

(1985) 09 CAL CK 0015

Calcutta High Court

Case No: Tender No. 1608 of 1983

Amiya Ranjan Maity

APPELLANT

Vs

Managing Director, Indian Oil
Corpn. Ltd. and Others

RESPONDENT

Date of Decision: Sept. 4, 1985

Acts Referred:

- Constitution of India, 1950 - Article 14, 16

Citation: 90 CWN 653

Hon'ble Judges: S.K. Mookherjee, J; A.K. Sen, J

Bench: Division Bench

Advocate: Somnath Chatterjee, Pranab Kr. Chattopadhyay and Bijon Majumdar, for the Appellant; Dipankar Prasad Gupta, Tarun Kr. Bose and Sudhangshu Sil for Respondent Nos. 1 to 3, for the Respondent

Judgement

A.K. Sen, J.

In this appeal under Clause 15 of the Letters Patent appellant is the Writ petitioner and the order impugned is one dated February 2, 1984 passed by a learned single Judge of this Court in C.O. No. 11110(W) of 1982. By consent of parties while hearing the application for stay filed in the appeal we have heard out the appeal as well by dispensing with other formalities since all the necessary parties are now appearing before us. On July 14, 1981 the respondent Indian Oil Corporation Ltd. notified to the Officer-in-charge, Project Employment Exchange nine vacancies for the posts of Technician Grade IV in the trade of Rigger, and Welder. This notification made it clear that the requisite qualification for eligibility for the post shall be that the candidate must be literate preferably up to Class VII with minimum experience of three years in the line" and should have knowledge with regard to certain specified trade. The obvious object of notifying the vacancies is to enable the Employment Exchange to sponsor appropriate candidates borne on their panel for consideration for such appointment. There is no dispute that the employment exchange

sponsored a number of candidates possessing the requisite qualification and experience including the Writ petitioner.

2. It is further not in dispute that the management of Indian Oil Corporation Ltd. entered into a negotiation with the Employees' Union which ended in a tripartite agreement on November 15, 1981 under this agreement the departmental employees possessing the requisite qualification would be entitled to offer themselves for appointment to such posts of Technicians Grade IV. It is necessary that we should quote the relevant clause in the agreement which reads as follows:

Section of Riggers Since ITI Trade Certificates is not available for Rigger Trade and there might be Shramiks with requisite experience in the Refinery, it is agreed by and between the parties that the posts of Rigger in Technicians Grade IV will be filled up by the selection from amongst shramiks provided they are found suitable in the tests and possess requisite experience certificates. In case no suitable candidates within the Refinery is available the management will have the right to select candidates from outside.

3. The requisite experience certificate referred to in this Clause of the tripartite agreement obviously means three years minimum experience which was a part of the qualification laid down by the circular dated July 14, 1981 as a qualification for the candidates eligible to apply for the post of technicians Grade IV. This point was made clear by the Indian Oil Corporation when they issued the circular on November 17, 1981 to the effect as follows:

We are having a few vacancies of technician Grade IV (Rigger) in the scale of Rs. 360-11-481-13-624/- which are intended to be filled in from amongst the suitable departmental candidates. The requisite qualification and experience for the aforesaid post is mentioned below:

Qualification - Must be literate preferably up to Class VII.

Experience - Minimum three years experience in the line and should have knowledge of the following:

Interested departmental candidates may send their application through proper channel along with the requisite experience certificate to the undersigned by 7.12.81 being the last date for the receipt of the application.

4. It is not in dispute that as a result of notifications (1) to the Employment Exchange and (2) the other in the department, both departmental candidates and candidates sponsored by the Employment Exchange were called at an interview for selection. Under the tripartite agreement the existing nine vacancies were to be filled up first by the available suitable departmental candidates and to the extent such candidates are not available the candidates sponsored by the employment exchange.

5. On April 22, 1982 the selection test was held. It is not in dispute that by this selection test the authorities constituted a panel of nine candidates, first six out of the departmental candidates and last three from the candidates sponsored by the employment exchange. It is also not in dispute that the present Writ Petitioner was one of those fortunate three candidates sponsored by the employment exchange who having qualified in the selection test was empanelled as one amongst the nine for appointment to the nine vacancies.

6. It is also not in dispute that out of the empanelled nine candidates as above, eight of the candidates were given appointment including the six from the department and two from the employment exchange. But before ninth vacancy could be filled up by appointing the writ petitioner, it appears that the employees' union intervened and objected to any such appointment being offered to the writ petitioner. Reasons are not known but it appears to us that the Union wanted to claim that none except the departmental candidates should be given any such appointment.

7. In that background it appears to us that the management of the Indian Oil Corporation issued a circular on April 22, 1982, relaxing the qualification required for appointment to such post of technicians. The relaxation made was to the effect that although the minimum experience should be three years experience as required earlier that may be relaxed to the extent of one year for departmental candidates who have completed 5 or more years of service as Shramiks and have assisted the Rigger in their course of duties. Having made such relaxation, the Corporation invited further applications from interested departmental candidates with the appropriate experience certificate for being appointed as technicians by 29.4.82. It appears to us that the one post of technician which was to be filled up on the earlier selection was really withdrawn and fresh applications were invited from departmental candidates on the basis of such relaxed qualification. No reason, whatsoever, was given as to why one amongst the nine poets was so taken out of the previous selection. The writ petitioner, a poor unemployed young man., who having qualified himself on the existing "qualification and experience at the selection test was otherwise entitled to get an appointment, was denied the appointment by that subsequent move on the part of. the management "of the Indian Oil Corporation at the behest of the Employees" Union" Feeling aggrieved he moved a writ petition before this Court which was registered as C.O. 11110 (W) of 1982. This application was disposed of by the learned Single Judge on December 7, 1982 with the following direction:

Having regard to the fact that the parties concerned have agreed to the order, which I propose to pass, I need not go into the details of this cases. I accordingly pass the following order.

I.O.C. authorities is directed to negotiate with the registered trade union for the appointment of the petitioner to the post concerned. Meanwhile, the authorities are

also directed to proceed with the process of selection to such post in accordance with clause "D" of the tripartite settlement, signed on 15.11.81 and produced on behalf of I.O.C. authorities. Such process of negotiation with the union and process of selection in accordance with clause "D" of the tripartite settlement be done within two months from this date. If within that period, registered union can be persuaded to the appointment of the petitioner to such post then the I.O.C. authorities will appoint the petitioner as such. If the registered union does not agree, then I.O.C. shall be entitled to appoint any person qualified and coming within clause "D" of the tripartite settlement. It is further directed that if the process of selection is not completed in accordance with clause "D" of the tripartite settlement and persons coming under said category are not appointed within two months from date, I.O.C. authorities, immediately after expiry of such two months would issue relevant order for appointment of the petitioner.

This application is thus disposed of. It is recorded that I have not decided herein if the petitioner has any legal right because it is not necessary for me to go into that in view of the order passed by me. Liberty to mention.

8. When the matter went back, the Employees' Union by their correspondence dated December 18, 1982 refused to give consent to any appointment being offered to the petitioner and the Corporation accordingly issued a fresh notification on December 20, 1982, inviting applications from departmental candidates for filling up the post of a technician Grade IV obviously meaning the post which in the normal course would have been given to the writ petitioner on the basis of the previous selection. Since the parties had liberty to mention the writ petitioner filed a fresh application before the learned trial Judge on January 17, 1983, for an appropriate direction upon the Corporation to fill in the dispute vacancy on the basis of the qualification specified in their circular dated February 27, 1981. This application, however, was dismissed by the learned trial judge not on merits but only because the earlier order passed by the learned Single Judge on December 7, 1982, was a consent order. Feeling aggrieved the writ petitioner has now preferred the present appeal.

9. Before we proceed to consider the claim of the writ petitioner on merits we should make it clear that the learned trial judge did not go into the merits or decide the claim of the writ petitioner on its merits either when the order dated December 7, 1982, was passed or when the order now impugned in the present appeal viz., the one dated February 2, 1982, was passed. It is really unfortunate that the case made out by the petitioner was not decided on its merits though the case so made out deserved serious consideration. He was a victim of the circumstances and was unreasonably singled out for denying him the benefit of a selection in which he qualified himself with others. We have heard Mr. Chatterjee in support of this appeal and we have heard Mr. Gupta appearing for the Indian Oil Corporation Ltd. Mr. Gupta appearing on behalf of the Indian Oil Corporation has taken an objection.

that since the main dispute had earlier been disposed of by the learned single judge by a consent order dated December 7, 1982, the subsequent order dismissing the subsequent application was well justified and no appeal lies to this Court against such a consent order. We would consider this objection of Mr. Gupta after we consider the claim of the petitioner on its merits.

10. Proceeding to consider the merits we are of opinion that the writ petition has made out a clear case of violation of a departmental right guaranteed under Articles 14 and 16 of the constitution. On the facts set out hereinbefore, there can be no dispute that at all relevant times when the nine vacancies occurred, the applications were invited and the selection was held or; April 22, 1982, the requisite qualification included a minimum experience of three years which was not relaxable. On such qualification candidates both departmental and those sponsored by the employment exchange including the writ petitioner were put up before the Selection Board. Selection was made and nine candidates found eligible for appointment were empanelled. Petitioner was one amongst the nine. By such selection the petitioner might not have acquired a right to a post, but he did acquire a right to be dealt with fairly for obtaining the benefit of such selection and also to be dealt with in equal terms with others, similarly selected. His right to the benefit of the selection can be taken away on reasonable grounds and without any unfair discrimination. But what happened was just otherwise. While eight others got the appointment, he was denied the appointment only because the Employees' Union would not agree to his appointment. The existing vacancy was snatched away from him and thrown open for being filled up on the basis of relaxed qualification, which relaxation came in later. This is neither fair nor based on any reason apart from being discriminatory. No reasons have been given in support of such an action except reference being made to tripartite agreement with the Union. We have set out the clause of the agreement which was based on existing qualification. The disputed selection wherein the petitioner got himself selected was held strictly in terms of the settlement and not in violation thereof. In any event when nine candidates got selected therein, there is no reason why the petitioner alone should be singled out for denying him the benefit of such selection. One amongst the nine vacancies cannot be withdrawn after the selection for being offered to departmental candidates on subsequently relaxed qualification. In our opinion mere fact that the employees union objected to an appointment being given to the petitioner could not constitute a valid or reasonable ground when the authorities held the selection in accordance with the Rules and the agreement as in force on the date of selection. Having held the selection on that basis to deny one of the eligible candidates who could qualify himself for an appointment on such selection, in our opinion is a discriminatory act on the part of the Corporation which violates the fundamental rights of equality under Articles 14 and 16 of the Constitution. This brings the case well within the writ jurisdiction of this Court as held by the Supreme Court in the case of Fertiliser Corporation Karmachari Union, Sindri v. Union of India, AIR 1981

S.C. 344, when dealing with scope of interference by the court in writ jurisdiction in similar situation it was observed "If the directorate of a Government Company, has acted fairly, even, if it has" faltered in his wisdom the court cannot, as superior auditor, take the Board of Directors to task. This_ Function is limited to resting whether the administrative action has been, fair and free from the taints of unreasonableness and has substantially, complied with the norms of procedure set for it by rules of public administration." That being the position: in our opinion the writ petition should have succeeded and the writ petitioner should have been granted the relief prayed for in the writ application.

11. Now we propose to dispose of the objection; raised by Mr. Gupta. In our view the simple answer to the" point "thus raised by Mr. Gupta is that when the writ petition makes out a case of breach of fundamental right arid when such a right is not negotiable, no amount of consent can stop the petitioner from claiming enforcement thereof. Hence the order dated December 7, 1982, even if it be considered to be really an order on consent on which point we have our own doubts cannot debar the petitioner from claiming the relief prayed. The appeal, therefore, succeeds and the order dated February 2, 1984", being set aside we hold and direct that the petitioner is entitled to the relief claimed in the writ petition. This relief has to be adjusted in an appropriate manner because in the meantime the Corporation had filled up the said vacancy which is claimed by the petitioner by the subsequent selection held on the basis of notification dated January 17, 1983. Taking into consideration the subsequent fact we dispose of the wart petition by directing issue of a writ in the nature of mandamus directing the Corporation to fill in the next vacancy of technician Grade IV (Rigger) by offering that appointment to the writ petitioner on the basis of his selection dated April 22, 1982. When so appointed his service will count from the date the eighth candidate on that selection was given an appointment for all purposes other than payment of salary and he will not be entitled to the salary from the said date of his appointment There will be no order as to costs.

S.K. Mookerjee, J.

I agree.