

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

Reserved on: 08.05.2023  
Pronounced on: 26.05.2023

**SWP No.368/2016**  
c/w  
**SWP No.1229/2011**

**KOUSAR ALI & OTHERS**

... Petitioner(s)

Through: -Mr. Arif Sikander Mir, Advocate.

Vs.

**STATE OF J&K AND OTHERS**

...Respondent(s)

Through: -Mr. Mohammad Rais-ud-din Ganai,  
Dy.AG

**CORAM:**

**HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

**JUDGMENT**

1) The petitioners, who were working in various capacities with the Municipal Committees, were deputed by the respondents to undergo 'Food Inspectors Training Course' as in-service candidates and after the completion of the said training course from the "**State Food, Health Authority, Punchkula Haryana**" were held eligible for adjustment as Food Inspectors in terms of Rule 8 of the Prevention of Food Adulteration Rules, 1955 (hereinafter for short 'the PFA Rules'), as well as the proposed recruitment rules, as is evident from the communication dated 22.07.2006. The petitioners were placed as In-charge Food Inspectors in their own pay and grade pending clearance by the Departmental Promotion Committee (hereafter for short 'the DPC') vide order dated 16.10.2006. Thereafter, vide SRO 132 dated

16.05.2008, the petitioners and the respondent No.3-Naeem Rizvi were appointed as Food Inspectors within the local areas as mentioned in the aforesaid SRO, in exercise of powers conferred by Section 9 of the Prevention of Food Adulteration Act, 1954 (hereafter for short 'the PFA Act').

2) The respondent No.3 herein-Naeem Rizvi filed a petition bearing SWP No.170/2010 for directing the respondents therein to regularize him as Food Inspector and also to promote him to the post of Executive Officer. The learned Writ Court, by virtue of an interim order dated 03.02.2010, directed the respondents to consider the representation of the petitioner (respondent No.3 herein) and also to consider his promotion as In-charge Executive Officer. As order dated 03.02.2010 was not implemented by the respondents, the respondent No.3 herein filed the contempt petition bearing No.46/2010.

3) The writ petition SWP No.170/2010 was disposed of by this Court vide order dated 27.07.2010, directing the respondents to confirm the petitioner (respondent No.3) against the post of Food Inspector within a period of eight weeks from the date a copy of the order was served upon the respondents therein and the petitioner (respondent No.3 herein) was held to be entitled to the grade of Food Inspector from the date he held the said post vide order dated 16.10.2006, provided there was no other impediment. Simultaneously, it was directed that after the respondent No.3 was confirmed as Food Inspector, his case for

promotion to the higher post be considered alongwith other similarly situated employees of the department.

4) After the passing of the order dated 27.07.2010, the respondent No.2 issued order dated 26.08.2010, whereby the petitioners as well as respondent No.3 were placed in the pay scale of Rs. 6,700-10,700 (pre revised) attached to the post of Food Inspector from the date they had been placed as such, pending clearance by the DPC. Though the grade attached to the post of Food Inspector was released in favour of the petitioners and the respondent No.3, yet by virtue of order dated 31.05.2011, respondent No.1 declined to confirm the petitioners and respondent No.3 as Food Inspector on the following grounds:-

“1. That the petitioners including respondent No.3 do not belong to the category of Sanitary Inspectors which is the feeding cadre for the post of Food Inspector.

2. That under SRO 132 of 2008, only power under the PFA Act conferred upon the Food Inspectors is within local area of the respective Municipal Councils and not otherwise. Therefore, conferring powers under the said Act upon any incumbent has no bearing so far as appointment and promotion is concerned.

5) Though order dated 31.05.2011 pertained to the respondent No.3 only, as is evident from the tone and tenor of the order, but the petitioner Nos. 1-3 who were sailing in the same boat as that of respondent No.3, apprehending threat to their rights and status challenged the Order dated 31.05.2011 through the medium of a writ petition bearing SWP No.1229/2011 and this Court vide order dated

08.06.2011 directed that the present status of the petitioners be not disturbed till next date before the Bench.

6) The respondent No.3 also challenged the order dated 31.05.2011 in contempt petition No.294/2010 and vide order dated 08.06.2011, operation of order dated 31.05.2011 was stayed.

7) The official respondents assailed the order dated 27.07.2010 passed by learned Single Judge in SWP No.170/2010 and contempt petition (SW) No.46/2010 and the Division Bench dismissed the LPA bearing No.83/2011 vide order dated 01.11.2011. The Division Bench, while dismissing the LPA observed as under:-

“8. Having considered the above submissions of learned counsel for the respective parties and having examined the issue along with the relevant provisions of law, we are convinced that the respondent was duly entitled for being confirmed in the post of Food Inspector, as has been done by the appellants themselves in the order dated 16.10.2006. **Under Section 8 of the Prevention of Food Adulteration Act, 1954, the Central government or the State government are empowered to appoint such persons as it thinks fit, having the prescribed qualification to be Food Inspector for such local areas as may be assigned to them, as the case may be by notification in the Official Gazette.** It also disentitles a person who has any financial interest in the manufacture, import or sale of any article of food to be appointed a Food Inspector under Section 9 of the Act.

9. Keeping in view the above statutory provisions in mind, when we pursue the order dated 16.10.2006, by which the respondent and other four persons were placed as in-charge Food Inspectors in their own pay and grade, **that order itself makes it clear that they completed the prescribed Training Course, as in-charge Food Inspectors in order to be eligible for being appointed as in-charge Food Inspectors.** Subsequently to the said order after two years by SRO 132 dated 16.05.2008 all the five persons came to be appointed to the post of Food Inspector by the State Government by invoking Section 9 of the Prevention of Food Adulteration Act, 1954. The said SRO No.132 of 2008 was also published in the Govt. gazette dated 16.05.2008. The said notification, therefore, confirms that the respondent was fully qualified for the post of Food Inspector and his appointment to that post was well within the statutory provisions of the Prevention of Food Adulteration Act, 1954. Even after such appointment having been made and notified in the Govt.Gazette, unfortunately respondent was not placed in the applicable pay scale of Food Inspector. In fact when the respondent preferred writ petition bearing SWP No.170/2010, an interim order came

to be passed on 03.02.2010, by which appellants were directed to consider the representation of the respondent for his appointment as in-charge executive Officer, but according to the respondent he was not placed in the applicable pay scale of Food Inspector.

10. **The contention of the appellants that having regard to the Rules which came into force w.e.f 18.12.2008, the respondent would not fall within the feeding category for promotion/placement to the post of Food Inspector, we are afraid that the said contention will have to be rejected at the very outset. Inasmuch as, even before the said rules came to be notified the respondent was already appointed on the post of Food Inspector by notification dated 16.05.2008, therefore, the said contention of the appellants cannot stand in the way of the respondent's appointment to the post of Food Inspector being confirmed as directed by the learned Single Judge. Therefore, the appellants themselves rightly understood the scope of any challenge that could be made to the order impugned in this appeal by coming forward with order dated 26.08.2010, by which the respondent and other four persons were regularized in the post of Food Inspector by according the pay scale of 6700-10700 (pre-revised), as applicable to the post of Food Inspector. The statement made in the order dated 16.08.2010 that there was a remote possibility of obtaining the decision in their favour by filing appeal against the order impugned in this appeal was, therefore, justified."**

[Emphasis Supplied]

8) The order dated 01.11.2011 passed by the Division Bench was impugned by the official respondents before the Apex Court through the medium of SLP (civil) No.2628/2012, but the said SLP was also dismissed by the Apex Court vide its order dated 27.02.2012. After the SLP was dismissed by the Hon'ble Supreme Court, the respondents issued Government Order No.77-HUD of 2012 dated 20.03.2012, whereby the respondent No.3 was placed as In-charge Executive Officer in his own pay and grade and subsequently, on the recommendation of the DPC, respondent No.1 issued Government Order No.183-HUD of 2012 dated 19.09.2012, whereby the sanction was accorded to the promotion of the respondent No.3 to the post of Executive Officer in the pay scale of Rs. 7,500-12,000 (pre-revised) w.e.f 16.05.2013.

9) The writ petition bearing No. 1229/2011 was amended by the petitioners and the petitioners prayed that they too be promoted to the post of I/C Executive Officer w.e.f. 20.03.2012 and further they be confirmed against the said post in the same manner as in the case of the respondent No.3. While the writ petition bearing SWP No.1229/2011 was pending, the official respondents issued Government Order No.51-HUD of 2016 dated 25.02.2016, whereby the Government Order No.273-HUD of 2006 dated 16.10.2006, by virtue of which the petitioners alongwith respondent No.3 were placed as In-charge Food Inspectors in their own pay and grade was rescinded. This prompted the petitioners to file the present writ petition bearing SWP No.368/2016, challenging the Government Order No.51-HUD of 2016 dated 25.02.2016. The petitioners have also sought a direction upon the respondents to promote them to the post of Executive Officer from 22.03.2012, when the respondent No.3 was placed as In-charge Executive Officer in his own pay and grade and further to confirm them against the said post in the same manner in which respondent No.3 was confirmed on the post vide Government Order No.183-HUD of 2012 dated 19.09.2012. The petitioners have also stated that they made numerous representations to the official respondents for placement as In-Charge Executive Officers and the respondent No.2 vide his Communication dated 03.03.2015 addressed to respondent No.1 even sought instructions for issuing the final seniority list on the ground that four officials i.e. the petitioners had been working as Food Inspectors

for last more than nine years and are similarly situated and deserve the similar treatment as has been given to respondent No.3.

**10)** The petitioners have assailed the order dated 25.02.2016 on the ground that its issuance is, in fact, an act of deceit and is contrary to the judgment passed by the Court in SWP No.170/2010 and contempt petition No.46 of 2010 and to the order dated 01.11.2011 passed by the Division Bench in LPA. It is also stated that the grounds for issuing order dated 25.02.2016 have already been considered and rejected by the learned Writ Court as well as the Appellate Court. It is alleged that the order dated 25.02.2016 has been issued at the back of the petitioners without any notice to them. More so, the order dated 31.05.2011 was stayed by this Court in SWP No.1229/2011 and the respondents were directed not to disturb the status of the petitioners.

**11)** The respondents have filed their response, wherein it has been stated that J&K Urban Local Bodies Institutions (Management) Service Recruitment Rules, 2008 prescribe qualification and method of recruitment for the Food Inspectors and the petitioners do not possess the requisite qualification and they do not fall within the feeding cadre for the post of Food Inspector, which in turn is the feeding cadre for the post of Executive Officer. It is also stated that SRO 132 was issued keeping in view the shortage of manpower in the department, which does not confer any right to claim for higher post. The respondents have also pleaded that the objections filed in SWP 368/2016 be treated as stand of the respondents in writ petition SWP No.1229/2011

**12)** Mr. Arif Sikander Mir, learned counsel for the petitioners vehemently argued that the case of the petitioners is squarely covered by the Judgment of learned Single Judge passed in SWP No.170/2010 and contempt petition No.46 of 2010 and the judgment of Division Bench passed in LPA No.83 of 2011. He further argued that order impugned No.51-HUD of 2016 dated 25.02.2016 in fact has been passed by the respondent No.1 in utter disregard of the judgment passed by the Writ Court as well as the Appellate Court. He also submitted that the respondent No.1 is guilty of violating the order dated 08.06.2011 passed by this Court, whereby the respondents were directed not to disturb the status of the petitioners. He further submitted that during the pendency of the writ petitions, the petitioner Nos. 3&4 have attained superannuation.

**13)** Mr. Rais-ud-din Ganie, learned Dy.AG appearing for the respondents argued that the petitioners were never regularized on the posts of Food Inspector under the relevant rules, as they did not belong to the feeding cadre for the said post and further that as per SRO 132 of 2008, the powers of the Food Inspectors only were conferred upon the petitioners, therefore, the writ petitions filed by the petitioners deserve to be dismissed.

**14)** Heard the learned counsels for the parties and perused the record.

**15)** The perusal of order dated 25.02.2016 by virtue of which Government Order No.273-HUD of 2006 dated 16.10.2006 which



placed the petitioners and respondent No.3 as In-charge Food Inspectors in their own pay and grade, was withdrawn, reveals that the same has been issued on the advice of the Department of Law, Justice and Parliamentary Affairs on the ground that incumbents are not entitled to promotion to the post of Food Inspector as the posts they held substantively were not the feeding source for the promotion to the posts of Food Inspectors. The promotion of Mr. Naeem Rizvi as Food Inspector was in deference to the order of the Court and that cannot be made an analogy to confer similar benefits upon the petitioners. A perusal of the order dated 31.05.2011 reveals that the respondent No.1 declined to confirm the respondent No.3 as Food Inspector as he did not belong to the feeding cadre for the post of Food Inspector after observing that the order dated 17.10.2006 (the order withdrawn by virtue of the order dated 25.02.2016) was illegal and void ab-initio. It needs to be observed that if the order dated 17.10.2006 was illegal and void-abinitio, there was no necessity to issue the fresh order dated 25.02.2016, which is the subject matter of challenge in SWP-368/2016.

**16)** The perusal of the order of the Division Bench reveals that respondent No.1 issued SRO 132 dated 16.05.2008 by invoking Section 9 of the PFA Act. The said SRO was notified in the J&K Government Gazette on 16.05.2008 and the said notification, therefore, confirmed that the petitioners and the respondent No.3 were fully qualified for the post of Food Inspector and respondent No.3's appointment to that post was will within the statutory provisions of the PFA. The official

respondents have not been able to demonstrate as to how the case of the petitioners is different vis-à-vis Naeem Rizvi-respondent No.3. Once the Division Bench has confirmed the eligibility of the respondent No.3 pursuant to SRO 132 of 2008, the respondent No.1 cannot dispute the eligibility of the petitioners. The case of the petitioners is identical to the case of respondent No.3-Naeem Rizvi. Not only is the order dated 25.02.2016 in utter disregard of the order dated 08.06.2011 passed by this Court but also is in the teeth of the order dated 01.11.2011 passed by the Division Bench. It is evident that the order dated 25.02.2016 issued by the respondent No.1 is, in fact, an attempt to reopen the controversy that stood settled earlier by the Division Bench. The respondent No.1 was expected to provide the same treatment to the petitioners as provided to the respondent No.3. Law is well settled that similarly situated persons are to be treated alike and there cannot be any discrimination between them. The respondent No.1 is expected to be fair and reasonable while dealing with its employees. The order impugned is an arbitrary exercise of power by the respondent No.1 just to deprive the petitioners of their legitimate right to seek similar treatment as provided to the respondent No.3.

**17) In *State of Karnataka v. C. Lalitha*, (2006) 2 SCC 747, the Apex Court has held as under:**

**“29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently. It is furthermore well settled that the question of seniority should be governed by the rules. It may be true that this Court took**

notice of the subsequent events, namely, that in the meantime she had also been promoted as Assistant Commissioner which was a Category I post but the direction to create a supernumerary post to adjust her must be held to have been issued only with a view to accommodate her therein as otherwise she might have been reverted and not for the purpose of conferring a benefit to which she was not otherwise entitled to.”

**18) In *State of U.P. v. Arvind Kumar Srivastava*, (2015) 1 SCC**

**347**, the Apex Court has held as under:

“ **22.1.** The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

**22.2.** However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

**22.3.** However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma v. Union of India* [*K.C. Sharma v. Union of India*, (1997) 6 SCC 721 : 1998 SCC (L&S) 226] ). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

**19) Accordingly, both the writ petitions are disposed of with following directions:**

- a. The Government order NO. 51-HUD of 2016 dated 25.02.2016 is quashed.
- b. The respondent No. 1 is directed to provide same treatment to the petitioners as provided to the respondent No.3 and the respondent No.1 shall place and confirm the petitioners as Executive Officers from the date the respondent No.3 was so placed and confirmed.
- c. The placement of the petitioners shall be on notional basis, however, they shall be entitled to monetary benefits prospectively.
- d. As the respondent Nos. 3 and 4 have already attained superannuation, their retrospective placement and confirmation as Executive Officers shall only entitle them to post retiral benefits.
- e. Necessary orders shall be issued by the respondent No.1 within eight weeks from the date a copy of this judgment is served upon the respondent No.1

20) Disposed of.

(RAJNESH OSWAL)  
JUDGE

SRINAGAR  
26.05.2023  
*Sarveeda Nissar*

*Whether the Judgment is reportable: Yes.*