

**IN THE HIGH COURT FOR THE STATE OF TELANGANA AT
HYDERABAD**

WRIT PETITION NO.10154 of 2018

&

WRIT PETITION No.18892 of 2021

W.P.No.10154 of 2018

Between:

S.Kamakshi Prasad

...Petitioner

AND

1. Food Corporation of India, rep. by its Chairman and Managing Director, Barakhambada Lane, New Delhi – 110 001 and two others

...Respondents

W.P.No.18892 of 2021

Between:

S.Kamakshi Prasad

...Petitioner

AND

1. Food Corporation of India, rep. by its Chairman and Managing Director, Barakhambada Lane, New Delhi – 110 001 and three others

...Respondents

COMMON JUDGMENT PRONOUNCED ON: 30.06.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE K.SARATH

1. Whether Reporters of Local : Yes/No
newspapers may be allowed to see
the Judgment ?
2. Whether the copies of judgment may : Yes/No
be marked to Law Reports/Journals
3. Whether Their Lordship/Ladyship : Yes/No
wish to see the fair copy of judgment

JUSTICE K.SARATH

THE HON'BLE SRI JUSTICE K.SARATH

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! Counsel for Petitioners Sri G.Vidya Sagar, Learned Senior Counsel appearing for Ms.K.Udaya Sri, Learned Counsel for the petitioner in both the petitions

^ Counsel for Respondents: Sri V.Gangaiah Naidu, Learned Senior Counsel appearing for Sri Yadaiah Jetli, Learned Standing Counsel for the FCI

Sri S.Rahul Reddy, Learned Counsel appearing for the unofficial respondents in WP No.18892 of 2021

< GIST :

> HEAD NOTE :

? Cases referred :

THE HONOURABLE SRI JUSTICE K.SARATH

WRIT PETITION Nos.10154 of 2018 and 18892 of 2021

COMMON ORDER:

1. Heard Sri G.Vidya Sagar, Learned Senior Counsel for Ms. K.Udaya Sri, Learned Counsel appearing for the petitioner and Sri Gangaiah Naidu, Learned Senior Counsel for Sri Yadaiah Jetli, Learned Standing Counsel for the Food Corporation of India appearing for the respondent Nos.1 to 3 and Sri S.Rahul Reddy, Learned Counsel appearing for the unofficial respondent in W.P.No.18892 of 2021.

2. Both the Writ Petitions are filed by one and the same petitioner and the petitioner is questioning the action of the Respondent-Corporation in not considering his candidature for the recruitment to the post of Assistant General Manager (General Administration) in ST reserved category in pursuance to the Advertisement

No.2/2013-FCI Category-I, dated 06.08.2013 by extending the panel list and consequential rejection proceedings in Proceedings No.2(7)/2014/E.1/Vol.I, dated 26.10.2017 in W.P.No.10154 of 2018 and the petitioner is questioning the Notification No.01/2021-FCI Category-I in so far as one (01) post of Assistant General Manager (General Administration) earmarked for ST Category in W.P.No.18892 of 2021. In view of the same, both Writ Petitions heard together and passed common orders.

3. Learned Senior Counsel for the petitioner submits that the Food Corporation of India (FCI) invited applications from the eligible candidates for 18 vacancies in Advertisement No.2/2013-FCI Category-I, dated 06.08.2013 to the post of Assistant General Manager (General Administration) in different wings of General Administration, Movement, Accounts, Law & Medical

Officer and in so far as Assistant General Manager (GAD) is concerned 3 posts were reserved for ST candidates out of 18 posts. The petitioner belongs to ST category and in pursuance to the said notification, the petitioner appeared for the written examination and the name of the petitioner was placed at Serial No.4 in the panel list published by the Respondent-Corporation on 07.09.2014 and his name was shown at Serial No.1 in waiting list in the ST Category. In case, any of the three selected candidates not join within the time the petitioner shall be selected as his name was shown at SI.No.1 in the waiting list.

4. The Learned Senior Counsel for the petitioner further submits that the Respondent-Corporation issued offer letters to the (3) candidates who belongs to ST Category and who were in the merit list i.e., 1) Sri Sanjay Kumar Linda secured 63.43 marks, 2) Sri Kuldeep Meena

secured 61.68 marks and 3) Sri K.Shanmugam secured 59.82 marks on 04.09.2014 and the said letter offer of appointment was issued on 03.11.2014 and as per Para-6 of the said offer letter, if acceptance was not received by 20.11.2014 and if does not join by 03.02.2015, unless extended by FCI Headquarters, the offer will automatically stand withdrawn and cancelled.

5. The Learned Senior Counsel for the petitioner further submits that one of the candidate Sri K.Shanmugam failed to join within the time given in the offer letter and as per Regulation-9(b)(ii) of the FCI Staff Regulations, 1971, the panel shall remain valid for one year from the date it was drawn up by the Selection Board and the number of persons on the panel shall generally be 1½ times the number of vacancies. In the instant case, the panel was drawn up on 05.09.2014. The panel was to be operated in terms of office Memo

No.35015/2/93-Estt(D), dated 09.08.1995 of DOPT. As per the said DOPT office memo, the offer of appointment should indicate that the candidate should join within the specified period which shall not normally exceed two or three months. However, where request is received from the candidate, such extension may be considered but extension beyond three months shall not be granted liberally and in any case only up to maximum of six months from the date of issue of the original offer of appointment. If the candidate does not join, the offer of appointment would lapse automatically after the expiry of six months from the date of issue of the original offer of appointment.

6. Learned Senior Counsel for the petitioner further submits that in the instant case, Sri K. Shanmugam was issued with offer of appointment on 03.11.2014. Therefore, it was valid only up to 02.05.2015. Within

the time, the said Sri K.Shanmugam has not joined and the respondents have not issued offer letter to the petitioner before the expiry of the panel year i.e., 04.09.2015. In the impugned rejection orders, the respondents stating that the offer of appointment was issued to the candidate within validity period of panel i.e., before 04.09.2015, but the FCI, Headquarters, New Delhi extended time upto 20.09.2015 due to late acceptance of his resignation by his present employer i.e., Indian Oil Corporation Limited and he joined duties on 21.09.2015 and the case of the petitioner was not considered due to joining of Sri K.Shanmugam.

7. The Learned Senior Counsel for the petitioner further submits that the Respondent-Corporation without following the regulations and guidelines issued by the DOPT, permitted Sri K.Shanmugam to join duties on 21.09.2015 and immediately he resigned from duties

on 22.09.2015. The case of the petitioner was rejected on the ground that the selection process was completed as all the selected candidates have joined the duties. The panel prepared for the selection was expired on 04.09.2015 as the panel was prepared on 05.09.2014 as per Rule 2(9) (b) of Food Corporation of India (Staff) Regulations, 1971. The respondents failed to produce any documents for extension of time to the said Sri K.Shanmugam by mentioning different dates for extension of time in letter submitted by the Respondent-Corporation to the National Commission for Scheduled Tribes on 21.10.2015 stating that the Competent Authority allowed extension of time and permitted Sri K.Shanmugam to join duties on 21.09.2015. In rejection orders, it is stated that the FCI Headquarters granted extension upto 20.09.2015. It shows that the extension was upto 20.09.2015, but the respondents were

permitted to join Sri K.Shanmugam on 21.09.2015 and he resigned from service on 22.09.2015.

8. The Learned Senior Counsel for the petitioner further submits that in fact the petitioner approached the respondents immediately after completion of 6 months and made representation on 27.08.2015 and requested to provide chance to join the Respondent-Corporation. In the earlier occasions, the Respondent-Corporation extended the panel list and in the instant case, without extending the panel list rejected the case of the petitioner is arbitrary and illegal. The respondents rejected the case of the petitioner and showing the said post as vacant and issued subsequent notice in the year, 2021 and the same was the subject matter in W.P.No.18892 of 2021. Once the petitioner given the chance to join the duties in pursuance to the Notification No.2 of 2013 by following the rules, there is no vacancy available for the

said post and the impugned action of the respondents is arbitrary, illegal and in violation of Articles 14 and 16 of the Constitution of India and requested to allow the Writ Petitions.

9. The Learned Senior Counsel appearing for the Respondent-Corporation submits that the representation of the petitioner dated 15.09.2017 was carefully considered and passed orders on 26.10.2017. According to the statutory FCI (Staff) Regulations, 1971, the panel shall remain valid for one year from the date it is drawn up and thereafter cannot be operated. In the instant case, the name of the petitioner figured in the wait list whereas all the candidates from the selection list were joined and since Sri K.Shanmugam the last candidate from the main list resigned only after the expiry of panel validity and there was no occasion for considering the wait list during the panel validity. Out of three, two

candidates namely Sri Sanjay Kumar Linda joined on 10.08.2015 and Sri Kuldeep Kumar joined on 01.07.2015. The 3rd one Sri K.Shanmugam requested FCI for extension of joining time on plea that he needs some time to obtain relieving order from his present employer and the same was accepted by the competent authority and he joined the duties on 21.09.2015.

10. Learned Senior Counsel appearing for the Respondent-Corporation further submits that as per Office Memorandum No.35015/2/93-Estt (D) dated 09.08.1995 of DOPT, Sri K.Shanmugam was granted extension of time up to 21.09.2015 and he was allowed to join on 21.09.2015. Thus, all the three successful candidates, who belong to ST community, of main list were joined. There was no representation from the petitioner was received in September, 2015 for extension of validity period of panel. Further, as per the

Regulations 9(b)(ii) of Food Corporation of India (Staff) Regulations, 1971, which has statutory status and a panel is valid for one year from the date of its drawn up and the same cannot be relaxed and the same was informed to the Research Officer, National Commission for Schedule Tribe, New Delhi at the instance of the petitioner through letter No.38(2)/NCST-17/LC-2015/551 dated 21.10.2015. Moreover, once the panel is operated and the main list candidates joined in the services, the subsequent resignation of a candidate from the service beyond the panel validity is of no significance for operating the wait list and the petitioner has no right to seek appointment after expiry of the panel year.

11. Learned Senior Counsel appearing for the Respondent-Corporation further submits that the petitioner have knowledge about the extension of time and joining of Sri K.Shanmugam and the information

under Right to Information Act was furnished to the petitioner in letter No.2 (7)/2014/E.I dated 30.09.2015 and the same was communicated to the petitioner by the Research Officer, National Commission for Scheduled Tribes through File No.SKP/1/2015/MCAP1/SEOTH/RU-IV dated 05.11.2015. But the petitioner without questioning the same and waited for nearly two years and filed representation on 15.09.2017 for considering his case and the respondents rightly passed orders on 26.10.2017.

12. The Learned Senior Counsel appearing for the Respondent-Corporation further submits that the vacancy arisen due to resignation of Sri K.Shanmugam has already been filled in the subsequent year i.e., 2017 through direct recruitment process and the petitioner was not in the zone of consideration.

13. Learned Senior Counsel appearing for the Respondent-Corporation further submits that the candidate in the waiting list of Advertisement of 2013 cannot be appointed in the Advertisement of 2021 as the panel itself expires after one year i.e., 04.09.2015. The petitioner recruited in the Respondent-Corporation as Manager (Depot) in pursuance to the Employment Advertisement No.4/2015 and joined duties on 17.04.2017 and continuing in the service. The petitioner once again applied for the post of AGM (General Administration) in pursuance to the Advertisement No.1/2021 but, failed to qualify. Hence, he again filed the W.P.No.18892 of 2021 to stall the recruitment process by obtaining interim stay on the recruitment. It is nothing but abuse of process of law as he has filed two writ petitions on the same subject and he has not qualified in the latest recruitment process in the year,

2021 and both writ petitions are not maintainable and liable to be dismissed and requested to dismiss the writ petitions.

14. After hearing both sides and perusing the records, this Court is of the considered view that the petitioner belongs to ST Community and applied for the post of AGM (General Administration) in pursuance to the Notification No.2/2013 in Respondent-Corporation and his name was shown at SI.No.1 of the waiting list for the post meant for ST candidates. The last candidate in S.T. Category one Sri K.Shanmugam joined duties on 21.09.2015 and resigned on 22.09.2015. The contention of the petitioner is that the respondents without following the procedure contemplated in FCI Regulations and also circulars of DOPT permitted the said Sri K.Shanmugam to join duties on 21.09.2015 after expiry of the time and without giving appointment orders to the petitioner as

the petitioner was next meritorious candidate in the selection list.

15. The petitioner made application under Right to Information Act, 2005 to the Respondent-Corporation on 01.09.2015 and sought information about Sri K.Shanmugam and in reply to the same issued letter No.2 (7)/2014/EI dated 30.09.2015 and clearly stated that Sri K.Shanmugam with the approval of the Competent Authority was allowed to join by 21.09.2015 and he has joined FCI on 21.09.2015 (Fore Noon).

16. The petitioner approached the National Commission for Scheduled Tribes in the year, 2015 and the Respondent-Corporation submitted their remarks in response to the representation filed by the petitioner on 21.10.2015 to the Research Officer, National Commission for Scheduled Tribes and clearly states that in case of Sri K.Shanmugam, the Competent Authority granted

extension of time to join post on 21.09.2015 and within the time he joined duties on 21.09.2015 and no notified vacancy of STs was vacant as three (3) posts were advertised against the ST quota and (3) candidates of ST quota were joined. The said communication was forwarded to the petitioner by the Research Officer, National Commission for Scheduled Tribes through File No.SK/P/1/2015/MCAP1/SEOTH/ RU-IV dated 05.11.2015.

17. The petitioner not questioned the extension of time given to Sri K.Shanmugam from 2015 onwards and participated in the selection process of lower post in Respondent-Corporation and got selected in the said post i.e., Manager (Depot) and joined duties on 17.04.2017. After joining the duties in the Respondent-Corporation, the petitioner made representation to the Authorities on 15.09.2017 for considering his case for the post of AGM

(General Administration) and the respondents rejected his case in impugned letter dated 26.10.2017.

18. The petitioner questioning the recruitment Notification No.1/2021 as the said Notification shown AGM (General Administration) with one vacancy out of three vacancies shown as backlog meant for Scheduled Tribes on the ground that the said backlog vacancy was in view of resignation of Sri K.Shanmugam and the said post has to be considered for the petitioner as the respondents violated the rules in giving extension of time to Sri K.Shanmugam and the petitioner was next meritorious candidate in the merit list in pursuance to the recruitment Notification No.2/2013.

19. In fact, the petitioner received the communication about the joining of Sri K.Shanmugam on 21.09.2015 as per information furnished to the petitioner under RTI Act by the respondents on 30.09.2015 and thereafter, the

petitioner made representation to the National Commission for Scheduled Tribes and also received communication from the Research Officer, National Commission for Scheduled Tribes on 05.11.2015. It clearly shows that the petitioner without taking any action as information furnished to the petitioner on 30.09.2015 and 05.11.2015 and kept quiet and also participated in the selection process for the lower post and got selection as Manager (Depot) and joined duties on 17.04.2017.

20. The petitioner waited for more than two years and filed the representation for consideration of his case for the post of AGM (General Administration) and after lapse of two years of resignation of Sri K. Shanmugam, consideration of the case of the petitioner does not arise and the respondents rightly rejected the case of the petitioner and passed impugned orders on 26.10.2017.

21. In view of the same the petitioner has no legal right to consider his case for appointment in pursuance to the Notification No.2/2013 and this Court is not inclined to interfere with the proceedings issued by the respondent on 26.10.2017.

22. The petitioner has no legal right for consideration of his case for the arisen vacancy of the resignation of Sri K.Shanmugam and the question of considering his case in the Notification No.1 of 2021 does not arise. Moreover, the petitioner participated in the selection and was unsuccessful in the year, 2021 and now he cannot question the same.

23. In view of the above findings, these writ petitions are devoid of merits and accordingly, dismissed. There shall be no order as to costs.

24. Miscellaneous applications pending, if any, shall stand closed.

JUSTICE K.SARATH

Date:30.06.2023

Note:
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