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

Case No. : WP(C)/3651/2019

SAMOON ISAI
S/O. SADAR ISAI, R/O. DIGBOI, MULIABARI, IOC QUATAR NO. 3054 (A), P.O.
DIGBOI, DIST. TINSUKIA, ASSAM, PIN-786171.

VERSUS

THE INDIAN OIL CORPORATION LTD. AND 4 ORS.
REP. BY THE CHAIRMAN CORPORATE OFFICE, CORE-2, 7 INSTITUTION
AREA, LODI ROAD, NEW DELHI-110003.

2:INDIAN OIL CORPORATION LTD.
(ASSAM OIL DIVISION) DIGBOI
REP. BY THE CHIEF GENERAL MANAGER
P.O. DIGBOI
DIST. TINSUKIA
ASSAM
PIN-783171.

3:THE GENERAL MANAGER (H.R.)
INDIA OIL CORPORATION LTD. (ASSAM OIL DIVISION)
DIGBOI
P.O. DIGBOI
DIST. TINSUKIA
ASSAM
PIN-783171.

4:THE CHIEF EMPLOYEE RELATION MANAGER (ER AND S)

INDIAN OIL CORPORATION LTD. (ASSAM OIL DIVISION)
DIGBOI
DIST. TINSUKIA
ASSAM

PIN-783171.

5:THE SENIOR EMPLOYEE RELATION MANAGER

INDIAN OIL CORPORATION LTD. (ASSAM OIL DIVISION)
DIGBOI
P.O. DIGBOI
DIST. TINSUKIA
ASSAM
PIN-783171

Advocate for the Petitioner : MR C BARUAH

Advocate for the Respondent : SC, OIL

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

Date of Hearing : 31.08.2023

Date of Judgment : 24.11.2023

Judgment and Order (CAV)

Heard Mr. Bhaskar Baruah, learned counsel for the petitioner. Also heard Mr. M.K. Choudhury, learned Senior Counsel assisted by Mr. M. Sarma, learned counsel for all the respondents.

2] The petitioner was employed as a Sweeper under the Indian Oil Corporation Limited (Assam Oil Division). The selection process was conducted by the respondent Corporation to fill-up several permanent vacant posts in

various Grades including Sweeper. The name of the petitioner was forwarded by the local employment exchange, Digboi. The petitioner having participated in the selection process was duly selected and against the vacant sanctioned and permanent post of Sweeper, the petitioner was appointed. However, although the selection was made for permanent vacant post, the petitioner was appointed for 45 (forty five) days or less basis with an artificial break for 2-3 days. Thereafter, he and some other similarly situated persons were engaged again for 45 (forty five) days or less. This process continued till the date of filing of the writ petition. The petitioner was assured that within a short span of time, the respondent authority will issue the letter for his regular appointment. However, the same was never issued. Although the petitioner was appointed to a regular post, he was only paid salary for the actual working days without giving other facilities like PL, Sick Leave, LTC, full medical benefit and facilities, conveyance allowances etc. The petitioner along with other similarly situated persons had submitted several representations before the authorities, which were in the process of being considered by the respondents. However, no specific orders had been issued by the respondent authorities. Being situated thus, the candidates appointed like that of the petitioner had approached this Court by filing writ petition being WP(C) No.5065/2009 and a Coordinate Bench of this Court by judgment and order dated 22.09.2017 arrived at a conclusion

that the claims of the petitioners therein, namely, persons, similarly situated like the petitioner, are covered by the decision of the Supreme Court rendered in *Peoples Union for Democratic Rights vs. Union of India & Ors.* reported in (1982) 3 SCC 235 as well as *The State of Punjab & Ors. vs. Jagjit Singh & Ors.* reported in 2017 (1) GLT (SC) 47. The Coordinate Bench held that the petitioners therein are entitled to have their salaries at the minimum of their regular pay scale. However, no directions were issued for regularization of their services by the Coordinate Bench. The petitioners in WP(C) No.5065/2009 again approached this Court by filing an intra Court writ appeal being W.A. No.56/22018 and the Division Bench of this Court by the judgment and order 06.06.2018 held that from the employment notification dated 07.04.1995 no indication is found that only some of the candidates, who are to be appointed pursuant to the process, would be regularized in due course as per their order of merit and the remaining selected and appointed candidates would not be regularized. The Division Bench held that the employment notification uniformly provides that the appointment would be made against the temporary vacancies, and although, it refers to 6 numbers of vacancies but it is an admitted position that 9 unreserved candidates and 8 reserved category candidates are recommended and appointed. The Division Bench held that in view of the factual situation, the provision in the employment notification that recruitment

would be for 6 (six) temporary vacancies had lost its relevance and the same itself cannot be a reason to regularise 11 candidates while not regularizing the others. The Division Bench of this Court held that in the absence of any such provision in the employment notification or in the minutes of the selection that some of the candidates would be regularized while the others would not be, the procedure adopted by the respondents authorities to subsequently regularize some of the selected and appointed candidates, while refusing the same treatment to others would be arbitrary and discriminatory and the differential treatment given on the basis of the merit position in the initial select list by itself cannot save such discriminatory and differential conduct. It was held that in the absence of any such indication at the time of recruitment, no intelligible differentia can be noticed between the selected candidates merely on the basis of their merit positions in the select list, so as to entail a differential treatment for the purpose of regularizing some of them while refusing others. The Division Bench concluded that the conduct of the respondent authorities in confirming/regularizing 11 of the similarly situated candidates who were selected and appointed along with the appellants while refusing to regularize the service of the appellants in a similar manner violates Article 14 of the Constitution of India. The Division Bench directed that the respondents authorities regularized the service of the appellants and grant all service benefits accrued to them with

effect from the date as to when the last 11 candidates were confirmed and regularized in their services. The IOCL carried this appeal to the Supreme Court, which was registered as Special Leave to Appeal (C) No. 27071/2018, however, the said appeal was dismissed by order dated 22.10.2018. Learned counsel for the petitioner submits that it is the employment notification pursuant to which the petitioner has been appointed. The appellant in writ appeal no.56/2018 and the present petitioner are similarly situated. It is submitted that this writ appeal has attained finality and it will squarely covers the case of the present petitioner.

3] Learned counsel for the respondents does not dispute the fact that the notification under consideration in W.A. no.56/2018 and the notification pursuant to which the petitioner was appointed are one and the same. He submits, however, that the petitioner had slept over the matter for 22 years and has filed the instant case only in the year 2019 without explaining any reason for the delay and as such, the writ petition ought to be dismissed on the ground of delay and laches. Learned counsel for the respondents submits that the delay not having been explained, the prayer made by the petitioner ought not to be considered and the writ petition be dismissed on the ground of delay and laches. Learned counsel for the respondents has pressed into service the judgment of the Apex Court rendered in ***State of Uttar Pradesh & Ors. vs. Arvind Kumar Srivastava & Ors.*** reported in (2015) 1 SCC 347. Relying on

the said judgment learned counsel for the respondents submits that those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counter parts were approached the Court earlier and succeeded in their efforts, such employees cannot claim the similar benefit of the judgment rendered in the case of similarly situated persons and the benefits cannot be extended to them. They would be treated to as fence-sitters and laches and delays, and/or acquiescence would be a valid ground to dismiss their claims.

4] By filling the affidavit-in-reply learned counsel for the petitioner duly disputed the contentions raised by the respondents in the affidavit in opposition. In the affidavit in reply the petitioner submits that where there is a continuing wrong then the question of delay or laches will not come. He submits that in the present case the petitioner having been appointed into regular vacancies ought to have been given the pay and benefits in the regular scale pay of like other employees. The authorities reason best known did not proceed with the same. This was lapse on the part of the Department and the benefits that accrue to the petitioner were not granted to the petitioner without giving any specific reasons. Such benefits to the petitioner having been deprived of by the respondent authorities will not be erased merely because the petitioner did not approach the writ Court at an earlier point of time. The rights which accrued

to the petitioner still continue and as such, there is no delay or laches. In support of his contention learned counsel for the petitioner relies on the judgment of the Apex Court rendered in ***Union of India Ors. & vs. Tarsem Singh*** reported in ***(2008) 8 SCC 648***.

5] Rival contentions of the parties have been carefully considered. Pleadings on record have been carefully perused. The judgments cited at the Bar have also been carefully noted.

6] The counsel for the respondents has fairly submitted that the present petitioner and the appellant in Writ Appeal no.56/2018 were selected and appointed pursuant to the same selection process adopted by the respondents. It is not disputed that vacancy notification dated 07.04.1995 was for 6 vacancies of Sweepers. Subsequently, the vacancy position was renotified and candidates were directed to report before the competent authority. As per the minutes of the selection commission meeting held on 30.10.1995 & 31.10.1995, the selected candidates position under various categories along with their roll numbers are reflected. Under the unreserved category it is seen that the candidates with Roll No. 2, 235, 55, 207, 96, 118, 134, 81, & 141 were recommended for appointment as per their order of merit and some of them were selected. By virtue of writ appeal no.56/2018 candidates with roll no.118,

81 & 141 who were the appellants before the Division Bench was regularized. Roll no. 134 is the petitioner whose name has been reflected in the selection minutes. As such, except the petitioner other candidates under the unreserved category have already been selected and appointed. The only objection raised by the respondents is on the ground of delay and laches as the petitioner had approached this Court after considerable period of time. There is no explanation by the respondent authorities as to why the petitioner's service has not been regularized, although all the selected candidates reflected in the selection committee minutes have been appointed and regularized except the petitioner. The decision of the Division Bench rendered in W.A. no.56/2018 by judgment and order dated 06.06.2018 had attained finality after dismissal of the SLP preferred by the IOCL.

7] Upon a careful perusal of the judgment rendered in W.A. no.56/2018, it is seen that the Division Bench had returned the finding that in the employment notification dated 07.04.1995, there was no indication that only some of the candidates who are to be appointed pursuant to the selection process would be regularized with due course as per the order of the merit and the remaining selected and appointed candidates would not be regularized. The Appellate Court held the employment notification uniformly provides that the appointments would be made against the temporary vacancies and the Division

Bench on facts held that notwithstanding the employment notification dated 07.04.1995 referring to 6 numbers of vacancies, 9 unreserved candidates and 8 reserved candidates were recommended for appointment and out of them 11 have been confirmed in service. Under such circumstances, it was held that the provision in the employment notification and the recruitment would be for 6 temporary vacancies has lost its relevance and it was held that the same cannot be a reason to regularize 11 appointed candidates while not regularizing the others. The relevant paragraphs of the judgment and order dated 06.06.2018 passed in WA no.56/2018 by the Division Bench are extracted herein below:

“11. From the employment notification dated 07.04.1995 it is discernible that there is no such indication that only some of the candidates who are to be appointed pursuant to the process would be regularized in the due course, as per their order of merit and that the remaining selected and appointed candidates would not be so regularized. The employment notification uniformly provides that the appointments to be made would be against temporary vacancies, and although, it refers to six numbers of vacancies, but it is an admitted position that nine unreserved candidates and eight reserved category candidates were recommended and appointed. It has also an admitted position that out of the same, eleven had been confirmed in service.

12. In view of such factual situation the provision in the employment notification that the recruitment would be for six temporary vacancies had lost its relevance and the same itself also cannot be a reason to regularize eleven of the appointed candidates while not regularizing the others.

13. In the absence of any such provision in the employment notification or in the minutes of the selection that some of the selected candidates would be regularized while others would be not, the procedure adopted by the respondent authorities to subsequently regularize some of such selected and appointed candidates, while refusing the same treatment to the others would be arbitrary and discriminatory and the differential treatment given on the basis of the merit position in the initial select list by itself cannot save such discriminatory conduct. In the absence of any such indication at the time of recruitment, no intelligible differentia can be noticed between the selected candidates merely on the basis of their merit position in the select list so as to entail a differential treatment for the purpose of regularizing some of them while refusing others.

14. Accordingly, it is concluded that the conduct of the respondent authorities in confirming/regularizing eleven of the similarly situated candidates who were selected and appointed along with the appellants, while refusing to regularize the service of the appellants in a

similar manner, violates Article 14 of the Constitution of India. The differential treatment on the basis of the position in the select list do not form a reasonable classification for the purpose of regularizing or not regularizing in the service.

15. It is further taken note of that the employment notification of 07.04.1995 clearly indicates that the appointments were made against sanctioned vacancies, although they were indicated to be temporary vacancies. But the factual situation is such that all the appointees pursuant to the said employment notification continues to remain in employment till date i.e. approximately more than 20 years and it by itself is an indication that the sanctioned vacancies had lost its status to be claimed as a temporary vacancies.

16. Further it is also taken note of that the recruitment of the appellants were made by following the constitutional scheme i.e. through an employment notification and selection, where others have also participated. In paragraph 53 of the judgment rendered in Secretary, State of Karnataka –vs- Umadevi & Ors., reported in (2006) 4 SCC 1, it was provided that even in cases where appointments are irregular, i.e. without following the constitutional scheme, but where the appointees continued to remain in service for more than 10 years as of the date of the said judgment without any aid of any order from any Court but against sanctioned vacant post, are entitled to a consideration for regularization as one time measure. In comparison thereof, the factual situation of the appellants is much better off, inasmuch as, they were appointed against sanctioned vacant post by following the procedure of constitutional scheme and therefore, a right of regularization had accrued to them.

17. Mr. R. Dubey, learned counsel for the respondent IOC-AOD has produced the information that some of the candidates who were selected and appointed along with the appellants were confirmed/regularized on 13.05.1997. The information provided is that Khargadhar Sonowal appointed under the ST category, Hema Kanta Gogoi and K. Nagbhusan Verma appointed under the OBC category and Bir Bahadur Sonar and A.U. Rao appointed under the unreserved category, were all regularized/confirmed on 13.05.1997.

18. As we have already arrived at a conclusion that there does not exist any intelligible differentia between the candidates selected and appointed under the same selection, there cannot be a differential treatment as regards their regularization and confirmation and further such differential treatment cannot be sustained by stating that it was done on the basis of the order of merit of the selection. Even such stand is unacceptable, inasmuch as, persons below in the select list have been regularized and confirmed, whereas, those above in the order of merit are yet to be regularized/confirmed. No other reason has been disclosed by the respondent authorities for meting such differential treatment. In the circumstance, the only conclusion that can be arrived is that there was discrimination and biasness in effecting the regularization/confirmation and the procedure adopted by the respondent authorities violates Article 14 of the Constitution of India.

19. In the circumstance, we are of the considered view that ends of justice will be met, if the respondent authorities in the IOC-AOD regularize the services of the appellants and that such regularization along with the benefits accrued thereof be given w.e.f. the same date as to when the last of the eleven candidates was so confirmed or regularized. Accordingly, the respondent authorities are directed to regularize the services of the appellants from the date when the last of the eleven candidates were confirmed or regularized and all the consequential benefits of being regularized be provided to them from the said date.”

8] In view of such specific findings by the Division Bench relating to the

same employment notification and which judgment has attained finality, it cannot be said that the interpretation given by the Appellate Court in respect of the employment notification dated 07.04.1995 and the consequential regularization of some of the selected and appointed candidates is binding on the Department and the same will also be applicable in respect of the claims made by the present petitioner.

9] In the judgment of the Apex Court rendered in *Arvind Kumar Srivastava (supra)* relied upon by the respondents, the Apex Court held that ordinarily people who did not challenge their wrong full action and acquiescence into the same, would be treated as fence-sitters and laches and delays and/or the acquiescence can be a valid ground for dismissal of their claim. The Apex Court, however, held that this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, more particularly, when the subject matter of the decision touches upon the policy matters, like scheme of regularization.

10] This Court having given its anxious considerations to the rival submissions as well as the judgments of the Apex Court pressed into service holds that the findings of the Division Bench of this Court rendered in W.A. no.56/2018 by the judgment and order 06.06.2018 interpreted the vacancy

position mentioned in the employment notification dated 07.04.1995 *vis a vis* the claims of the appellants therein. There is no dispute that the present writ petitioner and the appellants and other selected and appointed candidates including those regularized candidates stand on the same footing and are covered by the same employment notification dated 07.04.1995 issued by the respondents.

11] In that view of the matter the objection raised by the respondents that the writ petitioner has approached this Court after considerable delay of long 23 years will have to be overruled. The authoritative finding of the Division Bench in respect of the employment notification dated 07.04.1995 will have to be treated as final finding in so far as the interpretation of the employment notification dated 07.04.1995 is concerned *vis a vis* in respect of the claims made for regularization by the selected and appointed candidates like the present petitioner.

12] Under such circumstances, as has been held in the judgment of the Apex Court rendered in *Arvind Kumar Srivastava (supra)* that the exception of dismissal of the claims of fense sitters on the ground of laches and delays and/or acquiescence will not be applicable, the Division Bench in W.A. No.56/2018 by its judgment dated 06.06.2018 had granted benefit to all concerned who are covered by the employment notification dated 07.04.1995.

Accordingly, as discussed above there is no dispute at the Bar that the petition is covered by the said notification dated 07.04.1995.

13] In that view of the matter, the non-implementation of the findings of the Division Bench rendered in order dated 06.06.2018, in so far as the petitioner is concerned, will have to be considered to be a continuing wrong for which the petitioner's claim for regularization cannot be rejected. The case of the writ petition in the facts and circumstances as discussed above will fall within the ambit of the continuing wrong because of which the claims cannot be rejected on the ground of delay and laches. This principle has been lucidly curved out by the Apex Court in *Tarsem Singh (supra)*. In a recent judgment i.e. *Raman Kumar & Ors. vs. Union of India & Ors. 2023*, reported in Court Live Law (SC) 520 the Apex Court held that the act of regularizing the services of the 35 employees and not regularizing the service of other employees including the appellants is patently discriminatory and violative of Article 14 of the Constitution of India.

14] Considering all of the above, the writ petition is allowed. The respondents IOCL are directed to forthwith issue necessary orders granting regularization of the service of the writ petitioner in terms of the directions of this Court read with judgment and order dated 06.06.2018 passed in W.A. no.56/2018.

The writ petition stands allowed in terms of the above.

No order as to cost.

Pending I.A., if any, stands closed.

Interim order, if any, stands vacated.

JUDGE

Comparing Assistant