

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: April 18, 2017

Judgment delivered on: April 21, 2017

+ W.P.(C) 8057/2015

ARUN SHARMA

..... Petitioner

Through: Mr. Bheem Sain Jain, Adv.

versus

INDIAN OIL CORPORATION & ANR

..... Respondents

Through: Mr. V.N. Kaura, Adv. with Ms. Paramjeet Benipal, Adv. for R-1
Ms. Manjula Gandhi, Sr. Panel Counsel with Mr. Himanshu Dubey, Adv. & Mr. R.M. Tripathi, GP for R-2

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner with the following prayers:-

“In view of the aforesaid facts and circumstances, it is, therefore, most respectfully prayed that this Hon'ble Authority be pleased to:-

a) Pass a writ of mandamus or any other appropriate writ/order directing the Respondent No.1 to give joining to the Petitioner with immediate effect in terms of the directions of the Respondent No.2 i.e Ministry of Petroleum and Natural Gas as well as its own letter dated 05.05.2010 alongwith all the back wages and benefits including the promotion benefits, which the Petitioner is entitled to.

b) Direct the Respondent No.1, in addition to the aforesaid, to compensate the Petitioner for the harassment and torture, mental as well

as physical, caused to the Petitioner due to the illegal and biased actions of the Respondent No.1.

c) Pass any other relief(s)/order/direction which this Hon'ble Court deems fit and appropriate in the facts and circumstances of the present case in favour of the Petitioner and against the Respondents."

2. It is the case of the petitioner that the petitioner being a Cricketer, was appointed as an Apprentice Trainee sports for one year by the respondent no.1 under the then relevant Sports Quota Policy. On June 9, 1999 after successful completion of the Apprenticeship training period and finding his performance satisfactory, respondent No.1 appointed the petitioner as a Trainee Officer. It is the case of the petitioner that on May 30, 2002, his services were terminated without any reason on the alleged ground of unsatisfactory performance. It is his case, on February 16, 2004, he challenged his illegal termination before the Ministry of Petroleum and Natural Gas, which had found the termination of the petitioner, who had served for four years as unfair as well as too harsh. The ONGC, vide its letter dated February 16, 2004 referred the matter back to the Board of the respondent No.1 for fresh consideration.

3. It is averred and contended by the learned counsel for the petitioner that the Board of respondent No.1 vide its letter dated June 08, 2004 upheld the termination of the petitioner. The learned counsel for the petitioner contended, the said grounds were re-invented unlike the termination letter of May 30, 2002. The learned counsel for the petitioner would submit that petitioner again appealed before the Ministry vide his letter dated May 12, 2005 alleging discrimination, favouratism and biased action against him. The Ministry again remanded the matter back to the respondent No.1 for taking a

sympathetic approach suitably accommodating the petitioner in its work force. It is conceded by the learned counsel for the petitioner, on May 26, 2006, the Board of the respondent No.1 reiterated its decision on the termination of the petitioner on the ground that the petitioner had not represented U.P. in Cooch Behar Trophy Tournaments in the year 1990-91 and 1991-92 as claimed by him. It is the submission of the learned counsel for the petitioner that on January 25, 2010, the Ministry of Petroleum and Natural Gas again wrote to respondent No.1. According to him, the Ministry noted that the Board passed the earlier orders on June 8, 2004 and May 26, 2006 without taking note of full facts of the case. The Ministry took note of the facts, which clearly indicated that the petitioner had been victim of systematic discrimination and favouratism and accordingly, the Ministry advised the Board of the respondent No.1 to consider once again the case of reinstatement of the petitioner in IOC or any of its subsidiaries in the meeting scheduled on January 29, 2010.

4. It is averred in the petition and contended by the learned counsel for the petitioner that pursuant to the letter dated January 25, 2010 of the Ministry-respondent No.2 on May 5, 2010 directed appointment of the petitioner in one of the Joint Venture companies of respondent No.1 namely IOT Infrastructure & Energy Services Ltd, a Joint Venture company of respondent No.1 and Oil Tanking, Germany. He states that what followed the said appointment was a nightmare. He states that the petitioner was in fact engaged in an alleged group Company of IOT Infrastructure & Energy Services Ltd under Assam Petroleum Limited i.e Newsco Directional and Horizontal Drilling Services (Asia) Inc., as Business Liaison Executive, which was a contractor and the

petitioner was appointed on contractual basis. The petitioner has also averred and contended by the learned counsel for the petitioner that he was subsequently referred to Petronet LNG Limited, another Joint Venture Company of IOC in the year 2012. Reference is made to various correspondence made between the respondent No.1 and the said Joint Venture.

5. The learned counsel for the petitioner refers to an earlier writ petition, which was filed by the petitioner being W.P.(C) No. 3985/2015, which was disposed of on April 22, 2015. Learned counsel for the petitioner concedes that the petitioner has not challenged his termination in any judicial forum. He states, the case of the petitioner is only on the strength of the letter dated January 25, 2010 wherein, the respondent No.2 has called upon the respondent No.1 to consider the case of the petitioner for reinstatement in IOC or any its subsidiaries. He has drawn my attention to various communications, to contend that the petitioner's case, need to have been considered for appointment in IOC or in any of the subsidiaries of the said company. He states that unfortunately, this exercise has not been carried out by the respondent, which resulted in grave prejudice to the petitioner as he has remained without employment for all these years, more particularly, when there is a clear conclusion of the Ministry respondent No.2 in its communication dated January 25, 2010 that the termination of the petitioner was illegal.

6. On the other hand, Mr. V.N. Kaura learned counsel for the respondent No.1 would draw my attention to the counter-affidavit filed by the respondent No.1 taking a preliminary objection that the present petition is hit by delay and laches. That apart, he

states that the initial W.P.(C) No. 3985/2015 filed by the petitioner was disposed of giving liberty to the petitioner to file a fresh petition provided there exist a Sports Quota Policy of the respondent No.1 and the petitioner satisfies the ingredients of the said Policy. That apart, he states, the present petition having been filed after 13 years of the termination, need to be dismissed on delay and laches. That apart, he has drawn my attention to reasons leading to the termination of the petitioner. That apart, he states that pursuant to the direction of the Ministry respondent No.2 in 2004 and 2006, the Board of the respondent No.1 had considered the matter and found the termination of the petitioner in order. He states that pursuant to the communication dated January 25, 2010 of the respondent No.2, the petitioner was finally recruited as Business Liaison Executive, in a broader group company of IOT Infrastructure & Energy Services Ltd, a Joint Venture between OIC and Oil Tanking, Germany. However, the petitioner did not find the position to his liking and abandoned the position in 2011. He also draws my attention to the communication made by the counsel for the respondent with the counsel for the petitioner, pursuant to the order of this Court on December 9, 2016 to produce the list of Joint Ventures companies of the respondent No.1 and also the copies of the communications made by the respondent No.1 with the Joint Venture companies to contend that most of the Joint Venture companies have stated that they have no vacancies. He states that the prayers as made in the writ petition cannot be granted.

7. Having heard the learned counsel for the parties, it is the conceded position that the petitioner has not challenged his termination from the respondent No.1 organization in the year 2002. That apart, it is too late in the day for the petitioner to assail the same.

In any case, the limited scope of the petition is, whether the petitioner can seek relief on the basis of the directions of respondent No.2 dated January 25, 2010 and the respondent No.1's own communication dated May 5, 2010 of the Director, Human Resource of the respondent No.1 Corporation to the President IOT Infrastructure and Energy Services Limited. In the communication dated January 25, 2010, the respondent No.1 has only advised the respondent No.1 to consider the case for reinstatement of the petitioner in IOC or any of its subsidiaries. The respondent No.1 has taken a stand that the case of the petitioner was considered by the Board not only in 2010 but even earlier to that, in the year 2004 and 2006. In the years 2004 and 2006, the Board was of the view that the termination of the petitioner by the Competent Authority, is in order. The Board having taken a decision, the respondent No.2 could not have in a subsequent communication on January 25, 2010 advised the Board to reconsider the reinstatement of the petitioner in IOC or any of its subsidiaries. Suffice to state, the respondent No.1's consistent stand is the termination of the petitioner is justified, if that be so the aspect of reinstatement of the petitioner in the IOC would not arise. That apart, what is noted from the communication dated January 25, 2010 is the advice of the respondent No.2 to respondent No.1 to consider reinstatement of the petitioner in subsidiary companies. It is a settled position of law, every company is a separate legal entity and is governed by its own Rules of recruitment. The recruitment in IOC or in any of its subsidiaries cannot be made *de-hors* the Recruitment Rules without issuing advertisement calling for applications from the public at large. That apart, I note, in reference to the letter dated January 25, 2010, the Director Human Resource has written

the letter dated May 5, 2010 to one of the companies namely IOT Infrastructure and Energy Services Limited. It is also noted, the petitioner was granted appointment on June 22, 2010. It appears that the same was not to the liking of the petitioner. The satisfaction of the petitioner is immaterial. The petitioner should be concerned with the employment. Unfortunately, he quit that employment. That apart, the communications placed by the respondent No.1 pursuant to the order of this Court dated December 9, 2016 reveals that there are no vacancies/the case of the petitioner cannot be considered in view of the recruitment/appointment procedure and the same are justified.

8. The plea of the learned counsel for the petitioner that two Joint Venture companies have not responded to the communication made by the respondent No.1 would be immaterial when this Court is of the view that the respondent No.2 could not have advised to the respondent No.1 to consider the reinstatement of the petitioner in other Joint Venture company contrary to the Rules & Regulations. The petitioner having accepted his termination has no right to seek the prayers as made in the writ petition. It is not for the respondent No.1 to look for an employment of the petitioner commensurating his qualifications and experience like an Employment Exchange. I may record, the submission of the learned counsel for the respondent No.2 that the letter dated January 25, 2010 by the respondent No.2 to respondent No.1 was not a direction but in the nature of an advice. In other words, he would state, it was not mandatory direction for the respondent No.1 to reinstate the petitioner.

9. In view of my above discussion, I do not see any merit in the petition. The petitioner is not entitled to the reliefs as prayed for. The writ petition is dismissed. No costs.

V. KAMESWAR RAO, J

APRIL 21, 2017

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