

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE ARINDAM MUKHEREJEE.

WPA 12364 of 2013
With
CAN 1 of 2016 (Old No. CAN 2906 of 2016)

Dr. Sk. Asadul Haque
-Vs-
Food Safety and Standard Authority of India & Ors.

For the petitioner : Mr. Ashok Kumar Jena,
Mr. Sk. Omar SarifAdvocates

For the FSSAI Ms. Manika Roy,
Ms. Ankita Chowdhury,
Mr. Atanu Sur
.....Advocates

Heard on **21st May, 2025**

Judgment on : 2nd July, 2025.

Arindam Mukherjee, J.:

Facts of the case

In this writ petition, the writ petitioner has sought for cancellation of the appointment given to the respondent no. 7 and to give him appointment in the place and stead of the said respondent no. 7.

A. Petitioner's case:

1. Petitioner came across an advertisement published in a form of a circular dated 6th march, 2012 by Food Safety and Standard Authority of India (hereinafter referred to as the “FSSAI”) an autonomous statutory authority set up under the Food Safety and Standards Act (2006), (hereinafter referred to as the “said Act”) for appointment in various posts in FSSAI at its headquarters/regional office on transfer or deputation, contractual or outsourced in various posts in FSSAI. The said circular is at page 32 of the writ petition. The same circular was also issued on 6th April, 2012 which is at page 33 of the writ petition. The petitioner having requisite qualification to apply as Technical Officer on short term contract applied for the same. The petitioner was called for an interview on 30th April, 2012 at the Kolkata office at FSSAI situated at Salt Lake. The interview letter was issued by the designated officer Dr. S.K. Mohanta on behalf of FSSAI at Kolkata and is at page 36 of the writ petition. It is the case of the petitioner that from reliable source it came to know that the petitioner was selected but was not given appointment. The petitioner therefore, made queries under the Right to information Act, 2005 (in short RTI Act) which was received by the FSSAI on 3rd September, 2012. As the petitioner did not receive any reply to the queries in terms of such letter, the petitioner issued three reminder letters respectively 3rd September, 2012, 24th September, 2012 and 26th September, 2012. The Assistant Director (estt & Admn) of FSSAI on 21st September, 2012 (wrongfully typed as 2011) replied to the petitioner’s queries.

That the letter was wrongly dated according to the petitioner. This will be evident from the said letter itself wherein petitioner's application dated 21st August, 2012, 20th August, 2012 and 13 September, 2012 have been referred which could not have been done if the letter is dated 21st September, 2011. This letter is at page 40 of the writ petition. It appears from the said letter that there were six queries made by the petitioner. Against query no. 2, it has been stated "2 out of 4 recommended candidates joined as technical officer. Against Serial no. 3 it has been answered that the petitioner's name was recommended for selection. In response to query under serial no. 4 it has been stated that "position/merit list were not allotted to the candidates" after the interview. Against query no. 6, the approved panel for Kolkata office was enclosed. The said panel is at page 42 of the writ petition.

2. On a perusal of the said panel, it appears that Assistant Director (F & A of FSSAI) on 31st May, 2012 forwarded a list of persons to A.S. Bedi of M/s. Bedi & Bedi Associates wherein it is stated that FSSAI has decided to outsource the services of the following persons through the said agency. M/s. Bedi & Bedi Associates was to give service to the said persons in FSSAI on consolidated wages for a period upto 31st July, 2012 as per standard terms and conditions. In the said list/panel the petitioner's name is A in serial No. 2 while that of the respondent no. 7 is in serial no. 3.

3. FASSAI is the respondent no. 1 in the writ petition, the director (estt/Admn), the Deputy Director (estt/Admn) are respectively the respondent no. 2 and 3. Dr. Dhananjay Dhara is the respondent no. 7 and M/s Bedi and Bedi associates is added respondent no, 8.
4. It is the case of the petitioner he was placed in Srl. no, 2 in the panel as such was having higher rank than the respondent no, 7 who was placed in srl.3. The respondent nos. 1 to 6 who are respectively FSSAI and its officers by giving appointment to the respondent no. 7 had therefor, acted illegally and unlawfully and in an arbitrary manner thereby depriving the petitioner who was to be given the appointment ahead of respondent no. 7.
5. The petitioner also says that the appointment is against the post of Technical Officer in FSSAI. The interview was conducted by FSSAI. The panel was prepared by FSSAI. The matter relates to FSSAI an autonomous body under the said Act. The pervasive and all effective control over FSSAI is that of the concerned ministry. The outsourcing conducted by FSSAI is merely an eye wash. The petitioner is entitled to the reliefs claimed through a writ petition.
6. The petitioner also say that the service of the respondent no. 7 has been extended from time to time beyond 31st April, 2012. The petitioner therefore, claims for cancellation of the appointment of respondent no. 7 and mandatory direction to respondent no. 1 to 6 to appoint the petitioner in the place and stead of the respondent no. 7

and to give all other benefits available to the petitioner from the inception of service of the respondent no. 7.

7. The respondent no. 1 to 6 has objected to the prayer of the petitioner on the following grounds:

- (i) No merit list was prepared pursuant to the interview conducted by FSSAI of the candidates called for the interview to fill up the post of technical officers in terms of the circular dated 6th March, 2012 and 4th April, 2012.
- (ii) The appointment was purely on a short term contract basis. It was clearly indicated in the advertisement that the contractual employment can be outsourced.
- (iii) Although, the interview was conducted by FSSAI but the appointment was outsourced through M/s Bedi & Bedi Associates as per the advertisement. That the appointment will be on short term contractual basis either directly in FSSAI or in FSSAI through an outsourced agency. The appointment was admittedly outsourced as had been clearly stated in the advertisements and as such there is no illegality or irregularity. The appointment of respondent n. 7 was given by M/s Bedi and Bedi Associates an outsourced agency and as such the petitioner should ventilate⁴ his grievances, if any, against M/s Bedi & Bedi Associates instead of seeking relief directly from FSSAI. The writ petition is, therefore, not maintainable as the

petitioner is seeking enforcement of a contractual right admittedly through a private outsourced agency against FSSAI.

The writ petitioner therefore, should be dismissed.

B. Discussion and Findings

1. Each employment is a contract between an employer and employee. In a case where the employment is in a government department or an autonomous body or a public sector undertaking being an authority under article 12 of the Constitution of India, the employee has certain statutory protection in view of the applicable service law promulgated by the employer concerned. This statutory protection is not available in private sector employees whose service condition is either governed by the terms of appointment or by rules or regulations, if any framed by the employer save an except where the employee concerned is not governed by the Industrial Disputes Act, 1947 or The Industrial Employment (Standing Orders) Act, 1946 or any act of like nature.
2. The petitioner has proceeded on the basis that he had been selected for the job of Technical Officer in FSSAI ignoring the fact that the advertisement for recruitment clearly stated about short term contract/outsourcing. The Short time contract, therefore, could have been directly in FSSAI or through any outsourced agency so far as the power of the government to make contractual appointment for short term or until further orders is concerned the same is unbridled if there is

no statutory bar and the government policy provides for the same. Under the FSSAI Act at the initial stage the tenure of service of all officers in FSSAI was three years subject to approval by ministry. The engagement/appointment therefor could not have been over three years.

3. The Government, therefore, had the discretion to make contractual appointment in absence of any statutory bar as held in **2006(11) SCC 731 (B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Association & Ors.)**
4. The petitioner has not only sought for cancellation of the respondent no. 7 and his appointment in the place and stead of such respondent but also have asked for his regularisation in the post of Technical Officer. FSSAI on the other hand by filing a supplementary affidavit has stated that in 2012 it did not have any service rules but after promulgation of FSSAI (Recruitment and Appointment) Regulations 2018 all contractual appointments have been brought to an end and permanent technical officers have been appointed throughout the country. In the instant case, it is admitted position that appointment of Technical Officers in the Salt Lake office of FSSAI was outsourced through M/s Bedi & Bedi Associates (respondent no. 8). Issuance of writ in the nature of mandamus in respect of service matters fell for consideration in 2015 (4) SCC 670 (**K.K. Saksena vs. International Commission on Irrigation & Drainage**)
5. In paragraphs 43 and 52 of the said judgment the following has been held :

“43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is “State” within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is “State” under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law.

52. It is trite that contract of personal service cannot be enforced. There are three exceptions to this rule, namely:

- (i) when the employee is a public servant working under the Union of India or State;*
- (ii) when such an employee is employed by an authority/body which is a State within the meaning of Article 12 of the Constitution of India; and*
- (ii) when such an employee is “workmen” within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and raises a dispute regarding his termination by invoking the machinery under the said Act.*

In the first two cases, the employment ceases to have private law character and “status” to such an employment is attached. In the third category of cases, it is the Industrial Disputes Act which confers jurisdiction on the Labour Court/Industrial Tribunal to grant reinstatement in case termination is found to be illegal.”

6. The maintainability of the writ petition in respect of service matters has fallen for consideration in several judgments of the Supreme Court. In **2003 (10) SCC 733 (Federal Bank vs. Sagar Thomas)** the

Hon'ble Supreme Court while considering the maintainability of the writ petition against a private bank functioning under the RBI guideline has held that :

27. Such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution. But in certain circumstances a writ may issue to such private bodies or persons as there may be statutes which need to be complied with by all concerned including the private companies”.

7. Ratio laid down in **K.K. Saksena** (supra) has been upheld in **(St. Mary's Education Society v. Rajendra Prasad Bhargava), [(2023) 4 SCC 498]**, it has been held that:-

“75.1. An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.

75.2. *Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of “State” within the expansive definition under Article 12 or it was found that the action complained of has public law element.”*

8. This view has also been followed in Muthoot Finance. **(S. Shobha v. Muthoot Finance Ltd.), (2025 SCC OnLine SC 177).**

Issuance of writ in the nature of quo warranto in connection with service matter had fallen for consideration in **Retd. Armed Forces Medical Association** (supra) wherein it has been held by following the ratio laid down in **P.K. Jain vs. Union of India** reported in **1993(4) SCC 119** that it is issued only in a proceedings initiated by the aggrieved person when the appointment is contrary to the statutory rules. This view has been upheld in **2022(16) SCC 318 (State of West Bengal v. Anindya Sundar Das & Ors.)**. Writ in the

nature of certiorari is of wide amplitude. The Honourable Supreme Court while discussion the difference between writ of quo warranto and certiorari in service matter has held **2003(4) SCC 712 (High Court of Gujarat & Anr. v. Gujarat Kishan Mazdoor Panchayat & Ors.)** as follows:

“22. Sub-sections (5) and (6) of Section 8 as amended read thus:

“8. (5) If—

(a) the Vice-Chancellor is, by reasons of leave, illness or other cause, temporarily unable to exercise the powers and perform the duties of his office, or

(b) a vacancy occurs in the office of the Vice-Chancellor by reason of death, resignation, removal, expiry of term of his office or otherwise,

then, during the period of such temporary inability or pending the appointment of a Vice-Chancellor, as the case may be, the Chancellor in consultation with the Minister may appoint a person to exercise the powers and perform the duties of the Vice-Chancellor.

(6) The vacancy in the office of the Vice-Chancellor occurring by reason of death, resignation or expiry of the term of his office, removal or otherwise shall be filled up by appointment of a Vice-Chancellor in accordance with the provisions of sub-section (1) within a period of six months from the date of occurrence of the vacancy, and such period shall be held to include any period for which a Vice-Chancellor is allowed to continue in consultation with the Minister to exercise the powers and perform the duties of the Vice-Chancellor under sub-section (5).”

23. In the present case, the notification issued by the State Government reappointing the VC specifically notes that the proposal submitted by it for reappointment of the VC was not accepted by the Chancellor:

“Whereas, the State Government in the Higher Education Department, considering the above, had submitted the proposal of reappointment of Prof. (Dr) Chakravarti Banerjee before the Hon'ble Chancellor of the University for a period of four years, on two occasions firstly on 4-6-2021 and secondly on 17-6-2021. However, Hon'ble Chancellor of the University did not accept the proposal given by the Higher Education Department and sought

certain clarifications on some issues not related directly with the subject-matter....”

10. A contractual employee while engaged by a contractor but is working in FSSAI which is an autonomous body under the said FSSAI act and is discharging public duties and function as in the instant case can maintain a writ petition when the complaints of appointment contrary to statute in view of the discussion. I am, therefore, persuaded to hold that the writ petition concerning the engagement of a technical officer in FSSAI on contractual basis through an outsourced private agency is maintainable if not for mandamus or quo warranto but for certiorari in the facts of the instant case. However, this leaves to a further issue as to whether the writ petitioner can seek enforcement of a contractual employment which is as per the tenor of the letter dated 21st May, 2012 issued by FSSAI to M/s Bedi and Associates containing the panel of selected candidates was restricted upto 31st July, 2012 as sought for by the writ petitioner. On a scrutiny of documents and analysis of the terms of advertisement contained in the letter/circular read with the reply given to the petitioner's application under RTI Act, 2005 and the letter dated 21st may, 2012 it is crystal clear that the recommendation was to give appointment upto 31st July, 2012. The writ petition was filed on 24th April, 2013 i.e., much after expiry of the contractual period stipulated in the said letter. On expiry of 31st July, 2012, the contractual appointment recommended for the panel of selected candidates which include the

petitioner came to an end. The same therefore, cannot be enforced after expiry of 31st July, 2012. Any further engagement of respondent no. 7 on contractual basis after 31st July, 2012 should be construed to be fresh engagement on contractual basis through M/s. Bedi & Associates for a further term and as such will not come under the terms of the letter dated 21st may, 2012 wherein the petitioner's name figured even if the same is construed to be an offer letter, although not so. It is also noticed from the documents on record that no merit list was prepared after holding the interview of the candidates called for the interview in the post of technical officer on contractual or outsourced basis FSSAI has clearly stated that the panel of names forwarded to M/s. Bedi & Associates is not a merit list. The petitioner, though has suggested it to be merit list but have thrown no direct challenge to the association of FSSAI that the panel is not a merit list. The petitioner therefore, cannot claim and it is also not apparent from any of the document that the name of the petitioner being in Serial no. 2 meant that the petitioner was placed higher up in the merit list over respondent no. 7 whose name appeared in serial no. 3. The dispute that arises in the writ petition on the assertion by the petitioner and denial by the respondent authorities is a question of fact which cannot also be gone into writ jurisdiction when there is no document on record to establish that the petitioner on the basis of the merit list was placed above the respondent no. 7. That apart and in any even but after promulgation of the 2018 regulation, the question of engagement

in FSSAI on contractual basis is no more available. Furthermore, I do not notice any arbitrary action or statutory violation in the instant case as a consequence whereof the interference of this Court in exercise of jurisdiction under writ of mandamus or quo warranto or certiorari is necessary. The question of removing respondent no. 7 after promulgation of 2018 regulations also does not arise.

11. The writ petition for the reasons as aforesaid fails and is therefore, dismissed.
12. The application in view of the main writ petition having been dismissed also stand disposed of without any further order.

(Arindam Mukherjee, J.)