

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5329 of 2010

Sunil Paswan S/O Sri Ram Balak Paswan, R/O Village - Rajwara, P.O - Barauni, P.S - Barauni , District – Begusarai.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary Bhartiya Petroleum and Gas Ministerial Department , Government of India , New Delhi.
2. The Chief Executive Director, Indian Oil Corporation Ltd., Barauni , District- Begusarai, Bihar.
3. The Employee Relation Manager Indian Oil Corporation Ltd. Barauni District- Bagusarai, Bihar.
4. The Sr. Human Resource Manager, Barauni Refinery Indian Oil Corporation Ltd. Barauni District- Bagusarai, Bihar.
5. The Employee Relation Officer, Indian Oil Corporation Ltd. Barauni District- Bagusarai, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ajit Kumar, Adv.
		Mr. Sadanand Paswan, Adv.
For the I.O.C.	:	Mr. K.N. Gupta, Adv.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 20-04-2018

Heard learned counsel for the parties.

In the present case, the petitioner is seeking a direction from this court for the appointment of the petitioner on the post of Junior Engineer Assistant Quality Control Analyst.

The factum is that an advertisement was published for appointment in different disciplines for different posts including the post of Junior Engineer Trainee. As per terms of the advertisement, one of the condition was that the candidate must apply against only one post, candidates applying for more than one discipline will not be considered. The admit cards were issued



and the petitioner appeared for the examination of Junior Quality Control Analyst/Trainee and did not appear for the post of Junior Engineer Assistant-IV/Trainee (Production). The petitioner qualified in the written test and, as per result published by the Indian Oil Corporation, the name of the petitioner figured at serial no.11 in the merit list. The respondent vide letter dated 7.3.2009 informed the petitioner about the cancellation of his candidature on the ground that he had applied for the two posts i.e. Junior Engineer Assistant (Production) and Junior Quality Control Analyst IV, as per the advertisement, the petitioner could have applied only against one post. When the petitioner was not called for interview, he approached this Court in C.W.J.C. No. 3372 of 2009 and, this Court, vide order dated 23.3.2009, allowed to appear in the interview, but made it clear that it will not create any right in favour of the petitioner and if it would be found that there are other scheduled caste candidates available, the Court may not relax the requirement of the advertisement which had very much conveyed that candidates may apply only for one post and, accordingly, called for interview, the petitioner participated and, finally, the case was disposed of vide order dated 17.12.2009 giving direction to the Indian Oil Corporation giving direction to published the result of the competitive examination and interview



conducted pursuant to the advertisement dated 12.7.2008 published in the Dainik Jagran, Patna edition for appointment on the post of Junior Engineer, Assistant-IV/trainee (Production), Junior Engineer Assistant-IV/Trainee (Instrumentation), Junior Quality Control Analyst/Trainee, Jr. Engg. Assistant-IV/Trainee (Electrical), which shall include the result of the petitioner as well within one week. In spite of that order, the result of the petitioner was not published on the notice board as well as no information was served to the petitioner about marks obtained in the written test and in the interview. On enquiry, it transpired that one Hiralal Himani, who was also a candidate from the scheduled castes category, was selected as he secured better marks than the petitioner and was asked to produce the academic certificate including experience but, he failed to produce the same. Ultimately, Hiralal Himani failed to produce the necessary certificate of qualification. It will be relevant to mention herein that vide order dated 23.3.2009 passed in aforesaid C.W.J.C. No. 3372 of 2009, the interim relief was given to the petitioner that he will appear in the interview but, it was made clear that no right shall accrue on the petitioner on the basis of appearing in the interview and if ultimately it was found that there are other scheduled castes candidates available for such selection for the



aforesaid post, the Court may relax the requirement of the advertizement which had very clearly conveyed that a candidate can apply for one post. It was also made clear therein the performance of the petitioner in interview and his overall result for the said post will be kept in sealed cover and would abide by the final result of the writ application and, thereafter, finally the case was disposed of vide order dated 17.12.2009 giving direction to the respondents to publish the result.

In the counter affidavit, the Indian Oil Corporation has taken two grounds for non-selection of the petitioner, firstly, as he has applied against two disciplines, in terms of the advertisement, the candidature of the petitioner stood canceled. Secondly, the objection has been raised that for unreserved, the minimum cut-off selection percentage was 50% marks and 45% for reserved candidate. The petitioner secured 44% marks i.e. below 1% of the bench mark.

In the rejoinder, the petitioner has submitted that the first point raised by the Indian Oil Corporation about cancellation of candidature on account of opting for two posts is not available after the order of this Court passed in C.W.J.C. No. 3372 of 2009 as the plea of Corporation has been rejected. At the outset, it is a fact that as the Indian Oil Corporation never challenged the order



dated 17.12.2009 before the higher level and the second point as has urged is that as per advertisement, the rules and regulations of reservation policy of the Central Government employees will be applicable mutatis mutandis in the matter of selection of candidate in the Indian Oil Corporation. In nutshell, the rule, regulation and instruction issued from time to time governing the filed of reservation for the employees of Central Government will be applicable in the matter of selection of the candidate for the Indian Oil Corporation having claimed that instruction no. 1/1/70-Estt. (SCT) dated 25.7.2070 and the instruction dated 1.7.1998 will be applicable. This instruction provides that when sufficient number of suitable Scheduled Castes and Scheduled Tribes candidates were not available to fill up all the reserved share of vacancies, SC/ST candidates will be selected by relaxing the standards and this Court vide order dated 11.5.2005 passed in C.W.J.C. No. 5329 of 2010 had directed the authorities of the Indian Oil Corporation to inform this Court as to on what basis the minimum cut-off percentage of 45% marks on overall performance in written test and personal interview for reserved candidates was fixed by the Selection Committee in its meeting held on 26th March, 2009. In pursuance thereof, the Indian Oil Corporation has filed its supplementary counter affidavit explaining that 45% marks was



followed uniformly before 2009 and after 2009 recruitment for SC/ST, in all discipline, the cut-off percentage was/were recommended by the Selection Committee based on number of applications received and performance of the candidate and the cut-off percentage marks primarily remained as 40% and 35% in written test for unreserved and reserved category respectively but, has stated that in the year 2004, the relaxation was granted up to 40% to eligible candidates and after 2014-15, 40% for unreserved and 35% for the reserved categories while the total cut-off fixed at 45% for unreserved and 40% for reserved category. It will be relevant to quote paragraph nos. 5 to 9 of the supplementary counter affidavit which reads as follows:-

“5. That with regard to whether 45% is being followed uniformly before 2009 and after 2009 recruitment for SC/ST, it is respectfully submitted that the cut-off percentage marks were recommended by the Selection Committee based on the number of applications received, turnout and performance of candidates. The cut-off percentage has primarily remained at 40% and 35% in written test for Unreserved and Reserved categories respectively. The same was also followed in this case.

6. That the cut-off for the final selection (written and personal interview) were recommended to be 50% and 45% for the unreserved and reserved categories respectively. The same has been approved by Executive Director, Barauni Refinery, who is the appointing authority. It is also mentioned that the same cut-off (50%



and 45% for the unreserved and reserved Categories) were being followed in all disciplines (QC, Electrical, Production & Instrumentation etc.) of the said recruitment notification.

7. *That the same cut-off criteria have been followed in recruitment examinations before/after 2009 with minor variations as and when approved. For instance in 2004, the relaxation was further extended upto 40% to fulfill the reservation criteria for filling up ST position. Such variations have always been with a positive intent of giving due opportunity to reserved categories and also to maintain the necessary administrative efficiency levels.*

8. *That the latest cut-off followed in 2015-15 are 40% for Unreserved and 35% for Reserved categories written test while the total (written+interview) cut-off fixed at 45% for unreserved and 40% for reserved categories. Our personnel manual elaborates the provisions for recruitment of candidates however, there is no specific direction with regard to fixing of cut-off marks for written test or interview test or both.*

9. *That as per issue concerning whether government instructions and guidelines are followed, if not then why in government, pass marks is 37%, I would highlight that all the government guidelines and presidential directives with respect to reservation in recruitment is followed by India Oil Corporation and the policies incorporating recruitment and selection procedures have thus been laid down. But any cut-off marks fixed in a government advertisement is not binding. No specific government guidelines defining the pass marks as 37% uniformly for all recruitment examinations could be traced and there appears no mention of the same in our manual.”*



The documents which have been attached as Annexure-B shows that during 2004 selection, for ST candidates, the Committee recommended relaxation up to 40% in order to fulfill the reservation commitment for filling up the scheduled tribes vacancy.

In the second supplementary counter affidavit, a chart has been attached which reflects that up to 2011, the bench mark for SC and ST candidate was 45% and, whereafter, the percentage was brought down to 40%.

During argument, it has been stated that when the petitioner was not selected, a fresher has now been adjusted against that vacancy but, in the affidavit, nowhere a statement has been made to whom the benefit has been given and on what basis, without there being a direction of this Court or without any information to the Court has adjusted against the vacancy which was notified for appointment from open market. So in the present case, the question is to be decided as to whether the application of the petitioner stood rejected on the ground of his opting for two disciplines simultaneously or it will be treated to have been saved on account of the order and direction issued by this court in C.W.J.C. No. 3372 of 2009. The second question would be whether this Court should direct the Indian Oil Corporation to



grant relaxation to the petitioner in the matter of appointment to the vacancy published.

The question which has been raised by the Corporation that the application of the petitioner stood dismissed on account of filling up the form for two disciplines, for considering this aspect, it has to be examined the previous facts as it is apparent that when the petitioner was not called for interview, he approached this Court in C.W.J.C. No. 3372 of 2009, by interim order dated 23.3.2009 (Annexure-A), the Corporation was directed to hold interview of the petitioner but, has recorded that the appearance of the petitioner in the interview will not create any right to the petitioner and if ultimately it would be found that other scheduled castes candidates available for such selection for the aforesaid post, this Court may not relax the requirement of the advertisement which had very clearly conveyed that the candidate would apply only for one post. So this order itself had diluted strict condition of notification much less allowed the petitioner to participate in the interview and decision has been left to the Court that if any other scheduled castes candidates will be available, the Court may or may not grant relaxation. In the present case, there were two candidates, one, the petitioner and another, namely, Hiralal Himani but, he did not appear with his credential and the petitioner



remained singular candidate. The earlier order itself shows that the Court was of the view that if there will be more than one, in such situation, the Court may refuse to grant relaxation but, in the event of singular candidate, the probability of granting the relaxation in higher side and, finally, the Court has exercised jurisdiction and directed the Corporation for preparation of result inclusive of the petitioner and that order has attained finality as that has not been challenged anywhere, itself indicates that the Court has exercised jurisdiction in favour of the petitioner, merely he had applied for the two disciplines, the application has not been treated to have been rejected of his candidature. In such circumstances, this Court is of the view that the petitioner cannot be considered to have been non-suited as he had applied for two disciplines as this Court has by the aforesaid order has diluted the rigors of the advertisement that in the event of candidate applying for the two disciplines will be treated to have been canceled. This point goes in favour of the petitioner.

The other point is with regard to the fact that as per Corporation, the cut-off marks fixed for the scheduled caste candidates for all discipline was 45% whereas the petitioner has secured only 44%. Learned counsel for the petitioner has urged that as the petitioner is the singular candidate, in such event, this



Court should exercise its jurisdiction in giving direction to the respondents to grant relaxation as in the past also, the Corporation has granted relaxation to the scheduled tribe candidates on the strength of circular issued by the Central Government from time to time in order to improve the strength of scheduled castes and scheduled tribes. It will be relevant to quote relevant portion of the Circular of the Central Government dated 1.7.1998 which reads as follows:-

“As part of measure to increase the representation of SC/ST in the services under the Central Government, the Government have reviewed the procedure for implementing the policy of reservation while filling up reserved share of vacancies for Scheduled Castes and Scheduled Tribes by direct recruitment. The practice presently being followed is to adjust SC/ST candidates selected for direct recruitment without relaxation of standards against the reserved share of vacancies. The position of such SC and ST candidates in the final select list, however, was determined by their relative merit as assigned to them in the selection process. When sufficient number of suitable Scheduled Caste and/Scheduled Tribe candidates were not available to fill up all the reserved share of vacancies, SC/ST candidates were selected by relaxed standards.”

The stipulation in the advertisement itself makes it clear that reservation policy of the Central Government will be applicable in the matter of selection and promotion of the employee of the Indian Oil Corporation. It will be also relevant to



quote relevant portion of the clause made in the advertisement itself which reads as follows:-

“Reservation of posts for SC/ST/OBC (non creamy layer) candidates and relaxations thereof as per Govt. directives.”

The advertisement itself makes it very clear that the relaxation would be granted to the reserved category candidates specially scheduled castes and scheduled tribes and supplementary counter affidavit which has been filed by the Corporation shows that in 2004 there was less number of ST candidates and the Committee had recommended for relaxation of qualifying marks to 40% in order to fulfill the reservation commitment for filling up the said ST quota and, later on, after 2011, the qualifying marks itself has been reduced, so in the event of singular candidate, the Corporation has previously invoked the relaxation clause i.e. to the extent of 40% to the scheduled tribe candidates. Herein the present case also, the petitioner is singular candidate and, as such, it is desirable for the Corporation to exercise jurisdiction of relaxation in terms of advertisement where it has been specifically mentioned that the rule, circular and notification issued by the Central Government with respect to reservation policy in selection of scheduled castes candidates, the relaxation should be granted.

In that view of the matter, this writ application is allowed to the extent that this Court, as because the petitioner is



the singular candidate, directs the Indian Oil Corporation to exercise jurisdiction of grant of relaxation to the petitioner and appoint him to the post of Junior Quality Control Trainee.

With the aforementioned observation and direction, this writ application stands allowed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.04.2018
Transmission Date	NA

