

Ravindra Dewaji Durge Vs. Ongc Ltd. and ors.

Ravindra Dewaji Durge Vs. Ongc Ltd. and ors.

SooperKanoon Citation : sooperkanoon.com/919005

Court : Delhi

Decided On : May-13-2011

Judge : Rajiv Sahai Endlaw, J.

Appeal No. : W.P.(C) 7430/2009 & CM No.3372/2009

Appellant : Ravindra Dewaji Durge

Respondent : Ongc Ltd. and ors.

Advocate for Def. : Mr. Rakesh Sawhney; Mr. S. Sirish Kumar; Mr. Navin Chawla; Gaurav Kaushik, Advs.

Advocate for Pet/Ap. : Mr. Hrishikesh Baruah; Mr. Nishant Das, Advs.

Judgement :

1. The writ petition has been filed impugning the appointment of respondent No.5 Mr. Ravinder Pal Gupta as the Chief Manager (Security) in the respondent No.1 ONGC.
2. Both, the petitioner and the respondent No.5 were at the relevant time employed with the respondent No.1 ONGC as Manager (Security), an E-4 post. The petitioner claims and it is not disputed in the counter affidavits of the respondent No.1 ONGC and the respondent No.5 that as per the seniority list, the petitioner was senior to the respondent No.5.

3. The respondent No.1 ONGC on 22nd March, 2008 published an advertisement inviting applications for the post of Security Officer (an E-1 post) and DGM (Security) (an E-6 post). The respondent No.5 applied for the post of DGM (Security). The petitioner claims that he was not eligible to apply for the post of DGM (Security).

4. The respondent No.1 ONGC though did not find the respondent No.5 eligible / suitable for the said post of DGM (Security) but posted him as Chief Manager (Security), an E-5 post. It was then that the present petition was filed averring that the respondent No.5 could not, in pursuance to the advertisement aforesaid, be appointed to the post of Chief Manager (Security) which was not even advertised.

5. Notice of the petition was issued and vide order dated 13 th March, 2009 the appointment of the respondent No.5 to the post of Chief Manager (Security) was made subject to the final outcome of the writ petition. Counter affidavits have been filed by the respondent No.1 to 4 ONGC and its officials and the respondent No.5 and the counsels have been heard.

6. The counsel for the petitioner besides the ground aforesaid, that the post which was not advertised could not be filled up has also invited attention to the Recruitment and Promotion Regulations, 1980 of the respondent No.1 ONGC to contend that the post of Chief Manager (Security) is a promotional post and not a post for direct recruitment for which vide advertisement aforesaid applications were invited. It is contended that the procedure for filling up of the post of Chief Manager (Security) has not been followed. It is further contended that the petitioner being senior to the respondent No.5 was eligible for the post of Chief Manager (Security), if at all the same were to be filled up and no opportunity was granted to the petitioner to seek appointment to the said post. Reliance is placed on Ashok Kumar Sharma v. Chander Shekhar (1997) 4 SCC 18 to contend that posts cannot be filled up in contravention to the representation made in the advertisement.

7. The only reason for which the respondent no.1 ONGC has sought to justify the apparently illegal appointment, is the following clause in the advertisement supra inviting applications to the post of Security Officer and the DGM (Security):

"Number and level of posts may vary."

8. The counsel for the respondent no.1 ONGC has contended that in view of the aforesaid clause in the advertisement, respondent no.1 ONGC in pursuance to the advertisement for the post of Security Officer and DGM (Security) could fill up any other posts also which had not been advertised and for which no applications even had been invited. It is contended that such has been the practice in ONGC.

9. The argument is preposterous and has to be necessarily negated and rejected. Such practice, if prevailing in ONGC is also illegal and is deprecated. Respondent no.1 ONGC merely by advertising one post cannot fill up all the other posts for which the applications have not even been invited and without giving opportunity to all those eligible to apply therefor. It has been enquired from the counsel for the respondent no.1 ONGC as to whether notice of filling up of the post of Chief Manager (Security) was given to all persons eligible therefor. No cogent answer has been forthcoming. It is quite apparent that the post of Chief Manager (Security) has been filled up by appointment of respondent no.5 thereto, illegally. Similarly, there is an admission that the post of Chief Manager (Security) is a promotional post. If it is admitted to be a promotional post, it is inexplicable as to how it was filled up pursuant to the clause aforesaid in the advertisement inviting applications for direct recruitment. In fact both counsel for the petitioner and the counsel for the respondent no.5 state that as per the Rules produced before the Court, even the post of DGM (Security) is a promotional post.

10. The counsel for the respondent no.5 has contended that the respondent no.5 was eligible for and had applied for the post of DGM (Security) and in fact had secured the highest marks in the selection process for the said post but others with lower marks were accommodated for the said post and the respondent no.5 posted as Chief Manager (Security). It is further stated that the respondent no.5 immediately on appointment, has made a representation that he was eligible to be appointed as the DGM (Security).

11. I find that the Supreme Court in K. Shekar v. Indiramma (2002) 3 SCC 586 was concerned with a clause in the advertisement published by National Institute

of Mental Health & Neuro Sciences (NIMHANS) inviting applications for various posts as under:

"If the candidate is not found suitable to the post applied for, the Section Committee may recommend the candidate for a lower post. In case of a highly qualified candidate, the Selection Committee may recommend to a higher post other than the one advertised."

The Supreme Court inspite of noting that NIMHANS is an Institution of repute held that there can be **"no islands of insubordination to the rule of law"** and actions of Institutions, however highly reputed, are not immune from judicial scrutiny. It was indeed held that to preserve the high reputation there is a greater need to avoid even the semblance of arbitrariness or extraneous consideration colouring the Institution's actions. It was further held that the clause aforesaid could not enable the appointment of the recommended candidate against an unadvertised post and an interpretation to the contrary would render the stipulation violative of Articles 14 & 16.

12. Reference may also be made to Bhanu Prasad Panda v. Chancellor, Sambalpur University (2001) 8 SCC 532, where also it was held that though the Department concerned was of **"Political Science and Public Administration"** but since the advertisement invited applications for the post of lecturer in Political Science, on selection in pursuance thereto the candidate could not have been appointed as Lecturer in Public Administration. (The said judgment was recently clarified in Dr. Rajbir Singh Dalal v. Chaudhari Devi Lal University (2008) 9 SCC 284 without however affecting the principle laid down). The Supreme Court recently in Rakhi Ray v. High Court of Delhi (2010) 2 SCC 637 and State of Orissa v. Rajkishore Nanda (2010) 6 SCC 777 also held that appointment made beyond number of vacancies advertised is without jurisdiction, being violative of Articles 14 & 16.

13. All the aforesaid shows a sad state of affairs in the matter of recruitments/promotions in the respondent no.1 ONGC. It appears that the

respondent no.1 ONGC has been making appointments without following the procedure laid down under the Rules or as per the principles for filling up of the said posts. The authorities concerned of respondent no.1 ONGC appear to have chosen to turn a blind eye towards such illegalities in the organization.

14. In the circumstances while allowing the writ petition and quashing the appointment of the respondent no.5 to the post of Chief Manager (Security), the Chairman and Managing Director (CMD) of the respondent no.1 ONGC is directed to conduct/have conducted an inquiry into the aforesaid incident and to fix the responsibility for the same and to initiate proceedings against those found guilty and to submit a report to the PIL Committee of this Court within six months of today.

15. A copy of this order be forwarded to the PIL Committee of this Court for ensuring compliance by the CMD of the respondent no.1 ONGC and for further action if deemed necessary.

16. The petitioner is also awarded costs of this writ petition of `20,000/- payable by respondent no.1 ONGC within six weeks of today.

17. The counsel for the respondent no.5 seeks clarification that the respondent no.5 will be entitled to seek his separate remedies qua the denial of appointment to the post of DGM (Security). This matter being not concerned therewith, it is clarified that the respondent no.5 will be entitled to so seek his remedies.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com