

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OAC) No.2606 of 2016

Chandan Kumar Sahoo

....

Petitioner

-versus-

**D.G. of Police, Fire Service &
Ors.**

....

Opposite Parties

**CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER
11.08.2022**

Order No

01. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Heard Mr. G.R. Sethi, learned counsel for the Petitioner and Mr. A.P. Das, learned Additional standing counsel appearing for the Opp. Parties.

3. The Petitioner has filed the present writ Petition with the following prayer:-

“i) To quash the memorandum of charge under Annexure-7.

ii) To quash the order dtd.16.1.2016 under Annexure-3.

iii) To direct the respondents to allow the applicant to discharge the duty Fireman.

iv) To direct the respondents to release the salary of applicant from Feb.2016 to till date.

v) To direct the respondents not to insist him to discharge the duty of a fireman driver.

vii) And pass such other order/orders as may be deemed fit and proper for the interest of justice.”

4. It is submitted that after facing due selection process the Petitioner was appointed as a Fireman in Odisha Fire Service vide

Order under Annexure-1. It is submitted that even though the Petitioner was appointed as a Fireman, in Odisha Fire Service, when he was issued with Annexure-2 with a direction on him to drive fire service vehicles & operate the pump and was further directed to submit his heavy driving license vide Annexure-3 dtd.16.01.2016, the present writ Petition was filed by the Petitioner challenging the said communication issued on 16.01.2016 under Annexure-3 and the memorandum issued on 05.07.2016 under Annexure-7. The main thrust of argument of Mr. Sethi is that since the Petitioner was appointed as a Fireman, he is not required to drive fire service vehicle and operate pumps.

5. It is also submitted that the Petitioner is not required to submit heavy driving license as directed under Annexure-3. It is submitted that since due to non-compliance of the direction issued under Annexure-2 and 3, the proceeding under Annexure-7 was initiated, the said proceeding is also maintainable as against the Petitioner. Making all such submissions, Mr. Sethi prayed for interference of this Court and to pass appropriate order on the prayer made in the writ Petition.

6. Mr. Das, learned counsel appearing for the Opp. Parties on the other hand made his submission basing on the stand taken in the counter affidavit. It is submitted that prior to his appointment as a Fireman the Petitioner qualified in the driving test and he was imparted driving training with HMTV learners license.

7. It is also submitted that in accordance with the Odisha Fire Service (Method of Recruitment of Fireman) Order, 2006 the Petitioner is to drive fire service vehicle and has to submit the

HMV license. The stand taken by the Opp. Parties in Para 9 & 10 of the counter affidavit is quoted hereunder:-

“9. That in reply to the averments made in Para-6.8 it is to state here that the petitioner had qualified in the driving test during recruitment and he has been imparted driving training with HMV learner’s license and he has successfully passed out from training event. Hence the averment made by the Petitioner regarding diffidence of driving is a plea to avoid driving Fire Service vehicle.

Further it is submitted that as an interim disciplinary and administrative control the pay of the petitioner was held up temporarily and it has been released.

10. That in reply to the averments made in Para-6.9 it is to state here that directing the petitioner to drive Fire Service Vehicle and to submit HMV license is only in accordance with Odisha Fire Service Method of Recruitment rule as cited supra which is appropriate.

Further it is submitted that the Petitioner was well aware of the service condition prior to appointment in this organization. After appointment retreating from condition, shows his cowardice attitude and for such act on part of the petitioner the public service could not be catered to effectively which is the very purpose of his appointment. As such the proceeding instituted against the petitioner is justified.”

8. It is accordingly submitted that since in accordance with 2006 order the Petitioner was issued with Annexure-2 & 3, directing him to drive fire service vehicle and to produce the HMV license, no illegality has been committed by the Opp. Parties. It is further submitted that since the Petitioner did into comply with the said

direction so issued under Annexure-2 & 3, the proceeding under Annexure-7 has been rightly initiated and no interference is called for by this Court.

9. A rejoinder was filed in Court today by taking the stand that the Petitioner as a SEBC category candidate was selected basing on the mark secured in the selection process and since the Petitioner had secured 62.63 marks in all the tests and the last man as a SEBC category so appointed has secured 61.75 marks, even though the marks awarded to the Petitioner towards driving test is deducted, the Petitioner would have been provided with the appointment.

10. It is also submitted that as per Rule 14(4) of the Odisha Fire Service (Method of Recruitment and Conditions of Service of Fireman Driver (Rules), 2011. The duty and responsibility of the Fireman Driver is indicated and those fireman driver shall have to operate fire service pumps and vehicles. It is accordingly submitted that since the Petitioner was appointed as a Fireman, the Petitioner should not be compelled to drive fire service vehicles and operate pumps.

11. Heard learned counsel for the Parties. Perused the materials available on record. This Court after going through the same finds that the Petitioner during the recruitment process was allowed marks towards driving of LMV vehicle and the stand taken by the Opp. Parties that the Petitioner was provided with driving training with HMV learner's license was never disputed by the Petitioner.

12. The Rule relied on by learned counsel for the Petitioner is meant for Odisha Fire Service Method of Recruitment and Condition of Service of Fireman Driver (Rules), 2011 and the said

Rule is not applicable to the case of the Petitioner as the Petitioner is governed by the Odisha Fire Service (Method of Recruitment of Fireman) Order, 2006. In the said order under Clause 11.3.1(i), it has been provided as follows:-

“This test may be conducted only for those candidates, who claim in their applications that they are proficient in driving and possess the Light and Heavy Duty Driving Licence for the last two years (excluding learned period) or more from the date of advertisement of vacancies. Those appearing for the test and awarded the marks shall be deemed to have accepted the service condition that if called upon, they shall have to drive the heavy Duty as well as Light Duty vehicles as part of their normal duties & responsibilities. Driving test shall not be conducted without verification of validity of the Heavy Duty or Light Duty Driving License as the case may be and the date of its issue. Candidate must produce the original Driving License, which must tally with the details given by him in the Application form.”

13. Having heard learned counsel for the Parties and after going through the materials available on record and the provisions contained under Clause 11.3.1(i) of 2006 Order, this Court finds no illegality or irregularity in directing the Petitioner to drive fire service vehicle and to operate pumps and also to produce the heavy driving license.

14. Since the Petitioner did not comply with the said direction, this Court also finds that the proceeding under Annexure-7 has been rightly initiated against the Petitioner. However, it is observed that if the Petitioner complies with the direction issued under Annexure-2 & 3 and give his undertaking to that effect within a period of 15 days from the date of receipt of this Order, then the Authorities may

reconsider the initiation of the proceeding so initiated under Annexure-7.

15. With the aforesaid observation and directions, the writ Petition is disposed of.

(Biraja Prasanna Satapathy)
Judge

Sneha

