
(2003) 06 OHC CK 0021

In the Orissa High Court

Case No : Original Jurisdiction Case No. 12314 of 1998

Basanta Kumar Nayak

APPELLANT

Vs

Mohanadi Coal Fields Ltd. and Others

RESPONDENT

Date of Decision : 23-06-2003

Acts Referred:

Citation : (2003) 06 OHC CK 0021

Hon'ble Judges : P.K. Misra, J;B. Panigrahi, J

Bench : Division Bench

Advocate : B.K. Sahoo and K.C. Sahoo, for the Appellant; Sanjit Mohanty, N.C. Sahoo, S.P. Panda and D. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

B. Panigrahi, J.—In this case the Petitioner has challenged the arbitrary, whimsical and malafide action of the opp. parties in not issuing an order of appointment in the post of a Fitter. The Petitioner has claimed to have passed I.T.I. from Model Industrial Training Institute, Talcher. It is stated that the said Institution is under the control of the Government of India, Ministry of Labour, Directorate General of Employment and Training. The certificates obtained by the Petitioner from the Institution would be an evidence of completion of the Training Course. The Institute was newly established in the State and the course of training and duration is similar to other I.T.I. Courses under the control of the State Government. The process of examination conducted by both the Institutions although appears to be different, but the practical training and basic training are the same. It is further stated in the writ petition that since some of the Industrial Establishments could not understand about the training course and its equivalency with other I.T.I. Course, therefore, different Industrial units failed to give due credibility to the certificate obtained from the Model Industrial Training Institute. Although the National Trade Certificate stipulates that a candidate should undergo basic training as well as proficiency certificate in specialised models of the Directorate General of Employment and Training, but

the other Institutions have failed to treat the certificates obtained from Model Industrial Institute, Choudwar par for the I.T.I. certificates obtained from other institutions. It is claimed by the Petitioner that other candidates such as Rajani Kanta Misra, Pravat Kumar Swain, Nabakishore Sahoo, who had passed from the Model Industrial Training Institute, Choudwar were appointed, but so far as the Petitioner is concerned, they treated him differently on other considerations. Therefore, he filed this case for an appropriate direction against the opp. parties to appoint him in the post of Fitter.

2. The opp. parties 1 to 3 have filed their counter whereby they denied the allegations of the Petitioner's averments. It is, inter alia, stated that the prayer made in the writ petition is unsustainable in law inasmuch as the writ Court cannot issue a direction to the employer for giving employment in the post of Mazdoor Category -I (III). The Petitioner does not possess the essential qualification laid down in the Notification/requisition dated 19.1.1994 for being appointed in the cadre of Mazdoor Category-I.

Since the qualification possessed by the Petitioner was not in conformity with the requirement of the opp. parties, they have, therefore, not considered the Petitioner's case. Earlier he had filed a writ petition being O.J.C. No. 13369 of 1996 whereby this Court refused to entertain his prayer. It is within the domain of the employer to lay down the eligibility criteria with essential qualification to carry out the jobs. The employer is the best judge of its requirement. The selection has already been completed and on the basis of the said selection appointment orders were issued. Therefore, there is no occasion to open the matter once again for relaxation of the requisite qualification. Since the Petitioner has only taken training for one year in basic course and six months in fitting (general) and six months in Metrology and Engineering Inspection, therefore, he was not considered to have possessed the requisite qualification. It is imperative for a person to undergo 2 years training in Fitter training in order to obtain National Trade Certificate in Fitter Trade, whereas the Petitioner has obtained the NCVT Certificate after undergoing one year training in different basic Course. When there are other suitable candidates available fulfilling the eligibility criteria fixed by the authorities to be appointed in Fitter Trade, the authorities were not obliged to consider the Petitioner's case for the said post. The opp. parties are under no obligation to appoint the Petitioner in the Fitter's Grade.

3. In course of hearing learned Counsel appearing for the Petitioner has advanced an inexorable plea that while the other candidates possessing similar qualification were appointed, the opp. parties should not have taken a step-motherly attitude in so far as the Petitioner is concerned. It is submitted that the case of two other candidates possessing similar qualification having been/ rejected there has been no ground for the Petitioner to approach this Court seeking an appointment in the above post. It is further submitted that there has been no vacancy at present.

4. It is no longer in dispute that the employer has an absolute prerogative to fix

up the eligibility criteria for appointment in different vacancies. The Petitioner's case is that the certificate possessed by him is equivalent with the certificate obtained by a candidate for I.T.I. It is not the appointing authority to take such a decision in the matter. But it is open to the National Council of Vocational Training to take an administrative decision if the certificate obtained by the Petitioner is equivalent with that of the I.T.I. certificate. As a matter of fact, the opp. parties have taken a decision that the Petitioner did not possess the requisite qualification. The case of two other candidates was also rejected. They have filed a writ petition which has awaited appropriate decision.

5. In this background since there has been no post lying vacant to appoint the Petitioner in the grade of Mazdoor Category-I, we are, therefore, not inclined to issue any direction. In the mean time it is open to the authorities to consider whether the certificate obtained by a candidate from Model Industrial Institute, Choudwar is equivalent with that of the certificate obtained from other I.T.I. Institutions. But for the time being we are of the firm view that the Petitioner cannot claim a right to be appointed in the grade of Mazdor, Category-I.

Accordingly, the writ petition is dismissed. No costs.

P.K. Misra, J.

6. I agree.