

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7000 OF 2023

Chandan Shantaram Gunjal
Age : 26 years, R/o. Flat No.2,
Laksmi Villa Apartment,
Shreeram Nagar, Near Jatra Hotel,
Nashik 422 003.

....Petitioner

Versus

1. Oil and Natural Gas Corporation Ltd.
Western Offshore Unit,
Through the Deputy General Manager,
Recruitment and Promotion Section,
Q-1, 4th Floor, NBP Green Heights,
Plot No. -69, BKC, Bandra East,
Mumbai.
2. The Deputy Assistant (Steno-English)
Oil and Natural Gas Corporation Limited,
Mumbai Assets, HR-ER, 5/B Vasudhara Bhavan,
Bandra East, Mumbai-400 051.

....Respondents

Appearances :

Mr. S. S. Pakale a/w. Pranit Kulkarni, Saurabh Pakale i/b. Padmaja U. Malgaonkar for Petitioner.

Mr. Karthik Somasundaram a/w. Alabh Lal i/b. M/s. Bharucha & Partners for Respondent No.1.

**CORAM : DHIRAJ SINGH THAKUR &
SANDEEP V. MARNE, JJ.**

DATE : JULY 11, 2023.

JUDGMENT: (*Per – Sandeep V. Marne, J.*) :

Rule. Rule is made returnable forthwith. With consent of learned counsels for the parties petition is taken up for final hearing.

2. Denial of appointment to Petitioner on the ground of his failure to submit No Objection Certificate from his previous employer is the issue involved in the present petition. Petitioner has been appointed by Oil and Natural Gas Corporation Limited (**ONGC**) by order dated April 13, 2023, but he is not allowed to join the post on the ground that he neither discloses his services with Rashtriya Chemicals and Fertilizers Limited (**RCF**) nor submitted his No Objection Certificate at the time of document verification conducted on January 9, 2023.

3. A brief factual background of the case is that an advertisement was issued by ONGC for filling up various posts including that of Junior Engineering Assistant (Electrical). The last date of submission of online applications was May 28, 2022. One of the conditions specified in the advertisement was that the candidates, employed with Public Sector Undertakings / Government service were required to produce 'No Objection Certificate' (**NOC**) at the time of document verification / uploading of documents. Petitioner applied in pursuance of the advertisement. At that time, he was not employed anywhere. He came to be selected and appointed on the post of Technician (Electrical) Grade II in RCF on August 3, 2022. He joined the services with RCF.

4. Petitioner was issued e-admit card by ONGC for computer based examination scheduled to be held on August 16, 2022. He was issued letter

dated December 31, 2022 intimating that he was provisionally shortlisted for document verification. The document verification was conducted on January 9, 2023, when Petitioner produced original documents which he had uploaded. He however did not inform ONGC at the time of document verification that he was employed with RCF. The final select list was published by ONGC on February 21, 2023 and the Petitioner was shown to have been selected for appointment to the post of Junior Engineering Assistant (Electrical) in OBC category. After his selection, the Petitioner submitted application dated March 30, 2023 to RCF giving intimation about his selection by ONGC and requesting RCF to issue NOC.

5. ONGC issued appointment order in favour of the Petitioner on April 13, 2023, appointing him on the post of Junior Engineering Assistant (Electrical). The Petitioner thereafter tendered resignation at RCF and he was relieved by the RCF with effect from May 9, 2023.

6. It appears that at the time of conducting his medical examination in ONGC, Petitioner disclosed the factum of his previous employment in RCF. Accordingly, ONGC made inquiry with RCF vide e-mail dated May 12, 2023. RCF confirmed the factum of resignation by the Petitioner and that he was relieved with effect from May 9, 2023 by its reply dated May 15, 2023. ONGC also called the Petitioner's explanation for not disclosing information about his employment with RCF at the time of document verification. Petitioner submitted reply on January 17, 2023. Thereafter ONGC has passed impugned order dated May 25, 2023 directing that Petitioner's joining cannot be accepted on account of his failure to submit NOC at the time of document

verification. The decision dated May 25, 2023 is the subject matter of challenge in the present petition.

7. Appearing for Petitioner, Mr. Pakale learned senior advocate would submit that Petitioner could not disclose information about his service with RCF at the time of filling up application form as his appointment in RCF was made on August 3, 2022, whereas date of filling up application form was to be May 28, 2022. He would further submit that Petitioner was under impression that he was required to submit only those documents, which were uploaded alongwith online application form at the time of document verification. That Petitioner cannot be accused of suppression of facts as he voluntarily disclosed his services with RCF at the time of medical examination as well as intimated the factum of his selection by ONGC to RCF by his letter dated March 30, 2023. That the Petitioner has already been relieved from services of RCF in pursuance of his resignation with effect from May 9, 2023 and that there is no impediment in his appointment in services in ONGC. That the impugned action of the Respondent ONGC would result in losing both the jobs by Petitioner. That the circumstances under which Petitioner did not produce NOC from RCF at the time of document verification on January 9, 2023 were communicated to ONGC by e-mail dated May 17, 2023. That there has been no intention on the part of Petitioner to suppress any fact. Since RCF has accepted the resignation and received Petitioner only to enable him to join services of ONGC, appointment cannot now be denied to him by ONGC.

8. *Per contra* Mr. Somasundaram the learned counsel appearing for the Respondent-ONGC would oppose the petition and justify the action of

ONGC in denying appointment to the Petitioner. He would submit that the terms of advertisement unequivocally required the Petitioner to submit NOC of RCF at the time of document verification. He would further invite our attention to condition No.9 in the e-admit card whereby the Petitioner was directed to submit NOC at the time of document verification. That as on the date of issuance of the e-admit card, the Petitioner was already in service with RCF and ought to have submitted NOC on January 9, 2023, when document verification was conducted. That Petitioner applied for NOC and resigned from service of RCF only after being selected for appointment in ONGC. That therefore the conduct of the Petitioner in not disclosing the factum of his service with RCF is far from bonafide. He would rely upon clause 'e' of paragraph 'P' of the advertisement which specifically warned candidates about cancellation of candidature in the event of suppression of facts. Lastly Mr. Somasundaram would submit that allowing Petitioner now to join the service would result in discrimination in respect of 5 other candidates, who failed to submit NOC at the time of document verification and who have been denied opportunity to join services despite their selection. He would pray for dismissal of the petition.

9. Rival contentions of the parties now fall for our consideration.

10. There is no dispute to the position that the Petitioner has been selected for appointment to the post of Junior Engineering Assistant (Electrical) and appointment order dated April 13, 2023 has been issued in his favour. However when he attempted to join the post, he has been prevented from doing so by Respondent ONGC. By impugned communication dated May 25, 2023, Respondent ONGC has declined opportunity to Petitioner to

join the post on account of his failure to submit NOC from his parent organisation at the time of document verification.

11. At the time of submission of application in pursuance of the advertisement, Petitioner was not in employment with RCF. He came to be appointed subsequently on August 3, 2022. Therefore, this is not a case where the Petitioner can be accused of suppression of his previous employment in the application form. By the time e-admit card was issued to Petitioner, he was already in employment with RCF. The e-admit card was issued only to enable him to appear in the computer based examination scheduled to be held on August 16, 2022. Few days before the scheduled date of examination, the Petitioner has joined RCF on August 3, 2022. Going strictly by the terms and conditions of the advertisement and e-admit card quoted above, it was mandatory for Petitioner to produce NOC of RCF at the time of document verification which was conducted on January 9, 2023. The Petitioner has admittedly not submitted the same on January 9, 2023. He has in fact not submitted NOC of RCF at any point of time. What is submitted by him is certificate dated May 9, 2023 issued by RCF reliving him with effect from May 9, 2023.

12. The objective behind incorporating the requirement for submission of NOC of PSU/Government departments is required to be borne in mind. The objective is to ensure that PSU/Government does not have any objection to the candidate taking up employment in another organisation. While ordinarily, the previous employer would not have any objection, but in some case due to shortage of staff, execution of a bond for service for specified period, cost of training incurred of an employee, etc, a PSU/Government may

have reservation in relieving its employee for taking up employment in another organization. Keeping in mind this broad objective, a condition is usually stipulated for submission of NOC of previous employer so as to ensure that an employee already in service of PSU/Government does not unilaterally abandon his previous employment. Applying this broad objective behind incorporation of the concerned condition in the present case, it can be seen that RCF does not have any objection to Petitioner leaving its services and taking appointment with ONGC. Had it been a case where Petitioner wanted to join service with ONGC without consent of RCF, it would have been a different case altogether. In the present case however, Petitioner communicated to RCF on March 30, 2023 that he was selected for appointment at ONGC and requested for NOC of RCF. He also voluntarily disclosed to ONGC at the time of his medical examination that he was employed with RCF. Again, by his e-mail dated April 26, 2023, Petitioner informed ONGC that he was already working with RCF and would be able to join service with ONGC after receiving relieving letter from RCF. It appears that ONGC thereafter sought clarification from RCF by e-mail dated May 12, 2023 about the Petitioner's employment. RCF wrote back to ONGC on May 15, 2023 stating that Petitioner was already relieved from service of RCF with effect from May 9, 2023. This shows that RCF had no objection to Petitioner joining service of ONGC.

13. In the above circumstances, though the Petitioner may have committed a technical violation in not submitting RCF's NOC on January 9, 2023 when document verification was conducted, it cannot be stated by any stretch of imagination, that he ever intended to suppress any information from ONGC. It is possible that the Petitioner did not recollect the fine printed

terms and conditions of advertisement after securing employment with RCF. Though the date of submission of NOC was reiterated on the e-admit card, the same was issued on August 5, 2022 and the Petitioner has taken over appointment with RCF two days before on August 3, 2022. It is possible that the Petitioner missed out requirement of obtaining NOC from RCF which was reiterated on the e-admit card as well. In these circumstances, the question is whether Petitioner should be denied an opportunity to join the post despite his selection for such a minor technical violation. The answer to the question, in our opinion, is required to be in the negative. Considering the Petitioner's conduct in giving due intimation to both the employers, we are of the view that the ends of justice would meet if the Petitioner is given an opportunity to join the post of Junior Engineering Assistant (Electrical) in ONGC.

14. Coming to the submission of possible discrimination vis-à-vis over similarly placed candidates, we are not aware about the exact situation of the 4 candidates who are named in paragraph No.23 of the affidavit in reply filed by Respondent ONGC. We do not know whether the said four candidates were already in employment of PSU/Government on the date of submission of applications and the exact reason why they could not procure NOC from current employer. Therefore, we cannot deny relief to Petitioner only because the Respondent ONGC did not made offers of appointment to the said four candidates. It must also to be borne in mind that the Petitioner was functioning as Technician (Electrical) Grade II in RCF on substantially lesser pay scale of Rs.22000-60000 (basic pay of Rs.22000/-) whereas he has been selected for appointment on the post of Junior Engineering Assistant (Electrical) in ONGC in the pay scale of Rs.29000-98000. He has resigned from service with RCF on a hope to gain higher wages at ONGC. If, at this

stage, he is not permitted to join the service with ONGC, he would lose both the jobs.

15. It is also to be noted that condition No. viii (c) of the appointment order required Petitioner to submit discharge certificate from previous employer. The said condition reads thus:-

“viii)

a) ...

b) ...

c) Discharge Certificate from the previous employer in the prescribed form to be submitted by the candidate, if already in employment either in Government or Government undertakings;”

16. Petitioner has undoubtedly submitted discharge certificate from RCF, which was issued on May 9, 2023. In these circumstances, denial of opportunity to the Petitioner to join the services at ONGC would, in our opinion, be iniquitous.

17. Resultantly the Writ Petition succeeds. Respondent ONGC is directed to permit the Petitioner to join the post of Junior Engineering Assistant (Electrical) in pursuance of offer of employment dated April 13, 2023 forthwith. The Writ Petition is accordingly allowed. Rule is made absolute in the above terms. There shall be no order as to costs.

SANDEEP V. MARNE, J.

DHIRAJ SINGH THAKUR, J.