



GAHC010259352018

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/8101/2018

DEBOJIT SAIKIA
S/O SHRI PUTUL SAIKIA
R/O BORBIL NO. 1 JYOTINAGAR, DIGBOI
DIST. TINSUKIA, ASSAM, PIN - 786171.

VERSUS

THE INDIAN OIL CORPORATION LTD AND 3 ORS.
(REFINERY DIVISION)
BONGAIGAON REFINERY, P.O. DHALIGAON,
DIST. CHIRANG, ASSAM, PIN - 783385, REP. BY THE MANAGING
DIRECTOR.

2:THE GENERAL MANAGER

(HR) AND CPIO
THE INDIAN OIL CORPORATION LTD.
(REFINERY DIVISION)

BONGAIGAON
REFINERY
P.O. DHALIGAON

DIST. CHIRANG
ASSAM- 783385

3:THE HUMAN RESOURCE OFFICER

THE INDIAN OIL CORPORATION LTD. (REFINERY DIVISION)

BONGAIGAON REFINERY
P.O. DHALIGAON



DIST. CHIRANG
ASSAM- 783385

4:SHRI SURAJ PRATIM DAS
S/O SHRI TANGKARESH DAS
R/O BONGAIGAON REFINERY TOWNSHIP
QTR. NO. BP 530/A
P.O. DHALIGAON
DIST. CHIRANG
ASSAM- 783385

Advocate for the Petitioner : MR. M SARMA

Advocate for the Respondent : SC, I O C

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri M. Sarma, Adv.

Advocates for the respondent : Shri KN Choudhury, Sr. Adv.
Ms. RR Kakati, Adv. - IOC-BR
Shri AK Bhattacharyya, Sr. Adv.
Shri DK Bhattacharyya, Adv. R-4.

Dates of hearing : **04.04.2024 and 26.04.2024**

Date of Judgment : **30.04.2024**

JUDGMENT & ORDER

The selection and appointment of the respondent no. 4 to the post of Junior Engineering Assistant – IV (Fire and Safety) in the Indian Oil Corporation Ltd., Bongaigaon Refinery and the rejection of the petitioner for the said post is the primary subject matter of challenge in the present writ petition.

2. Before going to the issue which has arisen for determination, the facts of



the case, as projected in the petition, may be narrated briefly.

3. An advertisement was published on 17.02.2018 for filling up of various posts including the post of Junior Engineering Assistant – IV (Fire and Safety) in the Indian Oil Corporation Ltd., Bongaigaon Refinery (hereinafter IOC-BR). In response to the same, the petitioner, the respondent no. 4 and other candidates had participated. In the written test, the petitioner with Roll No. 107008 and the respondent no. 4 with Roll No. 107018 were declared successful and on 03.05.2018, the physical / proficiency tests were held. It is contended that while the petitioner had passed in all the segments, the respondent no. 4 had failed in the driving test. However, in the select list dated 21.05.2018, the respondent no. 4 was held to be selected. The petitioner could gather that he had secured highest marks in the written test and though information was sought to be obtained under the RTI Act, the marks were not provided. Accordingly, the writ petition has been filed with the following relief:

“In the premises aforesaid, the Petitioner prays that your Lordships may be pleased to call for the records of the case including the selection process, issue a Rule calling upon the Respondents to show cause as to why a Writ in the nature of Certiorari or a Writ of like nature should not be issued to set aside and quash the impugned Select List dated 21.05.2018 issued by the Respondent Authorities selecting the Respondent No. 4 to the post of Junior Engineering Assistant – IV (Fire & Safety) (Annexure-V) and/or as to why a Writ in the nature of Certiorari or a Writ of like nature should not be issued to set aside and quash the impugned selection and appointment of the Respondent no. 4 to the post of Junior Engineering Assistant – IV (Fire & Safety), Indian Oil Corporation Ltd., Bongaigaon Refinery and/or as to why a Writ in the nature of Mandamus or a Writ of



-AND-

4. I have heard Shri M. Sarma, learned counsel for the petitioner. I have also heard Shri KN Choudhury, learned Senior Counsel assisted by Ms. RR Kakati, learned counsel for the respondent nos. 1, 2 and 3 - IOC-BR and Shri AK Bhattacharyya, learned Senior Counsel assisted by Shri DK Bhattacharyya, learned counsel for the respondent no. 4. Ms. Kakati, learned counsel for the IOC-BR has also produced the records pertaining to the selection in original.

5. Shri Sarma, learned counsel for the petitioner has submitted that the

petitioner is a Diploma holder and is duly qualified for the post in question. By referring to the advertisement dated 17.02.2018, he submits that the selection methodology is in Sl. No. "J". As per the same, the selection was to be comprised with a written test and a Skill – Proficiency / Physical Test (SPPT) which would be of a qualifying nature and a candidate would be required to secure minimum 40% marks in the written test. Pursuant to the candidature offered, the petitioner was issued a call letter dated 19.03.2018 and on 25.03.2018, the written test was held in which the petitioner along with the respondent no. 4 were held to be qualified in the same. Both the incumbents had accordingly participated in the SPPT held on 03.05.2018. However, in the select list published on 21.05.2018, the respondent no. 4 was held to be selected for the post concerned. It is submitted that getting certain information from reliable source that the petitioner had secured more marks and the respondent no. 4 in the written test, the petitioner, through his sister had made an RTI application on 25.07.2018. However, no disclosure were made in the reply dated 20.08.2018 on vague grounds. Shri Sarma, learned counsel for the petitioner has emphatically asserted that the petitioner got highest marks in the written test and therefore, the respondent no. 4 could not have been appointed and it is the petitioner who was required to be appointed.

6. *Per contra*, Shri KN Choudhury, learned Senior Counsel for the IOC-BR has submitted that the basis of the petition is more on speculation rather than on any substantial grounds. By referring to the affidavit-in-opposition filed on 29.03.2019, the learned Senior Counsel by drawing the attention of this Court to the selection methodology under Sl. No. "J" has submitted that the selection was provisional in nature. By producing the records in original, the learned Senior Counsel has submitted that the candidatures of both the petitioner and

the respondent no. 4 were accepted and both of them had qualified in the written test. Though as per the records, the petitioner had secured more marks than the respondent no. 4 in the written test, the petitioner was held to be not qualified in the SPPT and therefore, the respondent no. 4 was held to be selected and accordingly offered the appointment. By referring to the documents pertaining to the SPPT, it is submitted that the same was conducted by experts who are not directly connected with the IOC-BR. He therefore, submits that the decision was taken on the recommendation of the experts and there is no *mala fide*.

7. In support of his submissions, Shri Choudhury, learned Senior Counsel has placed reliance on the case of **(2003) 2 SCC 132 [Jasvinder Singh v. State of J&K]**. In the said decision, it has been held that in absence of allegation of any *mala fide*, the mere fact that a candidate had secured more marks in the written test and less marks in the viva-voce cannot be a ground to claim appointment. For ready reference, the relevant portion of the judgment is extracted hereinbelow-

“8. The learned Single Judge also seems to have been very much carried away by few instances noticed by him as to the award of higher percentage of marks in viva voce to those who got lower marks in the written test as compared to some who scored higher marks in the written examination but could not get as much higher marks in viva voce. Picking up a negligible few instances cannot provide the basis for either striking down the method of selection or the selections ultimately made. There is no guarantee that a person who fared well in the written test will or should be presumed to have fared well in the viva voce test also and the

expert opinion about as well as experience in viva voce does not lend credence to any such general assumptions, in all circumstances and for all eventualities. That apart, the variation of written test marks of those who were found to have been awarded higher marks in viva voce vis-à-vis those who secured higher marks in the written test but not so in the viva voce cannot be said to be so much (varying from five marks and at any rate below even 10) as to warrant any proof of inherent vice in the very system of selection or the actual selection in the case. There was no specific allegation of any mala fides or bias against the Board constituted for selection or anyone in the Board nor any such plea could be said to have been substantiated in this case. The observation by the learned Single Judge that there was a conscious effort made for bringing some candidates within the selection zone cannot be said to be justified from the mere fact of certain instances noticed by him on any general principle or even on the merits of those factual instances alone. Further, the course adopted by the learned Single Judge in directing selection from general candidates of all those who have obtained 56 marks in the written examination cannot be justified at all and it is not given to the Court to alter the very method of selection and totally dispense with viva voce in respect of a section alone of the candidates, for purposes of selection. On a careful and overall consideration of the judgments of the learned Single Judge and that of the Division Bench, we are of the view that the decision of the learned Single Judge cannot be sustained for the reasons assigned by him and the decision of the Division Bench cannot be considered to suffer any such serious infirmity in law to call for our interference.”

8. Shri AK Bhattacharyya, learned Senior Counsel for the respondent no. 4

while endorsing the submissions made on behalf of the IOC-BR has further submitted that the selection process has been done by following due process of law and in a transparent manner in which his client was found to be more suitable and qualified than the petitioner. The petitioner has also not made any allegation of *mala fide* and only a vague statement has been made in paragraph 16 of the writ petition without making the concerned incumbents party respondents. He accordingly submits that the writ petition is without any basis. The learned Senior Counsel refers to the affidavit-in-opposition filed by the respondent no. 4 on 06.05.2019.

9. The learned Senior Counsel for the respondent no. 4 has also submitted that the law is settled that a candidate who has submitted to the jurisdiction of a selection process cannot turn around and challenge the same only on the ground that he has been declared as unsuccessful. In the connection, reliance has been made on the case of ***Ranjan Kumar Vs. State of Bihar*** reported in ***(2014) 16 SCC 187*** and ***Ramjit Singh Kardam and Ors. Vs. Sanjeev Kumar and Ors.*** reported in ***(2020) 20 SCC 209***. In both these cases, it has been laid down that it is not permissible for a candidate to question the selection or the methodology adopted after being unsuccessful in the said process.

10. The rival submissions have been carefully examined and the materials, including the original records of the selection have been duly scrutinized.

11. To examine the challenge, the methodology of selection, as laid down in the advertisement is required to be considered in the proper perspective. The relevant portion is extracted hereinbelow-

“1. The selection methodology will comprise Written Test and a skill –

proficiency / physical test (SPPT) which will be of qualifying nature.

2. *A candidate will have to secure a minimum of 40% marks in the written test to qualify for further consideration.*
 4. *Obtaining minimum qualifying marks in the written test does not confer any right or claim by the candidate for being shortlisted for further consideration or the final selection, as the same is related to number of positions ratio applied and relative performance in respective categories.*
 7. *Category wise Merit list shall be drawn on the basis of marks obtained in the written test from & the out of the said short-list only for such candidates who qualify in the SPPT.”*
12. The records of the selection reveal that the petitioner had indeed secured more marks than the respondent no. 4 in the written examination. To be precise, the petitioner had secured 60 marks whereas the respondent no. 4 had secured 48 marks. However, as per clause 2 of the selection methodology, the minimum percentage of marks stipulated in the written segment is 40% and there is no dispute in the Bar that both the incumbents had secured the qualifying marks and eligible for the SPPT. In the SPPT, the petitioner has been held to be “not passed / not qualified” whereas the respondent no. 4 has been held to be “passed / qualified”. In the opinion of this Court the relevancy of higher marks in the written examination amongst candidates would only come when all such candidates are found to have passed / qualified in the SPPT.
13. At this stage, a submission was advanced on behalf of the petitioner that though the petitioner was held to have not qualified in certain segments of the SPPT, even the respondent no. 4 had not qualified in certain segments of the SPPT. Emphasis have also been given on the aspect that the respondent no. 4

had not passed the proficiency test regarding confidence in driving etc. A minute examination of the records would show that even the petitioner had not qualified in the aforesaid aspect of confidence in driving etc. Further, while the respondent no. 4 has been held to be qualified in 6 out of 8 segments of Skill test and Proficiency test, the petitioner has been to be qualified in 3 out of 8 segments of Skill test and Proficiency test. Further, this Court finds force in the contention / clarification made on behalf of the IOC-BR on the aforesaid aspect that the decision to hold a particular candidate to be ultimately qualifying or not qualifying was of a Committee consisting of experts and none of those experts are directly connected with IOC-BR and therefore, there is no element of any *bias* or *mala fide*.

14. Further, on the aspect of "Driving", the advertisement in question for the post of Junior Engineering Assistant – IV (Fire and Safety) does not indicate under the "Area of Experience" that there was a requirement to have expertise on that field and the only requirement was to have a heavy vehicle driving license.

15. This Court has noted that the selection methodology is not the subject matter of challenge and the same clearly stipulates that the marks obtained in the written test is of qualifying nature wherein a minimum percentage of 40 has been stipulated. As observed above, the relevancy of the marks in the written test would have a bearing only when a candidate is held to be qualified in the SPPT. In the instant case, the petitioner has been held to be not qualified in the SPPT conducted by a Committee of Experts. Without any substantial allegation of *bias* / *mala fide* which is apparently discernible or can be perceived, it would not be prudent on the part of this Court to interfere with such selection and appointment.



16. In view of the aforesaid discussion, this Court is of the opinion that the petitioner has not been able to make out any case for interference and accordingly, the writ petition is dismissed.

17. No order as to cost.

18. The records in original of the selection be returned to Ms. RR Kakati, learned counsel for the respondent - IOC-BR.

JUDGE

Comparing Assistant