

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7443 of 2013

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Gauri Shankar Mishra S/o Late Ram Gobind Mishra, R/o village- Jagdishpur, P.S.- Jagdishpur, District- Bhojpur, Ara.

.... Petitioner/s

Versus

1. The Bihar State Electricality Board through the Chairman, Bihar State Electricality Board, Bailey Road, Patna, Bihar.
2. The Chairman, Bihar State Electricality Board, Bailey Road, Patna, Bihar
3. The Secretary, Bihar State Electricality Board, Bailey Road, Patna, Bihar
4. The Director (Personnel), the Chairman, Bihar State Electricality Board, Bailey Road, Patna, Bihar
5. The General Manager-cum-Chief Engineer, Muzaffarpur Thermal Power Station, Kanti, Muzaffarpur
6. The Electricalal Superintending Engineer, Muzaffarpur Thermal Power Station, Kanti, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Prakash Verma, Adv.
For the State : Mr. Aditya Nath Pandey, AC to SC-1
For the BSEB : Mr. Ranjit Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 13-01-2015

Heard learned counsel for the petitioner and learned counsel for the Bihar State Electricity Board including the State.

In this case, the petitioner is challenging the order of termination which has been passed vide Office Order No. 722 dated 20th July 1987. The original prayer was made by the petitioner that he continued in the service of the Electricity Board but payment has not been made. Relief has been sought to make payment of arrear of salary and grant other benefits to the petitioner. After enforcement of new

Electricity Act, 2003, it has become a Power Holding Company as per the counsel for the respondent.

It appears from the record that an advertisement was published for appointment to post of Assistant Operator/Technical Grade III, MTPS, Kanti and the qualification was fixed that the person must be ITI in the Electrical Trade.

As per the counsel for the petitioner, the appointment for the post of Assistant Operator/Technical Grade III, the qualification was fixed ITI either in the Electrical Trade or in Mechanical Trade and he had produced the certificate of ITI, Turner Mechanical.

It appears that while the petitioner was in service, a criminal case was instituted against him with respect to the matter involved in the present case that he obtained the employment by committing fraud there the Trial Court convicted the petitioner in G.R. Case No. 880 of 1987 (Annexure-4). In appeal, the order passed by the Trial Court was set aside and the petitioner has been acquitted from charges. It appears that the erstwhile Board only by issuing a show cause notice as per the claim made by the petitioner, terminated the service of the petitioner on the ground of submission of forged and fabricated certificate. It also appears that the Board had written a letter to the ITI, Institute Begusarai where the Principal of the ITI Institute informed the Board that the ITI Institute has issued the certificate of

Turner in favour of the petitioner which is not forged and fabricated.

The Board has claimed that though the petitioner was ITI in Turner but he got employment on the strength of ITI in Electrical Trade Certificate and he had produced certificate of ITI in Electrical Trade whereas the counsel for the petitioner has disputed the claim of the Board and has drawn attention of this Court to paragraphs 5 and 6 of Annexure-A where it has been mentioned that at the time of joining, the petitioner was required to submit the original certificate and he has asserted that he had produced the original certificate showing him ITI in Turner, accordingly, he was taken in service. The counsel for the petitioner has denied the claim of the Board that he had not produced the original certificate. If he had not produced the original certificate then certainly there should have been some correspondence asking the petitioner to produce the original certificate for verification. As per the claim of the petitioner, the Board has neither produced the original application filed by the petitioner nor any letter has been filed in the affidavit calling upon the petitioner to produce the original certificate. As per the petitioner the show cause vide Memo No. 2871 dated 16th June 1987, was never served upon the petitioner whereas the counsel for the Board has submitted that it was served upon him and when he did not give reply then the Board has passed the order for termination of his service.



The original record has been produced before this Court, though the aforesaid show cause is there in the file but there is no material to show that this letter was served upon the petitioner either through immediate Higher Officer or through Peon Book or through the Postal Department and also it appears that getting an employment on the basis of wrong/forged certificate is a misconduct as provided in Standing Order of the Bihar Electricity Board framed under the Industrial Employment Standing Order Act. Under the Standing Order, the Board was required to follow certain procedure for termination of service on the ground of misconduct which has been mentioned in clause 29, sub-clause (b) (q) and the procedure has been provided in clause 30, as the petitioner was terminated from service on the charge of misconduct mentioned in clause 29, sub-clause (b) (q) and the Board did not follow the procedure that was provided under the Board Standing Order.

The delay has been explained in the petition, the petitioner remained under the conviction upto 2012 till the order passed by the Appellate Court, when he was acquitted by the order of the Appellate Court then he approached Power Holding Company and when he did not get any favourable response that compelled him to approach this Court. As it appears from the record that the termination of the petitioner from service was not affected by a full fledged departmental

proceeding though he was terminated from the charge of misconduct which has been defined in the Standing Order, this Court feels that the order of termination that has been passed against the petitioner, cannot be sustained and accordingly, the same is quashed. Now the question would arise what relief should be granted to the petitioner though the Board will have liberty to take action after holding a full fledged departmental proceeding but here is the question how the petitioner can be compensated, as action of the Board cannot be sustained.

In this view of the matter, the Board must pay at least 50% back wages to the petitioner and rest payment of salary and other benefit will be subject to result of the departmental proceeding. The enquiry should be completed without unnecessary delay preferably within a period of six months from the date of receipt/production of a copy of this order and the petitioner is directed to co-operate in the departmental proceeding.

The aforesaid back wages should be paid to the petitioner within a period of three months from the date of receipt/production of a copy of this order.

Accordingly, this petition is allowed to the aforesaid extent.

(Shivaji Pandey, J)

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