

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10301 of 2020

1. Mukesh Kumar, S/o Late Guneshwar Prasad Singh, Permanent resident of Vill.- Gokhulchak, P.O.- Ramcharitra Maidan, P.S.- Harpur, District-Munger, State- Bihar, PIN- 811213, at present residing at Quarter No. CF/11, Barauni Refinery Township, District- Begusarai, State- Bihar, Pin- 851117.
2. Shobha Devi, W/o Late Guneshwar Prasad Singh, Permanent resident of Vill.- Gokhulchak, P.O.- Ramcharitra Maidan, P.S.- Harpur, District-Munger, State- Bihar, PIN- 811213, at present residing at Quarter No. CF/11, Barauni Refinery Township, District- Begusarai, State- Bihar, Pin- 851117.

... .. Petitioner/s

Versus

1. The Union of India, through the Secretary, the Ministry of Petroleum and Natural Gas, Shastri Bhavan, New Delhi- 110001.
2. Indian Oil Corporation Limited through its Chairman, Registered Office at Indian Oil Bhavan, G-9, Ali Yavar Jung Marg, Bandra (East), Mumbai, Maharashtra, Pin code- 400051 and Corporate Office at Plot-3079/3, Sadiq Nagar, J B Tito Marg, New Delhi- 110049.
3. Director (HR) Indian Oil Corporation Limited, Corporate Office at Plot-3079/3, Sadiq Nagar, J B Tito Marg, New Delhi- 110049.
4. Director (Refineries) Indian Oil Corporation Limited, Scope Complex Core 27, Institutional Area, Lodhi Road, New Delhi- 110003.
5. Indian Oil Corporation Limited Barauni Refinery through its Chief General Manager (Human Resources), P.O.- Barauni Oil Refinery, District-Begusarai, Bihar, 851114.
6. Chief General Manager (Human Resources), Indian Oil Corporation Limited, Barauni Refinery, P.O.- Barauni Oil Refinery, District- Begusarai, Bihar, 851114.
7. Deputy General Manager (Human Resources), Indian Oil Corporation Limited, Barauni Refinery, P.O.- Barauni Oil Refinery, District- Begusarai, Bihar, 851114.
8. Manager (ER) Indian Oil Corporation Limited, Barauni Refinery, P.O.- Barauni Oil Refinery, District- Begusarai, Bihar, 851114.
9. Assistant Manager (ER) Indian Oil Corporation Limited, Barauni Refinery, P.O.- Barauni Oil Refinery, District- Begusarai, Bihar, 851114.

... .. Respondent/s

Appearance :

For the Petitioners : Mr.Kumar Brijnandan, Advocate
For the Corporation : Mr.Ankit Katriar, Advocate

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT



Date : 28-11-2022

Heard learned counsel for the petitioners as well as learned counsel for the respondent-Corporation.

2. The Petitioner No.1 is son of late Guneshwar Prasad singh bearing Employee No.65649, who died on 26.09.2018 while in employment of Barauni Refinery of the Indian Oil Corporation Limited. The Petitioner No.2 is the spouse of the deceased employee who has nominated the Petitioner No.1 for the said benefit.

3. Writ application has been filed seeking a direction upon the Respondents to employ the Petitioner No. 1 on a suitable post in 'Staff Category' in the respondent-Corporation, in terms of the Superannuation Benefit Fund Scheme (hereinafter referred to as 'SABF').

4. Learned counsel for the petitioners submits that as per Clause R-3 of the SABF a dependent son/daughter, who possess the prescribed qualification and fulfills the job specifications, is entitled to be considered for employment, subject to there being a regular induction level vacancy, within three years of the death/permanent disablement of the employee. He submits that the petitioner possesses the minimum requisite qualification for a post in the Staff Category. It is submitted by the petitioners' counsel that since he possesses the minimum



requisite qualification, he is required to be offered suitable post in the Staff Category. The requisite qualification for appointment at induction level in workmen (staff category) prescribed in the notes to para 6(i), i of the Recruitment in Workmen Category through All India Open Advertisement, hereinafter referred to as “WRQ”, are applicable to recruitment under open category only. The Authorities, therefore, cannot be permitted to import the restriction, that candidates possessing higher professional qualification, in this case petitioner’s B.Tech. degree, considered equivalent to B.E., would be disqualified for the purposes of consideration and appointment in Staff Category under SABF.

5. It is also submitted that the petitioner was pursuing his ITI course. The Authorities, therefore, should have provided the petitioner an opportunity of completing the ITI course and thereby acquiring the requisite qualification, by extending the normal waiting period of three years, up to seven years, under Clause R-3 (d) of the SABF Scheme for becoming eligible under option R-3 of the SABF.

6. Learned counsel for the respondent-Corporation submits that the petitioner’s claim for benefit of employment under SABF Scheme was rejected under communication to the petitioner on 25.02.2019 (Annexure-9



series to the writ petition). The order of rejection refers to minutes of counseling session with the petitioner no.2 on 01.02.2019 (Annexure-8). Accordingly, the petitioner no.2 has been communicated rejection of petitioner no.1's claim for appointment either as Grade-A officer, or in Staff Category.

7. From perusal of the minutes of the counseling dated 01.02.2019, wherein the petitioner has admittedly participated, which is apparent from her signature on the minutes, copy of which has been enclosed to the writ petition (Annexure-8), she has been informed in the meeting dated 01.02.2019 that age criteria for employment as Grade-A Officer is 26 years. Even if additional 3 years is allowed to the petitioner no.1, as an OBC candidate, then his age works out to be 30 years, since his date of birth is 05.05.1988. He thus does not fulfill the eligibility criteria for Grade-A Officer.

8. Insofar as the claim for appointment in Staff Category is concerned, petitioner no.1's qualification is B.Tech. (E and C), which is equivalent to B.E.. She was informed that there is no provision for a graduate engineer in the Staff Category. Both these reasons indicated in the minutes of meeting dated 01.02.2019 are founded on the WRQ. The petitioners are conscious of rejection of the claim of petitioner no.1 for appointment under both categories right since the



meeting dated 01.02.2019, copy of which was handed over to the petitioner, as is apparent from Annexure-8. The same reasons have been reiterated in the subsequent communication dated 05.02.2019 (Annexure-9).

9. The petitioner has never assailed or challenged the said rejection/s. In fact petitioner does not deny or dispute these reasons. The instant writ application, therefore, seeking a mandamus upon the Corporation to employ the petitioner under Clause R-3 of the SABF is not maintainable.

10. The learned counsel for the corporation has also submitted that the SABF is clear in its intent. In case of death or permanent total disablement of an employee, it gives an option to the spouse to opt for any one of the three options designated as R-1, R-2A and R-3. The petitioner no.1 has claimed benefit of employment under SABF against 'Staff Category'. Clause R-3 clearly specifies that benefit of employment is to be granted on possessing the "prescribed qualification" and fulfilling the job specification, apart from other conditions. Admittedly the petitioner is possessing a B.Tech. Degree which is equivalent of B.E.. Possession of this higher degree is a disqualification which is evident from Notes to Para 6(i), i which declares that candidates possessing higher professional qualification, such as the petitioner's qualification



(B.Tech.), which is equivalent to B.E., shall not be eligible for appointment in Staff Category. The petitioner, therefore, who possesses higher professional qualification of B.Tech., equivalent to B.E., is disqualified for appointment in Staff Category.

11. Clause R-3 of SABF is unambiguous in its requirement that dependent must possess the “Prescribed Qualification” for appointment under the scheme, and fulfilling the job specifications, subject to other conditions specified therein. By virtue of his disqualification, the petitioner cannot be considered as possessing the “Prescribed Qualification”, in view of Clause 6(i), i of the WRQ. The petitioner admittedly possessing higher professional qualification, is disqualified for the purposes of benefit of employment in Staff Category under clause R-3 of the SABF Scheme.

12. Upon consideration of rival submissions and the provisions contained in SABF Scheme, this Court finds that Clause R-1 of the Scheme provides for a monthly recurring superannuation benefit calculated as of 32 years service, irrespective of actual length of service at the time of demise of the employee, which is 40 per cent of the last salary. The same is payable for a guaranteed 15 years, or life of the spouse, whichever is longer. In case of demise of the spouse before 15



years, the benefit is to be extended to the nominee till completion of total period of 15 years.

13. Clause R-2A provides payment of an amount equivalent to 60 months of last drawn salary (Basic Pay + D.A.) to be paid as rehabilitation grant to the spouse of the employee who dies or suffers permanent total disablement, while in service. In addition thereto, the spouse is entitled to receive the pension as admissible in normal case under the Superannuation Benefit Fund Scheme.

14. Clause R-3 provides for availing the option of employment. Since the petitioner is claiming benefit under Clause R-3, this Court would consider it apposite to reproduce the Clause, which reads as follows:-

“R-3 For employment of otherwise eligible, suitable and dependent unmarried son/daughter (which shall also include son/daughter legally adopted prior to the death of the employee”, the following provisions shall apply:

a) Employment of eligible son/daughter must be sought within 6 months of the death or permanent disablement of the employee, and be sought in the prescribed format. Employment under the scheme will be offered within a period of three years.

b) A dependent son/daughter on possessing



the prescribed qualification (emphasis mine) and fulfilling the job specifications will be considered for employment provided there is a regular induction level vacancy of a type, within three years of the death/permanent disablement of the employee, for which a person of his/her age, background, qualifications attainments and physical fitness would have been otherwise considered.”

15. Another relevant provision is Notes to Para 6

(i), i of the WRQ, which reads as follows :-

“i. Candidates possessing higher professional qualification such as BE, MBA, CA, LLB, MCA or any such qualification shall not be eligible.”

16. From perusal of Clause R-3 of the SABF, it

is clear that for availing benefit of employment possession of “Prescribed Qualification” is essential. The “Prescribed Qualification” has been specified in the WRQ, which includes the Notes to Para 6(i), i.

17. The petitioner, in the Court’s opinion, cannot

be permitted to conveniently rely upon the minimum requisite qualification, and at the same time contend that the disqualification specified in the same WRQ, based on



possession of higher professional qualification, cannot be imported in the SABF scheme. R-3(b) of the SABF clearly specifies requirement of possessing the “Prescribed Qualification”, which admittedly has been specified in the WRQ. The various parameters constituting “Prescribed Qualification” in the WRQ includes the notes to Para 6(i), i of the WRQ.

18. If this Court were to hold that any requirement in the “Prescribed Qualification” as per WRQ is not to apply to the SABF Scheme, the same would be contrary to the letter and intent of Clause R-3(b) and amount to rendering Clause R-3(b) as redundant. The expression “Prescribed Qualification” in Clause R-3(b) has to be considered having regard to all the requirements in the WRQ for open appointment. As per the SABF, under which the petitioner is claiming appointment, the petitioner’s candidature had to be evaluated against the ‘Prescribed Qualification’ as per WRQ. In view of the Notes to Para 6(i), i the petitioner suffers a disqualification for appointment against Staff Category, on account of possessing a higher professional qualification and, therefore, the Authorities had no discretion than to reject the petitioner’s claim, as per SABF read with WRQ.

19. This Court would also find that petitioner’s



claim for appointment under Clause R-3 was admittedly considered and rejection communicated in the meeting dated 01.02.2019; and by communication dated 25.02.2019. The minutes of the meeting dated 01.02.2019 and communication dated 25.02.2019 showing consideration based on the applicable provisions have never been challenged. Even in the instant writ proceedings the petitioner has not challenged the said decision/s, communicated to the petitioner by the Assistant Manager (E R) by letter dated 25.02.2019.

20. While rejecting the petitioner's claim for appointment, the Assistant manager under communication dated 25.02.2019 has informed the petitioner that the petitioner could avail benefit by exercising her option in respect of R-2A of the SABF, noted above.

21. The petitioner has never questioned the reasons assigned in the communicated dated 25.02.2019 by challenging the same at any forum, the petitioner, thus cannot be permitted to claim a direction from this Court to the contrary, for considering him for appointment, or to appoint him under Clause R-3 of the SABF.

22. This Court would thus consider the law in this regard with reference to decision of the hon'ble Apex Court in the case of *Amarjeet Singh and Others vs. Devi Ratan and*



Others reported in **(2010) 1 SCC 417**. Paragraphs 28 to 31 of the said judgment sums up the law in this regard and is being reproduced here:-

“28. In the instant case, promotions had been made by two different DPCs held on 19-12-1998 and 22-1-1999. Both DPCs had made promotions under different Rules on different criterion and their promotions had been made with retrospective effect with different dates notionally. In the writ petition before the High Court, the promotion of the appellants had not been under challenge. The seniority which is consequential to the promotions could not be challenged without challenging the promotions. Challenging the consequential order without challenging the basic order is not permissible. (Vide P. Chitharanja Menon v. A. Balakrishnan [(1977) 3 SCC 255 : 1977 SCC (L&S) 378 : AIR 1977 SC 1720] .)

29. In Roshan Lal v. International Airport Authority of India [1980 Supp SCC 449 : 1981 SCC (L&S) 303 : AIR 1981 SC 597] the petitions were primarily confined to the seniority list and this Court held that challenge to appointment orders could not be entertained because of inordinate delay and in absence of the same, validity of consequential seniority could not be examined. In such a case, a party is under a legal obligation to challenge the basic order and if and only if the same is found to be wrong, consequential orders may be examined.

30. In H.V. Pardasani v. Union of India [(1985) 2 SCC 468 : 1985 SCC (L&S) 482 : AIR 1985 SC 781] this Court observed that : (SCC p. 473, para 9)

“9. ... If the petitioners are not able to establish that the determination of their seniority is wrong and they have been prejudiced by such adverse determination, their ultimate claim to promotion would, indeed, not succeed.”



A similar view had been reiterated by this Court in Govt. of Maharashtra v. Deokar's Distillery [(2003) 5 SCC 669].

31. These appeals are squarely covered by the aforesaid judgments. We are of the considered opinion that in absence of challenge to the promotion of the appellants, relief of quashing the consequential seniority list could not have been granted. ”

23. In view of this settled legal position, and since the petitioners have never challenged the reasons for rejecting the petitioners' claim for appointment under the SABF as per minutes of meeting dated 01.02.2019 and communication dated 25.02.2019, the prayer for appointment under SABF made in the writ application is, therefore, not maintainable.

24. This Court, however, would also consider that the petitioner is claiming the benefit of appointment under Clause R-3 (b). Therefore, the prescribed qualification as per Clause R-3 (b) which are spelled out in the WRQ including notes to para 6(i), i, would undoubtedly apply. The petitioner cannot be permitted to submit that his disqualification as per WRQ be overlooked. Such submissions of the petitioner is contrary to the mandate of Clause R-3(b) of the SABF, under which the appointment is claimed.

25. The petitioner cannot be permitted to blow hot and cold at the same time. Petitioner is claiming appointment under Clause R-3 (b) of the SABF. It is thus more



than obvious that he is required to fulfill all the requirements under the Clause. The petitioner clearly does not fulfill the “prescribed qualification” as per Clause R-3 (b). Therefore, also he is not in a position to claim appointment under the SABF.

26. From the consideration above, this Court would find that no case is made out for issuance of any positive direction in the case.

27. Writ application is devoid of merit and dismissed.

(Madhuresh Prasad, J)

shashank/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	31.12.2022
Transmission Date	NA

