

GAHC010118442016



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

Case No. : WP(C)/5646/2016

JAYANTA GOGOI
S/O- SRI HIREN GOGOI, VILL.- JAMIRAH GOHAIN GAON, P.O.-
BARBARUAH, DIST.- DIBRUGARH- 786007, ASSAM.

VERSUS

THE UNION OF INDIA and 7 ORS
THROUGH THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF RAILWAY,
NEW DELHI.

2:THE REGIONAL DIRECTOR OF APPRENTICESHIP TRAINING
EASTERN REGION
CGO COMPLEX
DF BLOCK
SECTOR- 1E
FIRST FLOOR
SALT LAKE
KOLKATA- 700064.

3:THE GENERAL MANAGER PERSONNEL
N.F. RAILWAY
MALIGAON
GHY- 6
DIST.- KAMRUP M
ASSAM.

4:THE CHIEF WORKSHOP ENGINEER CWE
N.F. RAILWAY
MALIGAON
GHY- 6
DIST.- KAMRUP M
ASSAM.

5:THE CHIEF WORKSHOP MANAGER
N.F. RAILWAY WORKSHOP
P.O. and DIST.- DIBRUGARH
ASSAM- 786001.

6:THE ASSTT. PERSONNEL OFFICER
N.F. RAILWAY MECHANICAL WORKSHOP
P.O. and DIST.- DIBRUGARH
ASSAM- 786001.

7:THE PRINCIPAL
SUPERVISOR TRAINING CENTRE
NEW BONGAIGAON
N.F. RAILWAY
P.O.- NEW BONGAIGAON
DIST.- BONGAIGAON
ASSAM.

8:THE SUPERINTENDENT
INDUSTRIAL TRAINING INSTITUTE
P.O. and DIST.- DIBRUGARH
ASSAM- 786001.

9:UNION OF INDIA
MINISTRY OF LABOUR AND EMPLOYMENT
NATIONAL COUNSEL FOR VOCATIONAL TRAINING (NCVT)
NEW DELHI REPRESENTED BY ITS SECRETARY

10:UNION OF INDIA

MINISTRY OF SKILL DEVELOPMENT OF ENTREPRENEURSHIP
(APPRENTICESHIP TRAINING DIVISION)
NEW DELH

Advocate for the Petitioner : MR. R K JAIN
Advocate for the Respondent : MR. D K DEY

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri K. Biswakarma, Adv.
Advocates for the respondents : Shri DK Dey, Railway
Shri UK Goswami, CGC

Date of hearing : **14.03.2024**
Date of Judgment : **14.03.2024**

JUDGMENT & ORDER

Heard Shri K. Biswakarma, learned counsel for the petitioner. Also heard Shri DK Dey, learned counsel representing the Railways as well as Shri UK Goswami, learned CGC.

2. The facts projected in the writ petition is that the petitioner had passed the competency test in Modular Gas Cutting under sector fabrication Welder from the Industrial Training Institute (ITI), Dibrugarh and was provided a certificate issued by the Regional Director, Regional Directorate of Apprenticeship Training (RDAT) on behalf of the National Council for Vocational Training (NCVT), Eastern Region, Kolkata. Pursuant to an Employment Notice dated 17.10.2014 whereby applications for engagement of passed out ITI candidates as Act Apprenticeship in various trades including the trade of Welder in NF Railway Mechanical Workshop, Dibrugarh, the petitioner had offered his candidature.

3. It is the case of the petitioner that after verification of the documents and medical examination, he was selected for undergoing the training which was for a year vide letter dated 29.10.2015. The petitioner had reported to the S.T.C. Bongaigaon for undergoing the said training. After completion of 9 months of training, a letter was issued on 16.06.2016 directing the petitioner to submit the ITI mark sheet within 15 days. It is the case of the petitioner that he had already submitted the ITI certificate initially. Nonetheless, the petitioner had made an application on 20.06.2016 requesting the Superintendent of ITI to issue the mark sheet. However, vide a reply dated 24.06.2016, it was informed

that only proficiency certificate were issued and there is no provision for issuing mark sheet. The said communication dated 24.06.2016 was brought to the notice of the authorities. However, vide the impugned order dated 13.08.2016, the petitioner was terminated from the engagement as Apprentice which he had completed about 11 months. As a result thereof, the petitioner was deprived from appearing in the final examination which was to be held in October, 2016. The petitioner was also advised to deposit the training cost which was calculated to be three months of last drawn stipend.

4. Shri Biswakarma, learned counsel for the petitioner has submitted that the certificate obtained by him dated 02.08.2013 is equivalent to an ITI certificate. By referring to the advertisement, he has submitted that there are certain clauses under which an application could be summarily rejected and one of such clause was not having the educational qualification. He submits that in spite of existence of such clause, not only the candidature of the petitioner was accepted, he was also inducted for the Apprenticeship course and was sent to Bongaigaon. He submits that by the conduct of the respondents, there was no manner of doubt that no questions were raised on the eligibility of the petitioner.

5. By referring to the communication issued by the ITI, Dibrugarh, the learned counsel has submitted that the petitioner has been termed to be a student of the said ITI and therefore, the issue on which the impugned action has been taken is without any basis. In this regard, reference has been made to the communication dated 20.06.2016 by the ITI, Dibrugarh to the Regional Directorate of Apprenticeship Training (Eastern Region). The learned counsel has also drawn the attention of this Court to the orders dated 04.10.2016 and 01.11.2016 passed by this Court. By the first order dated 04.10.2016, it was

observed that the petitioner may not refund back the last three months stipend and by the subsequent order dated 01.11.2016, the petitioner was allowed to appear in the All India Trade Test of Apprentice which was commencing from 08.11.2016. The learned counsel submits that pursuant to the aforesaid order, the petitioner had appeared in the test and as per observation made by this Court, the results have not been declared.

6. Shri Biswakarma, learned counsel for the petitioner accordingly submits that interference is required from this Court by which the petitioner may not be held to be ineligible for the Apprenticeship course, the major part of which was already completed by him. He further submits that since the petitioner had also appeared in the final test, the results may be allowed to be declared depending upon which the consequential steps be taken.

7. *Per contra*, Shri Dey, learned counsel representing the Railways has submitted that the initial action of the respondents in short-listing the petitioner and sending him to the training at Bongaigaon will not preclude the authorities from scrutinizing the documents. He submits that full opportunity was granted to the petitioner to produce the relevant documents which include the mark sheet from the concerned ITI which he had failed to do. He submits that the certificate of the petitioner dated 02.08.2013 cannot be held to be equivalent to an ITI certificate which is required by the advertisement dated 17.10.2014.

8. Shri Dey has also referred to the RDE No. 74/95 on the subject of recognition of educational qualification - certificate issued by the National Council for Vocational Training – equivalent to ITI. He submits that in the list of trades, against Sl. No. 15, the trade of Welder has been stated which envisages training period of one year.

9. Shri Dey, learned counsel has also referred to the averments made in paragraph 2 of the affidavit-in-opposition dated 14.02.2017 wherein it has been stated that the certificate of the petitioner is of 6 months whereas the requirement as per the Railway Board Circular dated 26.07.1995 for Welder trade, one year training period is required.

10. Supporting the stand of the Railways, Shri Goswami, learned CGC has referred to the affidavit-in-opposition filed by the respondent no. 10 on 17.06.2022. In paragraph 6 of the said affidavit, it has been specifically stated that the course undertaken by the petitioner was of 120 hours duration i.e., 15 days. For ready reference, the said averments are extracted hereinbelow-

“6. That deponent begs to state that Certificate No. KOL-0026333236 dated 2.08.2013 with ABN : 0149-FAB 103-B00020685 issued in favour of Jayanta Gogoi for undergoing a training on a module namely 'Gas Cutting' (MES Course code No. FAB 103) is a course of 120 Hours duration (i.e., 15 days duration). The minimum educational qualification required is 8th standard.”

11. This Court has noticed that the affidavit-in-opposition of the respondents have not been responded to by the petitioner. Shri Biswakarma, learned counsel for the petitioner however fairly submits that the brief was subsequently handed over to him and therefore rejoinder affidavit could not be filed.

12. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

13. The contention of the petitioner is that since he was shortlisted initially and his candidature was not summarily rejected, the authorities could not have reopened the issue, that too after completion of a major part of the training.

Though the petitioner claims to have completed about 11 months, Shri Dey, learned counsel representing the Railways has submitted that the period of training undergone is of 9 months.

14. Though the aforesaid aspect would have some relevance, the length of the period of training undergone would not be a decisive factor which would preclude the respondents from undertaking a scrutiny so far as the credentials of a candidate is concerned. The respondents had granted adequate opportunity to the petitioner to produce the mark sheet to remove any doubts which the petitioner could not produce. Though certain reasons have been cited that such mark sheet could not be produced in spite of best efforts by the petitioner, the issue appears to be finally dealt with by the stand taken by the Central Government in the affidavit-in-opposition dated 17.06.2022. In paragraph 6, which has been quoted above, a verification exercise was done on the certificate produced by the petitioner wherein it was detected that the course undertaken was of 120 hours duration i.e., 15 days. As indicated above, there is no rebuttal to the aforesaid stand of the Central Government which is categorical in nature. The requirement of a candidate to have passed out from ITI with one year course is also specifically stated in the guidelines holding the field. This Court has already noted the submissions and the documents relied upon by the respondents including RBE No. 74/95 which specifically lays down the requirement of one year training period so far as the post of Welder is concerned.

15. This Court is of the view that since the eligibility of the petitioner itself is not met, his appearance in the examination as permitted by this Court will be of no consequence.

16. The writ petition accordingly stands dismissed.

17. It is however provided that the recovery of the stipend is not to be insisted upon.

JUDGE

Comparing Assistant