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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.1128 of 2015**

Satyanarayan Sahu, son of Shri Dilbaran Sahu, aged about 31 years, residence of Ekta Nagar, Godripara, P.O. Godripara, Chirmiri, District Koriya, Chhattisgarh Earlier working as Lab Technician, Primary Health Center Kunni, Block Lakhanpur, District Sarguja, Chhattisgarh

----Petitioner**Versus**

- 1.** State of Chhattisgarh, through Secretary, Health & Family Welfare Department, Mahanadi Bhawan, Mantralaya, P.S. Rakhi, Tahsil Aarang, Naya Raipur, District Raipur, Chhattisgarh
- 2.** Commissioner, Health Services, Health and Family Welfare Department, Indrawati Bhawan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh
- 3.** Divisional Joint Director Health Services, Sarguja Division, Ambikapur, District Sarguja, Chhattisgarh

---- Respondents

For Petitioner	:	Mr.C.J.K.Rao, Advocate
For Respondents	:	Mrs. Ashtha Shukla, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****06/12/2016**

1. Respondent No.3/Divisional Joint Director, Health Services issued an advertisement inviting applications for the post of Lab Technician on 16.5.2012 stating vide condition No.2 that candidate appearing pursuant to the said advertisement must have live registration in the employment exchange on the date of issuance of advertisement i.e. 16.5.2012.

2. The petitioner appeared in the said examination, he was selected and appointed on the post of Lab Technician by order dated 24.12.2013. Thereafter, a complaint dated 2.8.2014 was made by Jiya-Ul-Haque, Rajiv Kumar and Vinay Kumar that the petitioner did not have valid live registration certificate with employment exchange on the time of submitting the application form and he has obtained the said certificate after the date of advertisement and therefore, appointment of the petitioner is contrary to law and his appointment be cancelled.
3. Respondent No.3 issued show-cause notice to the petitioner dated 13.1.2015 directing him as to why his appointment be not cancelled invoking clause (14) of order of appointment as he did not have live registration certificate on the date of issuance of advertisement.
4. The petitioner replied to the said show-cause on 13.2.2015 stating inter-alia that he has obtained live registration certificate with employment exchange on 24.5.2012 and that has been renewed before the last date of submitting the application form i.e.5.6.2012 and therefore, he is entitled to continue in service.
5. Respondent No.3 by its order dated 17.3.2015 (Annexure P/1) revoked his order of appointment holding

that he did not have live registration certificate on the date of advertisement of the said post and cancelled his appointment in view of clause (14) of order of appointment.

6. Feeling aggrieved and dissatisfied with the order of respondent No.3, this writ petition under Article 226 of the Constitution of India has been filed by the petitioner.
7. Learned counsel appearing for the petitioner would submit that such an order is without jurisdiction and without authority of law as the petitioner has already obtained live registration certificate before the last date of submission of application form for the said post. He would rely upon a decision of the Full Bench of this Court passed in Writ Appeal No.411 of 2014 (State of Chhattisgarh Vs. Rohni Sahu and other connected matters), decided on 21.10.2016.
8. On the other hand, learned Panel Lawyer appearing for the respondents/State would oppose the writ petition and support the impugned order.
9. I have heard learned counsel appearing for the parties, perused the order impugned, considered their rival submissions made herein and also gone through the documents annexed with the writ petition with utmost circumspection.

10. The question is whether respondent No.3 is justified in revoking the order of appointment of the petitioner on the ground that he did not have live registration certificate on the date of issuance of advertisement in view of the provisions contained in Section 4 of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959.
11. It is not in dispute that advertisement for the post of Lab Technician was issued on 16.5.2012, in which the petitioner applied and live registration certificate with employment exchange was issued to him on 24.5.2012. It is also not in dispute that last date for submitting the application form was 5.6.2012 and the petitioner has been allowed to appear in the written test as well as in interview and his candidature was not rejected on the ground of non having live registration certificate on the date of issuance of the advertisement.
12. The Supreme Court in the matter of **Union of India and others Vs. Pritilata Nanda**¹ has held that it was not mandatory to appoint only those who are sponsored by employment exchange. It was observed as under:-

“20. The issue deserves to be considered from another angle. It was neither the pleaded case of the appellants before the Tribunal and the High Court nor any evidence was produced by them to

¹ (2010) 11 SCC 674

prove that notification/advertisement dated 31.1.1987 was sent to all the employment exchanges including the special employment exchanges in the State of Orissa. Before this Court also, no document has been produced to show that the advertisement was circulated to the employment exchanges in the State. In this backdrop, it is not possible to approve the stance of the appellants that the respondent was not appointed because she did not get her candidature sponsored by an employment exchange.

13. The Full Bench of this Court considered the similar issue.

The question before the Full Bench was :-

“3. There are two questions which arise. The first question is whether the State which issued the advertisement containing a condition that the applicant for the job should be on the live registration of the Employment Exchange, despite no such proof having been given along with the application has allowed the applicant to appear in the written test as well as interview, can be permitted to reject the candidature of such candidate after he has been found eligible to be selected on merit?

4. The second question is whether the State can impose such a condition that only those who are on the live registration of the Employment Exchange can be considered for appointment?”

14. The Full Bench answered the issue relying upon the judgment of the Supreme Court in **Pritilata Nanda** (supra) and answered the issue in para 11 and 12 as under:-

“**11.** In Writ Petition (S) Nos. 3336 and 3334 of 2015, the advertisement was issued on 2.7.2013 and the last date for submission of the documents was 23.9.2013. The petitioners were registered with the Employment Exchange in August, 2013. They were permitted to appear in the examination. Though there were no proof of their registration at that time, the petitioners were permitted to appear in the written test and thereafter also in the physical test. It was only after they were successful that their candidature was cancelled on the ground that at the time when their applications were submitted they were not registered with the Employment Exchange.

12. As far as these four cases are concerned, we are clearly of the view that these are squarely covered by the judgment of **Pritilata Nanda** (supra), especially by the observations of the Apex Court made in paragraph 21 quoted herein above. This is also the view taken by the Division Bench of this Court in Writ Appeal Nos. 322 and 323 of 2014, decided on 16th September, 2014. We agree with the view expressed in this case.”

- 15.** Their Lordships in the Full Bench have clearly held that once the candidates are permitted to appear in the written test and thereafter also in the physical test and it was only after they were successful that their candidature was cancelled on the ground that at the time when their applications were submitted they were not registered with the Employment Exchange.
- 16.** The case of the petitioner is squarely covered by the judgment of Full Bench of this Court in **Roshni Sahu** (supra) and therefore, in the light of the judgment, it is

held that since the petitioner was allowed to appear for the post of Lab Technician and he already got live registration certificate on 24.5.2012 before the last date of submission of application form i.e. 5.6.2012, he was allowed to appear in interview and he was duly selected on the post of Lab Technician.

17. In view of the judgment of the Supreme Court in the matter of **Pritilata Nanda** (supra) and the judgment passed by the Full Bench of this Court in the matter of **Roshni Sahu** (supra), the impugned order dated 17.3.2015 (Annexure P/1) is hereby quashed and respondent No.3 is directed to reinstate the petitioner on the post of Lab Technician forthwith.
18. The petitioner has also prayed for consequential benefits. The impugned order was passed on 17.3.2015. The petitioner has neither averred in the writ petition nor brought any material on record to hold that during this period i.e. from 17.3.2015 to 6.12.2016, he was not gainfully employed anywhere. The normal rule is, a workman whose service has been illegally terminated would be entitled to full back-wages except to the extent during the enforced idleness (See M/s. Hindustan Tin Works Pvt. Ltd. Vs. The Employees of M/s. Hindustan Tin Works Pvt. Ltd. And others²). Thereafter, in the matter of

²(1979) 2 SCC 80

M/s. Reetu Marbles v. Prabhakant Shukla³. Their Lordships of the Supreme Court have emphasized the need for enquiry/material with regard to gainful employment before directing full backwages particularly when the award is being modified and their Lordships awarded only 50 percent of back-wages from the date of termination of service till reinstatement. Following the law laid down in this regard and considering the facts and circumstances of the case, I deem it appropriate to award only 50% back-wages to the petitioner from the date of termination till the petitioner is reinstated in service.

19. The writ petition is allowed to the extent indicated hereinabove.

Sd/-
(Sanjay K.Agrawal)
Judge

B/-