
(2001) 07 BOM CK 0038
In the Bombay High Court
Case No : O.O.C.J.W.P. No. 1294 of 2001

Dharmendra J. Solanki

APPELLANT

Vs

Hindustan Petroleum Corporation Limited and Another

RESPONDENT

Date of Decision : 25-07-2001

Acts Referred:

Citation : (2002) 92 FLR 702 : (2002) 1 LLJ 667

Hon'ble Judges : S.A. Bobde, J;A.P. Shah, J

Bench : Division Bench

Advocate : C.U. Singh, instructed by Vyas and Bhalwal, for the Appellant; K.K. Singhvi and Rakesh Kumari, instructed by Rustamji Ginwala, for the Respondent

Final Decision : Allowed

Judgement

S.A. Bobde, J.—Rule, returnable forthwith. Respondents waive service. Heard parties.

2. Petitioner challenges his dismissal from service with the respondent No. 1 Hindustan Petroleum Corporation Ltd. from the post of Senior Manager.

3. The petitioner had applied for employment with the respondent-Corporation in the year 1981. He was appointed on July 1, 1981. The particulars of his caste which he gave at the time of his employment has become the cause of his dismissal after 20 years of service.

4. The petitioner's case is that he comes from the State of Gujarat where his caste i.e. Salat is recognised as a socially and educationally backward class under Government Resolution No. BCR 1078/1373-H dated April 1, 1978. When he filled up his application form, there were only two categories in the application form which the applicant was expected to choose from: (i) Scheduled Caste; and (ii) Scheduled Tribe. Knowing that since he did not belong to Scheduled Tribe, he stated "yes" to the only other category i. e. Scheduled Caste.

5. After about eleven years, during which time the petitioner was promoted on

September 6, 1984 as Senior Operations Officer, Palam ASF, and, thereafter, on November 15, 1988 as Deputy Manager - Operations, Patna Regional Office, the respondents issued a show cause notice dated July 7, 1992. By that show cause notice, the respondents called upon the petitioner to show cause as to why action should not be taken against him for having represented that he belongs to Scheduled Caste. The respondent-Corporation stated that this amounted to a false statement and a contravention of Clause 8(b) of the appointment letter dated May 28, 1981 issued to him. The petitioner replied to the show cause notice and pointed out that till the receipt of the show cause notice, he has been under the impression that he belongs to Scheduled Caste since he belongs to Salat Caste. He further stated that he had submitted a copy of the certificate that he belongs to Salat Caste which was socially and educationally backward class and that this fact has been verified at the time of interview. He urged that his act was not wilful nor did he have any mala fide intention, since he still entertains an impression that he belongs to Scheduled Caste as he belongs to socially and educationally backward class.

6. Nothing was done in the matter till May 30, 2001 i.e. for about nine years thereafter. Suddenly on May 30, 2001 the respondent- Corporation issued the impugned dismissal order on the strength of the show cause notice dated July 21, 1992.

7. It is an admitted position that when the petitioner applied for employment, he did not submit caste certificate stating that he belonged to Scheduled Caste, but submitted a certificate which clearly stated that he belongs to Salat Caste which the Government of Gujarat considers as a socially and educationally backward class under the aforesaid Government Resolution.

8. It is further an admitted position that subsequent to the show cause notice dated July 7, 1992 and the reply to it dated July 21, 1992, the petitioner was promoted to the post of. Senior Manager, Bombay-Pune Pipeline and that this promotion was not granted due to the fact that he belongs to a backward class or a Scheduled Caste. At this juncture, it is important to note that the petitioner has an otherwise unblemished record.

9. Mr. Singh, learned counsel appearing for the petitioner, submitted that the petitioner has not at any point of time wilfully misled the Respondent-Corporation into granting him employment. He further submitted that the petitioner did not submit a false certificate that he belonged to Scheduled Caste, but submitted the certificate that has been issued to him that he was recognised as a socially and educationally backward class by the Government of Gujarat. The learned counsel for the petitioner further submitted that the respondent-Corporation has acted unreasonably and arbitrarily in terminating the services of the petitioner after 20 years, particularly since termination has not been preceded by an opportunity of hearing.

10. Mr. Singhvi, learned counsel for the respondent, submitted that the petitioner

is not entitled to take advantage of a false statement, viz., that in the two categories provided for in the application form, he said "yes" against the column of Scheduled caste. According to the learned counsel, merely because the termination is after 20 years, it does not vitiate the same. The only reply in the affidavit is as follows. That the District Social Welfare Officer, Baroda, informed that the petitioner belongs to the "Salat" Caste. This was in the year 1992. Thereafter, the National Commission for Scheduled Castes and Scheduled Tribes replied on January 2, 2001 that the action of termination should be taken against an employee who has made a false statement about his caste. There is really no explanation for the slumber.

11. Having heard the parties at length and having given our anxious consideration to the matter, we are of view that though strictly speaking there is a lapse on the petitioner's part in representing that he belongs to Scheduled Caste, the manner in which the respondent-Corporation has dealt with the petitioner is one which cannot be considered reasonable. In fact, we find that the respondent-Corporation has acted with inordinate delay and in a manner which is arbitrary and unreasonable. We could not have been persuaded to uphold the action of the respondent-Corporation had it acted with due diligence at the time of the petitioner's appointment in the year 1985 itself. The petitioner had not submitted a false certificate and had, in fact, submitted the original at the time of the interview. Then, or soon thereafter, was the time when the respondent-Corporation ought to have verified whether Salat caste was designated as a Scheduled Caste. However, the respondent-Corporation waited for about 11 years before it issued a show cause notice dated July 7, 1992 alleging that the petitioner had made a false statement in the application. After the petitioner had replied to the show cause notice, the respondent-Corporation did nothing in the matter. On the other hand, it promoted him in the year 1998 to the post of Senior Manager, Mumbai - Pune Pipeline. It is, in fact, after a lapse of about nine years after the show cause notice that the respondent-Corporation has suddenly terminated the petitioner's service for a reason, which was in existence since 20 years. The only reason given by the respondent is that it had referred the matter to the National Commission for Scheduled Castes and Scheduled Tribes and the Commission wrote to it on July 2, 2001 that the petitioner's claim is not correct.

12. We find that there is a gross, unreasonable and unexplained delay on the part of the respondent-Corporation in dealing with a statement in the petitioner's application for employment made in the year 1981. Though the principle of "double jeopardy", as contended on behalf of the petitioner, may not be attracted to the case, since the petitioner was not punished in pursuance of the show cause notice dated July 7, 1992, we feel that if the respondent-Corporation was earnest in the matter, it ought to have at least taken a decision in the year 1992 after the petitioner replied to the show cause notice. There is no justification why the respondent-Corporation ought to have waited for a period of nine years before taking action and that too eventually without affording the petitioner an opportunity of personal hearing. If the petitioner was afforded a

personal hearing, he would have been able to explain the circumstances in which he wrote "yes" in the column against the category of Scheduled Castes. The lapse of the petitioner appears to us to be plausible and consistent with his belief that he was entitled to apply for a reserved post since he belongs to a caste which was recognised as socially and educationally backward in the State of Gujarat. It is plausible that since there were only two columns, one marked "S.C." and the other "S.T.", the petitioner said "yes" while applying. Whatever be the petitioner's belief, we cannot find any justification for the respondent-Corporation to have waited 20 years before it terminated the petitioner's services. In the employer-employee relationship, we consider it prejudicial and detrimental to an employee to be terminated from his services for a lapse which is 20 years old, particularly when the employer took note of the fact about nine years ago and again let it pass.

13. In this view of the matter, since the petitioner's service record is otherwise unblemished, we allow the petition and set aside the termination order dated May 30, 2001. The rule is made absolute without any order as to costs.