

(1997) 05 GAU CK 0033
In the Gauhati High Court
Case No : Writ Appeal No. 257 of 1996

Oil and Natural Gas Corpn. Ltd.

APPELLANT

Vs

Pabitra Gogoi and Others

RESPONDENT

Date of Decision : 13-05-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1998) 4 GLT 60

Hon'ble Judges : V.D. Gyani, Acting C.J.; D.N. Chowdhury, J

Bench : Division Bench

Advocate : D.K. Talukdar and B.J. Talukdar, for the Appellant; N.N. Saikia, G. Deka, J.M. Das, G. Uzir, B. Borgohain and T. Khro, for the Respondent

Final Decision : Allowed

Judgement

V.D. Gyani, Actg. C.J.

1. This Writ Appeal is directed against the judgment and order dated 7.5.96 passed by a learned Single Judge of this Court in Civil Rule No. 4339/95 and Civil Rule No. 2659/95. Both these petitions have been disposed of by a common impugned order. Both these petitions were heard together as per direction contained in the order dated 15.2.96 passed in Writ Appeal 1175/95.

2. It is a case relating to selection and appointment of five Junior Engineers as per advertisement dated 2.1.1995 published in local press. These posts were created as far back as 1982. A written test was held. The Petitioners appeared at the said test, they were called for interview, and they claim to have been successful although on their own showing no result had been announced and in fact it is one of the reliefs sought by them, seeking a Mandamus against the Appellant to publish the select list.

3. Before we go to legal right accruing to the writ Petitioner, it would not be out of place to note the Appellant's case:

That it is stated that the vacancy of 5 posts of Junior Engineer (Civil) was created as back as in the month of March, 1992, but after the passing of 4 years, time since then, due to Court cases, the situation in the administration has been changed greatly and due to the change in the entire policy of the Central Government and the Ministry of Oil and Natural Gas, all further recruitment has been stopped. As per the new policy even some of the drilling operation itself are going to be done by way of giving it as a contract job to independent contractors etc. and other technicals are reduced very much and all further recruitments have been stopped. So, presently there is no requirement of any Junior Engineer (Civil) or so to say any other technicians and no vacancy is available at this stage. Rather as per the policy of the Central Government the ONGC has to reduce the strength of the employees by offering option to take voluntary retirement and by not filling up the vacancies created by retirement/superannuation or death or resignation. This being the present position, the ONGC will not be in a position to give appointments to the candidates who appeared in the selection process.

4. Now coming to legal aspect of the matter assuming for the sake of argument that the writ Petitioners are borne on the Select List, yet what is their legal right? The law on the point is settled by the Supreme Court in several of its judgments.

A person selected by the Subordinate Service Selection Board for direct appointment to the post of Assistant Sub-Inspector of Police does not have an unfettered right to be appointed on the basis of the recommendation made by the said Board.

Jatinder Kumar and Others Vs. State of Punjab and Others,

There is no question of applicability of promissory estoppel stopping the State Government from acting in the manner it did in not appointing the Appellants although their names had been recommended. The notification issued by the Board in this case was only an invitation to candidates possessing specified qualifications to apply for selection for recruitment for certain posts. It did not hold out any promise that the selection would be made or if it was made the selected candidates would be appointed. The candidates did not acquire any right merely by applying for selection or for appointment after selection. When the vacancies were subsequently reduced, the Appellants were duly informed of the situation.

Jatinder Kumar and Others Vs. State of Punjab and Others,

A candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature.

N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others,

Though a candidate does not get any right to the post by merely making an application for the same, but a right is created in his favour for being considered for the post in accordance with the terms and conditions of the advertisement and the existing recruitment rules. If a candidate applies for a post in response to advertisement issued by Public Service Commission in accordance with recruitment Rules he acquires right to be considered for selection in accordance with the then existing Rules.

P. Mahendran and others Vs. State of Karnataka and others,

5. Mr. Talukdar, learned Counsel appearing for the Appellant argued that the learned Judge was in error of both law and facts in coming to the conclusion that the Appellant's action was not bonafide. The learned Single Judge has gone by the note dated 13.1.95 put up by the Director, Personnel. It has to be read in its proper perspective and context and not out of context. As is evident from the advertisement No. 1/95 dated 22.2.95, the posts were created in 1992, advertisement No. 2/92 was published, written test held on 29.11.92. It is also the pleaded case of the Appellant that those were the days of Army Operations in the State. Those transferred from outside the State were not willing to stay because of the prevailing law and order situation during 1991-92, which improved subsequently and the transferred officers, in view of the improved conditions opted to come back and join the posts here, in Assam, which they during the last four years preceding the advertisement 1/95 were not holding. The finding therefore as recorded by the learned Single Judge that no decision has been taken not to fill up the vacancies in a bona fide manner, cannot be supported or subscribed to on facts. The requirement which existed in 1992 was no longer there in 1996 when those who went out of the region returned back with change in the situation.

6. Indisputably there was litigation going on, writ petitions were filed, in such circumstances if the Director (Personnel) put a note "Can't we go to the Court and make a submission that at present we don't require any J.E. (Civil) giving detailed reasons, as and when there is requirement the recruitment will be made following the directions of the Court." It is preceded by a note dated 13.1.95 that situation has changed since then, we need not fill up the posts are present, please consult G.M. (Legal). Now who is to decide the filling of posts, the employer or the Court? Where is the element of mala fide? What was the Petitioner's pleaded case on the point of mala fide? All these relevant questions have not been addressed to by the learned Single Judge.

7. Pausing here for a while, one is prone to ask the question what is the scope of judicial review in such matters? It is not a case of any alleged discrimination or violation of Article 14 or 16 of the Constitution. With the limited scope of "mala fide" as alleged by the Petitioners in paragraphs 7 to 9 of their petition, even if taken on its face value, is nothing but mere user of the expressions "arbitrary,

illegal and mala fide". No facts constituting mala fide have been pleaded. The only allegation is that even after four months of interview, the Select List was not published. It is this non-publication of the Select List which is the sole grievance of the writ Petitioners and that is the only relief sought. No case of malafide not even prima facie, is made out, even if the Petitioner's pleadings are accepted on face value. The learned Single Judge has placed strong reliance on R.S. Mittal Vs. Union of India (UOI),

8. This was a case of Judicial Member of the Income Tax Appellate Tribunal recommended by the Selection Board, headed by a sitting Judge of the Supreme Court. The fact that a panel was already prepared by the Board headed by a sitting Supreme Court Judge, was sought to be procrastinated or frustrated. The realities in the case at hand are altogether different. The vacancies were created way back in 1992 for reasons already noted above. Subsequently, the Junior Engineers after the change of conditions in Assam, agreed to return to Assam, thus the need for filling up the posts was no longer existed. The Corporation has its network spread over different parts of the country, tWs aspect of the matter, it appears, escaped notice of the learned Single Judge. While following Mittal's case (supra), in that case it was found as a fact that two vacancies were in fact available, even according to the counter affidavit filed by the Govt. of India, they wanted to keep one vacancy out of two reserved for P.J. Menon, who was on deputation abroad and who did not resume duty in India even after the deputation period was over and disciplinary proceeding was initiated against him. It was contended that he had a lien in the Tribunal. The second fact which was found by the Apex Court in Mittal's case was gross delay on the part of the Central Govt. even in filling up one vacancy which was undoubtedly available and the Court took a serious view of the matter. When recommendations of the selection are made by a Selection Board headed by a sitting Judge of the Supreme Court, the recommendations must be given immediate attention, it would not be allowed to gather dust. Now overlooking this factual matrix of the case in the matter of appointment of a Judicial Member of the Income Tax Appellate Tribunal, the learned Single Judge has tried to apply the same analogy of appointing Junior Engineer (Civil) in the Corporation. This case does not help the Writ Petitioner-Respondents.

9. In view of the foregoing discussion, this appeal deserves to be allowed, it is accordingly allowed. The impugned judgment and order dated 7.5.96 passed by the learned Single Judge is liable to be set aside, it is accordingly set aside.