattern in NHM. The email reads as follows:

“Dear Candidate,

Please refer to your email dated 06 June 2022 addressed to CEO, FSSAI.

2. In this connection, it is informed that you mentioned in the letter that your pay in the National Health Mission, Karnataka was aligned to pay band 3, pay level-10 and above. However, you have not submitted any document in support of your pay alignment in NHM Karnataka. As such consolidated pay of Rs. 65000/- drawn in NHM does not meet the CTC criteria of Rs. 11 Lakhs for Deputy Director post as prescribed in Recruitment advertisement.

3. In case you have any government orders/documents in support of your pay alignment of Pay Level-10 or above in CDA pattern in NHM, Karnataka, a copy of the same may be sent to us for further action.

Recruitment Cell.”

16. From a bare reading of the email, it is clear that documents were sought from the Petitioner to show that his pay in NHM was aligned to PB-3/Pay Level-10 after the cut-off date but this was only by way of clarification. Mr. Choudhary strenuously contends that this was a mistake and there was no reason for FSSAI to write to the Petitioner after the cut-off date. This argument, in my view, is only an afterthought and there is nothing on record to substantiate the stand. No email was sent to the Petitioner cancelling/recalling the email and no action was initiated against those who authored and sent the same. Based on this email, Petitioner furnished a certificate dated 07.06.2022 issued by NHM, certifying that his pay level was aligned to Pay Level-10 (PB-3) and he was working with the said organization under the MH&FW for 4 years and 4 months. As an



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afterthought, FSSAI cannot be permitted to take a u-turn and reject the certificate on the ground that it was given after the extended cut-off date. It cannot be glossed over that the second certificate was only a clarification of the first experience certificate given before the cut-off date and on the asking of FSSAI. In my view, this ground of rejection is also untenable in law.

17. Petitioner admittedly meets the experience criteria stipulated in *Note-1* in the advertisement and was wronged by declaring him ineligible. Interest of justice demands that Petitioner be called for an interview and depending on his score, further action may be taken by FSSAI. Any other course of action would amount to injustice to him since he was wrongly disqualified despite having scored high marks in the written examination, well above the cut-off of 34 marks in the SC category, in which he had applied.

18. Ordinarily, with passage of two years, this Court may have been reluctant in interfering with the selection process but in the present case, it is pertinent to note that on 25.07.2022, when the matter came up for hearing, learned counsel for FSSAI had stated that one post will be kept vacant in both, the General category and the SC category and the appointment letter in respect of the candidate lowest in the merit position in the General category will not be issued till the next date. The interim order has continued till date and therefore, a vacancy is available in case the Petitioner is successful in the selection process after the interview.

19. Writ petition is thus allowed to the extent of directing FSSAI to call the Petitioner for interview after intimating the date, time and venue, two weeks in advance. If the Petitioner is successful in the interview, offer of



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appointment shall be issue to him forthwith and he will be entitled to all consequential benefits, in accordance with law.

20. Needless to state that insofar as private Respondents are concerned, if they are qualified and have been selected with scores higher than the Petitioner, their appointments will not be disturbed.

21. Writ petition stands disposed of in the aforesaid terms. Pending application also stands disposed of.

JYOTI SINGH, J

AUGUST 22, 2024/kks/dv