

(2017) 01 OHC CK 0017

In the Orissa High Court

Case No : 5243 of 1995

Subrat Kumar Behera

APPELLANT

Vs

Indian Oil Corporation Ltd. and others.

RESPONDENT

Date of Decision : 20-01-2017

Acts Referred:

Citation : (2017) 01 OHC CK 0017

Hon'ble Judges : B.R.Sarangi

Bench : SINGLE BENCH

Advocate : J.K. Khuntia, N.C. Sahoo, S.P. Panda

Judgement

1. The petitioner has filed this application seeking for direction to the opposite parties no.1 to 3 to give him appointment in the post of Steno-cum-Typist in Indane Bottling Plant at Balasore pursuant to the select list dated 14.07.1993 (Annexure-4) and to quash the requisition dated 19.07.1995 (Annexure-6) made by the Deputy General Manager-opposite party no.2, for and on behalf of Indian Oil Corporation, to the Employment Officer, District Employment Exchange, Balasore calling for the names of suitable qualified candidates to fill up the posts of Steno-Typist at Balasore Bottling Plant.

2. The factual matrix of the case is that Indian Oil Corporation is a Government of India undertaking, of which Indane Bottling Plant at Balasore is one of its units dealing with marketing division. The petitioner, being a Graduate in Arts and having completed the course of shorthand and typewriting and also experienced in electronic typewriting and word processing in personal computer, registered his name in the District Employment Exchange, Balasore to consider his case for suitable appointment in different organizations. Marketing Division of Indian Oil Corporation Ltd. issued a requisition vide Annexure-1 dated 10.03.1993 to the Employment Officer, District Employment Exchange, Balasore to send a list of 40 suitable General and Scheduled Caste candidates, having requisite qualification and experience as indicated in Annexure-1, by 25.03.1993 for appointment of Steno-Typist. On receipt of the same, on 30.04.1993, the District Employment

Officer, Balasore submitted a list of 40 suitable candidates, having requisite qualification, for test and interview for the post of Steno-Typist. In the said list, the petitioner's name was also sponsored by the Employment Officer and his name was found place at serial no.11. After receipt of the said list of names, the petitioner was issued with call letter to attend the test on 07.06.1993 for test/personal interview. The petitioner along with other candidates appeared on the date fixed and on verification of records and testimonials, the typing and stenography tests were held and lastly personal interview was conducted by the selection committee on the very same day. Finally, opposite party no.1 communicated to the Employment Officer-opposite party no.4 that out of candidates sponsored by the Employment Exchange, the present petitioner was found suitable for appointment by the Corporation on the basis of his interview test and performance and he was kept reserved for future vacancy as per the communication dated 14.07.1993. Thereafter, a requisition was received by the Employment Exchange Officer on 19.07.1995 for filling up of the vacancy of Steno-Typist. As the petitioner's name was empanelled for future vacancy, it is stated that without filling up of the vacancy pursuant to the selection already made, the authority could not have issued a fresh requisition for filling up the very same vacancy.

3. Mr. J.K. Khuntia, learned counsel for the petitioner strenuously urged that pursuant to requisition made by opposite party no.1 when the name of the petitioner was sponsored and his name was indicated in the select list with a condition that in the event any vacancy would arise in future, the same would be filled up by the petitioner, the subsequent requisition made vide Annexure-6 dated 19.07.1995 cannot sustain. It is stated that having adjudged the merits of the petitioner and kept in waiting list, opposite party no.1 could not have gone for a fresh requisition.

4. Mr. N.C. Sahoo, learned counsel appearing for opposite parties no.1 to 3 strenuously urged that even though the petitioner's name appeared in the waiting list, the validity of the said list having been expired, he cannot claim as a matter of right to get the appointment after expiry of the merit list and, as such, no right has been accrued in favour of the petitioner to get appointment because his name was found place in the merit list at one point of time. Therefore, the claim so made in the writ application cannot sustain in the eye of law.

5. Having heard learned counsel for the parties and after going through the records, since pleadings between the parties have been exchange, with the consent of learned counsel for the parties, this matter is being disposed of finally at this stage.

6. The undisputed fact being that due to vacancy available for the post of Steno-Typist, opposite party nos. 1 to 3 issued requisition to the District Employment Exchange, Balasore to sponsor names of 40 candidates having requisite qualification. In response to the same, 40 names were recommended, in which the name of the petitioner was found place at serial no.11. Accordingly, the

petitioner was called upon to appear at the interview and for production of original certificates and he, having been found suitable, was placed in the waiting list subject to availability of future vacancy. This fact was also communicated to the Employment Officer, Balasore by opposite parties no.1 to 3. But, the petitioner claims that even though vacancies were available at the relevant point of time, deliberately and willfully he was given appointment just to accommodate own people of the opposite parties. This is a disputed question of fact, to which this Court expresses no opinion.

7. Admittedly, recruitments of the Corporation are governed by "the Indian Oil Corporation's Recruitment Rules". The relevant part of the said Rules dealing with validity of selection panel and the notification of vacancies is extracted hereunder: "I. Notification of vacancies in respect of workmen category: Rule 10: All vacancies which are to be filled up by outside recruitment in workmen categories shall be notified to:- 10.1: Regional Employment Exchange 10.2: Special Employment Exchange for Physically Handicapped persons in respect of vacancies to which such persons are to be considered for appointment. 10.3: The Refineries and Pipelines Division of the Corporation for their surplus staff, if any; 10.4: Foreign Oil Companies for their surplus/retrenched employees; 10.5: Ex-servicemen's Organisations; and 10.6: Scheduled Castes/Scheduled Tribes Organisations. II. Validity of Panels : Rule-31: The panels shall be valid for a period of two years from the date of their creation. The validity period may be extended or reduced at the discretion of the Appointing Authority for reasons to be recorded in writing." In view of Rule-31, as extracted above, a selection panel is valid for a period of 2 years from the date of its creation, but, however, the validity period may be extended or reduced at the discretion of the appointing authority for reasons to be recorded in writing.

8. From the materials available on record, it appears that the petitioner's name finds place in the select list dated 14.07.1993. The validity of said list was for a period of two years, which expired on 13.07.1995. The fresh requisition was issued on 19.07.1995, after expiry of the said period of two years. The same is in consonance with Rule-31 of the Corporation's Recruitment Rules. Therefore, the validity of the select list having been expired in consonance with Rule-31, the petitioner cannot claim that he should be given appointment on the basis of selection made earlier.

9. In *State of Bihar v. The Secretariat Assistant Successful Examinees' Union*, (1994) 1 SCC 126, the apex Court held that "the empanelment of the candidate in the select list confers no right on the candidates to appointment on account of being so empanelled. At the best it is a condition of eligibility for the purpose of appointment and by itself does not amount to selection nor does it create a vested right to be appointed unless the service rules provide to the contrary."

Similar view has also been taken in *Syndicate Bank v. Shankar Paul*, (1997) 6 SCC 584 : AIR 1997 SC 3091; *Vinodon v. University of Calicut*, (2002) 4 SCC 726 : AIR 2002 SC 1885 and *State of U.P. v. Om Prakash*, (2006) 6 SCC 474:

AIR 2006 SC 3080.

10. As the tenure of the select list has already been expired with the expiry of time, the petitioner cannot claim that he should be appointed on the basis of the selection made pursuant to earlier requisition made by opposite party no.1. In *State of Bihar v. Madan Mohan Singh*, AIR 1994 SC 765 : (1994) Supp.3 SCC 308 the apex Court held: "A select list once made does not exist forever. It gets exhausted on completion of the selection process which was held pursuant to a particular advertisement or invitation."

Similar view has also be taken by the apex Court in *Surinder Singh v. State of Punjab*, (1997) 8 SCC 488.

11. In *Nadia Distt. Primary School Council v. Sristidhar Biswas*, (2007) 12 SCC 779 : AIR 2007 SC 2640 the apex Court held: "If a panel has already exhausted itself by lapse of time, no appointment from such panel is to be made."

12. In *Deepa Keyes v. Kerala SEB*, (2007) 6 SCC 194 the apex Court held: "Appointment from a ranked list by extending its life after it expired is not permissible."

13. In view of the law laid down by the apex Court, merely because the petitioner's name finds place in the select list, he cannot have a right to be appointed. Further the existence of vacancy does not give a legal right to the petitioner for appointment and, as such, no mandamus can be issued to give such appointment on the basis of the fact that the petitioner's name finds place in the select list.

14. In paragraph-10 of the counter affidavit opposite parties no.1 to 3 have categorically stated as follows:- "10. It is stated that the petitioner's name although appeared in the panel, such panel as per the rule of the opposite party no.1 was valid for two years. Since the appointment could not be made by the opposite party no.1 within a period of two years, the panel lapsed as a result of which the employment exchange had to be requisitioned for sending of fresh names for being considered for making panel for the post of steno typist. It is stated that in the requisition to be Employment Exchange it was specifically mentioned that the requisition was made for anticipated vacancy and there was no existing vacancy as such. It is submitted that the panel in which the petitioner appeared was approved on 12.6.1993 hence the said panel was expired on 11.06.1995 as per the relevant rules of the Company."

15. As it appears from the order-sheet, though this Court on 14.08.1998 passed an interim order that one post of Steno9 Typist may not be filled up without leave of this Court, by that time the validity of the list had already expired. In the meantime, more than 20 years have lapsed. Therefore, by efflux of time, since no right has been accrued in favour of the petitioner, this Court is of the considered view that the claim made by the petitioner to get appointment cannot sustain in the eye of law.

16. In view of the aforesaid facts and circumstances, this Court is of the considered view that, since no right has been accrued in favour of the petitioner on the basis of his name being found place in the select list, this Court is not inclined to issue any direction for giving appointment to the petitioner in the post of Steno-Typist.

17. Accordingly, the writ application merits no consideration and the same is hereby dismissed. No order as to cost.