

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13495 of 2013

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1. Daya Nand Kumar Singh S/O Sri Ashok Singh Resident Of Village- Bholsar, P.S- Ekchari (Rasalpur), District- Bhagalpur
 2. Santosh Sah S/O Late Gopal Sah Resident Of Village- Kirari,Tola- Khutahari, P.S- Kahalgaon, District- Bhagalpur.
 3. Ajay Kumar Singh S/O Sri Chandar Singh Resident Of Village- Bholsar, P.S- Ekchari (Rasalpur), District- Bhagalpur.

.... Petitioner/s

Versus

1. The Union Of India Through Its Secretary, Human Resources Department, Government Of India, New Delhi.
2. National Thermal Power Corporation Ltd., Kahalgaon, District- Bhagalpur.
3. The Senior Manager Of Human Resources Department, National Thermal Power Corporation Ltd., Kahalgaon, District- Bhagalpur.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Pravee Kumar Agrawal
: Mr. Santosh Kumar
For the Respondent-NTPC: Mr. Anil Kumar Sinha
: Mr. Abhimanyu Deo
: Mr. Ankit Katriyar

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 19-02-2016

1. Heard learned counsel for the petitioners and learned counsel for the National Thermal Power Corporation Ltd.
2. There are three petitioners in the present case. Identical relief has been sought, making a prayer by them that a writ of mandamus be issued to the respondent Nos.2 and 3 for their appointment on the post of Artisan Trainee (Fitter/ Electrician) and Lab Assistant (Trainee).

3. Before going to the merits of the case, at first, it is to be mentioned that the petitioners were appointed on the aforesaid posts respectively, but, later on, when it was found that there was a suppression of material fact, the order of dispensing with the service was passed against the petitioners, which compelled them to approach this Court.

4. From the record, the following facts emerge that National Thermal Power Corporation Ltd. (hereinafter referred to as “N.T.P.C.”) has issued Notification Nos. 261/2009 and 262/2009 dated 17.02.2009 for appointment of Artisan Trainee (Fitter/Electrician) and Lab Assistant (Trainee) and names were called from the different employment Exchanges. Altogether 348 applications were received and 86 persons were selected for different posts, as aforesaid, which was challenged before this Court in C.W.J.C. No.3876 of 2013 by one Nakul Das and other persons, claiming that there cannot be 100% reservation for the land oustees and so much so that the posts which were filled up were not notified in the newspaper as Notification to the different employment exchanges is not sufficient in terms of Articles 14 and 16 of the Constitution of India. That submission of Nakul Das and others was accepted and this Court has held that there cannot be 100%

reservation for the land oustees and the action of the respondents were found faulty and directed for fresh exercise of selection.

5. That order was challenged in L.P.A. No.1878 of 2010 by the N.T.P.C. and in L.P.A. No.1860 of 2010 by other affected persons and the Division Bench of this Court, in which I was also a member, has set aside the judgment of the learned Single Judge and directed for appointment of selected land oustees. The same was challenged before the Supreme Court in S.L.P. (Civil) No.31026 of 2011. At the first stage, the Hon'ble Supreme Court passed the interim order for appointment of all 86 candidates subject to the final result of the S.L.P. As has been told by the learned counsel for the N.T.P.C. the said S.L.P. has been disposed of and the Hon'ble Supreme Court has not passed any order adverse to the selection made by the N.T.P.C. The petitioners were also appointed on different posts, as aforesaid, but later on, some complaints were received by the S.D.O. Kahalgaon as well as the District Magistrate, Bhagalpur, that certain persons have obtained the appointment by suppression the material fact, such as, they were already in service but wrongly shown to be unemployed persons and from one family more than one person was appointed. Therefore, a committee was constituted and it was found that altogether five persons have obtained the selection by suppressing the

material fact.



6. In the present case, the N.T.P.C. has dispensed with the service of the petitioners as it has been claimed that the petitioner No.1-Daya Nand Kumar Singh has stated in paragraph No.4 of his Affidavit that he was in service of the Defence Protection Unit, Government of India from 01.2.2010. The petitioner No.2-Santosh Sah has also in paragraph No.3 of his affidavit has stated that at the time of submission of application to N.T.P.C. for the post of fitter, he joined the Eastern Railway as Appr. Technician-III on temporary basis, which is not likely to be made permanent in future but has stated that on the day of filling up the form in the N.T.P.C., he was unemployed. Similarly, petitioner No.3-Ajay Kumar Singh has also stated in paragraph No.6 of his affidavit that if he selected in N.T.P.C., Kahalgaon, he would tender his resignation from East Central Railway where he was working as Assistant Loco-Pilot, but he has not mentioned the date from when he was in service. The fact of their earlier engagement was not mentioned by them in their application forms.

7. Learned counsel for the N.T.P.C. has submitted that after the interview, these petitioners were asked to fill up the form and they have filled up the forms. The petitioner No.1 has filled up the form on



10.02.2010, which is apparently clear from the last page. In second column of the said form there is a column where the prospective selected candidate has to make a declaration with respect to their engagement either in the Government Service or in the Public Sector Undertaking, where the petitioner No.1 has put the sign of “No”, meaning thereby he was not employed anywhere earlier. Similarly, petitioner No.2-Santosh Sah has filled up the form on 12.02.2010 and he also in column No.2 of the form has mentioned “No”. Identically, Petitioner No.3-Ashok Kumar Singh has also filled up the form on 12.02.210 and in the said column he has also put the sign of “No”.

8. Whereas, as per the claim of the petitioners they have not put any sign either in “yes” or in “No” but they kept this column vacant. The note of “No” in column No.2 of the forms has been manipulated by someone in order to defeat their claim.

9. This Court has asked the learned counsel for the N.T.P.C. to produce the original record, which have been produced by the N.T.P.C. and the same was shown to the learned counsel for the petitioners. The record shows that statement has been made in column No.2 of the forms by each of the petitioners that they were not employed anywhere and when they knew about their disengagement, they rushed with an affidavit, making a statement that at the time of

filling applications they were unemployed, and as such, they have not given the details of the engagement in the Government or Semi Government organization.

10. To substantiate the claim, the learned counsel for the petitioners submits that as the petitioners were already selected mere on some technical defects they cannot be deprived of their selection as land outstees and further submits that the statement of “No” is interpolation. They have not made any statement of “No” but mischievously this statement has been introduced, the same cannot be the basis of their disengagement.

11. Learned counsel for the petitioners also submits that in one Dhirendar Kumar Singh and Bhaskar Bhusan were also found that they have suppressed the material fact of their engagement, but this Court has granted relief, in turn, they have been reinstated by the N.T.P.C. so, the similar relief given to Dhirendra Kumar Singh and Bhaskar Bhusan may also be extended to the present petitioners.

11.1. In support of his submissions, the leaned counsel for the petitioners has placed reliance on a judgment in ***Bandhua Mukti Morcha vs. Union of India and Others, A.I.R.1984, S.C., page 802,*** paragraph No.15, on the point that technicalities will not come in the

way to advance the justice to the parties.

11.2. He also placed reliance on another judgment in *Banwasi Seva Ashram vs. State of U.P. and Ors.*, reported in *A.I.R.1992, S.C. 920*, paragraph No.6, where the Hon'ble Supreme Court has delineated the different nature of benefits which could be given to the land oustees, but here is not the question with regard to other benefits, save and except, granting the benefit of employment, so the other benefits are not required to be gone into in the present proceeding.

11.3. Learned counsel for the petitioners also placed relied on a judgment in *the State of Bihar, through the Rehabilitation Officer, Medium Irrigation Project, Bhagalpur vs. Prem Kumar Singh*, reported in *2011(2) PLJR, page 956*, where it has been held that the policy decision of the State Government does create legal right which can be enforced through Court.

12. In contra, learned counsel for the respondent-NTPC submits that as the petitioner has suppressed the material fact, it is hit by the principle of *suppressio veri* and *suggestio falsi*. He has further submitted that the petitioners have not filled up the forms with correct detail and they have suppressed the material fact, which itself disentitled them for their engagement.

12.1. In support of his submissions, learned counsel for the N.T.P.C. has relied upon the judgment in *A.P. Public Service Commission vs. Koneti Venketeswarulu & Ors.* reported in 2005(6) *Supreme 73*, where the Hon'ble Supreme Court refused to accept the submission that the suppression of some facts which are not material fact is mere a pure inadvertence on the part of the candidate cannot be basis for disengagement as the purpose for which the information is called for from the employer, the employer is the ultimate Judge, it is not open to the candidate to sit over the judgment about the relevance of the information called for and decide to supply it or not. In the aforesaid case also there was a suppression of fact regarding engagement. It will be relevant to quote paragraph Nos. 7 and 8 of the said judgment, which read as under:-

“7. The learned counsel for the First Respondent, however, rejoins that there was no malafide intention in not giving the full particulars. He reiterated the contentions urged before the Tribunal and submitted that Column 11 refers to paragraph 3(d) of the advertisement, which was concerned only with age concession. Since age concession was being made available to ST candidates under paragraph 3(a), there was no need for him to fill up the requirements of Column 11 of the application. He also urged that Annexure III was intended only for candidates claiming fee exemption; since the First Respondent was not claiming fee concession, the annexure need not have been filled by him. The fact that it was filled by him wrongly could, therefore, not lead to any adverse consequences. He, therefore, submits that it was pure inadvertence on the part of the First

Respondent and not malafides, which lead to the non-disclosure of his employment status. In the submission of the learned counsel, this could not be a reason for the cancellation of the First Respondent's candidature.

8. We are unable to accept the contention of the learned counsel for the First Respondent. As to the purpose for which the information is called, the employer is the ultimate judge. It is not open to the candidate to sit in judgment about the relevance of the information called for and decide to supply it or not. There is no doubt that the application called for full employment particulars vide Column 11. Similarly, Annexure III contained an express declaration of not working in any public or private employment. We are also unable to accept the contention that it was inadvertence which led the First Respondent to leave the particulars in Column 11 blank and make the declaration of non-employment in Annexure III to the application. The application was filled on 24.7.1999, the examination was held on 24.10.1999, and the interview call was given on 31.1.2000. At no point of time did the First Respondent inform the appellant commission that there was a bonafide mistake by him in filling up the application form, or that there was inadvertence on his part in doing so. It is only when the appellant commission discovered by itself that there was suppressio veri and suggestio falsi on the part of the First Respondent in the application that the respondent came forward with an excuse that it was due to inadvertence. That there has been suppressio veri and suggestio falsi is incontrovertible. The explanation that it was irrelevant or emanated from inadvertence, is unacceptable. In our view, the appellant was justified in relying upon the ratio of Kendriya Vidyalaya Sangathan (supra) and contending that a person who indulges in such suppressio veri and suggestio falsi and obtains employment by false pretence does not deserve any public employment. We completely endorse this view.”



12.2. He also placed reliance on a judgment in *State of Bihar & Ors. vs. Kameshwar Prasad Singh*, reported in *2000(3) PLJR, page 81*, where the Hon'ble Supreme Court has held that Article 14 is a positive concept, which cannot be enforced in a negative manner. If any person is appointed illegally, the same cannot be the basis for others to get an employment on the basis of illegal appointment.

12.3. To meet the argument with regard to the appointment of one Dhirendar Kumar Singh and Bhaskar Bhusan, learned counsel for the respondent has placed reliance on a judgment in *Mohan Prasad Singh vs. The State of Bihar & Ors.*, reported in *2000(2) PLJR, page 187*, on the point that the power of Court under Article 226 is very wide for enforcing the fundamental right.

12.4. Learned counsel for the respondent-N.T.P.C. submits that the petitioners have to approach this Court at the earliest but they were waiting of the outcome of their case, and as such, the status of the petitioners are of fence-sitters and submitted that those who are fence-sitters cannot be allowed the relief after a lapse of considerable time.

12.5. In support of his contention, he placed reliance on a judgment reported in *Bharat Sanchar Nigam Limited Vs.*

Ghanshyam Dass (2) and Others, reported in **(2011) 4 SCC 374**.

Paragraph Nos. 26, 27 and 28 of the aforesaid judgment is quoted hereinbelow:-

“26. On the other hand, where only the affected parties approach the court and relief is given to those parties, the fence-sitters who did not approach the court cannot claim that such relief should have been extended to them thereby upsetting or interfering with the rights which had accrued to others.

27. In Jagdish Lal v. State of Haryana, the appellants who were general candidates belatedly challenged the promotion of Scheduled Caste and Scheduled Tribe candidates on the basis of the decisions in Ajit Singh Januja v. State of Punjab, Union of India v. Virpal Singh Chauhan and R.K. Sabharwal v. State of Punjab and this Court refused to grant the relief saying: (Jagdish Lal Case, SCC pp.562-63, para 18)

"18. ...this Court has repeatedly held, the delay disentitles the party to the discretionary relief under [Article 226](#) or [Article 32](#) of the Constitution. It is not necessary to reiterate all the catena of precedents in this behalf. Suffice it to state that the appellants kept sleeping over their rights for long and elected to wake up when they had the impetus from Virpal Chauhan and Ajit Singh ratios. But Virpal Chauhan and Sabharwal cases, kept at rest the promotion already made by that date, and declared them as valid; they were limited to the question of future promotions given by applying the rule of reservation to all the persons prior to the date of judgment in Sabharwal case which required to be examined in the light of the law laid in Sabharwal case. Thus earlier promotions cannot be reopened. Only those cases arising after that date would be examined in the light of the law laid down in Sabharwal case and Virpal Chauhan case and equally Ajit Singh case. If the candidate has already been further promoted to the higher echelons of service, his seniority is not open to be reviewed. In A.B.S.



Karamchari Sangh case a Bench of two Judges to which two of us, K. Ramaswamy and G.B. Pattanaik, JJ. were members, had reiterated the above view and it was also held that all the prior promotions are not open to judicial review. In Chander Pal v. State of Haryana a Bench of two Judges consisting of S.C. Agrawal and G.T. Nanavati, JJ. considered the effect of Virpal Chauhan, Ajit Singh, Sabharwal and A.B.S. Karamchari Sangh cases and held that the seniority of those respondents who had already retired or had been promoted to higher posts could not be disturbed. The seniority of the petitioner therein and the respondents who were holding the post in the same level or in the same cadre would be adjusted keeping in view the ratio in Virpal Chauhan and Ajit Singh; but promotion, if any, had been given to any of them during the pendency of this writ petition was directed not to be disturbed...."

28. Since the respondents preferred to sleep over their rights and approached the Central Administrative Tribunal only in 1997, they cannot get the benefit of the order dated 07.07.1992 of the Tribunal in O.A. No.1455 of 1991 and will only be entitled to the benefit of the circular dated 13.12.1995 which was in force in 1997."

13. Having considered the rival contentions of the parties, this court has to see whether the relief that has been claimed by the petitioners can be granted to them or not, in view of the facts and circumstances of the case. It is a fact that as per the report dated 03.04.2010, Annexure-R/6, altogether five persons have been found to have suppressed the material fact with regard to their engagement and out of five persons two persons are already in service. The claim of the respondent that Article 14 does not apply in negativity but that is



for the executive action, even executive has acted illegally that cannot confer any right to the third party for the same and similar relief on the ground of Article 14, as Article 14 has a positive concept and it does apply when an action has been taken legally. In such circumstances, Article 14 does not come into play when a similarity is claimed on the basis of an illegality.

14. Another question is that as per the petitioners they have not made any statement with regard to their engagement somewhere in Government Service or P.S.U. but the original record shows that they made positive statement that they are not engaged either in any Government Service or Public Sector Undertaking. So far this aspect of the matter, in view of the disputed fact, one side is claiming that they have kept the column vacant with regard to their engagement, in contra, the other side submits that specific statement has been made that in the said column that the petitioner are not engaged. This disputed fact cannot be decided in the present proceeding. This can only be settled in a proceeding before the Civil Court where the party will have a liberty to bring their evidences to show that the statement that has been recorded is an afterthought or manipulation. This Court cannot go to this disputed question of fact.

15. *Prima facie*, the N.T.P.C. appears to be the correct as



there is a specific statement mentioned about their engagement having been said “No”. Therefore, in terms of the judgment of the Supreme in *A.P. Public Service Commission vs. Koneti Venketeswarulu & Ors. (supra)*, where the Hon’ble Supreme Court has specifically stated that the candidate has to give correct information what will be the value of the information is not to be judged by the candidate, it is for the management to decide and calibrate the information that has been supplied by the candidate.

16. In view of this proposition laid down by the Hon’ble Supreme Court, which is binding on this Court, this Court cannot say that it has no bearing with regard to the statement made in the said column regarding engagement, that itself disentitled the petitioners for the relief which they are claiming. It is well said that a candidate must furnish the correct details and should not give wrong statement or a doubtful statement. In the present case this Court feels that the issue with regard to the genuineness of the record cannot be cannot decided. *Prima facie*, it appears that the entry that has been made in the column of engagement has been shown to be “No”, therefore, it is very difficult to give a relief to the petitioners. If the right has been conferred by a statute or by a policy, it is supposed that a candidate must furnish the correct information, giving wrong information to the

employer itself disentitled him/her for the engagement. It is not a mere technicality, but it goes to the root of the matter with regard to suppression of the material fact, specially in the case of the petitioner No.1, where the affidavit shows that on the date of the filing of the application form he was certainly engaged in the P.S.U.

17. Learned counsel for the petitioners has submitted that it is a technical error on the part of the petitioners. When an affidavit has been sworn, wherein specific statement made regarding engagement, the same cannot be said to be a mere error, which was never be rectified by the petitioners.

18. In such view of the matter, this Court cannot extend the relief to the petitioners, however, liberty is given to the petitioners to approach before the appropriate Civil Court with regard to question of entry in the application forms as the same is disputed question of fact.

19. This writ petition is accordingly, dismissed.

(Shivaji Pandey, J)

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