
(2016) 03 GAU CK 0023
In the Gauhati High Court
Case No : W.A. No. 165 of 2013

Oil India Ltd.

APPELLANT

Vs

Swapan Gogoi

RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 GauLJ 285 : (2016) 3 GauLR 810 : (2016) 3 GauLT 293

Hon'ble Judges : Ajit Singh, C.J. and Hrishikesh Roy, J.

Bench : Division Bench

Advocate : S.N. Sarma, A. Sarma, K. Kalita and S. Choudhury, Advocates, for the Appellant; G.P. Bhowmik and S.S. Roy, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Ajit Singh, C.J.—Heard Mr. SN Sarma, learned senior counsel assisted by Mr. A Sarma, learned counsel appearing for the appellant. Also heard Mr. GP Bhowmick, learned counsel for the respondent.

2. This intra Court appeal is directed against the order dated 13.5.2013 passed by the learned Single Judge whereby he has disposed of respondent's WP(C) 430/2012 with the direction to evaluate his Computer Operation Skill by treating him as qualified in the written examination and subject to the outcome of the said test, future course of action shall follow.

3. The respondent had subjected himself to written test held by an Expert Body i.e. Indian Institute of Bank Management on behalf of Oil India Limited, the appellant as per recruitment process for selecting eligible candidates for the post of Junior Assistant-I (Clerk-cum-computer Operator) Grade-V. Qualifying cut off marks for the written test was set at 50% and the marks of respondent after all re-check could reach only 49.5%. The respondent aggrieved with the evaluation of his answer-sheet filed WP(C) 430/2012. The question and its answer which became crux of the issue and the main subject for adjudication was Question No.

22. It reads as under:

"Question No. 22

Directions (21-22): In each of the following two questions the two words given on one side of the double colon bear a relationship. The other side shows an incomplete pair marked by a missing word, which bears a similar relationship with the given word. Find the missing word from the given options.

22. If Butterfly :: Pollination then Earthworm:?

(a) Spoilage, (b) Pollution

(c) Soil digging (d) Fertilization"

4. The respondent answered "Fertilization" while as per the Expert Body's "Master Question Booklet" the correct answer was "Soil Digging". The respondent was therefore not given marks against Question No. 22. It is true that if the respondent was awarded marks for her answer to Question No. 22 she would have been successful for the next test of Computer Operation Skill. The learned Single Judge by an interim order directed the Expert Body to submit report justifying why "Soil Digging" was treated as correct answer and not "Fertilization". The Expert Body in its report by giving reasons justified "Soil Digging" as correct answer. The report reads as under:

"The act of pollination by the butterfly and the act of soil digging by the earthworm are intermediate stages. The eventual outcome of these two acts leads to plant reproduction in one and soil fertilisation in the other. Hence the relationship of the earthworm to soil digging is more appropriate than fertilisation in the context of the analogy between butterfly and pollination."

5. But the learned Single Judge did not agree with the report of the Expert Body and held that "Fertilization" was the correct answer. The learned Single Judge on this finding directed the appellant to evaluate Computer Operation Skill treating the respondent as qualified in the written examination. It is to be noted that learned Single Judge was also informed by the appellant that all the posts had been filled up and even if the respondent qualified in the Computer Operation Skill and the other segments of the selection it was not possible to accommodate him. And despite this, the learned Single Judge directed that respondent be accommodated against the future vacancies. It is in this background the present appeal has been filed.

6. It is now well settled that the Writ Court cannot sit on appeal over the decision of examining authorities and opinion of experts on the subject unless the same is absolutely perverse. In the case at hand, the Expert Body's Master Question Booklet clearly reveals that "Soil Digging" was the correct answer of Question No. 22. This answer also find support by a well reasoned report of the Expert Body submitted pursuant to the order of Court. In our considered view, the learned Single Judge committed an illegality in disagreeing with the report of Expert

Body and key answer provided in the Expert Body's Master Question Booklet that "Soil Digging" was the correct answer to Question No. 22. We also agree with the reasoned report of Expert Body that "Soil Digging" is really the correct answer. This opinion of the Expert Body on the subject cannot be held perverse or wrong. Respondent was thus rightly denied marks for answering "Fertilizer". As already stated above, all the posts had also been filled up even before passing the impugned order. And for filling up future vacancies, the appellant has a right to fix new eligibility criteria or standard for selection. We accordingly set aside the impugned order and allow the appeal.

7. The appeal is allowed.