

GAHC010195122017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2153/2017

DEEPAK
S/O. JAGADISH CHANDER, R/O. HOUSE NO. 630, WARD NO. 22,
PANCHSHEEL COLONY, NEAR MILTON ROAD, SONIPAT-131001, HARYANA.

VERSUS

THE UNION OF INDIA and 6 ORS.
THROUGH THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF
RAILWAY, NEW DELHI.

2:THE REGIONAL DIRECTOR OF APPRENTICESHIP TRAINING

EASTERN REGION
CGO COMPLEX
DF BLOCK
SECTOR 1-E
FIRST FLOOR
SALT LAKE
KOLKATA-700064.

3:THE GENERAL MANAGER PERSONNEL

N.F. RAILWAY
MALIGAON
GUWAHATI-781011
DIST. KAMRUPM
ASSAM.

4:THE CHIEF WORKSHOP ENGINEER CWE

N.F. RAILWAY
MALIGAON

GUWAHATI-781011
DIST. KAMRUPM
ASSAM.

5:THE CHIEF WORKSHOP MANAGER

N.F. RAILWAY WORKSHOP
P.O. DIBRUGARH
PIN-786001
DIST. DIBRUGARH
ASSAM.

6:THE ASSTT. PERSONNEL OFFICER

N.F. RAILWAY
MECHANICAL WORKSHOP
P.O. DIBRUGARH
PIN-786001
DIST. DIBRUGARH
ASSAM.

7:THE PRINCIPAL

SUPERVISOR TRAINING CENTRE
NEW BONGAIGAON
N.F. RAILWAY
P.O. NEW BONGAIGAON
DIST. BONGAIGAON
ASSAM

Advocate for the Petitioner : MR.R K JAIN

Advocate for the Respondent : MR.A K SARKARSC, N.F.Railway.

Linked Case : MC/64/2023

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ASSAM.

Advocate for : MR K BISWAKARMA

Advocate for : DY.S.G.I. appearing for THE UNION OF INDIA and 6 ORS

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

10.05.2024

Heard Mr. K. Biswakarma, learned counsel for the petitioner. Also heard Mr. A.K. Dutta, learned CGC along with Mr. D. K. Dey, learned counsel for the respondents.

2. On 17.10.2014, an employment notice was issued by the Chief Workshop Engineer, N. F. Railway (respondent no. 4), inviting application for engagement of ITI passed candidates as apprentices, *inter alia*, in the trade of "Fitter" at the N. F. Railway Mechanical Workshop, Dibrugarh. The petitioner had offered his candidature and along with the other documents, he had submitted his National Apprenticeship Certificate issued by the National Council for Vocational Training at Maruti Suzuki. The petitioner got selected and by a communication dated 29.10.2015, and the petitioner was directed to appear before the Principal, S.T.C. (State Training Centre), Bongaigaon. After having undergone training for more than 11 (eleven) months as well as on receipt of payment stipend, the apprenticeship of the petitioner was terminated vide notice dated 06.09.2016 w.e.f. 14.09.2016. By that time the petitioner had

completed 11¹/₂ months of training and a miniscule period of half month had remained.

3. It was projected that by the said action of the respondents the petitioner was prevented from appearing in the final examination to be held in April 2017 and moreover the petitioner was directed to deposit the last 3 months stipend @ Rs. 5880/- per month aggregating to Rs.17,640/-. Accordingly, the petitioner has assailed the termination letter dated 14.09.2016 by filing this writ petition under Article 226 of the Constitution of India .

4. The learned counsel for the petitioner has submitted that the petitioner had disclosed all material facts when applying for apprenticeship training and that there is nothing in the employment advertisement which empowers the respondents to terminate the apprenticeship after having joined there, as such his training could not have been terminated and the recovery of stipend could not have been made. It is submitted that the defence taken by the respondents to the effect that there is a statutory bar under Rule 3(2)(a) of the Apprenticeship Rules, 1992, was not disclosed to the petitioner either in the employment advertisement or any other communication before the commencement of the training. Accordingly, it is submitted that the petitioner having undergoing training for the entire period except for the last half month and had a reasonable expectation of being absorbed in the establishment of N. F. Railway. The petitioner has prayed for quashing the termination notice dated 06.09.2016 giving effect to the termination on and from 14.09.2016.

5. The learned counsel for the petitioner had submitted that pursuant to the interim orders passed by this Court, the petitioner was permitted to sit in the final examination which was scheduled between 06.04.2017 and 12.04.2017. It is also submitted that pursuant to the order of this Court dated

25.09.2023, the respondent authorities were directed to produce the result of the petitioner on sealed cover.

6. From the record it is seen that on 29.02.2024, the sealed cover containing the result was opened by the Court. However, from the result sheet it could not be deciphered whether the petitioner has passed or failed in the Apprenticeship Examination and nor the learned CGC could enlighten the Court on the point and therefore, the matter was deferred.

7. Per Contra, the learned CGC as well as the learned standing counsel for the respondents has referred to the statutory bar created under Rule 3(2)(a) of the Apprenticeship Rules, 1992. It is submitted that because of the statutory bar, notwithstanding whether the petitioner had successfully passed the examination or not, there was a statutory bar which prevented the respondents to engage the petitioner as apprentice.

8. It is also submitted that while allowing the petitioner to undergo the Apprenticeship Training, a contract agreement was signed with the petitioner which expressly provided that he would abide by the Apprentices Act, 1961 and Apprenticeship Rules, 1992.

9. It would be relevant to quote the provision of Rule 3 of the Apprenticeship Rules, 1992 :-

3. Standard of Education-

(1) A person shall be eligible for being engaged as a trade apprentice- if he satisfies the minimum educational qualifications as specified in Schedule_1.

(2) A person shall be eligible for being engaged as a Graduate or Technician or Technician (Vocational) apprentice if he satisfies one of the minimum educational qualifications specified in Schedule- _IA :

Provided that:-

(a) No Engineering Graduate or Diploma Holder or Vocational Certificate holder who had training or job experience for a period one year or more, after the attainment of these qualifications shall be eligible for being engaged as an apprentice under the Act ;

(b) No Sandwich Course Student shall be eligible for being engaged as an apprentice under the Act after passing the final examination of the technical institution wherein such student is undergoing the course unless so approved by the Regional Central Apprenticeship Advisers ;

(c) A person who has been a Graduate or Technician or Technician (Vocational) apprentice under the Act and in whose case the contract of apprenticeship was terminated for any reason whatsoever shall not be eligible for being engaged as an apprentice again under the Act without the prior approval of the Apprenticeship Adviser.

10. From the perusal of Proviso (a) of Rule 3 of the Apprenticeship Rules, 1992 it is seen that there is a statutory bar for engagement of those persons as apprentices who had training or job experience for a period of 1 year or more. The petitioner has annexed to the writ petition a National Apprenticeship Certificate issued by the Government of India, Ministry of Labour and Employment, National Council for Vocational training which is jointly signed by the Secretary of National Council for Vocational training and Secretary, State Council for Vocational training where the petitioner had passed the prescribed Trade Test held in October-November of 2010, on completion of his training at Maruti Suzuki India Limited, Gurgaon.

11. Therefore, owing to the statutory bar as referred above, even if the petitioner has turned out to be successful in the Final Examination, or the 105th AITT, but the said pass certificate could not be sufficient to give any benefit to the petitioner in view of the statutory bar under Proviso (a) of Rule 3 of the Apprenticeship Rules, 1992 as referred to above.

12. Moreover, in view of the statutory bar, as the petitioner is otherwise found to be disentitled to National Apprenticeship Certificate on the same trade of "fitter". Under such circumstances, notwithstanding that as per the documents produced, the petitioner is shown to be passed out in 105th AITT, the candidature of the petitioner in the said examination will not be sustainable. Hence, it would be open for the respondent authorities to recall the result of the

petitioner.

13. The direction to the respondent authorities permitting them to recall the result of the petitioner is due to the fact that pursuant to the interim orders of the Court the petitioner was allowed to appear in the final examination and by the orders of this Court, the result of the petitioner has been brought on record in a sealed cover.

14. As the Court does not find this to be a fit case, the writ petition stands dismissed.

15. The result sheets produced by the learned CGC in a sealed cover is returned back to the learned CGC.

JUDGE

Comparing Assistant