

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No.345/2015

Date of Order: 06.03.2024

Shri Minsngi Marboh

..... Petitioner

Vs.

1. Meghalaya Energy Corporation Ltd. represented by its Chairman, Shillong.
2. Director, Meghalaya Energy Corporation Ltd., Corporate Affairs, Shillong.
3. Deputy Secretary, Meghalaya Energy Corporation Ltd., Corporate Affairs, Shillong. Respondents

Coram:

Hon'ble Mr. Justice S. Vaidyanathan, Chief Justice

Appearance:

For the Petitioner : Mr. Philemon Nongbri, Adv with
Mr. E. Lalsangluaia, Adv

For the Respondents : Mr. A. Kumar, Advocate General with
Ms. R. Colney, GA

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: Yes

ORDER

The present writ petition has been filed by the petitioner, questioning the order of termination dated 30.10.2015, issued by the 2nd respondent, in and by which he was not allowed to write the written examination along with other candidates on the ground that he had produced fake degree and birth certificates.

2. It is the case of the petitioner that he had joined the services of the respondent Corporation on 20.12.2007 in the post of Diploma Engineer (Elect.) as temporary work charge Junior Engineer on a lumpsum payment of Rs.8,000/- pm and he had been allowed to continue his work till 31.10.2015 and thereafter, he has been terminated from service.

3. According to the respondents, it is only a termination simpliciter, as the petitioner did not have the requisite qualification. The petitioner has possessed the degree in Bachelor of Science in Applied Information and Technology in the year 2011 from Sikkim Manipal University. Even assuming for the sake of argument that the petitioner has cleared the examination in 2009, on the date of appointment on 20.12.2007, the petitioner did not have the requisite qualification.

4. In reply to the above, learned counsel for the petitioner has stated that the respondents have filed the counter, stating therein otherwise that the degree certificate was fake, which is ultimately held to be incorrect. When the respondents have permitted other candidates, who have been selected along with him to write the examination, despite the fact that the petitioner had completed Diploma Software Engineering from Aptech Computer Education, Shillong and Bachelor of Science in Applied Information and Technology from Sikkim Manipal University, Shillong on the day, when the candidates were asked to appear for the

written examination vide communication dated 19.08.2015, he was deprived of that opportunity, which clearly amounts to discrimination, arbitrariness and smacks victimization. He further submitted that there was no explanation or reason for discharging the services of the petitioner and even assuming that the order of discharge appears to be simple, having extracted work for eight years, the respondents have not paid any compensation or gratuity and that the petitioner would be entitled to the relief. Learned counsel for petitioner also submitted that as the petitioner has taken up some other employment after his discharge from service, he is not interested in going back to employment under the respondents and he is interested only in compensation.

5. Learned Advocate General appearing for the respondents contended that for the services rendered by the petitioner from the year 2007 to 2015, salary has been paid to the petitioner on monthly basis and that there are no arrears of payment.

6. The respondent Corporation is an Industry within the meaning of Section 2-A of the Industrial Disputes Act, 1947 (in short 'the I.D. Act, 1947') and the respondent Corporation has also not complied with the provisions of Section 25-F of the I.D. Act, 1947. Even assuming for the sake of argument that the termination simpliciter is justified, admittedly, he has not been paid gratuity for the actual period of service rendered by him. According to the petitioner, the respondents

will have to pay approximately Rs.3 lakhs towards compensation for illegally divesting of the duties of the petitioner from the services.

7. It is seen that the petitioner, at the time of joining the services of the respondent Corporation, did not possess the qualification and even though he has been given a chance to write the examination in 2010, he was not successful, however, he was allowed to continue his work. The question as to whether the action of the employer amounts to retrenchment and whether his juniors are continuing in the job or not, is a disputed question of fact, which cannot be gone into in this writ petition, as the remedy available to the petitioner is to raise an industrial dispute. As the petitioner is interested only in compensation, this Court is of the view that leaving all the issues open to the petitioner to agitate the matter in the manner known to law, by raising an Industrial Dispute before the appropriate forum, subject to the limitation, if any prescribed under the I.D. Act, 1947. The petitioner has expressed his inclination to receive the gratuity amount and therefore, this Court directs the respondent Corporation to release the payment of gratuity to the petitioner, as the learned Advocate General fairly conceded that the respondent Corporation is bound by the provisions of the Payment of Gratuity Act, 1972. The amount of gratuity shall be paid to the petitioner within a period of 45 days from the date of receipt of this order and that

the petitioner would be entitled to interest on the gratuity in terms of Section 7(3)A and Section 8 of the Payment of Gratuity Act, 1972. The provisions of Sections 7(3)A and 8 of the Payment of Gratuity Act, 1972 along with respective notifications have been elaborately dealt with by the Division Bench of this Court, in which I am a member in the judgment dated 29.02.2024 passed in W.A.No.39/2023.

8. With the above observation and direction, this writ petition stands disposed of.

(S. Vaidyanathan)
Chief Justice

Meghalaya
06.03.2024
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