

Before Rajesh Bindal & B. S. Walia, JJ.

FOOD CORPORATION OF INDIA AND OTHERS —*Appellants*

versus

BABU LAL YADAV AND OTHERS—*Respondents*

LPA No.69 of 2017

January 25, 2018

Selection—Post advertised—Eligibility—Experience as trainee—Issue was whether experience as Management Trainee can be counted towards the requisite 5 years' experience in storage of food grains etc. required for the advertised post of Assistant General Manager (Technical)—The petitioners had experience as Management Trainees before appointment on the post of Manager (Quality Control)—Were paid stipend as Trainees—Learned Single Judge ordered the training period to be counted as experience for petitioners' eligibility for the post—Held, relying upon the judgment by a Division Bench of Hon'ble Delhi High Court in Manoj Kumar Singh case, that the period of training cannot be counted towards experience required for the post as training cannot in any way be equated with experience, which has to be independent where duties are performed by the officer himself—Appeal allowed, writ petition was dismissed holding the opinion of the learned Single Judge as erroneous.

Held that, issue as to whether the period of training is to be counted for the purpose of experience has been gone into by a Division Bench of Delhi High Court in Manoj Kumar Singh's case (supra) with reference to the same selection and it has been opined that the period of training cannot be counted towards the experience required for the post as the training cannot in any way be equated with experience, which has to be independent where the duties are performed by the officer concerned himself and not that he remains under training under supervision of the officers in the training institute.

(Para 12)

J. S. Puri, Advocate
for the appellants.

Roshan Lal Batta, Senior Advocate with
Mandeep K. Saajan, Advocate
for the respondents.

RAJESH BINDAL, J.

(1) Aggrieved against the order passed by the learned Single Judge allowing the writ petition, Food Corporation of India (for short, 'the Corporation'), has filed the present intra-court appeal.

(2) The writ petitioners filed the writ petition claiming that they being eligible for the post of Assistant General Manager (Technical), should be interviewed as they had already qualified the written test. Qualification required for the post of Assistant General Manager (Technical) was 5 years experience in storage of foodgrains and maintenance of stocks or in the examination, inspection and analysis of foodgrains in Government or Public/ Private Limited undertakings in addition to educational qualification.

(3) While allowing the writ petition, the learned Single Judge directed that the experience of the writ petitioners as Management Trainees be also counted towards the experience in storage of foodgrains. It is by adding that period only that they become eligible for consideration.

(4) While impugning the judgment of learned Single Judge, learned counsel for the appellants submitted that one of the qualifications for appointment as Assistant General Manager (Technical), is 5 years experience in storage of foodgrains and maintenance of stocks or in the examination, inspection and analysis of foodgrains in Government or Public/ Private Limited undertakings. The writ petitioners have been working as Manager (Quality Control). For appointment to that post, one has to undergo training during which only stipend is paid and the same is not treated as appointment. Successful training is pre-requisite for appointment. Initial joining is as Management Trainee, as on the cut off date the writ petitioners did not have five years experience, required for the post, as the period of training cannot possibly be counted for the purpose. During training only sessions/ classes are held or some attachments are there. Responsibilities are not assigned to the person to work independently, which is the experience required. He further referred to judgment of Division Bench of Delhi High Court in LPA No. 90 of 2014 – *Food Corporation of India and others* versus *Manoj Kumar Singh and others*, decided on 29.9.2016, where same arguments were accepted and the writ petitions were dismissed.

(5) On the other hand, learned counsel for the respondents submitted that Delhi High Court judgment cannot be relied upon to

non-suit the writ petitioners as in that judgment Food Corporation of India (Staff) Regulations, 1971 (for short, 'the Regulations'), were not considered.

(6) In para 6 of the judgment, learned Single Judge has dealt with the issue regarding the experience and opined that training period is to be counted. He further submitted that in the advertisement for certain posts, it has specifically been mentioned that training part is not to be included. There is no such condition against the post in question. He also referred to schedule of training being imparted to the writ petitioners to submit that all kinds of responsibilities were being discharged by them and it was not merely a training.

(7) In response, learned counsel for the appellants submitted that the Regulations sought to be referred to by the writ petitioners are not relevant for the issue involved in the present appeal as that defines employee only for punishment and appeal or for determination of inter-se seniority after appointment.

(8) Heard learned counsel for the parties and perused the paper book.

(9) The issue in the present appeal is regarding appointment to the post of Assistant General Manager (Technical). The requisite qualification required for the post in question, as mentioned in the advertisement, are extracted below:-

“Assistant General Manager (Technical) (Post Code: 06)- i) Degree in Agriculture or Degree in Science with Diploma in Food Technology or Master's Degree in Zoology or Biochemistry or equivalent qualifications, ii) 5 years experience in storage of food-grains and maintenance of stocks or in the examination, inspection and analysis of food grains in govt. or Public/Private Sector Undertaking, Desirable: Knowledge of toxicology of insecticides, rodicides and fumigants in use in grains /stocks. The experience acquired as Junior/Senior Research Fellow while pursuing higher studies, will be reckoned as "required experience.”

(10) The dispute in the present appeal is with reference to the experience required in storage of foodgrains and maintenance of stocks or in the examination, inspection and analysis of food grains in Government or Public /Private Sector Undertakings. To further pinpoint, the issue would be whether period spent as Management

Trainee before appointment as Manager (Quality Control) is to be counted towards the experience required for the post, as it is undisputed that unless that period is counted, the respondents will not have five years experience to their credit.

(11) The appellants have placed on record training schedule, as Management Trainee before a candidate is appointed as Manager (Quality Control), which shows that the training primarily pertains to theoretical part or studies of different projects. It is in different areas. During the process of training, it is not that the Management Trainee is getting experience regarding storage of foodgrains and maintenance of stocks, etc. rather it includes subjects with reference to vigilance, food policy of India, crop pattern, labour laws, financial aspects, court procedures, house keeping, personnel management, etc. During the process of training a small stipend of Rs.6,000/- was paid. Initially appointment is made as Management Trainee. It is only on successful completion of training that a candidate is appointed as Manager in regular pay scale on usual terms and conditions. Period of probation also starts from there.

(12) Issue as to whether the period of training is to be counted for the purpose of experience has been gone into by a Division Bench of Delhi High Court in *Manoj Kumar Singh's* case (supra) with reference to the same selection and it has been opined that the period of training cannot be counted towards the experience required for the post as the training cannot in any way be equated with experience, which has to be independent where the duties are performed by the officer concerned himself and not that he remains under training under supervision of the officers in the training institute.

(13) Regulation 2(m), 8 and 16 (8) of the Regulations also do not come to the rescue of the respondents for the reasons that these only deal the Management Trainee as employee with reference to disciplinary proceedings or regarding inter-se seniority.

(14) For the reasons mentioned above, in our view, the opinion expressed by the learned Single Judge while allowing the writ petition is erroneous wherein the period of training has been directed to be treated as experience for the purpose of eligibility to be appointed as Assistant General Manager (Technical). The appeal is accordingly allowed, correspondingly the writ petition filed by the respondents is dismissed.