

GAHC010144992023



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

Case No. : WP(C)/3832/2023

ANKUSH SAIKIA
S/O- JITEN SAIKIA,
VILL- BHUYAN GAON,
P.O AND P.S- AMGURI,
DIST- SIVASAGAR, ASSAM, PIN-785680

VERSUS

OIL AND NATURAL GAS CORPORATION LTD. AND 4 ORS.
REPRESENTED BY ITS CHAIRMAN AND CEO,
PLOT NO- 5A-5B, NELSON MANDELA ROAD, VASANT KUNJ,
NEW DELHI-110070

2:THE GENERAL MANAGER
(HR) - INCHARGE
CORPORATE RECRUITMENT
ONGC
GREEN HILLS
TEL BHAVAN
DEHRADUN
UTTARAKHAND
PIN-248003

3:CHIEF MANAGER (HR)
RECRUITMENT AND PROMOTION SECTION
ASSAM ASSET

ROB-III
SECOND FLOOR
NAZIRA

DIST- SIVASAGAR

PIN-785685

4:MEDICAL OFFICER
ONGC HOSPITAL
SIVASAGAR
ONGC COLONY

DIST- SIVASAGAR

PIN-785697

5:THE CHAIRMAN
DISTRICT DISABILITY BOARD

SIVASAGAR

DIST- SIVASAGAR

PIN-78569

Advocate for the Petitioner : MR. C BORUAH

Advocate for the Respondent : SC, HEALTH

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

Date : 23.04.2024

Heard Mr. C. Baruah, learned counsel for the petitioner. Also heard Mr. B. K. Das, learned standing counsel, ONGC for the respondent Nos. 1 to 4 and Mr. D. Upamainya, learned standing counsel, Health Department for the respondent No.5.

2. The petitioner is suffering from 55% disability (hearing impairment) and to that effect a Temporary Disability Certificate was issued by the Medical

Authority, Sivasagar, Assam on 25.05.2022. The validity of the said Temporary Disability Certificate is up to 25.10.2025.

3. Pursuant to an Advertisement No. 2/2022 (R&P) issued by the Oil and Natural Gas Corporation Limited (ONGC) for appointment of Non-Executives, the petitioner applied for the post of Junior Technician (Diesel) in respect of ONGC Work Centers in Assam. Out of 9(nine) posts of Junior Technicians (Diesel), 2(two) posts were reserved for category B (D,HH). The petitioner thereafter participated in the selection process and was selected. Accordingly, the ONGC issued the Offer of Appointment dated 16.05.2023 to the petitioner. Clause-6 of the Offer of Appointment dated 16.05.2023 provides that the appointment is subject to production of certificate of medical and physical fitness from the Medical Officer of ONGC Clinic/Hospital. Thereafter, the petitioner subjected himself to the medical test and with regard to his disability, the Medical Officer, ONGC found the disability with regard to his left ear as impaired and the right and left ear as defective. The grievance of the petitioner is that despite his Temporary Disability Certificate issued by the Competent Authority, the ONGC authorities are refusing him to give appointment to the post of Junior Technician (Diesel) on the ground that the Disability Certificate of the petitioner is only temporary and not permanent. Accordingly, the present writ petition has been filed.

4. Mr. C. Baruah, learned counsel for the petitioner submits that as the Temporary Disability Certificate of the petitioner has been issued by the competent authority as prescribed under the Rights of Persons with Disabilities Act, 2016 (Act of 2016 in short) as well as the Rights of Persons with Disabilities

Rules, 2017 (Rules of 2017 in short), the ONGC authorities could not have refused appointment to the petitioner, particularly, when he has successfully completed the recruitment process. Therefore, he submits that directions should be issued to the respondents, particularly, the respondent Nos. 1 to 4 to issue appointment order to the petitioner, inasmuch as, he has successfully completed the recruitment process.

5. Mr. B. K. Das, learned counsel for the respondent Nos. 1 to 4 on the other hand submits that as the petitioner is having only a Temporary Disability Certificate, the ONGC authorities are not in a position to give him appointment, inasmuch as, a Permanent Disability Certificate is required for his appointment in view of the Section 2(s) of the Act of 2016. He submits that Section 2(s) means a person with long term physical, mental, intellectual or sensory impairment and as the petitioner is only having Temporary Disability Certificate only in respect of the left ear, the respondents are not in a position to give appointment to the petitioner. He also submits that if in the event, this Court gives a direction for appointment to the petitioner it would set a bad precedence in future. He therefore submits that the present writ petition should be dismissed.

6. Mr. D. Upamainya, learned standing counsel, Health Department submits that in terms of the Notification dated 30.12.2009, issued by the Ministry of Social Justice Empowerment which clearly states that the Permanent Disability Certificate can only be issued in cases where there is no chances on variation, over time, in the degree of disability and in case where there is any chance of variation, over time, in the degree of disability, the period of validity in the

certificate should have to be indicated. As the case of the petitioner was found to have chances of variation, he was issued the Temporary Disability Certificate which is valid up to 25.10.2025. After expiry of the validity period, the petitioner would have to apply through on-line as per the guidelines and thereafter, he will have to appear before the Competent Board for proper assessment and the Board will decide for issuance of Permanent Disability Certificate accordingly.

7. I have heard the learned counsel for the parties.

8. The Advertisement issued by the ONGC for filling up of Non-Executive posts provides for 9(nine) posts of Junior Technicians (Diesel) in respect of ONGC Work Centre in Assam. From the 9(nine) posts of Junior Technicians (Diesel), 2(two) posts are reserved for bench mark disability categories. Further, Clause-G (xviii) provides that the certificate of disability should be issued by the notified Medical Authority in the format prescribed in the Rights of Persons with Disability Rules, 2017 and the minimum degree of disability for persons to be eligible for any concessions/benefits would be 40%.

9. Rules 18 (3) (ii) of the Rules of 2017 prescribes that the medical authorities after due consideration shall issue a Certificate of Disability indicating the period of disability in cases where there is any chance of variation, over time, in the degree of disability. Further, Rule 19 of Rules of 2017 provides that a person to whom the certificate issued under Rule 18 shall be entitled to apply for facilities, concessions and benefits admissible for persons with disability under schemes of the Government and of non-Governmental organizations

funded by the Government.

10. In the present case in hand, it is undisputed that the Temporary Disability Certificate issued to the petitioner which is valid up to 25.10.2025 has been issued by the Competent Board. This Court has also considered the medical report of the petitioner made by the Medical Officer of ONGC and in the said report it is also clearly stated that there is impairment in the left ear and both the right ear and left ear are defective.

11. Considering that the petitioner is holding a Temporary Disability Certificate, this Court does not see any reason as to why the ONGC authorities should refrain themselves from giving appointment to the petitioner only on the ground that he is holding a Temporary Disability Certificate and more particularly when he has successfully passed the recruitment process.

12. After examining the balance of convenience and in the interest of justice, the ONGC authorities are directed to issue appointment order to the petitioner to the post of Junior Technicians (Diesel) under the disability category up to 25.20.2025, i.e., the date of validity of the Temporary Disability Certificate of the petitioner. This Court makes it clear that this shall not be a precedent in future for other cases. It is further made clear that after the expiry of the validity period of the Temporary Disability Certificate of the petitioner, he shall undergo the required medical tests before the Competent Board and if it is found that his degree of disability has gone down below the bench mark of 40%, the ONGC authorities are giving liberty to terminate the service of the petitioner without

any notice. However, in the event that he is found to be having a permanent disability, he shall be allowed to continue.

13. It is made clear that the appointment of the petitioner should be given at the earliest but not later than 2(two) months from today.

14. Interim order stands merged with this final order.

15. With the above observations and directions, this Writ petition stands disposed of.

JUDGE

Comparing Assistant