



2023:DHC:7609



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

% **Date of order : 10th October, 2023**

+ **W.P.(C) 13279/2023**

ASHWIN MURLI

..... Petitioner

Through: Mr.Mathew M. Philip, Mr.Gaurav
Pachauri, Mr. Nishant Sharma and
Mr. Nilesh Kumar Advocates

versus

OIL AND NATURAL GAS CORPORATION LTD & ORS.

..... Respondents

Through: Mr. Atul Krishna (SPC) with Mr.
Gokul Sharma (G.P) for R-3
Mr Ravi Prakash (CGSC),Mr Aman
Rewari,Ms Usha Jamnal, Advocates
for R-3

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner vide the present petition under Article 226 of the Constitution of India, seeks the following reliefs:

- “a. Direct the Respondent No. 1 to quash the order No. DDN/CE/Instt./GT/Cancellation/2020-21 dated 06.12.2022 cancelling the offer of appointment of the Petitioner to the post of AEE (Instrumentation) in ONGC.*
b. Direct the Respondent No. 1 to reinstate the



Petitioner's appointment to the abovementioned post in the same services or otherwise so that the Petitioner's Right to Equality, Right to Equal Opportunity, and Right to Livelihood is protected.

c. Direct the authorities of the Respondent No. 1 to review its medical examination policy and make suitable corrections such that there remains no oversight in terms of eligibility of candidates based on functional requirements of the job and that the medical policy complies with the requirement of "due process of law" by including within its ambit the principle of "reasonable accommodation".

d. Pass any other Order that this Hon'ble Court may deem fit and proper in the interest of justice.."

2. The Petitioner herein has graduated from Amity University and appeared in the GATE (Graduate Aptitude Test in Engineering) Instrumentation Engineering paper in the year 2020, for the purpose of applying to the technical posts at the Public Sector Undertakings. Pursuant to securing the requisite rank, the petitioner got a provisional Offer of Appointment for the post of Graduate Engineer Trainee (GET) in NALCO around November 2021.

3. Being declared medically unfit due to medical impairment during the pre-employment medical examination, the petitioner was disqualified from being appointed to the said post. Since, the said post was advertised with reservation for hearing impaired candidates and, hence, the petitioner obtained Hearing Disability Certificate from the concerned authorities at Lady Hardinge Medical College and it was stated in the said report that the petitioner had 17% hearing impairment.



4. Since, the petitioner had 17% hearing impairment, whereas the eligibility for the said position required minimum 40% hearing disability to be qualified for reservation for persons with disability (PwD). Therefore, the petitioner could not be appointed to the said position.

5. Furthermore, on 27th October 2022, the petitioner received a Provisional Offer of Appointment from respondent no.1, ONGC *via* email wherein the petitioner was instructed to appear before the HR Executive in Mumbai for the further process, pursuant to which a pre-employment medical examination was to be conducted.

6. During the said medical examination, the petitioner was declared medically unfit for the said post on account of Profound Sensorineural Hearing Loss in the right ear and was duly intimated about the same *vide an* e-mail.

7. Aggrieved by the same, the petitioner preferred a complaint dated 30th November, 2022 bearing file no. to the NHRC and contended that it was discriminatory to disqualify him on the ground of his hearing problems whilst, allowing candidates with a more severe hearing problem (PwBD with Hard of Hearing (Category B)) to be appointed.

8. The respondent no. 4 in order to address the grievances of the petitioner directed the respondent no.1 to file an Action Taken Report regarding the same.

9. During the course of proceedings before respondent no. 4, the respondent no. 1 intimated that the petitioner cannot be considered as Person with Benchmark Disability because the overall calculated disability is 17%,



and the authorities of respondent No. 1 had furnished the requisite report stating the same.

10. Aggrieved of being not appointed with either at an unreserved post or at a reserved post, the petitioner approached this Court by way of a writ petition.

11. Before approaching this Court, the petitioner approached the Hon'ble Supreme Court by filing a Writ Petition under Article 32 bearing no. W.P.(c) No. 627/2023, which was listed and heard on 24th July 2023 and was dismissed as withdrawn with liberty to approach High Court.

12. Learned counsel appearing on behalf of the petitioner submitted that he in bewildering situation since, he neither is able to avail of the benefits of reservation rendered to PwDs as he does not come under the category of PwBD, nor is he being considered eligible for employment as an unreserved candidate owing to his disability and, therefore, despite being an eligible candidate the petitioner is denied employment opportunities.

13. It is submitted that the medical policies of the respondent no. 1 are violative of fundamental rights since, they have given employment to persons with more than 40% hearing loss and the person belonging to unreserved category, but did not take into consideration the aspect that they have not made any provision for the candidates with less than 40% hearing disability.

14. It is contended that the provision under the Rights of Persons with Disabilities Act, 2016 (hereinafter called "The Act") has been violated by the medical policy of the respondent no.1. Since, as per Section 3 and



Section 20 of the Act, there is a prohibition regarding the discrimination of disabled person and an obligation is casted upon the public authorities to give an appropriate environment and reasonable accommodation to persons with disability.

15. It is further contended that the said provisions have been violated by the respondent No. 1 by depriving the petitioner of the job due to his hearing disability, for which the petitioner is duly entitled, since the petitioner qualified the GATE exam and got a good rank in the exam.

16. It is submitted that as per Section 2(y) of the Act, the requisite reasonable accommodation should be provided to the disabled person, so that the petitioner may be able to work with the respondent no.1. The said provision has been reproduced herein below:

“Reasonable accommodation” means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others.”

17. In view of the foregoing submissions, the counsel for the petitioner prays that the instant petition may be allowed and the reliefs as sought by the petitioner may be granted.

18. *Per Contra*, the learned counsel appearing on behalf of the respondent No.3 opposed the arguments advanced on behalf of the petitioner and submitted that there is no such violation of the fundamental rights of the petitioner.

19. It is further submitted that the petitioner as per para- 6 of the said offer



of the appointment of the petitioner, the petitioner was found medically unfit in Pre- Employment Medical Examination since, he has Profound Sensorineural Hearing Loss. Hence, the respondent no. 3 as per the terms and conditions of the appointment letter enlisted in Annexure- 1 of the said letter, cancelled the employment of the petitioner.

20. It is contended that the respondent no. 3 has acted in compliance with the terms and conditions of the organisation for the appointment of an eligible candidate and therefore, there is no such illegality in the action of the respondent as alleged by the petitioner.

21. Hence, in view of the foregoing submissions, the respondent seeks that this Court may be pleased to dismiss this revision petition thereby, upholding the impugned order.

22. Heard and perused the pleadings on record.

23. It is the petitioner's case that due to the pre- appointment medical policy of the respondent no. 1 which gives reservation to candidates with 40% or more hearing loss and for the candidates belonging to the general category, therefore, due to which the petitioner being 17 % hearing disabled is not able to get employment in either of the categories.

24. It is the case of the respondent no. 1 to 3 i.e., ONGC that they have not violated any rights of the petitioner, instead they have acted in compliance with their "Instructions to the Competent Authority Regarding Physical Examination Of Candidates For Appointment In Oil And Natural Gas Corporation Limited."

25. The petitioner filed a complaint before the NHRC and it observed as



follows:

The genesis of the Rights of Persons with Disabilities Act 2016 i.e the Convention on the Rights of Persons with Disabilities (CRPD) in its Article 27 – Work and employment has inter-alia prescribed that

"1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;

b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances"; i.e State parties which are signatory to the convention has been asked to prohibit discrimination on the basis of disability with regards to all matters concerning all forms of employment including conditions of recruitment. The Commission, as stated supra, observes that the complainant doesn't have more than 40% disability. Therefore, as per provisions of the Rights of Persons with Disabilities Act 2016 although he is considered as a person with disability, but as his disability is less than 40 % he could neither get benefits of affirmative action under the said Act nor he could be included under the General Category. As such, this group of PWD are being



discriminated and their rights as enunciated under UNCRPD are being clearly violated.

Having so observed, the Commission, thus, directs Secretary, Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice and Empowerment, Govt. of India to submit an additional report qua clarity on affirmative actions for a persons with the disabilities(PWD) having less than 40% specific disability in matter of employment under Government of India/PSUs/Other Institutions within a period of four weeks failing which the Commission shall be constrained to invoke its coercive power u/s 13 of the PHR Act,1993 calling for the personal appearance of the authority concerned before the Commission.

The copy of instant proceeding be forwarded to the Secretary, Department of Personnel and Training, Govt. of India and the Chairman and Managing Director, ONGC for information.”

26. Upon perusal of the said findings of the NHRC, it is evident that the NHRC took into account the issues faced by the petitioner and especially the fact that the petitioner being 17% hearing disabled is not able to get an employment either with the PwBD category or in the general category. The said medical policy of the respondent no. 1 is in contravention of the legal rights, since the same does not provide any opportunity to the candidates who have hearing disability less than 40%.

27. Before proceeding any further, it is imperative to enunciate that this Court being a judicial body, under Article 226 of the Constitution of India has an extraordinary power to protect the legal rights of the party before it. However, the said extraordinary power is also subjected to restrictions. As per the Constitution of India, the power of three organs i.e., the Executive,



the Legislature and the Judiciary are divided and such powers are given in such a way that they don't overlap.

28. The judiciary has the power to keep a check on the functioning of the working of the legislature and executive as well as dispense justice to the people of this Country. However, the judiciary cannot assume the role of the executive or legislature by way of commanding an amendment in the law or enactment of any law. It can merely suggest the same to the executive or legislature, which if they deem fit the same will be enacted. The executive or legislature have the discretion to enact or amend the law as and when it deems fit to them. The Courts under Article 226 by way of issuing a writ of mandamus cannot command the legislatures/ executive to either enact a law or make the requisite amendment in the law.

29. The said principle has been enunciated in the judgment of ***Manuelsons Hotels (P) Ltd. v. State of Kerala, (2016) 6 SCC 766*** as follows:

“22. However, some of the judgments of this Court have held that a writ of mandamus cannot be issued to the executive to frame rules or regulations which are in the nature of subordinate legislation. (See State of J&K v. A.R. Zakki [State of J&K v. A.R. Zakki, 1992 Supp (1) SCC 548 : 1992 SCC (L&S) 427 : (1992) 20 ATC 285] , SCC at paras 10 and 15 and State of U.P. v. Mahindra and Mahindra Ltd. [State of U.P. v. Mahindra and Mahindra Ltd., (2011) 13 SCC 77] , SCC at p. 81.) This is for the reason that a court would then trespass into forbidden territory, as our Constitution recognises a broad division of powers between legislative and judicial activity.

23. However, though the power to grant exemption under a statutory provision may amount to subordinate legislation in a



given case, but being in the domain of exercise of discretionary power, is subject to the same tests in administrative law, as is executive or administrative action, as to its validity—one of these tests being the well-known Wednesbury principle [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] under which a court may strike down an abuse of such discretionary power on grounds that irrelevant circumstances have been taken into account or relevant circumstances have not been taken into account (for example). This is clearly exemplified in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121].”

30. The said principle was further enunciated in the judgment of **Bal Ram Bali v. Union of India, (2007) 6 SCC 805** as follows:

“3. It is not within the domain of the court to issue a direction for ban on slaughter of cows, buffaloes and horses as it is a matter of policy on which decision has to be taken by the Government. That apart, a complete ban on slaughter of cows, buffaloes and horses, as sought in the present petition, can only be imposed by legislation enacted by the appropriate legislature. Courts cannot issue any direction to Parliament or to the State Legislature to enact a particular kind of law. This question has been considered in Union of India v. Prakash P. Hinduja [(2003) 6 SCC 195 : 2003 SCC (Cri) 1314] wherein in para 30 of the Reports it was held as under : (SCC pp. 216-17)

“30. Under our constitutional scheme Parliament exercises sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation. In Supreme Court Employees' Welfare Assn. v. Union of India [(1989) 4 SCC 187 : 1989 SCC (L&S) 569] (SCC para 51) it has been held that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to



the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated legislative authority. This view has been reiterated in State of J&K v. A.R. Zakki [1992 Supp (1) SCC 548 : 1992 SCC (L&S) 427 : (1992) 20 ATC 285] . In A.K. Roy v. Union of India [(1982) 1 SCC 271 : 1982 SCC (Cri) 152] it was held that no mandamus can be issued to enforce an Act which has been passed by the legislature.”

31. Therefore, in view of the aforementioned judgments, it is well- settled that this Court cannot exercise its power by issuing writ of mandamus and direct the legislature/ executive body to enact or implement any law or make any amendment to any legislature.

32. In the instant case, this Court cannot direct quashing of the letter dated 6th December 2022, as per which the petitioner was disqualified. Since, the respondent has acted in compliance with its policy pertaining to pre-employment medical test of the candidates. The said terms and conditions were also a part of the provincial employment offer letter given to the petitioner.

33. Furthermore, this Court cannot direct by way of mandamus that a amendment may be made to for the provision of the jobs to the candidate which have been less than 40% hearing disability and does not fall within the category of unreserved. The concern raised by the petitioner requires certain deliberation on the part of the respondent no.1, however, this Court by way of instant petition cannot direct the said amendment.

34. In light of the foregoing discussions, this Court dismisses the instant petition on the ground that the letter dated 6th December 2022 wherein the



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petitioner was denied employment being medically unfit is not violative of rights, since the respondent no.1 has acted in compliance with its statutory rules. Furthermore, this Court by way of issuing writ of mandamus cannot direct the respondent no.1 to issue guidelines/rules for employment of the candidates with hearing loss of less than 40%, since such power vests with the executive/ legislature, since the same would amount to transgressing the power of this Court under its writ jurisdiction.

35. Accordingly, the instant petition is dismissed along with pending applications, if any.

36. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 10, 2023

SV/db/av

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed
By: DAMINI YADAV
Signing Date: 18.10.2023
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