

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

WRIT APPEAL NO.256 OF 2017

AND

WRIT PETITION NO.5941 OF 2017

COMMON JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

Heard Sri B.Adinarayana Rao, learned Senior Counsel appearing on behalf of the appellant (respondents in the Writ Petition), and Sri Sitaram Chaparla, learned counsel for the respondent-writ petitioner, and, with their consent, both the Writ Appeal and the Writ Petition are disposed of by this order.

Questioning the order of termination passed by the second appellant herein dated 14.02.2017, the respondent-writ petitioner invoked the jurisdiction of this Court under Article 226 of the Constitution of India. The order of termination dated 14.02.2017 was passed after a notice was issued to the respondent-writ petitioner on 31.01.2017 calling upon him to submit his explanation to the show cause notice within fifteen days. The show cause notice dated 31.01.2017 records that the petitioner was appointed as a Junior Helper on 04.05.2001; Matriculation was an essential qualification for appointment to the post of Junior Helper; the petitioner had submitted a duly attested copy of the Matriculation Marks-cum-Pass certificate dated 27.06.1997 issued by the Controller of Examinations, Andhra University at the time of joining the post; subsequently, he had submitted his Matriculation Marks-cum-Pass Certificate

in original, issued by the Andhra University, to the Human Resources Department, ONGC, Rajahmundry for verification; ONGC had requested the Registrar, Andhra University, Visakhapatnam to verify the genuineness of the said Matriculation Marks-cum-Pass Certificate; after verification, the Additional Controller of Examinations, Andhra University, had informed, by his letter dated 20.01.2017, that the Matriculation Certificate of the petitioner had been verified with their office records, and was found not to be genuine; in terms of para-2 – Annexure-I, to the offer of appointment letter dated 04.05.2001, if any declaration given or information furnished by the candidate is found to have wilfully suppressed any material information, the appointee was liable for removal from the service of the Corporation, and such other action as the Corporation may deem necessary; and the petitioner should show cause why his services should not be terminated with immediate effect as he had produced a Matric Certificate which was germane to his appointment as Junior Helper in ONGC, and it was now proved to be not genuine.

In his reply thereto, vide letter dated 10.02.2017, the petitioner stated that the reasons communicated by the Additional Controller of the Andhra University, by proceedings dated 20.01.2017 about the genuineness of the certificate, was not furnished to him; he was not informed as to how the certificate produced by him was not genuine; if reasons were stated, he would be in a better position to explain about the genuineness; and the reasons stated by the University should be

furnished to him to enable him to submit his explanation to the notice.

While the petitioner also referred to his service in the ONGC from 1992 onwards, and that he was now aged 52 years, these are matters extraneous to the issue which formed the basis for passing the order of termination. The order of termination dated 14.02.2017 merely records that, upon careful consideration of the relevant records and the reply submitted by the petitioner, the second appellant was of the view that the Matriculation Marks-cum-Pass Certificate was found to be fake and not genuine; and, therefore, the services of the petitioner were terminated from ONGC.

In the interlocutory order under appeal dated 22.02.2017, the learned Single Judge observed that, *prima facie*, a reading of the impugned order would show that no enquiry was conducted before the order of termination was made; the petitioner was working since the year 2001, and the order of termination was made after almost 16 years without following due process; the balance of convenience was in favour of the petitioner; and, hence, there shall be interim suspension of the said order.

When the matter came up before us earlier on 14.03.2017, Sri B.Adinarayana Rao, learned Senior Counsel appearing on behalf of the appellants, submitted that, while the respondent-writ petitioner had faulted ONGC authorities for not assigning reasons in support of their conclusion that the certificate submitted by the petitioner was not genuine, the petitioner had not even asserted in the affidavit, or in the explanation furnished by him to the show-cause notice, that the

Matriculation Marks-cum-Pass Certificate submitted by him was genuine; and the letter of appointment itself records that, if a declaration given or information furnished by the candidate is found to have wilfully suppressed any material information, the appointee was liable to be removed from service. Learned Senior Counsel would submit that as the petitioner had obtained employment on the basis of a false and bogus Matriculation certificate, which is the prescribed qualification for appointment as a Junior Helper in the ONGC, his termination was in accordance with the offer of appointment; such an order of termination does not amount to a major punishment under the Rules; and the action of the appellant-Corporation is legal and valid.

As Sri Sitaram Chaparla, learned counsel for the respondent-writ petitioner, had asserted that the petitioner had, while working as a Junior Helper, appeared for the Matriculation examination conducted by the Andhra University, he had passed the said examination, and the certificate produced by him was issued by the Andhra University, we permitted the petitioner to file an affidavit in this regard. An affidavit dated 26.03.2017 (wrongly referred to as 26.03.2015) has been filed wherein the respondent-writ petitioner has stated that the qualification, to be appointed as a casual labour (Junior Helper) in the ONGC, was a pass in VIII Standard; as he had the said qualification, he was appointed to the post; subsequently his services were regularised; while he was working as a Casual Labour (Junior Helper), he had appeared in the Matriculation Examination conducted by the Andhra University through Kavinikethan

Tuition Centre, Narsapuram in the year 1997; the examination was conducted in Sri Y.N.College, Narasapuram, which he had successfully passed; and the Andhra University had issued a certificate of Matriculation, and the same was produced before the competent authority of ONGC.

Employees of ONGC are governed by the ONGC Conduct, Discipline and Appeal Rules, 1994 (hereinafter called the “Rules”). Rule 36 prescribes the procedure for imposing major penalties. Rule 36(1) stipulates that an order imposing any of the major penalties specified in sub-Rule (vii) to (xi) of Rule 34 shall be made after an inquiry held, as far as may be, in the manner hereinafter provided or in the manner provided by the Public Servants (Inquiries) Act, 1850 where such inquiry is held under that Act. Rule 34 prescribes the nature of penalties. Clauses (x) and (xi) of Rule 34 prescribe the major penalty of removal from service which shall not be a disqualification for future employment under the Government or the Corporation/ Company owned or controlled by the Government, and dismissal from service which shall ordinarily be a disqualification for future employment under the Government or Corporation/ Company owned or controlled by the Government. Note (vii) thereunder relates to termination of services and, in terms of Note (vii)(b), termination of service of an employee, in accordance with the terms of his appointment, cannot be construed as a penalty under Rule 34 for which an inquiry is required to be conducted under Rule 36.

Para-2 of Annexure-I of the appointment order dated 04.05.2001 reads thus:-

“if any declaration given or information furnished by the candidate is found to have wilfully suppressed any material information, the appointee will be liable to removal from the service of the Corporation and such other action as the Corporation may deem necessary”.

It is only if a candidate has wilfully suppressed any material information, in the declaration given by him, does para-2 of Annexure-I of the letter of appointment confer power on the authority to remove the appointee from the services of the Corporation. The question which arises for consideration is whether the petitioner had wilfully suppressed material information while furnishing the declaration. It is only if it is established that the Matriculation certificate, submitted by the petitioner, is bogus and is not genuine, can it be held that the petitioner had wilfully suppressed material information. As the petitioner has denied the claim of the appellant that the certificate is not genuine, the appellants are obligated to conduct an enquiry to establish that the Matriculation Certificate submitted by the petitioner, at the time of his initial appointment, was not genuine, more so as the petitioner was appointed in the year 2001 and had already rendered 16 years of service with the ONGC on the date of his termination. We may not be understood to have expressed any opinion on the genuineness or otherwise of the Matriculation Certificate submitted by the petitioner at the time of his initial appointment, for these are matters to be examined in the enquiry to be conducted in terms of the aforesaid Rules of the ONGC. All that we have held is that the petitioner's services could not have been terminated, without an enquiry being caused in terms of the rules referred to hereinabove, since he

has disputed the appellant's claim that the Matriculation Certificate produced by him was not genuine, and has stated on oath, in the affidavit filed before this Court, that the certificate has been issued by the Andhra University.

The impugned order of termination is set aside. It is, however, made clear that this order shall not preclude the appellant-Corporation from conducting an enquiry, into the allegation that the Matriculation certificate is not genuine and, thereafter, from taking action in accordance with the ONGC Conduct, Discipline and Appeal Rules, 1994.

Both the Writ Appeal and the Writ Petition are accordingly disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

30th March 2017
RRB