

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 26627 of 2013

Kuldeep Kumar

.....Petitioner

versus

Indian Oil Corporation Ltd. and others

.....Respondents

CWP No. 12312 of 2014

Parv Singh

.....Petitioner

versus

Union of India and others

.....Respondents

Date of Decision: March 05, 2020

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Vijay Pal, Advocate
for the petitioner (in CWP No. 26627 of 2013)
for respondent No. 6 (in CWP No. 12312 of 2014)

Mr. Hemant Bassi, Advocate
for the petitioner (in CWP No. 12312 of 2014)

Mr. Ashish Kapoor, Advocate
for respondents No. 1 and 2 (in CWP No. 26627 of 2013)
for respondents No. 2 to 4 (in CWP No. 12312 of 2014)

Sudhir Mittal, J. (Oral)

This judgment shall dispose of CWP Nos. 26627 of 2013 and 12312 of 2014 as both the writ petitioners had applied for a retail petroleum outlet pursuant to advertisement dated 30.06.2012.

An advertisement dated 30.06.2012 was issued inviting applications for a retail petroleum outlet. The petitioners submitted their respective

applications and all the prospective candidates were called for interview on 15.10.2012. In the said interview, every candidate was allotted marks in respect of various criteria laid down. Petitioner in CWP No. 26627 of 2013 namely Kuldeep Kumar secured a total of 92.95 marks whereas the petitioner in CWP No. 12312 of 2014 namely Parv Singh secured 90.87 marks. Respondent No. 3 – Ruchi in CWP No. 26627 of 2013 secured 92.70 marks. Vide letter dated 02.09.2013, the candidature of petitioner Kuldeep Kumar was cancelled for submitting wrong information. Consequently, respondent No. 3 – Ruchi was selected and appointed as dealer. She commissioned the outlet w.e.f. 23.09.2017.

CWP No. 26627 of 2013 - Kuldeep Kumar vs. Indian Oil Corporation and others

In this case, the petitioner had submitted an experience certificate for the period 01.05.2006 to 30.07.2007 indicating that he had worked as the Manager in a retail outlet. On the basis of the said certificate, the petitioner was granted four marks in accordance with the laid down standards. The candidature was cancelled as a complaint was received that the experience certificate was false. The terms and conditions governing scrutiny of candidature of an applicant prescribed that in case a candidate furnishes false information, his candidature would be liable to be cancelled.

Learned counsel for the petitioner submits that order dated 02.09.2013 is illegal as no opportunity of hearing was granted to the petitioner. On an opportunity of hearing having been granted to him, he would have shown that the complaint made against him was false. Attendance record annexed as Annexure P-8 clearly shows that the petitioner worked as Manager in a retail outlet during the period for which the certificate has been issued. The authorised signatory of the said retail outlet has also given an affidavit dated 18.02.2013 that the certificate is valid.

Learned counsel for respondents No. 1 and 2 submits that the complaint was received against the petitioner after the interview was concluded. According to the complaint, experience certificate of the petitioner was false. The matter was enquired into. The owner of the retail outlet Smt. Javitri Devi gave an affidavit dated 23.04.2013 stating that the petitioner had never worked in her outlet. The attendance record of the employees of the said retail outlet for the year 2016 onwards has also been obtained and the said record shows that one Kuldeep Kumar is still working in the retail outlet. The application form of the petitioner records his profession as 'LL.B Practice' and, thus, it is obvious that attendance record of some other Kuldeep Kumar is relied upon. Under the circumstances, grant of opportunity of hearing would be a futile exercise. Reliance is placed upon ***Ramesh Kumar vs. General Manager, Hindustan Petroleum Corporation Limited and others, 2013(1) RCR(Civil) 233.***

The case of the petitioner is based upon the attendance record (Annexure P-8) and affidavit dated 18.02.2013 (Annexure P-7) given by authorised representative of the retail outlet. Against this, learned counsel for respondents No. 1 and 2 is relying upon affidavit dated 23.04.2013 of owner of the retail outlet, the profession of the petitioner mentioned in his application and the attendance record of the retail outlet for the year 2016 onwards. The application form of the petitioner records his profession as 'LL.B Practice'.

Learned counsel for the petitioner has submitted that he got his licence for practice in the year 2012.

If that is infact the case, then a question arises as to why the petitioner continuos to be shown as the employee of the retail outlet in the year 2016 onwards?

Learned counsel for the petitioner has not been able to give any

satisfactory explanation. It is, thus, obvious that Kuldeep Kumar recorded as an employee of the retail outlet is not the same person as the petitioner. Thus, reliance by respondents No. 1 and 2 upon affidavit dated 23.04.2013 is justified. So far as the affidavit dated 18.02.2013 (Annexure P-7) of the authorised representative of the retail outlet is concerned the said affidavit is also correct since it only says that Kuldeep Kumar is working in the retail outlet. However, the petitioner can not draw any benefit therefrom.

Since I have found that the experience certificate submitted by the petitioner is false, allowing the writ petition for violation of principles of natural justice would be a futile exercise. The Division Bench of this Court in ***Ramesh Kumar (supra)*** has held that enforcement of principles of natural justice can not be mechanical if the result is a fore-gone conclusion. Setting aside an order for complying with the principles of natural justice would be a useless exercise.

For the aforementioned reasons there is no merit in this writ petition and the same is dismissed.

CWP No. 12312 of 2014 Parv Singh vs. Union of India

As noticed earlier, the petitioner in this case secured 90.87 marks and was declared unsuccessful. His grievance is that under the sub head 'capability to provide finance' he should have been allotted additional four marks. The assets were certified by a valuer and there was no error in the documentation. Had he been granted additional four marks, his total would have gone upto 94.87 and he would have been granted the retail outlet.

Learned counsel for respondent No. 2 submits that according to Article 13.1.1 of the Brochure dated 01.03.2012 pertaining to norms for evaluating the candidates, evaluation report of assets should be certified by a Government approved valuer. The evaluation report submitted by the petitioner did not

disclose that the author thereof was a Government approved valuer and, thus, the candidature of the petitioner was liable to be rejected.

Report of the valuer has been annexed as Annexure P-3 (colly) with the writ petition. A perusal of the same shows that it no where discloses that the author thereof is a Government approved valuer. Hence, the submission of learned counsel for respondent No. 2 is justified. The applicants are required to be evaluated on the basis of documents annexed with the application and in accordance with the specified norms. Any shortcoming in a document would disentitle the applicants to award of marks on its basis.

At this stage, learned counsel for the petitioner argues that the valuer of the assets of the petitioner is infact a Government certified valuer. A specific averment in this regard has been made in the writ petition which has not been denied by respondent No. 2. Thus, the defect pointed out is non-existent. He further argues that the award of the retail outlet in favour of respondent No. 5 is malafide and the allegation in this regard is gone unrebutted as no written statement has been filed on behalf of the said respondent. Even respondent No. 2 has not denied this allegation.

The documents submitted by an applicant can not be supported with information provided later on. May be, the valuer who certified the assets of the petitioner, was Government approved. However, the documents submitted by him did not disclose so and respondent No. 2 can not be expected to assume his status in the absence of information available from the record of the applicant. Thus, the contention of learned counsel for the petitioner is misconceived.

Regarding allegation of malafide, no specific allegations have been made against any one. Only a general allegation that the action impugned was taken to favour certain individuals has been made and the same is not sufficient to

establish a plea of malafide. Thus, the said argument is also without any merit.

Accordingly, I do not find any merit in this petition and the same is dismissed.

March 05, 2020
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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No