

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11594 of 2007

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Lal Babu Singh son of Shri Kewal Singh, R/o- Vill-Dayal Chak, P.O.-Kotwa Patti
Rampur, P.S. Doriganj, District Saran

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Science and Technology Department, Government of Bihar,
Patna
3. The Director, Science and Technology Government of Bihar, Patna
4. The Secretary Council of Science and Technology, Government of Bihar,
Patna
5. The Project Director Council of Science and Technology Government of
Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Singh, Adv.
Mr. Alok Kumar Singh, Adv.
Mr. Shashi Bhushan Kumar, Adv.
Mr. Rajiv Ranjan Singh, Adv.
Mr. Mrityunjay Kumar, Adv.

For the Respondent/s : Mr. Naresh Dikshit, Adv.
Mr. Brij Bihari Tiwary, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 27-09-2016

The writ petition initially was filed for issuance of an appropriate writ for quashing the order bearing Memo No. 354 dated 2.8.2007 passed by the Project Director, Bihar Council on Science and Technology Department, Government of Bihar, Patna whereby the petitioner had been suspended on a decision taken by the Executive Committee of the council in its 66th Meeting held on 9.4.2005. The copy of suspension order dated 2.8.2007 is impugned at Annexure-1 to the writ petition. During the pendency of the writ petition, a disciplinary proceedings so initiated against the petitioner culminated



in an order of dismissal passed by the Project Director as contained in the memo dated 27.8.2007 which has been brought on record vide Annexure 27 of I.A.No.6323 of 2007 with the prayer to permit the petitioner to question the order of termination in the present proceeding itself and which prayer has been allowed vide order passed on 3.1.2008.

With the consent of the parties, the writ petition has been heard with a view to a final disposal at the stage of admission itself.

Facts of the case briefly stated is that in the year 1984 the Bihar Council on Science and Technology was established by the State Government in its Department of Science and Technology and certain Class IV posts were created on daily wages. Of the Class IV posts so created, the petitioner submitted his application for being appointed against one of such post and was appointed on 1.4.1987. Two years later in the year 1989, a Committee was constituted for making regular appointments. The petitioner also applied and was called for interview which was held on 6.1.1990 along with other applicants. Although some appointments were made in the exercise but the petitioner was not successful. In February, 1993, an advertisement was published for filling up of the posts of Centre Attendant, the petitioner applied and was called for interview. No action, however, was taken to fill up the vacancies. The petitioner came before this



Court in C.W.J.C.No.3263 of 1995 for regularization/absorption on any Class-IV posts with effect from the date he joined service as a daily wage employee on 1.4.1987 or with effect from 27.3.1990 being the date when some of his colleagues were regularly appointed. The writ petition was disposed of on 9.1.1997 vide order present at Annexure-9 with a direction to the competent authority to consider the grievance of the petitioner. Several representations followed but the order of this Court was not complied. The petitioner came again in contempt application being M.J.C.No.854 of 1997 and when pressure started mounting on the petitioner by the respondents to withdraw the contempt petition. The petitioner accordingly withdrew the contempt petition on 1.7.1999. In the mean time, another set of daily wage workers came before this Court in C.W.J.C.No.71 of 1998 seeking regularization of their services and which was disposed of with direction to the respondents to consider their claims and it is acting on the order of this Court disposing of the said writ petition present at Annexure-11 that advertisement was published for filling up the post of Centre Attendant and which was responded to by the petitioner, who was placed at Serial No.1 of the merit list. The petitioner was appointed as Centre Attendant vide appointment letter bearing no. 324 dated 7.9.1998 placed at Annexure-12 and was posted at Bhagalpur where he joined on 8.9.1998.



Even after being appointed as a Centre Attendant the petitioner kept on representing before the authorities for regularization of his services with effect from 6.3.1990 and since his request was not being considered, he again approached this Court in C.W.J.C.No.5052 of 2005 praying for regularization of his service and payment of salary. The writ petition is stated to be pending before this Court. On the other hand, the Executive committee of the 'Council' in its 66th Meeting held on 9.4.2005 decided to departmentally proceed against the petitioner on the basis of some enquiry having taken place in the meantime. Vide letter bearing No.102 dated 22.6.2005 impugned at Annexure-18 that a chargesheet was served upon the petitioner listing three charges against him, which basically revolved around allegation of forgery and interpolation in documents submitted at the time of appointment. A departmental proceedings was thus initiated with the Secretary, Bihar Council on Science and Technology as the Conducting Officer and Dr. Amitabh Ghosh, Project Director, as the Presenting Officer. The petitioner refuted the charges by filing his reply on 18.10.2005 placed at Annexure-20. Nothing progressed thereafter in the departmental proceeding so initiated. On 2.8.2007 the order of suspension was passed which is impugned at Annexure-1 to the writ petition and it is at this stage that the petitioner approached this Court through the present writ petition.



It is while the writ petition is pending that according to the petitioner, without any notice, show cause or any opportunity of hearing, that the termination was passed on 27.8.2007 and which has been brought on record vide Annexure-27 to the interlocutory application bearing I.A.No.6323 of 2007. The petitioner sought leave and has been permitted to challenge the termination order as well, in the present writ petition.

A counter affidavit is filed by respondent No. 5 in which it is stated that it is in consideration of the grievances raised by the petitioner regarding regularization that the Executive committee in its 66th Meeting held on 9.4.2005 decided to hold a departmental enquiry for looking into the grievances of the petitioner as well as to initiate action as per the provision of departmental proceeding. It is the stand of the respondent that a report was submitted in the enquiry on 11.8.2005 where the petitioner was found guilty of submitting forged and fake educational qualification as well as of manipulating his date of birth. It is the stand of the respondents that the petitioner never responded to the notices and when all efforts to serve the notice failed that a press communiqué in the Hindi Daily, Dainik Jagaran, was published on 15.8.2007. It is contended by the respondents that even such public notice went unheeded and thus the proceeding was completed ex parte resulting in the impugned order of termination

dated 27.8.2007. A second set of counter affidavit is filed on behalf of the respondent State which is similar to the counter affidavit of the respondent no. 5 and prays for dismissal of the writ petition.

Mr. Rajeev Kumar Singh has appeared for the petitioner, the State is represented by the learned State counsel while the respondent Nos. 4 and 5 are represented by Mr. Naresh Dikshit.

Mr. Singh initiated his argument by questioning the jurisdiction of the Project Director to pass the order of termination. According to Mr. Singh neither the Project Director is the appointing authority of the petitioner nor could he pass the order as a disciplinary authority particularly when a Project Director was already appointed as the Presenting Officer.

Responding to the charges framed against the petitioner Mr. Singh has referred to the application filed by the petitioner at the time of his initial appointment on daily wage on 1.4.1987 placed at Annexure-5 to the supplementary counter affidavit of the respondent Nos. 4 and 5 at page 184 to submit that though the date of birth is mentioned as 8.1.1967 but the petitioner has clearly mentioned that he has studied up to class 9th. He submits that although there was an error in the date of birth but the qualification clearly mentions as having studied up to Class 9th. He next refers to the application filed in response to the appointment process initiated for the post of Centre



Attendant in the year 1993, relied upon in the chargesheet at Charge No.1, placed at Annexure-K to the said counter affidavit at page 185 to submit that whereas the said application is dated 15.11.1993, the last date for filing any such application was 12.11.1993 even for application sent by post. According to Mr. Singh this document has been generated to implicate the petitioner and that the actual application filed by the petitioner is present at Annexure-21 at page 76 in which his date of birth is mentioned as 14.3.1967 and the qualification is mentioned as 9th pass. He submits that whereas the application relied upon by the respondents at Annexure-K to implicate the petitioner does not bear any receiving, there is a receiving present in the application present at Annexure 21 which is the genuine application of the petitioner.

Responding to charge No.2 regarding the submission of the certificate issued by the Bihar School Examination Board regarding passing of matriculation examination in 1980, it is submitted that if the petitioner would have passed the matriculation examination in 1980 then there was no occasion for him to mention his qualification as '9th pass' in his application to the post of Centre Attendant placed at Annexure-21 claiming to be only 9th pass. The submission of any such certificate is also denied by Mr. Singh who refers to the marksheet issued by the Bihar Sanskrit Shiksha



Board placed at Annexure-22 to the writ petition to submit that the petitioner passed the matriculation examination in the year 2005 in 1st division and not in 1980. He further submits that the certificate of the Examination Board of the year 1980 which finds mention in the chargesheet as well as in the report given by the Deputy Secretary, Vigilance, Bihar School Examination Board, is not even on the record of the proceeding which by itself is sufficient to prove that the chargesheet is resting on manufactured documents and concocted allegations.

Responding to the third charge present in the chargesheet impugned at Annexure-18 regarding submission of a certificate issued by the Bihar Intermediate Education Board, Patna of the year 1991, Mr. Singh again while reiterating his stand taken in respect of the certificate issued by the Bihar School Examination Board, submits that if the petitioner would have passed his intermediate examination in the year 1991, then there was no occasion for him to mention 9th pass in his application form filed on 2.3.1993. Learned counsel has next referred to the list of the candidates prepared at the time of consideration of their case of appointment as a Centre Attendant present at page 156 of the proceedings to submit that even according to the document of the respondent themselves, not only the date of birth of the petitioner has been mentioned as 14.3.1967 rather even his



qualification is mentioned as 9th pass. Learned counsel has also referred to the document present at page 171 vide Annexure-28 to canvass the same argument which is another list prepared by the respondents and mentions the date of birth of the petitioner whose name appears at Serial No. 13 as 14.3.1967 and his qualification as 9th pass. The said document also mentions his date of initial appointment in the 'Council' as 1.4.1987.

It is the argument of Mr. Singh that although allegations have been made against the petitioner of submitting forged matriculation certificate issued by the Bihar School Examination Board and the Bihar Intermediate Council but neither of the certificates allegedly issued by the two institutions in favour of the petitioner have been brought on record by the respondents nor it is proved that the petitioner had submitted those documents.

Summarizing his arguments Mr. Singh formulates the following issues:-

- (a) The Project Director having appointed as a Presenting Officer vide the charge memo present at Annexure-18, he not only proceeds to pass the order of suspension impugned at Annexure-1 but also the termination order impugned at Annexure-37.
- (b) The allegations constituting the charge is based on no

evidence because neither the petitioner has made any interpolation in his date of birth nor has he submitted intermediate certificate at the time of his appointment in the year 1993 nor he filed any certificate issued by the Bihar School Examination Board regarding passing the matriculation examination in the year 1980.

(c) The finding of the Enquiry Officer is perverse and was never served on the petitioner.

(d) The explanation submitted by the petitioner on 18.10.2005 vide Annexure-20 in response to the show cause dated 22.6.2005 placed at Annexure-19, has not been considered; and

(e) The order of termination is a non speaking order.

Responding to the arguments of Singh while the State is more or less formal in opposition in the present contest, the main contest has been led by Mr. Dikshit learned counsel for the Bihar Council on Science and Technology. Before proceeding to respond to the arguments of Mr. Singh on the merits of the contest Mr. Dikshit proceeds to question the very maintainability of the writ petition for according to him the writ petitioner had not come with clean hands before this Court. According to learned counsel, the hands of the



petitioner are soiled with attempted interpolation. For the purpose Mr. Dikshit has referred to the reply to the third supplementary counter affidavit filed by the petitioner enclosing a copy of a letter dated 5.1.2016 at Annexure-36 thereof in which the Investigating Officer of the criminal case arising from Kotwali P.S. Case No. 314 of 2007 has opined that the petitioner has been made a victim of the conspiracy. He submits that this letter of the Investigating Officer is a forged document and is a creation of the petitioner. He refers to the order dated 4.5.2016 passed by a bench of this Court to submit that on objection being raised by 'the Council', the petitioner was directed to verify the position but he has not clarified and which would confirm that Annexure-36 is a forged document. Mr. Dikshit has next referred to a letter of the Police Inspector-cum-Station House Officer, Kotwali Police Station annexed at Annexure-AA of the rejoinder to the reply filed by the respondent No.5 at page 238 to submit that the Police Inspector has reported that the Investigating Officer, Sub Inspector Binod Kumar had feigned ignorance about any such report. It is the argument of Mr. Dikshit that apart from the seriousness of the charge made against the petitioner of submitting forged documents, the very act of the petitioner to enclose a forged report of the Investigating Officer, by itself is sufficient to dismiss the writ petition.

Turning to the merits of the contest Mr. Dikshit has referred to

Annexure-12 which is the order of appointment of the petitioner dated 7.9.1998 to submit that it is under the signature of the Director-cum-Secretary of the Executive Committee and thus there is no error in exercise of jurisdiction.

In responding to the issue raised by Mr. Singh regarding the suspension order and the termination order being passed by the Project Director who also was appointed as a Presenting Officer, it is submitted that the orders issued by the Project Director impugned at Annexure-1 and Annexure-19 are merely communication of a decision taken by the superior authority. He refers to page 210 of the proceedings to refer to the statement made in paragraph 27 of the third supplementary counter affidavit to submit that the order of termination has the approval of Vice- Chairman of the Board. He further submits that while the Presenting Officer was one Dr. Amitabh Ghosh, Project Director, the order of suspension and termination has been passed by a different Project Director namely, Anirudh Singh.

On merits it is contended that the charges are based on evidence and which has been proved in the disciplinary proceeding which requires no interference.

Mr. Rajeev Kumar Singh in his short reply has referred to the first supplementary counter affidavit filed on behalf of the Officer Incharge, Kotwali Police Station present at page 246 and with specific



reference to the letter of the Investigating Officer, Binod Kumar enclosed at Annexure-B thereof at page 251 he submits that the Investigating Officer has admitted that the report present at Annexure-36 was submitted by him and that the signature thereon, is his own. He submits that while the order of termination is absolutely silent on the reasons, the reasons are being assigned in the counter affidavit and which is impermissible in view of the legal position settled by the Supreme Court in the judgments reported in **AIR 1978 SC 851 (Mohinder Singh Gill Vs. The Election Commission of India)**. According to learned counsel it is the claim raised by the petitioner for regularization of his services, that has pained the respondents to such extent that they have dismissed the petitioner even when there is no evidence to connect the petitioner with the charge.

I have heard learned counsel for the parties and I have perused the records.

The chargesheet is impugned at Annexure-18 of the writ petition and lists three charges against the petitioner which are as follows:-

- (i) In the application filed by the petitioner for appointment on daily wages, he mentioned his educational qualification as 9th pass and his date of birth as 8.1.1967.

In the second stage appointment process initiated

in 1993, the petitioner filed his application mentioning his qualification as undergraduate and his date of birth as 14.3.1967 and also enclosed an experience certificate along with his application.

The petitioner thus at two stages has given different qualification and different date of birth which is a serious matter.

- (ii) The Bihar Council on Science and Technology had sent the matriculation certificate submitted by the petitioner for verification by the Bihar School Examination Board vide letter No. 254 dated 9.12.2004 and in response the Bihar School Examination Board vide letter dated 28.12.2004 informed that the roll code No. 5614 had not been used by them in the Annual Matriculation Examination of 1980.

Charge against the petitioner is that he submitted a matriculation certificate issued by the Examination Board bearing Roll Code No. 5614, Serial No. 270 in respect of Annual Examination held in the year 1980 which was reportedly forged. The petitioner was thus charged with submitting a forged matriculation certificate.



(iii) The intermediate certificate submitted by the petitioner was sent for verification vide letter dated 9.12.2004 and the Bihar Intermediate Education Council vide letter dated 8.1.2005 has informed that the certificate bearing Roll No. 407, Serial No. 30125 Registration No. SR-5508/89/ Arts year 1991 was verified and found to be a forged document.

A plain reading of the charges would show that the petitioner has been charged of submitting fake matriculation certificate and a fake Intermediate Certificate. The petitioner has denied any such submission and has relied upon his application dated 2.3.1993 enclosed at Annexure-21 of the writ petition filed for appointment as Centre Attendant which clearly mentions his date of birth as 14.3.1967 and his qualification as 9th pass. Now this application was filed on 2.3.1993 and bears a receiving. A copy of the advertisement is placed vide Annexure-34 to the reply to supplementary counter affidavit at page 200 which is dated 28.2.1993 and the last date of filing application for the post of Centre Attendant is 12.3.1993 even for applications received by post. Very rightly Mr. Singh learned counsel for the petitioner has questioned the application form present at Annexure-K of the supplementary counter affidavit filed on behalf of 'the Council' at page 185 as a 'manufactured document' because it



is dated 15.11.1993 which is beyond the last date stipulated in the advertisement. No doubt the photograph of the petitioner is affixed thereon but that by itself would not be sufficient to uphold that the said application was filed by the petitioner. In fact, if that be so, then the petitioner could not have been appointed to the post of Centre Attendant because the last date of filing the application was only 12.3.1993. Another important aspect of the matter is that, this application at Annexure-K bears no receiving. In the circumstances, I find no reason to doubt the stand taken by learned counsel for the petitioner that while Annexure-21 is the application filed by the petitioner in response to the advertisement present at Annexure-34, Annexure-K to the supplementary counter affidavit placed on record by 'the Council', is a manufactured document created with ulterior motives.

That Annexure-K and the certificates relied upon in the chargesheet, has been manufactured with ulterior motives, is manifest from the documents of the respondents themselves.

Charge No.1 very clearly mentions that petitioner while seeking appointment on daily wages had mentioned his date of birth as 8.1.1967 and his qualification as Class-9th pass, but in the appointment process initiated in 1993, he changed his qualification as undergraduate and his date of birth as 14.3.1967. While the



discrepancy as to the change in the date of birth from 8.1.1967 to 14.3.1967 stands explained in the letter of the petitioner dated 2.5.1987 i.e. soon after his engagement as a daily wage employee in 'the Council' on 1.4.1987 present at Annexure- 2 in which he has clearly mentioned that by mistake he has given an incorrect date of birth in his application form and that his correct date of birth is 14.3.1967, there is no dispute on the qualification given by the petitioner as 9th pass and the bogey created in the charge regarding the petitioner having mentioned his qualification as an undergraduate, is resting on a fabricated document present at Annexure-K which is apparent from the following instances:-

(a) The application form at Annexure-K is dated 15.11.1993 when the last date for submitting the application for the post of Centre Attendant expired on 12.3.1993 as per Annexure-34 which is the advertisement. Obviously the petitioner was not appointed on such application and the actual application is present at Annexure-21. Meaning thereby the foundation itself is incorrect.

(b) The certificate allegedly submitted by the petitioner in support of his Intermediate qualification is of the year 1991 but neither the Intermediate certificate in question is on record nor there is any evidence on record to conclude that the petitioner had deposited the same.



(c) The list appended by the petitioner in his reply to the counter affidavit of respondent no. 5 at page 156 mentions his date of birth as 14.3.1967 and his educational qualification is 9th pass. The list contains the name of 134 applicants who had applied for the post of Centre Attendant in the year 1993 and thus if the petitioner had been applied as an undergraduate as mentioned at charge No. 1 then there was no occasion for the respondents to mention his qualification as 9th pass.

(d) The list of candidates present at Annexure-T which is the document of 'the Council' mentions at page 217 the qualification of the petitioner as 9th pass, and his entry in service as 1.4.1987.

(e) The other charge against the petitioner is of having deposited a forged matriculation certificate of Annual Examination held in the year 1980. The falsity of this charge is apparent on the face of it for if the petitioner would have been a matriculate of the year 1980 then he had no occasion to mention his qualification as 9th pass when he filed his application for appointment as a daily wage labourer in the year 1987 or when he filed his application for regular appointment for the post of Centre Attendant in the year 1993. The charge is apparently preposterous. The petitioner in fact has passed his matriculation examination from the Bihar Sanskrit Siksha Board in the year 2005 and the mark sheet is present at Annexure-22.

The hollowness in the charges is again apparent from other accompanying circumstances:

(i) The certification by the Investigating Officer of the police case bearing Kotwali P.S. Case No. 314 of 2007 present at Annexure-36 that the petitioner has been victimized is confirmed by the Investigating Officer vide Annexure-B to the supplementary counter affidavit at page 25, filed on behalf of the Officer Incharge of the Kotwali Police Station in which the Investigating Officer has admitted to his signature on the report present at Annexure-36.

(ii) The Presenting Officer and the Disciplinary Authority both are Project Directors. Meaning thereby both functions have been performed by the Project Director albeit by different persons. Even though an explanation to the order of termination passed by the Project Director is sought to be given by Mr. Dikshit in reference to paragraph 7 of the third supplementary counter affidavit at page 210 by submitting that it was approved by the Vice Chairman but the statement runs contrary to the submission. In fact even the respondents admit that the decision of termination was taken by the Project Director which was approved by the Vice Chairman.

(iii) The enquiry report is present at Annexure-D and upholds the charges on the premise that the Intermediate certificate had been deposited by the petitioner at the time of his verification for



appointment to the post on Centre Attendant and since the same is a forged document hence the appointment is based on forged document. It is on the basis of findings of the Enquiry Officer present at Annexure-D to the counter affidavit of the respondent at page 135 that the order of termination impugned at Annexure-27 of the interlocutory application was passed on 27.8.2007 holding the appointment of the petitioner to be resting on forged documents.

Now whereas the order of termination is a non-speaking order, the finding of the Enquiry Officer runs contrary to the document of the respondents present at Annexure-27 to the reply to the counter affidavit at page 152 which is the list of applicants to the post of Centre Attendant and the petitioner appears at Serial No. 37 at page 156 to mention his qualification as 9th pass. The said finding is also contrary to the list at Annexure-T page 217 containing identical information. It is rather strange that even though the list of candidates to the post of Centre Attendant mentions the qualification of the petitioner as 9th pass yet his appointment is being interfered with, on grounds that he claimed appointment as an undergraduate and that his Intermediate qualification is a forged document. Apparently and without doubt, a charge has been set up against the petitioner with a sole motive to remove him from the services and I am persuaded to accept that there may be individuals even in the management side,

whose role in the run up to the punishment, is not above suspicion. In fact there are materials on record but since rightly Mr. Singh has restricted his arguments on the documents and not on the individuals, I restrain myself in making any observations in this regard.

As I have said there is nothing on record to confirm that it is the petitioner who had deposited the forged matriculation and Intermediate certificates rather the documents on record confirm that all along the petitioner has claimed his appointment to the post of Centre Attendant on a 9th pass qualification and thus there was no occasion for him to indulge in adventurism. A ghost was created in the form of the charge memo and the petitioner was required to put an end thereto.

In my opinion the discussion above in reference to the documents on record conformingly indicates that the petitioner has been a victim of motivated action founded on documents, the procurer of which, has to be somebody other than the petitioner.

For the reasons aforementioned, the order of termination dated 27.8.2007 passed by the Project Director impugned at Annexure-27 I.A. No. 6323 of 2007 cannot be upheld and is quashed and set aside and considering the harassment to which the petitioner has been subjected to I am persuaded to order for his reinstatement with full back wages and consequential benefits which should be provided to

the petitioner within a period of three months from the date of receipt/production of a copy of this order.

The writ petition is allowed. Interlocutory Application is disposed of.

(Jyoti Saran, J.)

Bibhash/-

AFR	
CAV DATE	
Uploading Date	4.10.16
Transmission Date	