

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5995 OF 2016

Chandrashekhar S/o Tukarampant }
Madankar
Age 37 years, Occu: Service,
R/o D-302, Bhumiraj Meadows, }
Plot no.42/43, Nr NHP School,
Sector-19, Airoli, Navi Mumbai-400 708 .. Petitioner

vs

1.State of Maharashtra }
Through its Principal Secretary
(Department of Energy)
Mantralaya, Mumbai-32. }

2. The Maharashtra State Electricity
Transmission Company Ltd }
(Through its Managing Director)
Prakash Ganga, 8th Floor,
Bandra (E) Mumbai-51. }

3. The Chief General Manager
(Human Resources) }
The Maharashtra State Electricity
Transmission Company Ltd
Prakash Ganga, 7th Floor, }
Bandra (E) Mumbai-51.

4.The Chief Engineer (HRD) }
The Maharashtra State Electricity
Transmission Company Ltd
Prakash Ganga, 4th Floor
Bandra (E) Mumbai-51. }.. Respondents

with

WRIT PETITION NO.5996 OF 2016

Anup Udhav Lokhande
Age 37 Occu: Service
R/o 304,Swati Building, Taranjan Complex
Wayale Nagar, Kalyan (W) Dist Thane

.. Petitioner

vs

1.State of Maharashtra }
Through its Principal Secretary
(Department of Energy)
Mantralaya, Mumbai-32. }

2. The Maharashtra State Electricity
Transmission Company Ltd }
(Through its Managing Director)
Prakash Ganga, 8th Floor,
Bandra (E) Mumbai-51. }

3. The Chief General Manager
(Human Resources) }
The Maharashtra State Electricity
Transmission Company Ltd
Prakash Ganga, 7th Floor, }
Bandra (E) Mumbai-51.

4.The Chief Engineer (HRD) }
The Maharashtra State Electricity
Transmission Company Ltd
Prakash Ganga, 4th Floor }
Bandra (E) Mumbai-51.

.. Respondents

with

WRIT PETITION NO.6343 OF 2016

Harshal Radheshyam Malewar
Age: Major Occu: Service
R/o Sant Jagnade Nagar
Tumsar, Bhandara -441 902

.. Petitioner

vs

1.State of Maharashtra }
Through its Principal Secretary
(Department of Energy)

Mantralaya, Mumbai-32. }

2. The Maharashtra State Electricity
Transmission Company Ltd }
(Through its Managing Director)
Prakash Ganga, 8th Floor,
Bandra (E) Mumbai-51. }

3. The Chief General Manager
(Human Resources) }
The Maharashtra State Electricity
Transmission Company Ltd
Prakash Ganga, 7th Floor, }
Bandra (E) Mumbai-51. }

4. The Chief Engineer (HRD) }
The Maharashtra State Electricity
Transmission Company Ltd
Prakash Ganga, 4th Floor }
Bandra (E) Mumbai-51. }

.. Respondents

with

ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (Lodging) No.1461 of 2016

Rohan S/o Vijay Madshingikar
Age: 33 yrs, Occu: Service
R/o Shree Cooperative Hsg Sacty
96/2715, Kannamwar Nagar-2
Vikhroli East Mumbai-400 083

.. Petitioner

vs

1. State of Maharashtra }
Through its Principal Secretary
(Department of Energy)
Mantralaya, Mumbai-32. }

2. The Maharashtra State Electricity
Transmission Company Ltd }
(Through its Managing Director)

Prakash Ganga, 8th Floor,
Bandra (E) Mumbai-51. }

3. The Chief General Manager
(Human Resources) }
The Maharashtra State Electricity
Transmission Company Ltd
Prakash Ganga, 7th Floor, }
Bandra (E) Mumbai-51.

4. The Chief Engineer (HRD) }
The Maharashtra State Electricity
Transmission Company Ltd
Prakash Ganga, 4th Floor }
Bandra (E) Mumbai-51. .. Respondents

Appearances:

Mr.S.B.Talekar with Mr.Vinod N.Tayade I/b Talekar
& Associates for Petitioners in W.P.Nos.5995/16, 5996/16, 6343/16
and for Petitioner in OSWP (L) No.1461/16

Mr.J.Reis Senior Advocate with Mr.Abhijeet A.Joshi
for Respondent nos.2 to 4.

Mr.V.N.Sagare AGP for State in all matters.

CORAM: ANOOP V.MOHTA &
G.S.KULKARNI,JJ

JUDGMENT RESERVED ON: 15 OCTOBER 2016

JUDGMENT PRONOUNCED ON: 24 OCTOBER 2016.

COMMON JUDGMENT

Per G.S.Kulkarni, J

1. Rule Returnable forthwith. Respondents waives service. By
consent of the parties and their request heard finally.

2. This batch of petitions challenge the orders passed by

the respondent No.2-Maharashtra State Electricity Transmission Company Ltd. (for short 'MSETCL') whereby the petitioners who were selected and temporarily appointed as Additional Executive Engineer (Transmission) (for short 'the said post') have been removed from the said posts by the impugned orders. The impugned orders are dated 20 May 2016 and qua the petitioner in Writ Petition No.6343 of 2016 is dated 4 June 2016. Some of the petitioners who had participated in the selection process for the said post were in-service candidates and being removed by the impugned orders are reverted to the post on which they were working prior to their selection.

3. These petitions involve common issues of facts and law. We have thus heard common arguments. Learned counsel for the petitioner has advanced submissions in Writ Petition No.5995 of 2016. We therefore, proceed to decide these petitions by this common judgment. On this background, we refer to the facts in writ petition No.5995 of 2016.

4. The petitioner initially was appointed by MSETCL as Junior Engineer (Transmission) by an order dated 20 May 2010.

Subsequently, he was promoted on the post of Assistant Engineer (Transmission) on 8 November 2013 and continued in service of the MSETCL.

5. In January 2014 MSETCL published Recruitment Advertisement No.01 of 2014 advertising various posts in technical and on-technical cadres which interalia included 76 posts of Deputy Executive Engineer (Transmission). 114 post of Assistant Engineer (Transmission) and 247 post of Junior Engineer (Transmission). These Petitions concern the post of Deputy Executive Engineer (Transmission). The petitioner as also the other petitioners in the connected petitions, applied for the post of Deputy Executive Engineer (Transmission) some as in-service candidates and one as a direct recruit. Under the selection procedure, the MSETCL on 26 February 2014 notified that an on-line test would be held on 12 March 2016.

6. Thereafter the MSETCL issued a Notification dated 29 May 2014 calling upon the candidates to submit documents for deciding the eligibility of candidates, under which various personal documents were to be submitted on or before 18 June 2014. The

petitioners submitted the necessary documents showing their eligibility which included the documents showing experience of seven years in power transmission gained by him, as prescribed. As an illustration the Petitioner was issued experience certificates by one Ashtavinayaka Construction dated 30 June 2005 and 25 May 2010 and another experience certificate dated 10 June 2014 issued by the MSETCL. These certificates were pertaining to different periods of work experience. Similarly experience certificates were submitted by other petitioners.

7. MSETCL issued a schedule for interview by a notification dated 27 October 2014. It was informed that personal interview of short-listed candidates would be taken from 10 November 2014 to 19 November 2014. The petitioners being shortlisted appeared for interview on 15 November 2014. The result of the recruitment was declared by the Chief General Manager (HR) of the MSETCL on 1 December 2014 and the select list and wait list candidates for the post of Deputy Executive Engineer (Transmission), the nomenclature of which was revised as Additional Executive Engineer (Transmission) was notified. The name of the petitioner was placed at serial no.54 in the list of successful candidates. In pursuance of the

recommendation of the Selection Committee, the Chief Engineer being the appointing authority issued an Office Order No.18 dated 2 February 2015 appointing the petitioner to the post of Deputy Executive Engineer (Transmission)/revised designation Additional Executive Engineer (Transmission). The petitioner joined the new post on 22 February 2015. Under the very selection procedure the other petitioners were also selected and appointed and they also joined the new post.

8. The case of the petitioners is that subsequent to the appointments of the petitioners, MSETCL received several complaints regarding gross irregularities in the recruitment process under the said Advertisement No.01 of 2014 and more particularly about false/bogus experience certificates submitted by the selected candidates. In pursuance to these complaints, the Vigilance and Security section of the MSETCL issued notices to the employers of the respective selected candidates who has issued experience certificates and sought information about the genuineness of the experience certificates issued by them. The Chief Vigilance Officer sought point-wise reply/information/documents from the petitioner's erstwhile employer-Ashtavinayaka Construction in regard to the

experience Certificates issued to the petitioner. As the petitioner was issued experience certificate as a Site Supervisor/Site Sub-Engineer, Trainee Engineer, Site Engineer and Assistant Project Manager respectively by Ashtavinayaka Construction, it accordingly submitted information to the MSETCL about the said experience certificates and the appointment letter issued by them to the petitioner. On the basis of the information which was received from Ashtavinayaka Construction, the Chief Engineer (HRD) and the Appointing Authority of the MSETCL issued a show cause notice dated 25 April 2016 calling upon the petitioner to show cause why he should not be demoted from the post of Additional Executive Engineer (Transmission) on the ground that the experience Certificates submitted by the petitioner were not genuine and called upon the petitioner to submit an explanation within seven days from the date of receipt of the show cause notice. The petitioner by his letter dated 9 May 2016 submitted his reply to the show cause notice denying that the experience certificate submitted by him were fake and bogus. The Appointing Authority of respondent no.1 considered the reply to the show cause notice and passed the impugned order dated 20 May 2016 demoting the petitioner from the post of Additional Executive Engineer (Transmission) to the original post of

Junior Engineer as held by the petitioner. The other petitioners are issued similar orders of removal after a similar procedure being followed by the MSETCL .

9. The contention of the petitioners is that no hearing was granted to the petitioners before this removal order was passed. It is submitted that the impugned order is penal in nature on a alleged misconduct of furnishing false documents in the selection process. The contention is that a departmental inquiry ought to have been conducted before issuing the impugned order. It is submitted that the experience certificates were genuine certificates and that on the basis of certain material the petitioner could have demonstrated that these documents were not bogus. The petitioners would contend that such action has been resorted by the MSETCL against many other appointees and that writ petitions in that regard are filed before the Nagpur and Aurangabad Bench of this Court.

10. The MSETCL has appeared and has filed a reply affidavit dated 30 July 2016 of Shri Mangesh Madhukar Shinde Assistant General Manager (HR-T) as also an additional affidavit dated 5 October 2016 opposing the petitions. It is the case of the respondents

that the experience certificates as submitted by the petitioners were not genuine or were bogus as revealed under an investigation. In the facts of the petition we are discussing, the petitioner while submitting documents under the selection process submitted experience certificate dated 30 June 2005 issued by Ashtavinayaka Construction, Navi Mumbai showing experience for the period from 1 January 2005 to 30 June 2005 and Experience Certificate dated 25 May 2010 for the period of 10 June 2007 to 9 February 2008 and from 10 February 2008 to 9 February 2009 and from 10 February 2009 to 25 May 2010. It is stated that the MSETC issued a letter to the said previous employer-Ashtavinayaka Construction seeking details of the work done, proof of salary and provident fund etc so as to ascertain as to whether the petitioner was genuinely in the service of the said employer. This letter was responded by Ashtavinayaka Construction by its letter dated 29 July 2015 giving the details of the work experience of the petitioner and a copy of the appointment letter dated 10 February 2008 addressed to the petitioner. The information did not match with the experience certificates. The employer did not provide any details on salaries and other details as requested by the MSETCL. The case of the MSETCL is that the petitioner accordingly, had failed to prove that the experience certificates submitted by the Petitioner were not acceptable and the

petitioner was accordingly issued a show cause notice. In reply to the show cause notice, the petitioner could not justify by producing the salary slips and other documents to show that his employment was genuine and the experience certificate depicted truth of the experience contained therein. It is the case of MSETCL that when the petitioner earlier applied to the post of Junior Engineer by an application dated 12 August 2009, the petitioner did not mention anything about the experience prior to 2009 as claimed by the petitioner under the Experience Certificate issued and obtained from Ashtavinayaka Construction, Navi Mumbai. In fact the petitioner had written ' Nil Remark' in the column of experience. The petitioner for the first time used the said experience certificates showing experience prior to 2009 to secure appointment under Advertisement No.01/2014 in question. The MSETCL accordingly states that their action of issuance of the impugned order was justified and is taken as permissible under the relevant clauses of the Recruitment Notification as also the Rules, and Regulations pertaining to recruitment as also the Service Regulations.

11. In the additional affidavit, the MSETCL would point out that in pursuance of the vigilance investigation of the documents

of the candidates appointed under the recruitment process under Advertisement No.01/2014, it was revealed that out of the total 68 candidates appointed only 18 candidates were found to have requisite experience. Remaining 50 candidates were subjected to further scrutiny. It is stated that out of these 50 candidates, 14 candidates were issued show cause notices and documents of 9 candidates are still under scrutiny. It is stated that out of 41 candidates to whom show cause notices were issued, reply of 3 candidates were found to be satisfactory and hence no adverse action was taken against them. It is stated that reply of 38 candidates was found to be unsatisfactory as these candidates could not prove requisite experience. Out of these 38 candidates, 35 candidates were departmental candidates and they were removed from the post by a letter dated 20 May 2016 and 4 June 2016 which has been impugned in the present petition. The MSETCL has stated that out of the 38 candidates, 35 candidates were in-service candidates and were having a lien on their previously held posts and thus were reverted to the previously held post and 3 candidates being outsiders appointed under direct recruitment whose reply was unsatisfactory and who could not prove the requisite experience were removed from the posts. It is stated that out of 38 candidates except the

petitioner and four other candidates, all other candidates have joined the posts to which they were reinstated. The MSETCL in this reply affidavit have also justified their action on the basis of certain regulations. The relevant regulations would be Recruitment Regulations of the respondents as read with provisions of MSETCL Employees' Service Regulations, 2012. (for short the '**2012 Service Regulations**').

12. In the rejoinder-affidavit, as filed on behalf of the petitioner, the contentions of the MSETCL are denied on similar grounds as set out in the petitions. The petitioner has placed reliance on 2012 Service Regulations to urge that a disciplinary enquiry was required to be undertaken by the MSETCL before passing the impugned order. We would deal with these Service regulations after we note the submissions as urged on behalf of the above parties.

13. Learned counsel for the petitioner submits that the impugned order passed by the MSETCL is arbitrary as it imposes a major punishment which could not have been imposed without a full-fledged departmental inquiry. It is submitted that no hearing was

granted to the petitioner. There is thus, a gross violation of the principles of natural justice. An opportunity of a personal hearing was necessary so that the petitioner could have justified the experience certificates which according to them were genuine certificates. Learned counsel for the petitioner has placed reliance on the 2012 Service Regulations, as also made submissions on the Maharashtra State Electricity Board Classification and Recruitment Regulations, 1961 (for short the '**Recruitment Regulations, 1961**') as relied upon on behalf of the MSETCL.

14. We may note that the primary submission as urged by the learned counsel for the petitioner is that of breach of principles of natural justice as no hearing was granted by the MSETCL before issuance of the impugned order and secondly that such drastic action could not have been taken without holding a full-fledged departmental inquiry. Learned counsel for the petitioners have relied on the following authorities in support of the case of the petitioners.

*1. Union of India &ors vs M.Bhaskaran*¹ ; *2.Indian Bank vs Satyam Fibres (India) Pvt.Ltd.*², *3. State of H.P. vs J.L.Sharma &anr*³; *4. Karnataka State Road Trans.Corp'n &anr vs S.Manjunath*⁴; *5. Harbanslal Sahnia &anr vs*

1 1995 Supp (4)SCC 100

2 (1996) 5 SCC 550

3 (1998) 1 SCC 727

4 (2000) 5 SCC 250

*Indian Oil Corpn &ors*¹; 6.*Secy.Dept of Home Sec.A.P. vs V.B.Chinnam, Naidu*²; 7. *Bhaurao Dagdu Paralkar vs State of Maharashtra &ors.*³; 8.*Punjab State Elec.Board vs Leela Singh*⁴; 9.*UCO Bank &anr vs Rajinder Lal Capoor*⁵ 10.*Punjab National Bank vs Astamija Dash*⁶ 11 *CIDCO vs.Vashudha Gorakhnath Mandevlekar*⁷ 12*Kamal Nayan Mishra vs State of M.P*⁸ 13 *Kranti Associates P.Ltd vs Masood Ahmed Khan*⁹ 14 *Bhupendra Nath Hazarika vs State of Assam*¹⁰ 15 *Ratnesh Kumar Choudhary vs Indira Gandhi Ins.of Me.Sciences*¹¹ 16 *Star Tele.News Ltd vs Union of India*¹² 17 *State of Jharkhand vs Tata Steels &ors*¹³ 18 *A.P.State Council of Higher Education vs Union of India*¹⁴

15. On the other hand, learned senior counsel for the MSETCL would submit that the impugned order is wholly justified in-as-much as the petitioners are guilty of suppression and of concealing information in participating in the recruitment process. Relying on Regulation 16 of the Recruitment Regulations, 1961, it is submitted that as the petitioner knowingly furnished particulars which were false and suppressed material information, the consequence would be that the petitioners would be barred from being appointed by the MSETCL and were liable to be disqualified

1 (2003) 2 SCC 107

2 (2005) 2 SCC 746

3 (2005) 7SCC 605

4 (2007) 12 SCC 146

5 (2008) 5 SCC 257

6(2008) 14 SC 370

7(2009) 7SCC 283

8(2010) 2 SCC 169

9(2010) 9 SCC 496

10(2013) 2 SCC 516

11(2015) SCC online SC 954

12(2015) 12 SCC 665

13(2016) SCC online SC 135

14(2016) 6SCC 635

and now to be removed from its Reliance is also placed on Service Regulations 2012 which according to the respondents justify their action. During the course of hearing of these petitions the learned senior counsel however submitted that the MSETCL, without withdrawing the impugned removal orders the MSETCL was willing to give one more chance to the Petitioners to produce any fresh material to show that the experience certificates submitted by them are genuine. He submitted that the MSETCL would also grant a personal hearing and if the petitioner is in a position to demonstrate that the certificate is genuine the MSETCL would fairly cancel the removal order. This suggestion as made on behalf of the MSETCL was not accepted by the petitioners and the petitioners informed the court that they wished to press their respective petitions.

16. Before we proceed to consider the rival submissions, it would be profitable to note the terms and conditions of Advertisement No.01 of 2014, the appointment order and the relevant rules and regulations. The Employment Advertisement No.01 of 2014 advertised inter alia 18 posts of Executive Engineer (Transmission), 78 posts of Deputy Executive Engineer (Transmission), 114 posts of Assistant Engineer (Transmission) and

247 posts of Junior Engineers (Transmission). For the posts of Deputy Executive Engineers (Transmission) the pre-requisite qualification as on 29 January 2014 was an experience of seven years in power transmission to be possessed by a candidate. Clause 3 (iii) contemplated that departmental candidates possessing a degree in Engineering/Technology in any other discipline should fulfill conditions of required experience and they will have to appear for the written test, personal interview etc consisting of syllabus of Electrical Engineering and compete along with other candidates. General Conditions in the said Advertisement are also required to be noted and more particularly conditions requiring the candidates to submit certificates, conditions pertaining to eligibility criteria submission of documents/certificates and conditions in case of furnishing of the incorrect and false particulars. These conditions are conditions nos.1,3 and 6 which reads thus:

1. “ Before filing up the application form candidates should ensure that they fulfill all eligibility criteria as mentioned in the advertisement. Their admission to all the stages of the recruitment process will be purely provisional subject to verification and satisfying the prescribed eligibility criteria as mentioned in this advertisement.

3. Candidates are not required to submit any document/certificate etc (Except copy of Identity Proof) prior to on line written test. Company will take up verification of eligibility conditions with reference to original documents of those candidates who have qualified for personal interview. The

documents/certificates will be verified at the time of personal interview and prior to issuances of offer letter. It is responsibility of the candidates to produce all the required documents/certificates for proving his/her eligibility at the time of personal interview.

(6) If the candidate knowingly or willfully furnishes incorrect or false particulars or suppresses material information, he/she will be disqualified at any stage of recruitment process and if appointed, shall be liable for dismissal from the company's service without any notice or assigning any reasons whatsoever."

17. On 29 May 2014 a notification was issued by the MSETCL as regards submission of documents for deciding the eligibility of the candidates. Condition nos.7 and 8 are relevant which read thus :

"7. Non submission of required documents and those not duly attested by Govt.Gazetted Officer/Principal of Colleges/Post Master or by Superintending Engineer or its equivalent Officer of MSETCL (for departmental candidates of MSETCL only)are liable to be summarily rejected. In no case, self-attestation will be entertained.

8. If the candidate knowingly or willfully furnishes incorrect or false particulars or suppresses material information, he/she will be disqualified and if appointed shall be liable for dismissal from the company 's service without any notice or assigning any reasons whatsoever. "

18. The General interview notice dated 27 October 2014 also provided that candidates should furnish original documents along with attested copies. Clause 6 of the call letter provided for consequences if the candidate supplies incorrect information or conceals facts/distorts any material information, to provide that the

candidature will be canceled at any time during the entire process.

Clause 6 reads thus:

6. "Call letter for personal interview is purely provisional and does not confer any automatic right of possible employment with the company. If at any stage, information provided by candidate is found incorrect/incomplete or is not in conformity with eligibility criteria as specified in the advertisement for the applied post, or if it is found that candidate has concealed distorted any material information, his/her candidature will be cancelled at any time during the recruitment process."

19. In the interview call letter coupled with the intimation to bring all original documents, the following clause was provided :

*5. " After verifying certificates/documents if it is found that you are not eligible according to the criteria, stipulated in the advertisement, you may not be allowed for appearing at personal interview. **So you may please ensure that you are eligible for the post applied.**"*

20. Clause 16 provided that selection of the candidates was purely on provisional basis subject to conforming of the pre-requisites and other conditions notified in the advertisement. Clause 16 reads thus:

16. " The selection of the candidate is purely on a provisional basis subject to conforming of the pre-requisites and other conditions notified in the advertisement. If it is found that any candidate is not meeting the requirement of pre-requisites or not fulfilling any of the conditions or he/she has knowingly or willfully furnished incorrect or false particulars/fake certificates or suppressed material information, his/her selection is liable to be cancelled and if appointed, shall be liable for dismissal from the Company's service without any notice or assigning any reasons whatsoever."

21. Office Order no.18 by which the petitioners were appointed on the respective posts provided “ terms and conditions “ to state that the petitioners are appointed as Additional Executive Engineer on purely temporary basis until further orders. Further for other terms and conditions, they shall be governed by the 2012 Service Regulations, and by such other regulations as applicable to the employees of the company. Clause nos.1 and 3 of the appointment order are relevant which reads thus :

(1) “ The above Engineers are appointed as Additional Executive Engineers (Trans) on purely temporary basis until further orders.

(3) For other terms and conditions they shall be governed by MSETCL Employees' Service Regulations 2012 and by such other rules and regulations as are applicable to the employees of the Company.”

22. Thus the appointment order makes a reference to the service regulations as noted above and as also the MSETCL contends to have taken action on the basis of the powers conferred on these service regulations. It would be profitable to note the relevant service regulations. We first note the provisions of 2012 Service Regulations, 2012 which were brought into effect from 1 June 2012.

23. Chapter II Regulation 9 is the Definitions and Interpretations clause from which some definitions are required to be

noted as under :-

(33) “ Permanent Employee” is a person who after satisfactory completion of the prescribed period of probation has been confirmed in one of the regular cadres or posts of the Company.”

(36) “Probationer” means a person appointed provisionally in or against a permanent or temporary post and who has yet to complete the period of probation.”

(40) “Temporary Employee” means a person other than a permanent employee on the Company's Establishment appointed to officiate in a temporary or a permanent post and exclude a person borne on Work-Charged establishment and the Nominal Muster Roll.”

24. Chapter III of 2012 Service Regulations provide for General Conditions Of Service. Relevant regulation is regulation 12 under which the MSETCL states to have passed the impugned order. Regulation 12 reads thus :

12. Wherever it is found that an employee, who was not qualified or eligible in terms of the Recruitment Regulations etc for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment, he shall not be retained in service. Before terminating the services of such employee, a Show Cause Notice shall be served on him by giving 7 days time to submit the reply. If no reply is submitted within given time or if reply is submitted within give time by the employee, after considering the same, his services should be terminated and he should be relieved form the services of the Company. The Format-3 and Format-4 of Show Cause Notice and Service termination order, respectively may be referred to for guidance. “

25. Regulation 13 (g) provides that after satisfactory completion of probation, a probationer may be appointed substantively or to officiate in a permanent or a temporary post as

the Competent Authority may decide.

26. Regulation 88 provides for Procedure for Dealing with Acts of Misconduct on which reliance has been placed on behalf of the petitioner. Petitioners also rely on Regulation 90 which provides for Summary Proceedings to contend that these are not followed by the MSETCL before passing the impugned order.

27. MSETCL has relied on Regulation 16 of the Recruitment Regulations, 1961 which according to them are relevant in view of the clear language of Regulation 12 of 2012 Regulations. Regulation 16 of the Classification Regulations, 1961 reads thus :

16. "Any candidate who is found to have knowingly furnished any particulars which are false or to have suppressed material information of a character which, if known would ordinarily have debarred him from getting appointment in the service of the Board is liable to be disqualified and if appointed, to be dismissed from service. "

28. In the context of the above rules the submission on behalf of the MSETCL is that the petitioners are not confirmed employees on the posts in question, and thus the MSETCL is completely within its rights, power and authority to adopt the procedure as contemplated under Regulation 12 of 2012 Service Regulations read with regulation 16 of the Recruitment Regulations,

1961 to issue a show cause notice to the petitioners, and not being satisfied with the explanation as received from the petitioners, pass an order as impugned in the present petition. It is submitted that in view of the clear position envisaged by Regulation 12 of the 2012 Service Regulations, read with regulation 16 of the Recruitment Regulations, 1961, the petitioners cannot claim a legal right of a departmental inquiry to be held. It is thus, the contention of the respondents that the impugned order has been passed completely in consonance with the said Regulations and the writ petition therefore, deserves to be dismissed.

29. We find much substance in the contentions as urged on behalf of the respondents. The nature of the appointment of the petitioner is clear from the appointment order dated 28 May 2010. It is a clearly a temporary appointment. A temporary employee has been defined under the 2012 Service Regulation under Chapter II clause (40) to mean *a 'person' other than a permanent employee on the company's establishment appointed to officiate in a temporary or a permanent post and exclude a person borne on Work Charged establishment and the Nominal Muster Roll.* Significantly, Regulation 33 also defines a 'permanent employee' to

mean "*a person who after satisfactory completion of the prescribed period of probation has been confirmed in one of the regular cadres or post of the company.*" The petitioners also do not fall in Note 1 or Note 2 below the said definition of a ' permanent employee.' The appointment order also does not make a reference that the petitioners were appointed on probationary basis. If they were appointed to be on probation, then it was necessary that after completion of probation, they would be issued a confirmation order. A cumulative reading of these definitions and the appointment order issued to the petitioners clearly indicate that the petitioners were temporary appointees or in other words, the petitioners cannot claim any benefits, a permanent employee can avail under the Rules and Regulations.

30. In the above context, Regulation 12 of the 2012 Service Regulations (supra) becomes relevant. Regulation 12 as we have noted above, clearly provides that whenever it is found that an employee who was not qualified or eligible in terms of the Recruitment Regulations etc, for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment, he shall not be retained in service. However,

this Regulation contemplates that before terminating the service of such an employee, a Show Cause Notice shall be served on him by giving 7 days time to submit the reply and if no reply is submitted within given time or if reply is submitted within given time by the employee, after considering the same, his services should be terminated and he should be relieved from the services of the company. This Rule also prescribes Format-3 and Format-4 of Show Cause Notice and Service termination order, respectively may be referred for guidance. The contention on behalf of the MSETCL that Regulation 12 of Service Regulations takes within its purview and incorporates the provisions of Regulation 16 of the Classification and Recruitment Regulations, 1961 in our opinion, is required to be accepted which is clear from a plain reading of Regulation 12 which clearly refers to Recruitment Rules. Regulation 16 of the Recruitment Rules 1961 as noted above provides that a candidate who is found to have knowingly furnished any particulars which are false or to have suppressed material information of a character which if known, would ordinarily have debarred him from getting appointment in the service of the Board and that such a candidate is liable to be disqualified and if appointed, to be dismissed from service. This position under both these Regulations, clearly indicate

that there was sufficient power and authority with the MSETCL to issue a show cause notice once they were satisfied from the materials, that the petitioners had either submitted false documents or had suppressed information or such information was false. Now, coming to the aspect of the adequate and/or sufficient notice of this clear position to the participants/petitioners in the appointment process. It is clear from the various clauses/ terms and conditions of the different notifications we have noted above that the petitioners had sufficient notice of the action which can be taken by the MSETCL, in case of any false information or suppression of fact in the recruitment process. The Employment Advertisement No.01 of 2014 in clause 6 of the General Conditions had categorically provided that if a candidate knowingly or willfully furnish incorrect or false or suppressed material information, he/she should be disqualified at any stage of the recruitment process and if appointed shall be liable to be dismissed without any notice or assigning any reasons whatsoever. Further, the Notification of the respondents issued in regard to the submission of documents by the candidates to decide their eligibility also reiterated the said condition as per clause 8 of the said Notification appearing at page 55 of the paper book. Further precaution is also taken by the Corporation to have relevant clauses

in the appointment order namely Office Order No.18 (temporarily appointing the petitioners) wherein in the *terms and conditions*, it was stated that the appointments were purely on temporary basis until further orders and that the same were governed by 2012 Service Regulations and such other Rules and Regulations as applicable to the employees of the company. This itself indicates that the appointment of the petitioners were subjected to further scrutiny/process only after satisfactory completion of which the MSETCL would issue order appointing the petitioners as its permanent employees. It is thus, clear that the petitioner cannot have any quarrel in the MSETCL invoking these conditions/regulations if the MSETCL has found that the petitioners had knowingly or willfully furnished false particulars and the consequence which has been provided for is dismissal from service without any notice or assigning any reasons whatsoever. The MSETCL had received complaints in regard to bogus Experience Certificates submitted by the candidates/petitioners under a vigilance inquiry. Accordingly information was sought from the employers and only after ascertaining that the certificates which were submitted did not reflect the correct position of experience the MSETCL decided to initiate action and for this purpose issued to the petitioners the show

cause notice. The petitioners replied to the said show cause notice and tried to justify the experience certificates. However, as the material with the MSETCL was sufficient in each of these cases to show that the experience certificates issued did not reflect the correct experience the respondents invoking the powers as available in Regulation 12 of the 2012 Service Regulations and all various clauses of the advertisement and other connected notifications, the MSETCL passed the impugned orders cancelling the appointment of the petitioners and in respect of those petitioners who were already in the service of the respondents they were reverted to the posts which they were holding prior to the appointment.

31. We do not find any illegality or perversity in this approach of the MSETCL. This for the reason, as noted above there was sufficient power to take such an action. In fact, the MSETCL have followed the mandate of 2012 Service Regulations read with regulation 16 of the Recruitment Regulations, 1961 and only after an opportunity to show cause was given to the petitioners, the impugned order has been passed. It is not the case that there is no material which was available to the respondents. Whatever material was available was stated and put to the petitioner in the show cause

notice. The petitioners were not permanent employees and were granted only temporary appointments and therefore, the case of the petitioner that a departmental inquiry ought to have been conducted cannot be accepted.

32. In our opinion, powers which were available to the MSETCL under the 2012 Service Regulations read with Recruitment Regulations, 1961 and that the MSETCL would be justified exercising these powers in the fact situation. We therefore, see no arbitrariness or illegality in the impugned action of respondents.

33. Learned counsel for the petitioners has relied on number of decisions on the legal propositions canvassed firstly on the issue that a departmental inquiry was necessary and only after the inquiry is undertaken, the order of removal could have been passed. Secondly, on the proposition that when there was a question of fraud the same was required to be established by leading evidence. The third set of authorities as referred by the learned counsel for the petitioner is that the Service Regulations are required to be interpreted harmoniously. Fourthly, a reasoned and administrative order is required to be passed. The decisions relied upon by the

learned counsel for the petitioners lay down certain principles which are established with which there cannot be any disagreement, but for the purposes of this case, they are academic.

34. In the facts of the case and the reasons as we have set out and more particularly that the petitioners being appointed as temporary employees till further orders and no rights as would be available to a permanent/regular employees would be available to the petitioners, we have come to a considered conclusion that a departmental inquiry was not necessary and that the Service Rules are appropriately applied by the MSETCL as there was sufficient material for the respondents to initiate action under 2012 Service Regulations read with Regulation 16 of the Recruitment Regulations, 1961. It is not a case that the MSETCL had no material against the petitioners about the false or incorrect information supplied by the petitioners or suppression of material and/or bogus certificates submitted to take advantage of the recruitment process. In coming to the above conclusions, we are supported by decision of the Supreme Court in **Union of India vs M.Bhaskaran reported in 1995 Suppl (4) SCC 100** where their Lordships held thus :

“6..... Therefore, it is too late in the day for the respondents to submit that production of such bogus or forged

service cards had not played its role in getting employed in railway service,. It was clearly a case of fraud on the appellant-employer. If once such fraud is detected, the appointment orders themselves which were found to be tainted and vitiated by fraud and acts of cheating on the part of employees were liable to be recalled and were at least voidable at the option of the employer concerned.”

Though in the facts of that case, as the respondents had continued for long years in service and their Employer-Railway on its own volition had thought it appropriate to hold a departmental inquiry and there was no dispute in this context, nonetheless the Court observed that respondents therein were not justified to obtain such fraudulent employment orders. The Supreme Court observed that if any lenient view is taken then it would amount to putting premium on dishonesty and sharp practice which in the facts of the could not have been permitted.

35. Learned senior counsel appearing for the respondents has relied on a recent decision of the Supreme Court in **Avtar Singh vs Union of India** reported in **2016 (7) Scale 378** wherein the Supreme Court considering the conflict of opinions in the various decisions of the Division Benches of the Supreme Court, on the question of suppression of information or submitting false information in the verification form in securing employment held

that only in case, if an employee is confirmed in service, holding of departmental inquiry would be necessary before passing order of a termination/dismissal order on the ground of suppression or submitting false information in verification form. The observations of the Court in para 25 of the decision are required to be noted and reads thus:

25.” The fraud and misrepresentation vitiates a transaction and in case employment has been obtained on the basis of forged documents, as observed in M.Bhaskaran's case (supra) it has also been observed in the reference order that if an appointment was procured fraudulently, the incumbent may be terminated without holding any enquiry, however we add a rider that in case employee is confirmed, holding a civil post and has protection of Article 311 (2) due inquiry has to be held before terminating the services. The case of obtaining appointment on the basis of forged documents has the effect on very eligibility of incumbent for the job in question, however, verification of antecedents is different aspect as to his fitness otherwise for the post in question. The fraudulently obtained appointment orders are voidable at the option of employer, however, question has to be determined in the light of the discussion made in this order on impact of suppression or submission of false information.”

(Emphasis supplied)

36. During the course of hearing of these petitions as noted above, the learned senior counsel appearing for the respondents has fairly submitted that notwithstanding the orders of removal being passed against the petitioners, the MSETCL is still agreeable to grant

to the petitioners a second opportunity to place such further material for consideration of the respondents. Learned Senior Counsel on instructions, has submitted and in our opinion, fairly that one more chance would be granted to the petitioners to produce such material which would be gone into by the MSETCL and if it is found that such material would justify claim of the petitioners for their appointment, then the MSETCL in that case would recall the removal order and reinstate the petitioners. The suggestion is fair. We therefore, think it appropriate that the concerned petitioners if they have any further documents which would justify their claim and eligibility for appointment in the posts in question, can make such representation to the MSETCL within a period of two weeks from today and the same can be inquired into and considered by the MSETCL after a personal hearing to the petitioners and an appropriate decision in that regard can be taken .

37 Before parting we may note a regrettable facet in the conduct of the MSETCL which in our opinion touches the administration of justice. Though we have come to the above conclusion however, we cannot lose sight of the ex-parte-interim order dated 13 June 2016 passed by this Court, in three of the writ

petitions whereby we had stayed the impugned removal orders and that the stay has continued to remain in operation till date. It was the bounden duty of the respondents to have acted in conformity with the interim orders passed by this Court. However, for reasons and which the MSETCL think to be justified, the petitioners were not permitted to join duties. The MSETCL could have taken out an application for vacating the orders and /or sought stay of the said orders. However we do not find any such substantive application on record of these petitions. Such an approach from a public body in our opinion, was inappropriate. In these circumstances, though the petitioners in these petitions have not discharged their duties, we feel it appropriate and in the interest of justice, that these petitioners are required to be compensated by directing the MSETCL to pay an amount equivalent to the salary and allowances of the post in question on which they were selected and appointed which the petitioner otherwise would have earned if the MSETCL were to act in compliance of the interim orders.

38. In the light of the above discussion, we pass the following order :

- (i) The respondent-MSETCL was within its right, authority

and power to issue the impugned orders without requiring a departmental inquiry to be undertaken against the petitioners. The impugned orders, accordingly, are legal and valid.

(ii) The suggestion of the respondents as regards a second opportunity to be given to the petitioners is fair and equitable. The petitioners are at liberty to make a fresh representation along with such material to justify the experience certificates submitted by them along with their recruitment application. Such a representation be made to the respondents within a period of two weeks from today.

(iii) The respondents shall grant a personal hearing to the petitioners making such representation and on considering the contentions of the petitioners and documents so submitted, take an appropriate decision in accordance with law, including a decision to recall the impugned removal orders, if it is found that the petitioner has justified his claim for appointment. This exercise be completed by the respondents within a period of 10 weeks from the date of the submission of their representation.

(iv) The respondents are directed to pay the concerned petitioners an amount equivalent to their salary for the post in question {Additional Executive Engineer (Transmission)} for the period from 13 June 2016 till today for the reason that the MSETCL did not permit these petitioners to join duties in pursuance of the interim orders dated 13 June 2016 passed by

us in Writ Petition No.5995 of 2016, 5996 of 2016 and Writ Petition (Lodging) No.1461 of 2016 (OS).

Writ Petitions are accordingly dismissed, however subject to the above directions. No order as to costs.

{G.S.Kulkarni, J}

{Anoop V.Mohta, J}

Rng

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