

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION(C) NO.10847/2009

Date of Decision : 4th January, 2011

BALWANT KUMAR Petitioner
Through Mr. Santosh Kumar, Advocate
versus

UOI & ORS. Respondent
Through Ms. Anjana Gosain, Ms. Pooja Verma,
Advocates for respondent Nos. 2 to 7.

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

SUDERSHAN KUMAR MISRA, J. (Oral)

1. The petitioner seeks directions to the respondents to allow him to sit for an interview for the post of Junior Executive Engg. (Civil) in terms of an order passed by this court on 30th April, 2007, in WP (C) 18661-65 of 2004.

2. It is the petitioner's case that he was appointed as a Senior Superintendent (Engineer-Civil) at Gaya Airport, Gaya, Bihar, on an ad hoc basis on 15th December, 2000 for a period of six months. Thereafter, on 30th December, 2002 the competent authority approved his appointment until further orders. On 30th November, 2004 the respondent decided to terminate the services of about 133 employees, including the petitioner, on the ground that these

appointments were made without any advertisement; without calling candidates from the employment exchange, and without following the recruitment procedures, and therefore, the appointments including that of the petitioner, had no legal sanctity.

3. Dissatisfied with the order of termination, the petitioner and some other employees moved this Court and other High Courts. On an application of the respondent, the Supreme Court directed that all similar matters pending adjudication before any Court in India be transferred to this Court. A Division Bench of this Court then heard all the writ petitions of the terminated employees and, by a common order, dated 30th April, 2007 disposed of the matter on the basis of a settlement reached between the petitioners and the respondent, with the following directions:

"1. Petitioner as well as other employees whose services were terminated on similar grounds would be given an opportunity for selection in the proposed recruitment of Group C and D posts.

2. For Group D posts, suitability of the candidates would be adjudged by interview and wherever applicable, a trade test for the specific occupation. Additionally, suitability may be adjudged on the basis of familiarity with office procedures, basic knowledge of reading and writing, identification of files, notings thereon etc.

3. For Group C posts, a written objective test, which would assess the aptitude, General Knowledge, the job knowledge, proficiency in English language would be held. A typing test would also be held. However, those of the petitioners/terminated employees who have qualified the typing test of the respondents earlier would be considered for exemption. This would be applicable where the record of typing test passed earlier is available. In addition, candidates would be interviewed.

4. Respondents would make available 50% of the vacancies for the petitioners and others whose services have been terminated subject to their qualifying the objective written/trade test, 50% vacancies to be filled based on the merit amongst the petitioners and others, whose services were terminated subject to their qualifying the written objective and trade test being selected in interview.

5. Age relaxation would also be available to the petitioner and others whose services have been terminated. As regards weightage for experience and knowledge peculiar to the respondent organization, the same stands provided by provision of 50% of the vacancies being made available to them.

We also wish to note that the respondents have estimated the number of vacancies to be around 200 which should reassure the petitioners who are to take the tests in the selection process of having a fair chance, since 50% of the vacancies are proposed to be reserved for the petitioners and others whose services were similarly terminated."

4. The petitioner was interested in recruitment to a Group 'B' post while the terms of the order passed by the Division Bench of this Court on 30th April, 2007 applied to the proposed recruitment of only for the Group 'C' and 'D' posts. Admittedly, that order disposed of all the petitions, including that of the petitioner herein, by a consent order. It is inconceivable that the petitioner, who was interested only in a Group 'B' post, could have consented to terms which apply only to Group 'C' and 'D' posts. If that were so, it would mean the dismissal of his own claim. Therefore, the said consent order of 30th April, 2007 must be taken to apply to Group B posts also. It appears that initially, even the respondent was of the view that the order would apply equally to those aspiring for Group 'B' post also, and, in fact, allowed the petitioner to sit for the written test in terms of that order; to that extent the mandate of the aforesaid consent order is satisfied.

5. The respondent then initiated the selection process in the light of the aforesaid order. The petitioner also received a letter, dated 9th April, 2008 issued by the respondent, referring to the aforesaid order of this Court of 30th April, 2007, informing him that he may apply for the post within 20 days of the issuance of the letter.

Accordingly, the petitioner applied for the grade of Junior Executive Engg. (Civil). He appeared in the written test on 3rd August, 2008. He was however not called for the interview. Pursuant to an application under the RTI Act, the petitioner, inter alia, found out that he had only secured 35% marks in the written test.

6. In its reply, the respondent contends that an opportunity was granted to the petitioner, in terms of the aforesaid order dated 30th April, 2207 in WP (C) 18661-65 of 2004 by giving him the necessary age relaxation. However, the petitioner scored only 35% marks in the written test instead of the required minimum of 40%. Since he had failed to qualify in the written test, the respondent did not call the petitioner for the interview. It is contended that, therefore, the petitioner does not have any basis to impugn the process.

7. In response, the petitioner's counsel submits that the respondent was obliged to prescribe separate minimum pass marks in the written test, with respect to each category i.e. General, OBC, etc. According to him, the respondent was further obliged to prescribe lower minimum qualifying, or pass marks, for OBC candidates such as the petitioner, than what was prescribed for the General category candidates.

8. The respondent states that the fact that he belonged to the OBC category was disclosed by the petitioner for the first time in his rejoinder in this matter. In any case, the cut-off marks for General and OBC categories were same. However, for candidates belonging to the SC/ST category the minimum passing marks were kept at 35%.

In reply, the petitioner submits that there cannot be a common cut-off for candidates belonging to the General and OBC categories. According to him, the prescription of a common cut-off for the two would nullify the benefit of reservation because very idea of reservation implies selection of a less meritorious person, which redeems the constitutional promise of social justice. This contention of the petitioner cannot be accepted for two reasons. Firstly, reservation of posts for OBCs is not mandated by the Constitution. In **Chhattar Singh** vs. **State of Rajasthan** (1996) 11 SCC 742, the Supreme Court has held in paragraphs 18 and 19 as follows:

“16. The Constitution has not expressly provided such benefits to the OBCs except by way of specific orders and public notifications by the appropriate Government. It would, therefore, be illogical and unrealistic to think that omission to provide same benefits to OBCs, as was provided to Scheduled Casts and Scheduled Tribes, was void under Article 16(1) and 14 of the Constitution.

17. Accordingly we are of the view that the OBCs are not entitled to 5% cut off marks in the preliminary examination as provided under proviso to Rule 13.”

Secondly, the petitioner, an OBC candidate, was accorded due consideration by the respondent in terms of the orders of the Division Bench of this Court. That is why he was allowed to sit for the written examination. However, the petitioner failed to qualify.

9. It is open to an employer to prescribe a minimum mark which, in its own wisdom, indicates a necessary minimum understanding of the subject. There is nothing wrong with prescribing the same minimum pass or qualifying marks for the OBC as well as General categories, while at the same time, reserving separate seats for the two categories. If this is done, then provided the candidate

achieves the prescribed minimum, he will then be placed in order of merit amongst other candidates of his own category exclusively, and his selection will not be effected in any way by the marks of candidates of other categories. In this way, a candidate with less marks belonging to one category may be selected, while some other candidate with higher marks from some other category may not. This preference to specified categories is valid and within the contemplation of law.

9. In terms of the order dated, 30th April, 2007, 50% of the seats were to be made available to all the petitioners of that writ petition. Although the order did not say so, the respondent appears to have reserved some of those seats for SC/ST and OBC candidates also.

10. When the selection commenced, the respondents permitted the petitioner to participate in that selection by giving him relaxation in age. However, to get the benefit of appointment to a reserved seat, the petitioner had to qualify by scoring at least 40% marks. If the petitioner does not even qualify, then whether any seat is reserved or not for the petitioner's category is immaterial as far as he is concerned. Admittedly, the petitioner scored only 35%. In other words, the petitioner did not even score the minimum qualifying marks.

12. To my mind, the contention of the petitioner that directions under the aforesaid consent order of 30th April, 2007, to reserve 50% of the existing seats applied even to Group 'B' posts, to which the petitioner was an aspirant, is neither here nor there,

because ultimately the petitioner failed to even secure the minimum qualifying marks. Had the petitioner secured the minimum qualifying marks, then the question whether any seats ought to have been reserved as claimed would have been relevant, but not under the present circumstances. This is because even if the seat had been reserved, the petitioner would still not have been eligible for the same due to his failure to secure even the minimum marks prescribed. Furthermore, on the facts, the respondent was under no obligation to reserve seats for the OBC category. In any case, as concluded above, merely because the minimum qualifying mark for OBC and General candidates is the same, does not mean that no preference was being given in employment by the respondent's to persons belonging to the OBC category.

13. Under the circumstances, the relief prayed for cannot be granted to the petitioner. The writ petition is dismissed.

SUDERSHAN KUMAR MISRA, J.

JANUARY 04, 2011.