

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 5343/2024

Sakshi Apurva D/o Shri Sanjay Apurva, Aged About 23 Years,
Resident Of- Near Shiv Mandir, Tempu Stand, Old Housing Board,
Kishangarh City, Kishangarh, District Ajmer, Rajasthan.

----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary, Medical And Health Department, Govt. Of Rajasthan, Government Secretariat, Jaipur-302001
2. Rajasthan Public Service Commission, Through Secretary, Jaipur Road, Ajmer, Rajasthan-305001.

----Respondents

For Petitioner(s) : Mr. Gaurav Rathore with
Ms. Nikita Bhandari
Mr. Karan Audichya

For Respondent(s) : Mr. Archit Bohra, Addl. G. C. with
Mr. Pranav Bhansali
Mr. M. F. Baig
Mr. Rajat Arora through VC

HON'BLE MR. JUSTICE SAMEER JAIN**Order****Reportable****29/04/2024**

1. Learned counsel for the petitioner has submitted that the present petition is filed seeking appointment on the post of Food Safety Officer, in pursuance to the advertisement dated 21.10.2022, issued by the respondent-RPSC. Accordingly, the following prayers are advanced, reproduced herein-under:-

"a) That this Hon'ble Court be pleased to issue writ of Mandamus or any other appropriate writ order or direction in the nature thereof and thereby, the respondent may be directed to give appointment to the petitioner on the post of Food Safety Officer as



the petitioner secured more marks than the merit list, taking into account the petitioner's status as a person with disabilities.

b) That this Hon'ble Court be pleased to reserve one seat in the selection process for the post of Food Safety Officer to be allocated specifically for the petitioner, considering her eligibility, qualifications, and the injustices faced during the recruitment process;

c) Pass such other and further order(s) as may deem fit and proper and in the interest of justice and protect the rights and interests of persons with disabilities."

2. Learned counsel for the petitioner has submitted that the petitioner is a female candidate, belonging to the OBC Category. The petitioner suffers from 45% disability. She graduated with a Bachelor of Science Degree in Chemistry from the MDSU, Ajmer in the Year 2020, which is recognized University as per the advertisement dated 21.10.2022. It is averred that the said advertisement was issued inviting applications qua 200 seats for the post of 'Food Safety Officer' under the Rajasthan Medical and Health Subordinate Service Rules 1965 (in short, the Rules). Learned counsel submitted that the petitioner possesses all the requisite qualifications, as specified in the advertisement. In this regard, learned counsel for the petitioner has placed reliance upon the educational qualifications specified under the said advertisement, which are reproduced as under:

"1(i) A degree in Food Technology or Dairy technology or Biotechnology or Oil Technology or Agriculture Science or Veterinary Sciences or Bio-Chemistry or Microbiology or Masters Degree in Chemistry or Degree in Medicine from a recognized University.

Or

any other equivalent/recognized qualification notified by the Central Government and





(ii) has successfully completed training as specified by the Food Authority in a recognized institute or institution approved for the purpose:

(Note:- There is no requirement for training prior to selection. This training shall be provided to the selected candidates during probation period.)

Provided that no person who has any financial interest in the manufacture, import or sale of any article of food shall be appointed to be a Food Safety Officer under these rules.

2. Working knowledge of Hindi written in Devnagari Script and knowledge of Rajasthan Culture."

3. Learned counsel for the petitioner further submitted that the petitioner's case, categorically falls under the extended clause of Clause 1 and other equivalent educational qualification notified by the Central Government. Extended clause of Clause 1 of the Central Government, is reproduced as under:-

"(i) A degree in Food Tecnology or Dairy Technology or Biotechnology or Oil Technology or Agriculture Science or Veterniary Sciences or Bio-Chemistry or Microbiology or Master's Degree in Chemistry or Degree In Medicine from a recognized University, Or Any other equivalent/recognized qualification notified by the Central Government; and

(ii) has successfully completed training as specified by the Food Authority in a recognized institute or institution approved for the purpose:

Provided that no person who has any financial interest in the manufacture, import or sale of any article of food shall be appointed to be a Food Safety Officer under these rules.

4. It was further submitted by the learned counsel for the petitioner that during document verification, the respondents have orally ousted the petitioner for not meeting out required educational qualification as referred to in Clause 1. Learned counsel argued that while doing so, the respondents have by-passed the provisions and have not considered the mandate of the notification dated 16.01.2023 issued by Ministry of Health and Family Welfare, wherein by 'substitution' the qualification of





Designated Officers and Food Safety Officers was revised and the Central Government has held that Bachelor's or Master's or Doctorate degree in Food Technology or Chemistry will be taken as equivalent to the desired qualification. While placing reliance upon the same, it was next submitted by learned counsel for the petitioner that the said notification will be applicable retrospectively, as the draft notification for the same was issued on 27.08.2020.

5. To elaborate and define the word "substitution" learned counsel for the petitioner has placed reliance upon the dictum of the Hon'ble Supreme Court as enunciated in **(2004) 8 SCC 1** titled as **Zile Singh versus State of Haryana & Ors.** The relevant extract of the judgment is reproduced herein-under:-

"24. The substitution of one text for the other pre-existing text is one of the known and well-recognized practices employed in legislative drafting. "Substitution" has to be distinguished from "supersession" or a mere repeat of an existing provisions."

6. Reliance has also been placed upon the dictum enunciated in **(1999) 6 SCC 459** titled as **Madan Singh Shekhawat Vs. Union of India & Ors.**, through which learned counsel for the petitioner submitted that when it comes to interpretation of statutes, the aim and objective and the facts and the circumstances are to be duly considered. In the instant matter, for interpretation of certain terms, the beneficial rule of interpretation should be adopted and the provisions should be considered liberally. Furthermore, the draft notification dated 27.08.2020, has defined 'degree' to include the bachelors degree also. Therefore, cumulatively, it was argued that the term 'substitution' is to be





differentiated from 'supersession'. It was further contended that 'substitution' means replacement and the entire interpretation in the instant matter has to be holistically seen and the benefit should be given qua the petitioner in spirit of the law and in the interest of justice.

7. *Per contra*, learned counsel for the respondents submitted that in the matter of service jurisprudence, criteria of cut-off should be stringently complied with. The cut-off criteria should be given effect with certainty and no deviation qua the material terms and conditions should be made, otherwise, whole scheme of selection process shall be frustrated. Refuting the contentions leveled by learned counsel of the petitioner regarding the petitioner possessing the requisite educational qualifications, learned counsel for the respondents submitted that the petitioner is not meeting out the requirement(s) as outlined vide advertisement dated 21.10.2022 for the following reasons:

7.1 That the notification dated 27.08.2020 was merely a draft notification and after considering the objection(s), final notification dated 16.01.2023 was issued under the exercise of powers conferred U/S 91 of the Food Safety and Standard Act 2006.

7.2 That the said notification under Clause 1 (ii) makes it evident that the effective date for the notification will be the date of the publication of the notification in the Official Gazette. The said phrase is reproduced as under:

"They shall come into the force on the date of their publication in the Official Gazette."

7.3 That even otherwise, the petitioner is holding a degree of Bachelors in Chemistry, whereas, the essential qualifications





categorically prescribed Master's degree in Chemistry as the basic essential requisite.

8. At this juncture, learned counsel for the respondents placed reliance upon the dictum of the Hon'ble Apex Court enunciated in **(2007) 4 SCC 54** titled **Ashok Kumar Sonkar versus UOI & Ors.** and submitted that it is a settled position of the law that the cut-off date should be taken as the last date of filing of the application form. In the instant matter, 30.11.2022 was the relevant cut-off date for consideration of eligibility conditions.

9. Heard and considered the arguments advanced by learned counsel for the parties, scanned the records of the case and considered the judgments cited at Bar.

10. In the facts and circumstances of the case, following material observations are worth consideration:

10.1 The subject advertisement was issued on 21.10.2022 whereby the rules of the game and the terms and conditions qua appointment, as on the said date, were adequately defined and made very clear by the respondents.

10.2 That the manner in which the terms and conditions are formulated and the basic eligibility which is provided qua selection in connection therewith, falls purely within the domain of the employer. The discretion to lay down the rules of recruitment is an exercise carried on by the employer independently, of its own will and volition.

10.3 That as per the dictum of the Hon'ble Apex Court as enunciated in **Ashok Kumar Sonkar (Supra)**, the cut-off date should be taken as the last date of filing of the application form.





Therefore, in the facts of the present case, the same would be 30.11.2022.

10.4 That the arguments advanced by the learned counsel for the petitioner regarding the dilution of the educational qualifications vide notification dated 16.01.2023 cannot be countenanced as the effect of the said notification was prospective in nature. Therefore, the educational qualifications defined in the advertisement dated 21.10.2022 are to be considered accordingly.

10.5 That in the said notification dated 16.01.2023, it has been categorically mentioned that the same shall come into force as from the date of publication in the official gazette. Therefore, the same cannot be implemented retrospectively. Thus, as on 30.11.2022, the erstwhile educational qualifications were applicable.

11. Therefore, upon a cumulative consideration of the foregoing observations, this Court deems it appropriate to dismiss the instant petition.

12. Accordingly, the instant petition is dismissed. Pending applications, if any, stand disposed of.

(SAMEER JAIN),J

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