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

% *Date of Decision: 13th April, 2023*

+ W.P.(C) 13115/2018

ASHWANI KUMAR

..... Petitioner

Through: Mr. F.S. Chauhan, Advocate

versus

INDIAN OIL CORPORATION LIMITED

& ORS

..... Respondents

Through: Mr. V.N. Koura,
Mrs. Paramjeet Benipal and Mr. Nirbhay
Narain Singh, Advocates for IOCL.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed by the Petitioner seeking the following reliefs:-

"I. To pass appropriate order, direction or writ in nature certiorari to quash and set aside letter/ communication of respondent No. 3 dated 28.03.2018 and that of her predecessor dated 20.11.2015.

II. To pass appropriate order, direction or writ in nature of mandamus to direct the restoration of the Appointment Letter dated 04.06.2014 with retrospective effect.

III. To pass appropriate order, direction or writ in nature of mandamus commanding the respondent to allow the petitioner to join his duties in accordance with the Appointment letter dated 04.06.2014.

IV. Cost of the petition."

2. Facts to the extent relevant and as averred in the writ petition are that Petitioner's father, late Shri M.C. Upadhyay, died on 17.06.2011, while serving Respondent No.1/Indian Oil Corporation

Ltd. (hereinafter referred to as 'IOCL'). Petitioner acquired a B.Tech. degree in Computer Sciences and his mother applied for his appointment on 08.08.2011 under 'Scheme For Rehabilitation of The Family of The Officer Dying while in Service' read with Modification in the said Scheme (hereinafter referred to as 'Rehabilitation Scheme'), pertaining to option R-3, of IOCL whereby she had to forego the Rehabilitation Grant equivalent to 60 months of Basic Pay, Stagnation Increment and Dearness Allowance of her late husband, in lieu of Petitioner's employment.

3. On 04.06.2014, IOCL issued an appointment letter after scrutiny of the qualifications of the Petitioner and interview on 13.01.2014 for assessing his overall suitability. Appointment was offered to the post of Junior Technical Assistant (JTA) Grade-III. As per terms of the appointment, appointment was subject to the Petitioner being found medically fit by IOCL's Medical Officer or by a Government Medical Officer of the status as specified therein. Petitioner accordingly got himself medically examined by the Chief Medical Officer (CMO) of the District Government Hospital, Meerut, where he was residing and was found 'Fit' as per the medical report.

4. It is the case of the Petitioner that when he reported to the office of Respondent No.2 on 01.07.2014, there were three others who had reported for such appointments and submitted similar 'Pre-Employment Examination Forms in Part-I, II, III & IV', however, while they were appointed, Petitioner was not. Petitioner was thereafter directed to appear before a Medical Board of private doctors of Kailash Hospital, Noida, and was declared 'medically unfit' for employment and the appointment was cancelled vide letter dated 20.11.2015.

5. Dissatisfied with the medical report, Petitioner got himself examined at Fortis Hospital, NOIDA on 14.04.2016 and it was certified by the doctors that his kidney was functioning normally; he was on stable immunosuppression and blood pressure medicines and was medically and physically 'fit' for any kind of activity. Armed with this certificate, Petitioner requested IOCL to restore the appointment, but failing to receive any positive response, he challenged the cancellation letter dated 20.11.2015 in W.P.(C) 1051/2018. Writ petition was disposed of by order dated 05.02.2018 giving liberty to the Petitioner to make a concise representation to IOCL and directing the Respondent therein to consider the representation in light of the medical certificate dated 14.04.2016 and further directing that if any vacancy was available in the post of JTA Grade-III, then his case be considered sympathetically.

6. Petitioner submitted a representation on 09.02.2018, which was rejected on 28.03.2018 on the ground that no vacancy existed in the post of JTA Grade-III, against which Petitioner's case could be considered for compassionate appointment. Laying a challenge to the said order dated 28.03.2018 and the earlier order dated 20.11.2015, Petitioner filed the present writ petition seeking restoration of the appointment letter dated 04.06.2014 with retrospective effect.

7. In a nutshell, the contentions raised on behalf of the Petitioner are: (a) Petitioner complied with the terms and condition of the appointment letter including submission of report of 'Pre-Employment Examination Forms in Part-I, II, III & IV' in the prescribed format, wherein the CMO had declared him medically fit. Rejection of his documents amounts to discrimination under Article 14 of the Constitution of India since similar documents submitted by three other candidates were accepted; (b) Director, Nephrology and Renal

Transplant (Medicine) of Fortis Hospital certified that Petitioner has normal kidney functions and is physically fit for any healthy activity and this certificate throws light on the falsity of the certificate issued by the Medical Board at Kailash Hospital, Noida; (c) opinion formed by IOCL with respect to the medical condition of the Petitioner is biased and stems from the personal knowledge some employees had about the kidney transplant undergone by the Petitioner; (d) Petitioner has a B.Tech. degree in Computer Sciences and is more than qualified for job in question; and (e) the cancellation of his appointment has led to a situation where he has not only lost the job offered to him, but several crucial years of his life have been wasted, besides the fact that his family has lost out the Rehabilitation Grant which it was entitled to if he had not opted for compassionate appointment.

8. Learned counsel for the Petitioner relied upon the judgments of the Supreme Court in *Maharashtra State Road Transport Corpn. and Others v. Rajendra Bhimrao Mandve and Others*, (2001) 10 SCC 51; *State of Kerala and Others v. Leesamma Joseph*, (2021) 9 SCC 208 and *Amrit Banaspati Co. Ltd. and Another v. State of Punjab and Another*, (1992) 2 SCC 411, to argue that IOCL is estopped from cancelling the appointment which was offered to the Petitioner, without any pre-conditions or riders.

9. Mr. V.N. Koura, learned counsel appearing on behalf of IOCL, *per contra*, submits that in the earlier round of litigation, Court had permitted the Petitioner to make a representation and directed IOCL to consider the same but with the pre-condition of existence of vacancy in the post of JTA Grade-III. This order was never challenged by the Petitioner and has attained finality. Mr. Koura also draws the attention of the Court to the stand taken by IOCL on an affidavit, that the post of JTA Grade-III was abolished in 2017 and no such post exists today

against which the Petitioner can be appointed. Nonetheless, IOCL offered the post of Junior Chargeman Grade-III on two different locations of IOCL and a duty chart has also been filed pursuant to the order passed by this Court on 14.11.2022, indicating the duties of the said post. Mr. Koura submits that IOCL is still willing to offer this appointment to the Petitioner, subject to his being declared medically fit by a Medical Board and IOCL will abide by the direction of this Court with respect to constitution of the Medical Board by any hospital.

10. It needs a mention that Court has put to the counsel for the Petitioner, if the Petitioner is willing to accept the appointment as Junior Chargeman Grade-III subject to his medical fitness, but the learned counsel has flatly refused the offer.

11. I have heard learned counsels for the parties and examined their rival contentions.

12. From the factual narrative in the pleadings of the parties, it is evident that there is no dispute between them that Petitioner was offered appointment on compassionate ground, under a Rehabilitation Scheme published by IOCL in 2007. It is equally undisputed that the offer of appointment was subject to the Petitioner being found medically fit by the Corporation's Medical Officer or by a Government Medical Officer of the status of a Civil Surgeon, as per Forms in Part-I, II, III and IV. Para 2 of the offer of appointment is extracted hereunder for ready reference:-

"2) Your appointment and continuance in service shall be subject to your being found medically fit by the Corporation's Medical Officer or by a Government Medical Officer of the status of a Civil Surgeon (As per Forms in Part-I, II, III & IV enclosed) and also subject to verification of your caste (applicable for SC/ST/OBC), character and antecedents being found satisfactory. In the event of your being declared medically unfit before you join duty, this appointment letter will be deemed to have been cancelled automatically."

13. The argument of the Petitioner that the offer letter was unconditional or he had the liberty to get medical certification from a doctor/hospital of his choice is fallacious, to say the least and is belied by the terms of the offer letter as extracted hereinabove, which bind him. Equally fallacious is the argument that IOCL was bound to accept the medical certificate rendered by the Fortis Hospital, where the Petitioner had got himself examined of his own accord. In any case, it is not for this Court to examine the correctness of the medical report rendered by the Medical Board constituted for the purpose, on directions of IOCL and as per their Rules or norms. Be it noted that counsel for the Petitioner has candidly put forth that Petitioner has undergone a kidney transplant and therefore, it cannot be said that he has no medical history. Whether or not the Petitioner is medically and physically fit to carry out the requirements of the job for which he is to be appointed is for the IOCL to assess based on the medical report. Petitioner calls upon this Court to rule that the Petitioner is medically fit, which I am afraid, is a declaration this Court cannot give and is beyond the ambit and scope of its jurisdiction under Article 226 of the Constitution of India, besides the fact that the Court has no expertise to substitute the opinion of a Medical Board constituted for the purpose.

14. There is yet another hurdle that the Petitioner needs to cross but has been unable to. In the earlier round of litigation in W.P.(C) 1051/2018, the Court had passed the following order:-

“3. Before approaching this Court, petitioner has not made any Representation on the strength of Medical Certificate of 14th April, 2016 (Annexure P-11) to third respondent. In the facts and circumstances of this case, this petition and application are disposed of with permission to petitioner to make a concise Representation to third respondent within a week while relying upon Medical Certificate of 14th April, 2016 (Annexure P-11). Upon receipt of such Representation, third respondent shall consider petitioner's

application of 8th August, 2011 (Annexure P-1) in the light of Medical Certificate of 14th April, 2016 (Annexure P-11). If any vacancy of Junior Technical Assistant, Grade-III, under the category in question is still available, then petitioner's case be sympathetically considered. Let third respondent pass a speaking order within six weeks and the fate of petitioner's Representation be made known to petitioner within a week thereafter, so that petitioner may avail of the remedy, as available in law, if need be."

(Emphasis supplied)

15. It is obvious from a reading of the order that since the writ petition was filed in 2018, the Court was conscious of the fact that with passage of time, the post in question may not be vacant and therefore, the direction to consider the case of the Petitioner sympathetically, was made subject to the existence of vacancy in the post of JTA Grade-III. Admittedly, this order was never challenged by the Petitioner and has attained finality, binding the Petitioner. IOCL has taken a categorical stand on affidavit that the post of JTA Grade-III was abolished in the year 2017 and, therefore, no offer of appointment can be made to the Petitioner in the absence of the existence of the post.

16. In view of the fact that this Court had, by order dated 05.02.2018, made the consideration of the case of the Petitioner subject to existence of vacancy coupled with the fact that the post of JTA Grade-III itself stands abolished in 2017, this Court cannot direct IOCL to offer appointment to the Petitioner at this stage by quashing the cancellation letter. It is trite that creation and abolition of posts is the domain and prerogative of an employer and Courts cannot direct the post be created or revived for appointing the Petitioner. At best, in the given situation, perhaps the Court may have directed IOCL to consider the case of the Petitioner for appointment to an equivalent post, however, this exercise has already been undertaken by IOCL and as noted above, Petitioner was offered the post of Junior Chargeman

Grade-III, subject to medical fitness, which counsel for the Petitioner has refused to accept, even today.

17. In view of the above facts and circumstances, the letter dated 20.11.2015 cancelling the initial offer of appointment dated 04.06.2014 cannot be quashed and no direction can be issued for restoring the appointment of the Petitioner to the post of JTA Grade-III.

18. While the Court is unable to grant the relief sought in the writ petition for the reasons aforementioned, however, there is another aspect of the matter which needs to be noticed in view of the pleaded case of the Petitioner that because the family had opted for compassionate appointment, they were not considered for the Rehabilitation grant, which are monetary benefits. From para 5 of the Rehabilitation Scheme, which is annexed as 'R-1' to the counter affidavit, it is evident that where a spouse of a deceased employee does not opt for employment of eligible dependent under R-3 option i.e. for compassionate employment, Corporation shall extend financial help of an amount equivalent to 60 (sixty) months Basic Pay along with Stagnation Increment, Personal Pay, Special Pay and Dearness Allowance (excluding Protected Pay) as Rehabilitation Grant, in lieu of employment. In the present case, a very peculiar situation has arisen, where the Petitioner had chosen the option of employment in lieu of Rehabilitation Grant, however, the same did not fructify even though an offer was made and therefore, in my view, it would be appropriate if the Petitioner is given liberty to make a representation to IOCL for Rehabilitation Grant, admissible in lieu of employment. This Court is conscious of the general instructions to the Scheme which may otherwise preclude the Petitioner from applying for the Rehabilitation Grant that an option once exercised cannot be changed,

but peculiar situations demand peculiar considerations. Petitioner was offered appointment on compassionate grounds, but could not be appointed and thus, this Court directs that if any representation is received by IOCL from the Petitioner for Rehabilitation grant, the same shall be considered by IOCL. Decision thereon shall be taken within four weeks from the date of receipt of the representation, in accordance with law. It is made clear that in the peculiar facts of the case, the condition of the Scheme that option once exercised cannot be changed, will not be an impediment in the consideration of the case of the Petitioner on merits and needless to state this would not be treated as a precedence in any other case.

19. Writ petition is accordingly disposed of, in the aforesaid terms.

APRIL 13, 2023/kks

JYOTI SINGH, J