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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 8264/2023**

SHALENDRA

.....Petitioner

Through: Mr. Abhijit Anand and Mr. Yatee Solanki, Advocates with petitioner in person.

versus

CHAIRMAN AND MANAGING DIRECTOR & ORS.

.....Respondents

Through: Mr. Manoj, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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13.05.2025

CM APPL. 28795/2025 (for early hearing)

1. This is an application for early hearing of the captioned writ petition filed by the petitioner.
2. Having regard to the facts and circumstances stated in the application, and with the consent of learned counsel for the respondents, the application is allowed and the writ petition is taken up for hearing.

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3. By way of this writ petition under Article 226 of the Constitution of India, filed in the year 2023, the petitioner challenges a recruitment process conducted by the respondent - Food Corporation of India ["FCI"], pursuant to an advertisement dated 23.02.2019.



4. The petitioner applied for the post of Assistant Grade-III (Accounts) in the North Zone of FCI under the Disabled Ex-Servicemen (ESM) category. He claims that 4.5% of vacancies were required to be reserved for disabled ex-servicemen, but he was unlawfully excluded from consideration.

5. The petitioner had earlier filed W.P.(C) No. 15206/2022 in relation to the same grievance, which was disposed of by order dated 01.02.2023, directing the respondents to decide his representation dated 23.01.2020.

6. Pursuant to the said order, the respondent issued an order dated 21.03.2023, rejecting the petitioner's case on the ground that the disability claimed by him, namely, "*leprosy cured*," does not fall within the categories of disability eligible for reservation under the Disabled Ex-Servicemen category.

7. While the said decision has been challenged in the present writ petition, I am of the view that subsequent events render its adjudication unnecessary. The respondents, in their counter affidavit dated 29.09.2023, has disclosed that the petitioner, in fact, applied for the same post under the same category, pursuant to a subsequent advertisement issued in the year 2022. The petitioner was selected and has since been appointed.

8. This fact has not been denied in the rejoinder affidavit, and is confirmed by Mr. Abhijit Anand, learned counsel for the petitioner. However, curiously, the writ petition is entirely silent on the petitioner's application, pursuant to the advertisement issued in the year 2022, although the application had already been made when the writ petition was filed. The petitioner has also filed four applications for early hearing, the latest being CM APPL. No. 28795/2025.



9. In fact, the averments in these applications are not only silent about the petitioner's subsequent appointment to the same post but, clearly convey the impression that he remained unemployed as a result of not being selected in the recruitment conducted in the year 2019. Paragraphs 6, 7 and 8 of CM APPL. 28795/2025 read as follows:

"6. In the instant case, along with the Writ Petition, the Petitioner has also filed Application under Section 151 CPC praying for stay of proceedings on recruitment, joining and posting of selected and waitlisted candidates by the Respondents with the FCI Advertisement No. 01/2019-FCI Category III, dated 23-02-2019 and Advertisement No.01/2022-FCI Category III dated 03.09.2022 as well as stay on any proceedings on any further recruitment process in connection with the said post of Assistant Grade- III (Account) on the basis of further vacancies published by the Respondents till the final disposal of the instant Writ, but the said Application has not yet been decided by this Hon'ble Court and is pending for disposal.

7. The Petitioner who is also undergoing medical treatment and is a father of three minor children, his three minor children and his wife who are solely dependent upon the Petitioner for their survival, education and livelihood and the Petitioner being denied selection by the Respondents is facing great difficulties in maintaining his medical expenses as well as maintaining his three children and wife. The Petitioner is in dire need of money as well as medical assistance for himself and his three minor children and his wife and therefore seeking kind indulgence of this Hon'ble Court to get recruited at the said post of Assistant Grade- III (Accounts) for North Zone in FCI by the Respondents. Timely consideration of his case is not only help him financially but also his family will be grateful to this Hon'ble Court because the livelihood and the education of his children is one of the biggest challenge he is facing at this time, will be sorted out.

8. The instant matter is an urgent one involving question of significant importance and livelihood/survival of the Petitioner and his entire family and therefore warrants early intervention by this Hon'ble Court.

(Emphasis supplied)



10. These averments are clearly misleading, given that the petitioner has in fact been appointed to the post in question, *albeit* in a later recruitment.

11. It may be noted that, in the counter affidavit, the respondents have clearly stated that even in the recruitment conducted in 2019, the petitioner was accorded reservation under the Ex-Servicemen category and was placed at Serial No. 35 in the waitlist, which was ultimately operated only up to Serial No. 20. It has also been stated that the waitlist was operated until the commencement of the subsequent recruitment process, in accordance with FCI's guidelines on operational vacancies.

12. Mr. Anand submits that the petitioner's grievances remain alive, as he would have attained a higher rank, had he been appointed pursuant to the recruitment conducted in 2019.

13. Having regard to the facts narrated above, considered holistically, I do not find it appropriate to exercise the discretionary and extraordinary remedy provided under Article 226 of the Constitution. The Supreme Court in its recent judgment in *M.S. Sanjay v. Indian Bank* [2025 SCC OnLine SC 368; decided on 29.01.2025] has made it clear that even in cases where some irregularity or illegality is alleged, the writ Court is not bound to grant relief unless there is a demonstrable failure of justice. Applying the said principle, I am not inclined to entertain the present writ petition at the instance of a candidate who has subsequently been recruited to the same post in the respondent organisation, and particularly one who chose not to disclose this fact in the writ petition, and has filed four applications, premised on alleged deprivation of livelihood. His intention was evidently to mislead the Court, a course which must be



deprecated.

14. For the aforesaid reasons, the writ petition is disposed of. Although the suppression of material facts, as noted above, would ordinarily attract an order of costs against the petitioner, I refrain from doing so in deference to his status as an ex-serviceman.

PRATEEK JALAN, J

MAY 13, 2025
UK/SD/