

Dr. Vidhi Sundli Vs Oil And Natural Gas Corporation Ltd. And Others

Court: Uttarakhand High Court

Date of Decision: Nov. 12, 2018

Acts Referred: Industrial Disputes Act, 1947 " Section 25(T)
 Constitution of India, 1950 " Article 14, 16, 226

Hon'ble Judges: Rajiv Sharma, J; Sharad Kumar Sharma, J

Bench: Division Bench

Advocate: M.C. Pant, S.K. Jain, Dinesh Gahtori

Final Decision: Allowed

Judgement

Sharad Sharma, J

1. The petitioner of the present Writ Petition has filed the Writ Petition for the following reliefs:

“ (i) Issue a writ, rule or direction in the nature of certiorarified mandamus directing the respondents to grant the benefit of pay at par to the

similarly situated permanent employees in view of the law laid down by the Apex Court in the case of State of Punjab vs. Jagjit Singh and as per MCI

norms keeping in view the facts highlighted in the body of the petition along with all consequential benefits to quash the impugned advertisement along

with its effect and operation also after calling the entire records from the respondents.

(ii) Issue writ, rule or direction in nature of the certiorarifiedmandamus quashing the impugned advertisement, keeping in view the facts highlighted in

the body of the petition and further to correct the record of the respondents by quashing the terms of contractual employee and to declare the same as

substantive and permanent with all consequential benefits. Further to declare the act of the respondent as unfair in view the facts highlighted in the

body of the petition and also direct the respondents to prepare a scheme for absorption of the petitioner in regular employment before making any

steps for filling up the posts and position occupied by the petitioner from open market.

(iii) Issue any other writ, rule or direction, which this Hon’ble Court may deem fit and proper in the circumstances of the case.

(iv) Award cost of petition.

2. The contention of the petitioner in the Writ Petition has been that ONGC, which happens to be one of the premier institutions of the Government of

India has been declared as to be a Maha Ratan, Company and it is a creation of the statute and would be amenable to the writ jurisdiction under

Article 226 of the Constitution of India. The case of the petitioner in the petition is that the Oil and Natural Gas Commission engages almost more than

ten thousand employees in various sectors of its functioning and, as per the law, any organization which is engaging a sufficient number of employees

is required to have medical facilities available to be provided to its employees. For meeting the aforesaid objective, the respondent for the purposes of

the welfare of its employees has a Multi Specialty Hospital, which also stands recognized by the Medical Council of India as per the norms settled by

it. Consequently, for providing better medical services, respondents require the engagement of Doctors and Para Medical Staff. It has to ensure that

sufficient staff and other facilities are made available to cater the requirement. In the hospitals thus run and managed by the ONGC, it entails the

engagement of full time permanent medical officers for general and emergency duties. In most of the cases the recruitment of the medical officers

are made as against the permanent posts, which stands duly sanctioned by the Management of the respondents. The respondents had issued an

advertisement No. 1/2015, where, by virtue of the said advertisement, the Oil and Natural Gas Commission had invited the applications by way of

walk-in-interview for appointment as Medical Officers/ Doctors on contractual basis upto 30.06.2016.

3. The interview, in pursuance of the said selection process, was scheduled to be held on 29.05.2015. The other essential requirements pertaining to

the number of posts against which the appointment is to be made, the qualifications required were self-contained in the advertisement No. 1 of 2015.

However, the said advertisement provided that the appointment of the Doctors thus made on the conclusion of the interview, it would be on

contractual basis ending for a period on 30.06.2016. The qualification, with which, we are concerned at this stage, pertaining to the post against which

the petitioner applied is as under:

“MD (Medicine) with valid registration Experience desirable”.

4. The petitioner, in her application form, has submitted that she did her M.D. (Physician) from the SMOLENSK State Medical Academy, Russian

Federation, and according to the pleading, she has submitted that the medical qualification, which she has acquired from abroad was a qualification,

which was equivalent to the M.B.B.S., which is also a recognized medical qualification in India as per the settled guidelines of the Medical Council of

India. After completion of the aforesaid qualification in Russia, she came back to India and has also qualified the M.C.I. Examination, required to be

undergone by the doctors, who had qualified their examination from a foreign country and, ultimately, the petitioner was registered under the Medical

Council of India, as a medical practitioner on 17.04.2010 and certificate of Medical Council of India was issued on 08.12.2011. While applying in

pursuance of the advertisement No. 1/2015, the petitioner had submitted the certificate including the certificate of passing a "National Examination

Board (Health and Family Welfare Ministry, Government of India) exams for the purposes of getting equivalence with M.B.B.S. and she submitted

a registration from the Medical Council as a medical practitioner on 17.04.2010 and a certificate in this regard, was issued by the Medical Council on

8.12.2011.

5. Under the strength of the aforesaid qualifications, which she possessed, the petitioner was initially appointed in Ram Manohar Lohia Hospital, New

Delhi, as would be apparent from her certificate of experience, showing her tenure of appointment as to be an interim appointment. She has also

annexed a certificate dated 31.01.2011 showing her experience having worked in the Community Health Center Loni, Ghaziabad as an intern and,

henceforth, various such other certificates. The petitioner qualified the interview and she was granted an appointment as General Duty Medical

Officer (GDMO), though on a contractual basis on 04.08.2015, on a consolidated monthly honorarium of Rs.55,000/- and as per the covenants of the

said office memorandum of appointment No. 52/35/2014/Estt., the said appointment was to continue till 30.06.2016. The respondents had issued yet

another advertisement for graduate trainees at even level, which was numbered as Advertisement No. 03/2015 (R&P) for making recruitment at

various units/departments for the even level of engineering, Geo Science as well as Medical Officers.

6. The petitioner applied, she took part in the written test held on 10.05.2015 and qualified in the written examination. She was called for interview,

which was held on 29.06.2015. The petitioner was appointed and she continued to function.

7. The respondents issued the third advertisement in continuation thereto, being advertisement No. 3/2016, for making "contractual engagement of

Doctors", by way of walk in interview, which was to continue till 30.06.2018 on a consolidated salary of Rs.50,000/- per month. What is relevant was

that in the advertisement No.3 of 2016, the qualification provided was as the one given in the earlier advertisement of 2015. The fact that qualification

was same has not been denied in the counter affidavit filed by the respondents.

8. Since the advertisement thus issued on 30.06.2016, it was yet again walk-in-interview. The petitioner applied. She was selected and was appointed

on a contractual basis and held post of Medical Officer emergency duty since 2016, till date of issuance of the impugned advertisement.

9. What has been referred above, it shows that according to the case of the respondents themselves, they were required to cater the permanent

medical need of their employees and that is why they had been consistently appointing medical officers for the said purpose, by issuing advertisement,

though advertisements being in the nature of contractual appointment, it could not be ruled out that respondents avoided to make regular appointment,

though posts were available. No doubt, about the fact that the advertisement did have an intention of making a contractual appointment, but the mode

adopted for making a contractual appointment should not be taken as to be a mode to avoid a regular recruitment process as it deprives the incumbent

of the opportunity of regular service benefits, which otherwise he or she would have been entitled, hence, the respondent cannot take the advantage of

their own inaction of not making regular appointment and continuing contractual appointments, thereby, unduly benefiting themselves.

10. The respondent had issued yet another advertisement after the expiry of the term of appointment, i.e. 30.06.2018, where in the impugned

advertisement, which has been issued by the respondent, being Advertisement No. R&P-01/2018 for appointments upto 30.06.2020. They had

changed the criteria/qualification for appointment as a medical officer than that what was provided in the advertisement of 2017. In the advertisement

in Annexure-9 its column provided the qualification as to be the MBBS. This qualification was almost common in all the advertisements since 2015, till

the issuance of the impugned advertisement, except for the bar of qualification as provided under Clauses 9 and 12 (A).

11. In the advertisement thus issued they had imposed a bar that the medical graduates who have completed their qualification from a foreign country

would not be eligible to participate in the selection. Clauses 9 and 12 (A) read as under :-

“9. The qualification for the above posts should be from recognized University / Institution.

12. Medical facilities :

A) In-house OPD facility where ONGC hospitals /dispensaries exist in respect of self, spouse & two immediate dependents i.e. children and / or

parents. However, outside reference for medicine / consultation shall not be permissible and B) ..

It is this clause, which has been included in the advertisement necessitated for the petitioner to put to challenge the advertisement itself being

advertisement No. 01/18 (R & P).

12. The argument of the learned counsel for the petitioner is that the additional clause as added for the first time in the advertisement debarring the

foreign medical graduates like that petitioner from participating in the process of selection for the post of Medical Officers would be arbitrary for the

reason that atleast those Medical Officers, who were working and who had participated in the selection in the earlier advertisement ought not to be

debarred for the selection by ensuing advertisement of 2018 because, it would be arbitrary in the sense that those Medical Officers who have been

treated qualified and have bonafidely worked as per the criteria of selection laid down by the respondents themselves, ought not to be altered and if at

all it is required to be altered, it could only be debarring the candidates with prospective effect.

13. Another fact, which has been reflected from the proceedings is that with the same set of qualification which the petitioner possess, she was called

to participate in selection and permitted to participate in the selection process for the permanent post of medical officers in which she has qualified the

written test as well as the interview, but, the same was not concluded and she was later called upon for contractual appointment, which was floated in

2016.

14. The action of ONGC in restricting the appointment of medical officers, who had acquired their qualification from a foreign country would be

arbitrary and in violation of Articles 14 & 16 of the Constitution of India, the reason being that, the qualification acquired from a foreign country since

has been put at par with the qualification of MBBS as prevalent in India due to the qualifying examination called as National Examination Board

(Health and Family Welfare, Ministry of Government of India), held by the Medical Council of India and also due to the fact that after completion of

the medical qualification acquired in foreign country, the petitioner got himself registered with the Medical Council of India on 17.04.2010, that in itself,

will put her in parance with the medical qualification of the country and she would be entitled to be considered for the selection process in pursuance

of the advertisement in question. She ought not be ousted merely because she done her medical qualification from a foreign country. More particularly,

when the same has been earlier treated as equivalent by the respondents and by other premier medical institutions / hospitals of the Country.

15. At this stage, the argument of the learned Senior Advocate Mr. S.K. Jain appearing for ONGC is that it is always the choice of the employer to

impose restrictions in the appointment by changing the qualification criteria and if the ONGC has imposed a restriction that a candidate having a

degree from a foreign country would be debarred from participating in the selection. It will not be arbitrary because it is always the choice of the

employer to lay down the parameters and atleast the candidate applying cannot force that a specific qualification, which he or she holds, should also be

included in the advertisement, so as to make him or her eligible to participate.

16. This argument of the learned counsel may not be tenable for the reason that:

(i) Because for the same set of qualification, the petitioner was appointed by the respondent themselves in the year 2015.

(ii) With the passage of time or by the time subsequent selection is held, the professional acumen will not retard of a candidate.

(iii) She has continued to work as a Medical Officer with the same qualification, since then till issuance of the impugned advertisement for

appointment on contractual basis.

(iv) The qualification acquired by the petitioner from a foreign country, i.e. Russia, it is not the case that she was having a qualification from a foreign

nation which was not compatible to the qualification of the country, i.e. M.B.B.S..

(v) Because she has a valid registration from Medical Council of India and also is a holder of Certificate of Practice issued in her favour after

qualifying the exam held by the Ministry of Govt. of India.

(vi) Even otherwise also, since the qualification of the petitioner from a foreign country stood recognized by the Medical Council of India, which has

given it equivalence, no distinction could be drawn to make her ineligible to participate in the selection, for same post, on which, she stood appointed by

the respondents themselves with the same qualification.

17. The fact that she was registered with the Medical Council of India as a medical practitioner, would entitled her to participate in the selection in

question, as the same entitled her to practice the medical profession by the certificate issued on 08.12.2011.

18. For the aforesaid reasons, the argument as extended by the learned senior counsel is not acceptable by this Court. This Court is of the view that

the intention of the Oil and Natural Gas Commission by imposing such arbitrary restrictions is rather a camouflage, which is being adopted by the

ONGC for the purposes of replacing a contractual employee with another, solely intended not to enable a contractual employee qualified, already

appointed and has worked for considerable time to any how mature his or her right for a regular appointment. Even otherwise, under service

jurisprudence, the contractual appointment ought to be adopted only to meet a certain contingency and it should not be adopted as a mode to avoid

regular appointment so as to amount to be unfair labour practice, taking regular work from contractual employees, taking advantage of the

unemployment scenario of the country and depriving them of regular service benefit as laid down by the Hon'ble Apex Court in Jagjit Singh's

case.

19. On considering the rival contentions, it cannot be ruled out that though the respondents being one of the premiere organizations ought to be fair

enough with the employees and should have also protected their rights of equal pay for equal work as per the stipulations contained under the Equal

Remuneration Act and the constitutional mandate and, more particularly, considering the fact that the petitioner has already completed three

years of service with the respondents and with the passage of time, she might have rendered herself to be ineligible to get an appointment in any

other Government Organization.

20. The action of the respondents has also to be scrutinized from the constitutional mandate that an employer in particular when it happens to be a

State Agency, it has had to act as a model employer by protecting the constitutional intention of providing a job security, assurance and of curbing the

arbitrariness of uncertainty by providing an equivalence in the conditions of appointment and remuneration. Atleast an employer, which happens to be

a Government Organization, has to ensure that once there exists a regular vacancy, it should make a regular appointment, so that there may be a

sense of job assurance and conformity in serving the employer, providing an assurance to strike for excellence in discharging service within anticipated

upgradation and continuation in the job.

21. This is the ratio which has been propounded by the Hon'ble Apex Court in the judgment of the State of Punjab vs. Jagjit Singh and

Others as well as in the ratio laid down in the judgment reported in 2014 (11) SCC 1989 so as to attach fairness in State's action.

22. The basic concept of the democracy and equality, it also imbibes within it an establishment of cordial master and servant relationship, and

simultaneously the said concept has also to ensure a job certainty. This philosophy does not mean that either of the two limbs of service, i.e. master

and servant, they can act according to their whims and fancies. Their act and action has to be regulated by certain specified recognized norms, quite

obviously, the test of their functioning has to be with a sense of reasonableness and there has to be a distinction drawn between the fairness of actions

of the employer as well as of the employee and that is why it has also been held out that right of a servant working with a employer it has to be taken

as to be his personal right to ensure a job certainty. The instant action of ousting the petitioner because of the changed qualification would render her

jobless and also opportunity less for any other employment.

23. The argument of learned counsel for the petitioner is that the action of respondent in debarring the candidates having qualification from a foreign

country is discriminatory because in other centers of respondents, i.e. ONGC Assam, ONGC Mumbai and ONGC Chennai, in the recent

advertisements, have permitted foreign medical graduates, having equivalent qualification of M.B.B.S. as per the guidelines of MCI, but, they have

debarred the same from the ONGC, Dehradun centre. Thus, the condition no. IV in the advertisement "qualification equivalent to the one

prescribed in this advertisement including qualifications acquired from a foreign University will not be accepted is without any rationale and

arbitrary. This fact about the qualification not being debarred in other centers is not disputed in the counter affidavit.

24. The mode adopted by the respondent would also amount to be an unfair labour practice as contemplated under Section 25(T) of the Industrial

Disputes Act, and also according to the employment standing orders, which provides that in industrial establishment within the purview of which the

ONGC would fall, they have to treat its employees in a manner that it does not render them in a precarious situation as the case at hand.

25. For the reasons aforesaid, the Writ Petition is allowed in terms of the reliefs claimed. A Writ of mandamus is issued to the respondents to pay the

regular salary as payable to a regular permanent employee of the cadre of the petitioner in the light of the principles laid down by the Hon'ble

Apex Court in the judgment rendered by the State of Punjab vs. Jagjit Singh & Others.

26. Further, writ of mandamus is issued to the respondent to consider granting the regular status to the petitioner after considering the qualification,

which she possess, which has been recognized by the Medical Council or in an alternative to consider his candidature for an appointment as Medical

Officer on the basis of a qualification, which she possessed without creating a bar or treating her to be disqualified, merely because, she has got a

medical qualification from a foreign country. However, there would be no order as to cost.