

GAHC010141102018



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

Case No. : WA/256/2018

FOOD CORPORATION OF INDIA AND 3 ORS
REPRESENTED BY THE CHAIRMAN CUM MANAGING DIRECTOR 16.20
BARKHAMBA LANE, NEW DELHI-1
2: THE EXECUTIVE DIRECTOR (NE)
FOOD CORPORATION OF INDIA
(NE) ZONE, ULUBARI, GUWAHATI-7
3: THE GENERAL MANAGER
FOOD CORPORATION OF INDIA
ZONAL OFFICE (NE)
G.S. ROAD, GHY-7
PALTAN BAZAR, GUWAHATI.
4: THE ASSTT. GENERAL MANAGER (PER)
FOOD CORPORATION OF INDIA
ZONAL OFFICE (NE)
G.S. ROAD, ULUBARI, GHY-
VERSUS
GIRIN DAS
S/O SRI KUSHAL DAS, R/O VILL. MADHYAM KHANDA, P.S.NORTH
GUWAHATI, DIST. KAMRUP, ASSAM.

Advocate for the Petitioner : MR. P K ROY

Advocate for the Respondent : MR H DAS

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 03-08-2023

[Sandeep Mehta, C.J.]

Heard the learned counsel representing the parties and also perused the material available on record.

2. This intra-court appeal takes exception to the judgment and order dated 30.11.2017 passed by the learned Single Judge in WP(C) 5236/2011, whereby the decision of the appellant authorities in effecting proportional reduction of the total marks fixed in the selection process for the post of Assistant Grade-III in the Food Corporation of India (FCI), from 150 to 100, was held to be arbitrary and, simultaneously, a direction was given to revisit the procedure adopted in making the selection pursuant to the advertisement dated 15/16.11.2008 and to make necessary selection in the order of merit. It was further observed that, in doing so, if the respondent authorities (i.e. the appellants herein) were of the view that any of the appointed candidates would be adversely affected, appropriate notice shall be issued informing them about the same and appropriate decision shall be taken thereupon after giving reasonable opportunity of hearing. The appellants/FCI authorities have filed this intra-court writ appeal being aggrieved of the said judgment.

3. The writ petition (supra) came to be filed by the respondent herein who had participated in the selection process pursuant to the advertisement dated 15/16.11.2008, whereby applications were invited for selection and appointment to 25 posts of Assistant Grade-III in the FCI. The advertisement provided that the selection process would consist of written test, group discussion and interview. The written test was divided into two parts, Part-I consisting of 60 multiple choice questions on the relevant technical discipline and Part-II consisting of 60 multiple choice questions on General Aptitude comprising of Reasoning, Data Analysis, Computer Awareness and Current Affairs. The group discussion was to be evaluated for 10 marks and the interview was to be evaluated for 20 marks and, thus, the total being 150 marks.

The respondent/writ petitioner herein claimed that he had secured 63

marks, whereas the last selected candidate, who was offered appointment, had secured 62.05 marks and, thus, denial of selection to the respondent/writ petitioner amounted to arbitrariness and discrimination. He filed the writ petition alleging illegal deprivation of post despite claiming to stand higher in merit.

The FCI filed an affidavit in the writ court taking the stand that although the selection process was conducted for 150 marks, of which 120 marks were for written test, 10 marks for group discussion and 20 marks for personal interview, but for the purpose of calculating the merit of the respective candidates, the proportion of marks of written test, group discussion and interview was taken in the ratio of 70:10:20. Accordingly, the marks secured by all the candidates in the written examination were proportionally reduced to the extent that the full marks of written test were considered to be 70. Thus, after conversion of the total marks from 150 to 100 and preparation of merit list, the proportional marks secured by the respondent/writ petitioner in the written examination came down at 28, whereas the last selected candidate in OBC category, Jibesh Chandra Roy, secured 27.42 marks. Accordingly, the gross total marks secured by the respondent/writ petitioner in all the three categories, i.e. written examination, group discussion and interview, were evaluated at 42.50 marks and the marks secured by Jibesh Chandra Roy were evaluated at 42.92 marks and, accordingly, Jibesh Chandra Roy having stood higher in merit, was selected and appointed on the post.

The petitioner challenged the action of the FCI authorities by way of the captioned writ petition alleging *iner alia* that as there was a clear indication in the advertisement that evaluation would be made from a total of 150 marks, the subsequent reduction of marks in the written test proved prejudicial to the petitioner, because even though he had otherwise secured higher marks in the

written examination, he was brought down in merit by the proportionate reduction of marks in the evaluation process.

The learned Single Judge accepted the said contention of the respondent/writ petitioner and struck down the method of evaluation adopted by the authorities by conversion of marks from 150 marks to 100. Consequently, a direction was given to the employer/FCI authorities to revisit the procedure adopted for the selection and to make a fresh evaluation.

The respondent/writ petitioner contended that for the first time he became aware from the affidavit of the FCI about such exercise of proportional reduction of marks, whereby the total marks for evaluation were brought down from 150 to 100 and, resultantly, in the category wherein the respondent/writ petitioner had applied, i.e. OBC, one Jibesh Chandra Roy was shown having secured 42.92 marks as against 42.50 marks secured by the respondent/writ petitioner. The respondent offered this ground for non-impleadment of Jibesh Chandra Roy as a party in the writ petition.

It may be stated herein that non-joinder of Jibesh Chandra Roy as a party/respondent in the writ proceedings was projected by the FCI as a ground for rejection of the writ petition. It was further contended by the FCI in its affidavit that selections were made throughout the entire country by uniformly adopting the same criterion of rationalisation of marks and as the decision to make proportional reduction of marks by providing 70% weightage to written examination, 10% to Group Discussion and 20% to Interview was taken as a measure of policy decision and thus, interference therein was not permissible in exercise of powers of judicial review. However, the learned Single Judge, proceeded to interfere in the said decision of the FCI vide order dated 30.11.2017, which is subjected to challenge in this writ appeal.

4. It is the categoric stand of the appellants that pursuant to the selection process being completed, the candidate standing last in the order of merit for OBC category, Jibesh Chandra Roy, was appointed on the post and he had been working thereupon for the last more than 8 years. It is also stated that the subject selection process was carried out by All India Management Association, which was not made a party in the writ petition. A precise plea has been set up at Ground No. 6.3 of the Appeal explaining the decision behind proportional reduction of marks and giving weightage of 70% to written examination, 10% for group discussion and 20% for interview. It is also the stated that the same criterion was applied uniformly across all zones, cadres, categories in the selections made simultaneously throughout the country.

5. The learned senior counsel, Mr. P.K. Roy, representing the appellants vehemently and fervently contended that the decision of proportional reduction of marks was not only taken in respect of written examination, but was equally applied to the marks secured by the candidates in group discussion and interview as well and the total number of marks was brought down from 150 to 100, of which 70% was allocated for written examination, 10% for group discussion and 20% for interview. Such proportional evaluation of marks was uniformly applied across all Zones, Cadres and Categories and the same, being a policy decision, could not have been interfered by the learned Single Judge. He further submitted that the last candidate selected in the OBC category, i.e. Jibesh Chandra Roy, who would be displaced/put out of job on account relief granted by the learned Single Judge in the terms prayed for by the petitioner, was not impleaded as a party in the writ petition and, hence, the respondent/writ petitioner ought to have been non-suited for non-joinder of necessary parties.

6. Per contra, Mr. H. Das, learned counsel representing the respondent/writ petitioner vehemently and fervently opposed the submissions advanced by the appellants' counsel. He pointed out that by altering the evaluation criterion, the rules of the game have been changed after the advertisement and hence the decision to make proportional reduction of marks in the written examination, being totally arbitrary and illegal, was rightly struck down by the learned Single Judge. He submitted that as per the instructions contained in the advertisement, it is clearly mentioned that there will be a written test of 120 marks for all eligible applicants and, after the written test, group discussion and personal interview will be conducted and the candidates selected on the basis of merit will be appointed to the post. He thus urged that there could not have been reduction of the marks in written examination and the decision so taken has impinged upon the right of the respondent to be selected against the post, because had the original evaluation criterion, i.e. 120 marks for written examination, been retained, the respondent/writ petitioner, having secured 48 marks out of 120, would have definitely stood higher in merit as compared to the last selected candidate in OBC category, i.e. Jibesh Chandra Roy, who secured 47 marks out of 120.

However, learned counsel for the respondent/writ petitioner Mr. Das was not in a position to dispute the fact that the last selected candidate, i.e. Jibesh Chandra Roy, was not impleaded as party/respondent in the writ petition. He also was not in a position to dispute the fact that the criterion of proportional evaluation with reduction in the total marks was applied uniformly across all Zones, Cadres and Categories throughout the country in the selections conducted by the FCI for various cadres and hence, there cannot be any element of arbitrariness and discrimination in such a decision.

Nonetheless, the contention of Mr. Das was that as the respondent/writ petitioner claimed appointment on the basis of his own merit, the removal or otherwise of the last selected candidate, or his non-impleadment would not have any adverse effect on the right of the respondent/writ petitioner to seek appointment on the post.

7. We have given thoughtful consideration to the submissions advanced at the Bar and have gone through the material on record.

8. It may be stated here that the terms and conditions of the advertisement did not specifically indicate that the written examination would consist of 120 marks. The relevant clause of the advertisement of the selection process in question is reproduced below for the sake of ready reference:

“SELECTION PROCESS:

The Selection process consists of written test, group discussion and interview. The venue & schedule of written test will be intimated to eligible applicants along with the admit card. The same will also be placed on the FCI's website. The test will be in two parts. Part-I will consist of 60 multiple choice question of the relevant technical discipline and Part-II will consist of 60 multiple questions on general aptitude consisting of Reasoning, Data Analysis, Computer Awareness, General Awareness and Current Affairs. On qualifying the written test, GD & interview will be held for the short-listed candidates.”

9. A bare perusal of the said clause would make it clear that although it indicated that the written test would be of two parts with both the parts consisting of 60 multiple choice questions, but it did not specifically mention that each question would carry 1 mark. The “GENERAL INFORMATION AND INSTRUCTION” of the advertisement provided a stipulation that on qualifying in the written test, group discussion and interview, the eligible candidates will be appointed to the post applied for, based on the merit obtained by them. It seems that initially, while evaluating the marks of the written examination, each

question was evaluated at 1 mark, but later on proportional reduction was done as per the uniform policy adopted by the FCI by giving 70% weightage to written examination, 10% and 20% weightage to Group Discussion and Interview, respectively, so that result sheet could be prepared from 100 marks. This fact is discernible from the reply given to the respondent/writ petitioner in his application seeking information under the RTI Act vide his letter dated 16.06.2010. A perusal of the reply would clearly indicate that Jibesh Chandra Roy, i.e. the last selected candidate, secured 47 marks whereas the respondent/writ petitioner secured 48 marks in the written examination (out of 120 marks). In group discussion Jibesh Chandra Roy secured 5.5 marks whereas the respondent/writ petitioner secured 4.5 marks and both of them secured 10 marks each in the interview. Thus, without proportional reduction of marks, both the candidates secured equal marks. However, after the conversion of marks from 150 to 100, Jibesh Chandra Roy's marks stood fractionally higher as compared to the marks of the respondent/writ petitioner and thus Jibesh Chandra Roy was appointed on the post of Assistant Grade-III way back in the year 2010. The decision to proportionally reduce the total marks for making the evaluation process simpler was taken for all selections conducted simultaneously by the FCI across the country for all the categories and positions and, thus, the decision so taken cannot be termed as being arbitrary or discriminatory. Since the decision so taken to proportionally reduce the marks was uniformly applied as a policy decision in all simultaneous selections held across the country for all the posts, including the one on which the respondent applied, the learned Single Bench, while exercising powers of judicial review as conferred upon by virtue of Article 226 of the Constitution of India, was not justified in interfering into such decision. Furthermore, the respondent/writ petitioner was all along aware of the

fact that Jibesh Chandra Roy had been appointed to the post on which the respondent/writ petitioner could, in all probability, lay a claim. By the effect of the relief granted to the respondent/writ petitioner, the last selected candidate, i.e. Jibesh Chandra Roy was bound to lose the post and, as such, his impleadment in the writ proceedings was absolutely imperative and the respondent/writ petitioner having failed to do so, had to be non-suited on account of non-joinder of necessary party.

10. In the wake of the discussion made hereinabove, we are of the firm opinion that the view taken by the learned Single Judge in accepting the writ petition [WP(C) 5236/2011] is invalid in the eyes of law and does not stand to scrutiny. As a consequence, the impugned order dated 30.11.2017 passed by the learned Single Judge in WP(C) 5236/2011, is hereby reversed and set aside.

The appeal is allowed accordingly.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant