

\$~31

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 22.01.2020

+ LPA 40/2020

INDIAN OIL CORPORATION LTD Appellant

Through: Mr. V.N. Koura, Ms. Paramjeet
Benipal and Mr. Sumit Benipal,
Advocates.

versus

SHIVAM PANDEY & ANR Respondents

Through: Mr. D.K. Devesh, Advocate for R-1.
Mr. Gaurang Kanth, CGSC with
Mr. Aman S. Bakshi, Advocate for R-
2/UOI.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

SANJEEV NARULA, J. (Oral):

CAV No. 52/2020

1. Learned counsel for the Respondents/Caveator has appeared.
2. Accordingly, the caveat stands discharged.

C.M. No. 2416/2020 (exemption)

3. Exemption allowed, subject to all just exceptions.
4. The application stands disposed of.

LPA 40/2020 & C.M. No. 2415/2020

5. The present Letters Patent Appeal is directed against the judgement dated 11.12.2019 passed by the learned Single Judge allowing the writ petition of the Respondent and consequently setting aside the termination order dated 09.01.2019 passed by the Appellant - Indian Oil Corporation Ltd (IOCL)

removing Respondent No. 1 from its service.

6. The brief sequence of events giving rise to the present appeal is that the Appellant issued an advertisement No. RD-2017, *inter alia*, for the post of “Fire and Safety Officer Grade-A” prescribing the eligibility criteria including the Additional Minimum Standard “Eyesight Normal (6/6 in both the eyes, without glasses)”. The said advertisement specified that the candidates must satisfy the general criteria under the head “physical fitness” that was required to be satisfied by all the candidates seeking appointment to any position. The same reads as under:

“Physical Fitness

Selected candidates will be required to undergo 'Pre-employment Medical Examination' and should be declared medically fit as per Indian Oil's pre-employment medical standard. Candidates are advised to go through the 'Guidelines and criteria for Physical Fitness for Pre-employment medical examination'. The guidelines are available in the following link:

http://www.iocl.com/PeopleCareers/Pre-employment_Guiding_Principles11th_mar_2011_2011.PDF

7. The additional physical fitness standard for the post of Fire and Safety Officer was specified in the following terms:

“2. Addl Standards (Minimum) for recruitment to the Post Code 03: Fire & Safety Officer: Height: 165 GM, Weight: 50 Kg, Chest: Normal: 81 CM, Expanded: 86.5 CM, and Eyesight normal (6/6 in both the eyes; without glasses), colour vision normal and Free from - Vertigo problem, disease of heart/lungs/kidney, abnormal blood pressure. Knock Knee, Flat Feet, Squint eye and stammering.

8. The said advertisement also stipulated as follows:

"Liability to Declare

1. Candidates with reported ailments, deficiencies or abnormalities and also those with finding of not meeting the physical fitness criteria as above, shall make a declaration to this effect while submitting their application.

2. A candidate found UNFIT during medical examination conducted by any Refinery Unit while seeking regular employment in the past shall also be required to declare the same with reasons for being declared UNFIT."

9. Respondent No. 1 applied for the post of Fire and Safety Officer (Grade-A) pursuant to the above advertisement and on his selection, was offered the position vide letter dated 19.03.2018 subject to certain conditions as specified in the offer of appointment, the relevant portion whereof is extracted hereunder:

"Your appointment and continuance in the service shall be subject to your being found medically fit by our Corporation's Chief Medical Officer at any of the refinery hospitals at Guwahati, Barauni, Vadodara, Haldia,, Mathura, Panipat, Digboi or Bongaigaon or a Government Medical Officer of the status of Civil Surgeon (As per Forms in Part I, II and III enclosed). In the event of your being declared medically unfit before you join duty as Officer, this appointment order will deem to have been withdrawn and cancelled automatically."

"Notwithstanding anything to the contrary herein contained and in the bond which forms a part and parcel of this offer letter, the corporation shall be at liberty to withdraw or terminate this offer letter forthwith upon or at any time on the happening of the following events:

(a) If any information given by you in your application for appointment as officer or in any other documents connected

therewith or filed in support thereof shall be found to be untrue or incorrect.

Or

(b) If you have concealed any information which, if disclosed, would have disentitled you to secure the appointment as officer.”

10. As stipulated, Respondent No. 1 underwent the pre- employment medical examination at Gujarat Refinery Hospital in April, 2018 and was declared to be medically “fit”. On 10.05.2018, the Appellant issued letter of posting to Respondent No. 1 advising him to join Barauni Refinery instead of Indian Oil Institute of Petroleum Management (IIPM), Gurgaon as was initially instructed in the offer of appointment. In the meanwhile, Respondent No. 1 who was in service with Reliance Industries Ltd. (RIL), as Manager, HSEF - Fire Protection, in anticipation, submitted his resignation with his employer. He was relieved w.e.f. 15.05.2018 and thereafter joined Appellant’s Barauni Refinery. Eventually, Appellant office order dated 23.05.2018, was issued confirming his joining w.e.f. 21.05.2018. His employee code was generated and he was sent for induction training w.e.f. 24.05.2018 for one week. On completion of his training, Respondent no. 1 reported to the Appellant and started discharging his duties.

11. Subsequently, on 11.07.2018, Respondent No. 1 received an email from HR Department of the Appellant to the effect that the power of his glasses was -0.75 in both eyes and he was advised to undergo another medical examination at Barauni Refinery Hospital between 16.07.2018 and 31.07.2018, in terms of additional physical parameters, prescribed in the advertisement No. RD-2017. Respondent No. 1 underwent a minor medical

treatment called contura vision surgery as advised by the doctors, and requested the Appellant to get his medical examination done on any day after 10.09.2018. On 04.12.2018, the medical examination was conducted and afterwards the Appellant issued the termination letter dated 09.01.2019, terminating Respondent's services *inter alia* on the ground that he did not meet the prescribed criteria of eyesight notified for recruitment to the post of Fire and Safety Officer. Aggrieved with the aforesaid termination, Respondent No. 1 filed a writ petition before this Court, which was allowed in his favour and a writ of certiorari was issued quashing the termination order dated 09.01.2019. Appellant was directed to reinstate Respondent No. 1 with consequential benefits within four weeks and further directions were issued to the Appellant to offer alternative post to him, taking note of the medical condition.

12. Appellant is aggrieved with the aforesaid order and has assailed the same by way of the present appeal.

13. Mr. Koura, learned counsel for the Appellant impugns the judgment, contending that the learned Single Judge has failed to appreciate that Respondent No. 1 was ineligible to apply for the position of Fire and Safety Officer, since he did not have the requisite physical standards that are required to lead and be involved in fire fighting operations. The Appellant was bound to strictly adhere to the criteria set forth in the advertisement and the same could not be relaxed in favour of Respondent No. 1. He submits that permitting Respondent No. 1 to be appointed without meeting the eligibility criteria would be discriminatory and contrary to Article 14 and 16 of the Constitution. He further argued that the learned Single Judge has

failed to appreciate that there could be no estoppel against the law, including Article 14 and 16 of the Constitution. He also argued that the Doctor(s) at Gujarat Refinery, where Respondent No. 1 had submitted himself for pre-employment medical examination, while recording that Respondent No. 1 wore glasses and his vision met the prescribed criteria with the use of glasses of power -0.75 in both eyes, had erroneously certified him as “fit” for appointment. He submitted that the Doctor(s) did not realize that the advertisement for the post of Fire and Safety Officer prescribed additional standard of 6/6 vision in both eyes without glasses and this was a mistake on their part. Additionally, it was argued that Respondent No. 1 was himself bound to declare in his application for employment, that he wore glasses and did not meet the prescribed additional physical criterion for the post, and since he has not done so, he cannot take advantage of the mistake of the doctor. Mr. Koura also argued that the learned Single Judge had failed to appreciate the principle enunciated in the case of ***Dr. Rahul Kumar v. Union of India & Ors.*** in LPA No. 355/2017, the judgment relied upon before the learned Single Judge. In support of his submissions, Mr. Koura referred to the decisions of the Supreme Court in ***Arbind Kumar v. State of Jharkhand and Ors.*** (2018) 17 SCC 762, ***State of Punjab v. Jagdeep Singh*** 1964 4 SCR 964 and ***Ramana Dayaram Shetty v. International Airport Authority of India*** (1979) 3 SCC 489.

14. Mr. D.K. Devesh, learned counsel for the Respondent who appears on caveat argued that the impugned judgment does not call for any interference, in as much as that the Respondent No. 1 after resigning from his earlier position joined the services of the Appellant on receiving a confirmed

appointment. He submitted that Respondent No. 1 was declared as medically fit and he joined the services in accordance with terms of the offer of appointment. He also relied upon a medical report/examination conducted at AIIMS, New Delhi where the eyesight of Respondent was found to be 6/6 in the left eye and 6/9 in right eye and binocular vision as 6/6. He next referred to the minimum eyesight criteria fixed by other government/Public Sector Undertakings like GAIL India, Oil India and ONGC where minimum 6/9 distance vision in both eyes without glasses is the prescribed criteria for the post of fire fighting personnel. He submitted that the criteria of the Appellant – Corporation is contrary to the industrial practice and the same is arbitrary and unreasonable and the same cannot be any basis to declare the Respondent No. 1 to be ineligible.

15. We have given our thoughtful consideration to the submissions advanced by the learned counsels. The learned Single Judge, after considering the factual conspectus of the case, quashed the impugned termination order primarily holding that the contract of service/employment stood concluded between the parties on Respondent No. 1 reporting for duty in pursuance to the letter dated 10.05.2018. Since the posting was not subject to any further medical checkup, there was no basis or foundation for issuing the termination letter. The Medical Officer at Gujarat Refinery Hospital had declared Respondent No. 1 to be fit for the post. The genuineness of the medical certificate was not in doubt, and no ulterior motive could be attributed to Respondent No. 1 or the Medical Officer who issued the said certificate. The contract of service having attained finality, Respondent No. 1 could not be terminated from service except in accordance with the rules

and regulations applicable to the confirmed employees. The action of termination was contrary to the procedure and the Appellant being an instrumentality of State, has to follow the rigor of law in letter and spirit. The relevant portion of the impugned judgment, dealing with this aspect is reproduced as under:

“8. In the present case, it cannot be disputed that with the petitioner reported for duty on being posted by IOCL at its Barauni Refinery in pursuance of its letter dated 10.05.2018. The contract of service/employment thus stood concluded. Nothing emerges from the record to show nor has come to be pointed out by Mr. Koura during the course of hearing that such posting and joining of the petitioner was subject to any further medical check-up of Eyesight or otherwise. Undisputedly, the subsequent medical check-up and the result thereof, is the foundation of the impugned termination letter. The impugned termination letter by itself capitulates, as under:

“E. The Pre-Employment Medical Examination of Shri Shivam Pandey was conducted at Gujarat Refinery Hospital in April’ 2018 where he was found medically fit by the attending Doctors. Subsequently, a review of the aforesaid Pre-employment Medical Examination form revealed that Shri Shivam Pandey was not meeting the prescribed criteria of Eyesight as his power of glasses were recorded as- 0.75 in both eyes against the criteria of Eyesight normal (6/6 in both the eyes; without glasses) prescribed under Addl Standards (Minimum) notified in the Advertisement.

F. Shri Shivam Pandey was advised to undergo medical examination at Barauni Refinery Hospital with respect to eyesight criteria under additional parameters of Physical Fitness as mentioned in the advertisement. Vide letter dated 31.07.18, Shri Shivam Pandey informed that he had undergone medical treatment of his eyes and requested to get his power

vision rechecked after 10.09.18.”

9. A bare perusal of the foregoing reasons recorded in the impugned termination order would show that subsequent to the employment given to the petitioner, the Eyesight of the petitioner was not found to be meeting the standards prescribed at the time of employment. The review of the Eyesight of the petitioner on the premise whereof the impugned termination letter came to be issued is of sometime after September, 2018, whereas, his pre-employment examination medical certificate issued by the Medical Officer, Gujarat Refinery Hospital, IOCL is of 18.04.2018, which declares him fit for the subject post. Suffice, it would be to observe, IOCL has issued the impugned termination letter on the premise of the review medical test without raising even an iota of any doubt as regards the genuineness of the medical certificate dated 18.04.2018 nor any ulterior motive is attributed, either to the petitioner or the Medical Officer, who issued the medical certificate dated 18.04.2018. In the given factual conspectus, the contract of service having attained finality with the joining of the petitioner to the subject post on 23.05.2018, the contract of service/employment could not be terminated by IOCL in the manner, it has proceeded with. It does not require an elaboration that the petitioner having joined the services of IOCL, would be governed by the rules and regulations applicable to the employees of IOCL. Any action taken by it contrary to the procedure laid or applicable to it, it being an instrumentality of State, cannot be sustained. In the given case, once the contract of employment was concluded, the equitable considerations, assuming, the assertion of IOCL was the only correct position, by no means, could be ignored equally. The impugned termination letter is therefore, not sustainable even on that count. More so, when the petitioner claims to have left his previous employment in view of the offer of appointment to the subject post by IOCL.

10. The reliance placed upon Dr. Rahul Kumar's case (supra) is of no avail to the IOCL inasmuch as in that case, the petitioner was not allowed to join the duties on the ground of being

medically unfit. In other words, it was a case where the contract of service had not yet been concluded. There is thus an outright distinction between Dr. Rahul Kumar's case (supra) and the case in hand. The contention raised by Mr. Koura placing reliance upon Dr. Rahul Kumar's case (supra) is therefore, wholly misconceived and is rejected.

11. For the foregoing reasons, the writ petition is granted and by a writ of certiorari, the impugned termination order dated 09.01.2019 is quashed. As a result thereof, the petitioner would be reinstated with consequential benefits, within four weeks from today. It is however made clear that taking note of the medical condition of the petitioner, IOCL may proceed in the matter as per its laid down rules and regulations and/or offer alternative post or other alternative to the petitioner taking note of the equitable considerations."

16. On the basis of the facts noted above, it indisputably emerges that Respondent No. 1 was declared to be medically fit by none other than the Medical Officer of the Appellant – Corporation. The said medical examination was conducted by the Appellant – Corporation, mindful of the eligibility criteria prescribed for the position for which Respondent No. 1 had applied and at this stage, Respondent cannot resile and disown the certificate by contending that the same was issued by mistake.

17. We also note that the offer of appointment contains a condition which prescribes that “*in the event of -your being declared medically unfit **before you join duty as officer**, or your antecedents not being found satisfactory, this appointment order will deem to have been withdrawn and cancelled automatically*” (emphasis supplied) . This entitled the Appellant to declare Respondent No.1 ‘unfit’ only prior to joining duty and not later. Once Respondent No.1 was declared to be medically fit, and he accepted the offer

of appointment, there was no lawful basis for the Appellant to have subjected Respondent No. 1 to a review medical examination. There has been no mis-statement or misrepresentation on the part of Respondent No.1 and, thus, there is no inequitable conduct on his part. After having fully disclosed all facts that he was required to, as per the advertisement, and after having been given a confirmed appointment, there was no power or provision with the Appellant to have terminated his employment, apart from adopting the procedure prescribed and applicable to confirmed employees. We, therefore, cannot allow the Appellant to wriggle out of the promise held out to Respondent No.1. We may also note that Appellant has not invoked the doctrine/ equitable principle of *promissory estoppel*, and thus we are not expressing our view on the same, except for observing that the Respondent No.1 has acted to his detriment by resigning from his earlier job, and has not acted in any manner that would deny him recourse to this doctrine.

18. The basis for terminating Respondent No. 1's services is review of his medical fitness that he was subjected to, on 04.12.2018, where it was found that his distinct vision without glasses did not fulfil the additional requirement of eyesight (6/6 in both eyes without glasses) as prescribed under additional standards (minimum) in the advertisement. This medical examination, subsequent to the Appellant joining the position in May, 2018 has been initiated on the premise that the certificate declaring him as medically fit was erroneous. The learned Single Judge has rightly observed that the Appellant had no reason for subjecting Respondent No. 1 to fresh medical examination, as the same was contrary to the terms of the contract of service/employment. Further, no rule or regulation has been shown as

contained in the conditions prescribed in the offer of appointment issued to the respondent, which authorizes the Appellant to conduct a review or fresh medical examination after joining.

19. We also do not find any merit in the submission of Mr. Koura that Respondent No. 1 did not make a true and correct disclosure in the application for appointment. Despite repeated queries, Mr. Koura was unable to point out any document on record on the basis whereof it could be said that Respondent No. 1 had mis-declared the information. The Form that was required to be filled in by the candidate before medical examination does not have any column relating to vision. The pre-employment Examination Form which records the result of the examination carried out by the doctor, was required to be filled by the examining doctor. Respondent No. 1 cannot be penalized, even if there was an error on the part of the Doctor of the Appellant. If the Doctor has failed to conduct correct medical examination prior to Respondent No. 1 joining the post, we cannot hold him responsible for the same. The minimum medical standards are prescribed by the Appellant – Corporation and its Doctors ought to have been aware of the same. After joining, Respondent No. 1 has worked nearly for nine months. Onset of physical ailments can be at any stage, and if there is any change or deterioration in the vision of an employee, who is selected for this position, the Appellant – Corporation would surely have to include a provision in its Rules and Regulations to find an alternate suitable position. Respondent No. 1 had tendered a resignation with the previous private employer after receiving the conformation from the Appellant. He cannot be left in the lurch, only because the Appellant claims to have made a mistake.

20. We would like to state that although the conditions and guidelines or medical standards/norms of other public sector undertakings, that are relied upon by Respondent No.1 may not be strictly applicable to the Appellant – Corporation and the Appellant is entitled to lay down higher norms, however, at the same time we may add that applying the doctrine of *pari materia* we cannot overlook the fact that for the same position, the other public sector undertakings such as GAIL India, Oil India and ONGC do indeed prescribe standards that are relaxed in comparison to those framed by the Appellant, and Respondent No. 1 fulfilled the said criterion as provided in the standards prescribed by other authorities. Thus, even if the Respondent continues to perform his duties with the Appellant, heavens would not fall. The Appellant does not say that the Respondent is rendered incapable of rendering his services owing to the fact that it now transpires that his vision-before correction is not 6/6 in both eyes. He had worked for 9 months without any complaints. The Appellant is also not able to point out, as to what is so special about the job requirement of the position held by the Respondent with the Appellant, that the attainment of 6/6 vision without glasses is imperative for continued discharge of service. This is not even a requirement stipulated by the Appellant. If the Respondent is good enough to discharge the same functions in other similar organizations, we see no reason why he cannot continue to discharge the same functions in the Appellant's organization-particularly when the Appellant has not pointed out anything different or special in its set up. It is a settled position in law that a statute has to be interpreted in its whole context and *pari materia* legislations can function as an external aid to interpretation. This also shows that the disqualification or the ineligibility that the Appellant has pointed

out, is not so gross that Respondent No.1 is unable to perform and fulfil the job duties/responsibilities.

21. Lastly, the judgments relied upon by Mr. Koura are of no assistance to him. The factual situation in *Arbind Kumar* (supra) is completely distinguishable from the case before us. In that case, the appointments of the Appellant employees on the post of constables were terminated on the ground that the same were made in total disregard of the provisions in Police Manual and without inviting applications from eligible persons. The employees claimed to be victims of irregular and illegal action of the police officials concerned who appointed them without following the procedure prescribed under the police manuals and on that basis, claimed sympathy. The Supreme Court rejected their contention holding that the illegal appointment should not be continued in perpetuity and accepting such a plea would amount to giving premium to dishonest and illegal acts in matters of public appointment. Further in the case of *State of Punjab v. Jagdeep Singh* (supra), the question arose as to whether the Government would be powerless to do anything when it realizes that an order made by an authority under the Government is void? Examining this question, the Court held that where the Government Servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give, he will not in law be deemed to have been validly appointed to the post or given the particular status. The fact situation before us is starkly different.

22. Likewise, the judgment in the case of *R.D. Shetty* (supra) is also distinguishable on facts. The Court in the case of *R.D. Shetty* (supra) held

that the action of the first respondent in accepting the tender of the fourth respondents, who did not satisfy the standard or norm, was clearly discriminatory since it excluded other persons similarly situate from tendering for the contract and it was arbitrary and without reason. Acceptance of the tender was invalid, as being violative of the equality clause of the Constitution as also of administrative law inhibiting arbitrary action. This case is clearly distinguishable on facts from the present case, as there is no conscious relaxation by the Appellant in favour of Respondent No.1, before offering him appointment. The mistake was on the part of the Appellant Corporation and subsequently, they cannot seek to rectify it by putting Respondent No.1 to prejudice for no fault of his. The balance of equity clearly lies in favour of Respondent No. 1 to grant him the relief.

23. In view of the foregoing, we find no ground to interfere with the impugned judgment. The appeal is dismissed along with the pending application with no order as to costs.

SANJEEV NARULA, J

VIPIN SANGHI, J

JANUARY 22, 2020/nk