
(2002) 07 GAU CK 0007
In the Gauhati High Court
Case No : Civil Rule No. 284 of 1997

Promode Chetia

APPELLANT

Vs

Indian Oil Corporation Ltd. and Others

RESPONDENT

Date of Decision : 23-07-2002

Acts Referred:

Companies Act, 1956 — Section 314
Constitution of India, 1950 — Article 14, 16

Citation : (2002) 3 GLT 520

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : P. Roy and M.K. Mazumdar, for the Appellant; S.N. Sarma and H.N. Sarma, for the Respondent

Final Decision : Allowed

Judgement

J.N. Sarma, J.—The writ application has been filed by the Petitioner for issue of a mandamus directing the authority to allow the Petitioner to join in the post in terms of the letter of appointment dated 18.12.95 (Annexure-I) issued by the Respondent No. 4.

2. The brief facts are as follows:

The Petitioner is a member of the Other Backward Community and he comes from a very poor strata of the society. Due to poverty he could not prosecute higher study and read upto Class X only. In pursuance to a requisition by the Respondents, the Employment Exchange sponsored the name of the Petitioner along with other persons for a post of Grade IV employee (Sweeper) and accordingly written test and interview were held on 30-31st October, 1995 and the Petitioner was found suitable and was duly selected by the authority. Accordingly a letter of appointment was issued vide Annexure-I which is quoted below:

Ref. No. ERS. 2840/3R-95 Dated 18th Dec'95. To

Shri Pramod Chetia Mamorani Gaon P.O. Mamorani Dist. Tinsukia.

Dear Sir,

Sub: Offer for the post of SWEEPER in the scale of 2234-40-2514-50-2914-60-3454

With reference to your interview held on 30/31st Oct."95, we are pleased to offer you the post of SWEEPER GR 01 on the following terms and conditions.

1) Your appointment shall be subject to your being found medically fit by the Corporation's DGM(M and H). You are, therefore, advised to report to the office of the undersigned on 28th December, 1995 at 7:00 A.M. with a passport size photograph for completion of medical examination.

2) Your salary, will be fixed at Rs. 2234.00 per month in the scale of Rs. 2234-Rs. 3454/-. In addition you will receive Dearness Allowance and other allowances, if any, according to the rules of the Corporation, in force, as amended from time to time.

Annual increments would be subject to the rules of the Corporation in this behalf and would be granted on a specific recommendation of the departmental head for good work and conduct of the individual during the period concerned.

3) You will be required to work under the supervision of such officers and supervisors as may be directed from time to time.

4) Your services will be liable to be transferred to any place in Indian in the service of the Corporation at the discretion of the Management.

5) The Management may transfer you for work in any Section/Plant/department/Unit of the Corporation as it may consider necessary at its discretion from time to time without detriment to your emoluments. You may be transferred from one shift to another according to working convenience.

6) You will diligently and faithfully carry out the instructions given to you by your superiors in connection with your work to the best of your skill and ability.

7) You will abide by the rules and regulations of the Corporation which may be in force, as amended from time to time.

8) The Management reserves the rights to terminate your appointment at its absolute discretion, after giving you one month's notice or on payment of one month's wages and dearness allowance in lieu thereof. Similarly, you shall be at liberty to resign from the service after giving one month's notice. The power to terminate your service will rest with the Director-in-Charge, the General Manager or with such other officer of the Corporation authorized by them or to whom the power on their behalf has been delegated by them, either generally or by a special order.

9) This appointment is subject to your furnishing a good conduct certificate from

your previous employer/employers, if any.

10) This appointment is subject to your making a declaration that you are not a partner or relative of any Director of this Corporation within the meaning of Section 314 of the Companies Act, 1956.

11) You will be required to join the Provident Fund Scheme of the Corporation in accordance with the Provident Fund rules of the Corporation and rules governing the Family Pension Scheme and LIC Group Saving Linked Insurance Scheme.

12) As per the existing rules of the Corporation, a person who has entered into or contracted a marriage with a person having a spouse living or who, having a spouse living, has entered into or contracted a marriage with a person, is not eligible for appointment in the service of the Corporation unless exempted by the Director-in-Charge from operation of this rule, based on adequate justification. This offer of appointment is, therefore, subject to giving a declaration in the enclosed proforma.

13) You shall, if so required, be liable for military service in the IOC (Territorial Army) for a period of 7 years in the Territorial Army Service and 8 years in the Territorial Army Reserve or for such periods as may be laid down in this behalf from time to time.

14) Family related benefits/facilities like medical, leave travel concession, transfer TA etc. would be regulated so as to conform to the small family norm of only one spouse two oldest wholly dependent children.

15) You will superannuate from the service of the Corporation on attaining the age of 58 years.

16) The Corporation reserves the right not to accept the resignation of the employee if circumstances so warrant i.e. if disciplinary proceedings are pending or a decision has been taken by the Competent Authority to issue a charge-sheet to the employee.

17) In case of candidates claiming to be belonging to the Scheduled Caste/Scheduled Tribe/Other Backward Class the appointment is provisional and is subject to the Caste/Tribe/Other Backward Class certificate being verified through the proper channels and if the verification reveals that, the claim to belong to Scheduled Caste, Scheduled Tribe or Other Backward Class as the case may be, is false, the services would be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of the Indian Penal Code for production of false certificates.

18) If the above mentioned terms and conditions are acceptable to you, you are requested to return the attached acceptance letter duly signed signifying your acceptance of the terms and conditions of your appointment alongwith the declaration referred in Clause 12 above, either personally or by registered post so as to reach us on or before 28th December 1995. You are also advised to fill

up the three copies of the Attestation Forms enclosed with this letter and submit these copies duly filled in to the undersigned while reporting to us for medical examination along with the following documents:

- i) All certificates/marksheets/testimonials in original. One set of attested copy of all certificates/marksheets/testimonials (including the HSLC Admit Card).
- ii) Castes Certificate in original (if applicable) along with three attested copies.
- iii) Four copies of recent passport size photograph (black and white) duly attested by a Gazetted Officer and three copies of stamp size coloured photograph.
- iv) Employment Exchange/Zila Sainik Board Registration Card in original along with an attested copy of the same.
- v) Release Certificate and Good Conduct Certificate from your present employer, if any.

Subject to your being found medically fit you should report to the office of the Chief Personnel Manager (ER and S), Indian Oil Corporation Ltd. (Assam Oil Division), Digboi to join your duty.

Yours faithfully, Indian Oil Corporation Limited (Assam oil Division) Sd/- G.C Kalita Chief Personnel Manager (ER and S) For General Manager

Accordingly on 20th December, 1995 the Petitioner went to the office of the Chief Personnel Manager, Indian Oil Corporation to join. That is Annexure-II. Subsequently, on 29th January, 1996 he again went to the office to join, but he was not allowed to join. Hence, this writ application with the prayer as mentioned above.

2. An affidavit-in-opposition has been filed on behalf of the Respondents No. 1 to 4. The stand taken by the Respondents are in paragraph 4 of the affidavit-in-opposition and they are inter alia as follows:

i) that before interview it was a condition precedent that all prospective candidates were required to declare amongst Ors. their educational qualification, marital status, of if any one of his family members are already employed in the company i.e. in the Respondent No. 1 company. It was specifically mentioned in the said declaration form that if any candidate gives wrong information or suppressed any factual information, his candidature/service are liable to be cancelled/terminated without giving any notice or reasons thereof.

The Declaration Form is Annexure-A to the affidavit-in-opposition and the relevant portion of it is quoted below:

iii) whether any member of the family, as defined above, is employed in IOC LTD/AOD:NO

iv) If yes, give name, Regd. No. and date of joining:

I hereby declare that the forgoing information is correct to the best of my knowledge and belief. I have not suppressed any material fact or factual information in the above statement. In case I have given wrong information or suppressed any material fact or factual information, then my candidature/service are liable to be cancelled/terminated without giving any notice or reasons thereof I am aware of any circumstances which might impair my fitness for employment under Government.

Date 31-10-95

(Signature of the Candidate)

On 9th January, 1996 the authority wrote to the Petitioner vide Annexure-B to the affidavit-in-opposition which is as follows:

To

Shri Pramod Chetia Mamoorani Gaon P.O. Mamoorani Dist. Tinsukia

Dear Sir,

Sub: Offer for the post of SWEEPER in the scale of Rs. 2234-40-2514-50-2914-60-3454.

We refer to our letter No. ERS. 2840/3R95 dt. 18th Dec. 95 on the above subject and advise you as under:

It has been found that although you declared your qualification at the time of interview as Class IX passed, you are actually a Matriculate. This was confessed by you at our office on 2.1.96.

Moreover, your brother Shri Tileswar Chetia is employed in the Corporation since 04.03.87. But in the Declaration Form submitted by you, you have suppressed that information and declared that none of your family members is employed in the Corporation.

Since furnishing of false information and/or suppressing of factual information is an offence and renders a candidate unfit for employment under the Corporation, as such our offer of appointment issued to you vide our letter cited above stands cancelled.

Sd/- (G.C. Saikia) Chief Personnel Manager (Era and S)

It is the legality and validity of this letter at Annexure-B which is in challenge.

4. I have heard Mr. P. Roy, learned Advocate for the Petitioner and Mr. S.N. Sarma, learned Senior Advocate for the Respondents assisted by Mr. H.N. Sarma.

5. On 11.6.2002 there was an order directing the Respondents to produce the entire goods with regard to the appointment of the Petitioner including so called policy decision. Mr. Sharma did not produce the records with regard to the appointment of the Petitioner, but produced some photocopies of the records of

the year 1992. The first one is a letter written by the Chief Personnel Manager of the Company to the Deputy Director of Employment, Dibrugarh Zone, Dibrugarh with regard to alleged illegal recruitment criteria adopted by the IOC (AOD), Digboi Management in respect of the Sramik Panel recommended by the Selection Committee in 1990 where inter alia it is mentioned as follows:

There were a number of complaints received from various quarters such as; the Congress(I), the AGP, AASU etc., that although Corporation's recruitment policy is fair, it was biased in a manner that from certain families more than one member was employed whereas, from other family none were employed.

6. On 13th July, 1992 the Joint Director of Employment, Assam, Guwahati issued a circular with regard to the recruitment policy for appointment of Non-Gazetted staff other than school Teachers in Dist and below Dist. level offices and there it is mentioned as follows:

One family one post criteria on the basis of means cum merit to be followed.

This is not a policy decision of the Indian Oil Corporation, but of the government and it cannot be deemed to be a policy decision. Even if it is a policy decision, the question is that whether such a policy decision is applicable in the present situation. The first ground regarding cancellation of the appointment is that the Petitioner is a matriculate. This has been stoutly denied by the learned Advocate for the Petitioner and the learned Counsel for the Respondents failed to produce any document to show that the Petitioner is a Matriculate. So, on this ground the appointment of the Petitioner cannot be cancelled. In the Declaration Form which is annexed as Annexure-A the Petitioner gave the name of the school where he read i.e. Digboi High School with the subjects and it was very easy for the Respondents to produce a certificate from the Headmaster to show that the Petitioner passed Matriculation examination on the date of the interview. Further, the Petitioner produced a school certificate as will be evident from the declaration form and it is mentioned that he was reading upto Class X and did not pass Class X examination. That is available in the column for office use only. Further, in the Declaration Form he has given the family particulars and they are as follows:

1. Sri Rajeswar Chetia - Father
2. Miss Pohili Chetia - Mother
3. Miss Anita Chetia - Sister
4. Miss Rohila Chetia - Sister
5. Sri Deben Chetia - Brother
6. Sri Bogadher Chetia - Brother
7. Sri Lolit Chetia - Brother

In the note to the Family particulars it has been stated that "Family" includes father, mother, spouse and both married and unmarried brOrs. and sisters.

Nothing has been produced by the Respondents to show that Tileswar Chetia is the brother of the Petitioner. The service records of Tileswar Chetia could have been produced by the Respondents to show that he is the brother of the present Petitioner. That also was not done though there was a direction from this Court to produce all the records. So, there is also doubt with regard to that. Further, this matter can be looked at from another angle i.e. whether a wrong declaration made can wipe out the right of the Petitioner to get an employment and that will need cancellation of the appointment of the Petitioner.

7. The learned Counsel for the parties places the following decisions:

Mrs. Neera Mathur Vs. Life Insurance Corporation of India and another, . That was a case of termination of service of a lady employee of LIC. There the Appellant applied for the post of Assistant in the LIC of India. She was successful in the written test and interview. There was a direction to submit a declaration form which she did and submitted to the Corporation on the same day. She was also examined by a lady Doctor and found medically fit for the job. After completion of the training she was given an appointment and she was put up for probation. Thereafter she applied for maternity leave and during the period of her maternity her service was terminated and no ground for discharge was based on some discrepancy in the declaration made by her before joining the service. The declaration form is to filled as mentioned in paragraph 9 of the judgment. In paragraph 10 of the judgment, it was pointed out by the Supreme Court as follows:

It was asserted that the Petitioner had deliberately given in her declaration to the Corporation wrong date of menstruation as April 29, 1989 and she had given her correct date of LMP as April 3, 1989 to Dr. S.K. Gupta. If she had mentioned the correct date of her menstruation in her declaration her appointment would have been deferred as per Rules. It was also contended that the decision to discharge the Petitioner from the service of the Corporation was on 2 grounds) (1) because of a false declaration given by here at the very initial stage of her service; and (2) her work during the period of probation was not satisfactory.

The Supreme Court categorically rejected the first count and allowed the appeal. It was found by the Supreme Court that on the basis of the discrepancy in the declaration there cannot be any termination of service.

S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, . This case is of no help to decide the present controversy. The facts of this case was that a preliminary decree for partition of property was drawn up and the Supreme Court found that decree was drawn up by playing fraud. In this case the Supreme Court in Paragraph 7 laid down the law inter alia as follows:

The Courts of law are meant for imparting justice between the parties. Once who comes to the Court, must come with clean hands. It can be said without hesitation that a person whose case is based on falsehood has no right to approach the Court. He can be summarily thrown out at any stage of the

litigation. A litigant who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party.

Jammu and Kashmir Public Service Commission Vs. Farhat Rasool and Others, . That was a case with regard to recruitment and selection. In that case what happened was that the candidate in his application to the Public Service Commission made a declaration as to having passed the qualifying examination with 5608 marks out of 8000 marks although the result of that examination had not been announced by then. Subsequently, the result was announced and the candidate obtained 5569 marks out of 8000. The candidate participated in the selection and intimated the selection committee of his success before completion of the selection. The Supreme Court pointed out that notwithstanding his success in the qualifying examination, having furnished wrong information as to his eligibility the said candidate will not get any relief against withholding of the result of his selection by the Public Service Commission. The Supreme Court pointed out that this is a case before us where almost a fraud was sought to be played by the Respondent by giving wrong information as to his eligibility. That is not the situation in the case in hand. In the present case the eligibility of the Petitioner is not in doubt.

K.G. Ashok and Others etc. Vs. Kerala Public Service Commission and Others, . The facts of that case are follows:

The Kerala Public Service Commission (for short "the Commission"), by gazette notification dated 2.4.1996 and 11.4.1996, invited applications for a certain number of posts of Junior Health Inspector Grade II in 14 districts in the State. Application could be filed by a candidate in any one of the 14 districts of his choice but if he applied for more than one district his application was liable to be rejected on that ground alone. Similarly, application of a persons is liable to be rejected if he applied for more than one district but had made false declaration in the application form that he had not so applied. The Appellants herein were candidates whose applications had been rejected by the Commission on either of the two said grounds. After unsuccessfully approaching the Kerala High Court, the Appellants contended before the Supreme Court that the restriction on the choice of candidates to one district was violative of equality clause enshrined in Article 14 and 16 of the Constitution, as it took away the right of the candidate for being considered for the posts in other districts. They further submitted that although they had applied in more than one district since the test was conducted in all the districts on one day, they could appear only in one district. That therefore, the said condition should be read down in its application to their cases. Lastly, they submitted that as many of them had crossed the upper age limit and vacancies were available, the Appellants could, without disturbing the already selected candidates, be considered for selection on the basis of their placement in the merit list. The Supreme Court dismissed the appeal and held that the

Government introduced decentralization of recruitment to the lower ministerial cadre in various departments to district level vide G.O. (MS) No. 154/71 dated 27.5.1971 with a view to avoid administrative inconvenience caused by dearth of recruits in such cadres in the northern districts of Kerala. However, if candidates are allowed to apply to more than one districts in response to the same notification, they have to be allowed to appear in the tests to be conducted in different districts on different dates and subsequently, if they find a berth in the ranked list relating to more than one district, they will have to forego appointment in district/districts other than one. This would defeat the very purpose of the said GO and would put the Commission in an embarrassing situation and cause administrative difficulties. Therefore, the candidates are permitted to apply for one district only in one notification.

Though a candidate is prohibited from applying in more than one district, he is free to choose any district of his choice. Here, the right of the candidate is not curtailed as he/she is not prevented from choosing the district. At the same time, if every person is permitted to apply for all districts the number of applications received by the Commission will be 14 times the number of applications now being received with the result that the Commission will be doing a futile exercise of selection work in the other 13 districts, as a candidate can after all accept appointment in only one district. The restriction in question does not tantamount to denial of opportunity to a candidate for applying to any post.

Seeing the conduct of the Appellants in making false declaration and applying in more than one district in contravention of the gazette notification, it is not possible to accede to the last submission of the Appellants even on equitable grounds.

This case also is of no help to the Respondents. The next case is Bongalgaon Refinery and Petrochemicals Ltd. Vs. Samijuddin Ahmed, . That was a case from Assam. In that particular case the Appellant to company recruited the Respondent under the benevolent scheme of employment to candidates whose land had been acquired by the Appellant company. Before joining, it was found by the company that the Respondent had concealed the facts that already two of his brOrs. had been given employment by the company under the scheme. Accordingly the letter of appointment was withdrawn and the joining report was not accepted. The Respondent sought a reference of the matter by raising an industrial dispute. The government refused to make the reference on the ground that the Respondent is not an workman and not actually joined the service. Later on the matter was referred on an order of the High Court. That was challenged by filing a writ application. A single judge quashed the order of reference. However, a Division Bench reversed the order of the Single Judge. There was an appeal before the Supreme Court and the Supreme Court held that the reference was not valid as the Respondent have not entered the employment of the, Appellant. The Supreme Court further pointed out that the Court should not extend its helping hand to non deserving claimant. The reference of dispute is

wholly unwarranted and uncalled for. That was a case where the employment was under some scheme and the employment was available only subject to fulfilment of certain eligibility conditions. The Respondent therein made material concealment of facts and tried to acquire an employment to which he was not entitled to under the scheme. That case is also of no help to the Respondent. Here is a case where the employment was not any scheme. The name of the Petitioner was duly sponsored by the Employment Exchange and he appeared in the written test and in interview and was successful and thereafter his employment was terminated on none existence ground.

8. In that view of the matter, this writ application is allowed. The order of cancellation of employment of the Petitioner shall stand quashed. The Petitioner shall be allowed to join in service in terms of the letter of appointment. No costs.