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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION (CIVIL) No. 8301/2016**

Date of decision: 28th April, 2017

RAJU KUMAR SAH

..... Petitioner

Through Mr. Mr. Sanjiv K. Saxena, Mr.
Ramneek Mishra & Mr. Mukesh Kumar Tiwari,
Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through Mr. Ankur Chhibber, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

SANJIV KHANNA, J. (ORAL):

By the instant writ petition, the petitioner-Raju Kumar Sah, impugns the termination order dated 20th October, 2015.

2. The primary contention of the petitioner is that the respondents have erroneously concluded and affirmed that the 12th Class certificate of the petitioner was invalid, being from an unrecognised Board.

3. The petitioner had produced and relied upon the Class 12 certificate issued by the Board of Secondary Education, Madhya Bharat, Gwalior, for having qualified Intermediate Examination (10+2) in 2011. The certificate and marksheet are on record as Annexures P-4 & P-5 to the writ petition. The certificate mentions that the petitioner had undergone schooling in Perfect Tutorial College, Kolkata, West Bengal. The petitioner had obtained 366 marks out of 500 in Hindi, English, Mathematics, Physics and Chemistry. Each paper was of 100 marks.

4. The respondents in the counter affidavit have stated that the Board of Secondary Education, Madhya Bharat, Gwalior was/is not a recognised Board. As per the Recruitment Rules, the minimum educational qualifications prescribed for Naviks is 10+2 plus 60% marks in aggregate

in Mathematics and Physics from any educational board recognised by the Central/State Governments. The Boards have to be recognised by the Central and the State Governments.

5. Our attention is drawn to decision of the Punjab and Haryana High Court dated 22nd April, 2016 in Civil Writ Petition No. 15019/2015, ***Subash Chander versus State of Haryana and Others***, wherein after referring to the reply given by the Ministry of Human Resource and Development, it was held that the Board of Secondary Education, Madhya Bharat, Gwalior was neither set up nor recognised by the said Ministry. FIR had been registered against the management of the Board of Secondary Education, Madhya Bharat, Gwalior by the police after a raid in the premises of the alleged Board on 22nd July, 2012. The so-called Director of the Board was arrested during the course of investigation.

6. Learned counsel for the petitioner relies upon the Intermediate Education Act, 1921 applicable to the State of Uttar Pradesh. It is submitted that vide notification dated 5th March, 2014, the affiliation of Board of Secondary Education, Madhya Bharat, Gwalior was cancelled. Thus, the Board of Secondary Education, Madhya Bharat, Gwalior, was a duly recognised board under the Intermediate Education Act, 1921 till 2012, and the petitioner had appeared and cleared the 12th Class examination in 2011 and was issued the certificate.

7. A perusal of Section 2(d) of the Intermediate Education Act would show that recognition refers to recognition for the purpose of preparing candidates for admission to Board's examinations. The expression/term "Board" has been defined in clause (a) to Section 2 to mean Board of High School and Intermediate Education. The recognition granted under the said Act as per clause (d) to Section 2 is only for the purpose of preparing candidates for admission for Board's examination, which is to be conducted by the Board of High School and Intermediate Education. Section 7 of the said Act states that the Board constituted under the Act

would conduct examination at the end of the High School and Intermediate courses. The Board also recognises institutes for the purpose of the said examination. The Act does not state that any other Board or institute would conduct High School and Intermediate examinations.

8. The next contention of the petitioner is with reference to the proceedings leading to the order of termination. Our attention is drawn to the offence report (Annexure R-6), which makes reference to Section 44 of the Coast Guard Act, 1978. We have considered the said contention, but do not find any merit in the same. Section 44 of the Coast Guard Act, 1978 refers to an act, omission, disorder or neglect not specified in the Act, which is prejudicial to good order and discipline of the Coast Guard. Any person found guilty by a Coast Guard Court on the aforesaid account is liable to suffer imprisonment for a term which may extend to three years or such less punishment as mentioned in the Act. The offence report dated 23rd June, 2015 records under the heading 'particulars of offender' as under:-

"Particulars of offender"

Did on 12 Feb 13 at the time of enrolment submitted educational certificate namely Marks Statement of Higher Secondary School Sl. No. 600033170 dated 12 Mar 2012 issued by Board of Secondary Education Madhya Bharath Gwalior, which is not recognised by Council of Boards of School Education in India (COBSE). Thereby committed an offence punishable under Section 44 of Coast Guard Act, 1978."

Section 53 of the Act gives the hierarchy of punishments. Punishment of dismissal from the Coast Guard is deemed to be inferior to punishment imposed for the term of life (or other lesser term). Section 58 (2) states sentence of imprisonment shall in all cases be accompanied by a sentence of dismissal. As per Section 56, punishment can be inflicted in respect of offences committed by persons subject to the Act without the

intervention of the Coast Guard Court in the manner stated in Section 57 or 57A. Section 57 of the Act relates to minor punishment which can be awarded by the Commanding Officer or any other Officer with the consent of the Central Government. Punishment of dismissal from the Coast Guard therefore can be imposed by the Commanding Officer, or another Officer specified. In other words, Section 44 creates the offence against good order and discipline. Section 57 read with Section 56 relates to the manner and who can impose punishment stipulated therein without recourse to the Coast Guard Court. Rule 25 of the Coast Guard (General) Rules, 1986 stipulates that furnishing of false or wrong information at the time of recruitment would result in discharge/release from service. The petitioner had submitted the 12th Class certificate from an unrecognised Board. Following the prescribed procedure, the minor punishment enlisted under Section 57 has been awarded as in the present case, order of dismissal from service has been passed.

9. First proceeding initiated against the petitioner was set aside on account of legal lacunae and flaws vide letter dated 14th May, 2015. Thereafter, fresh proceedings under the Act were initiated. On 22nd June, 2015, hearing of the charge under Rule 23 of the Coast Guard (Discipline) Rules, 1983 was conducted by the Commanding Officer. Thereupon, the case was remanded for record of evidence in writing. The photocopy of the record of evidence has been produced before us. The record of evidence was done on 23rd June, 2015 and as per the photocopy produced before us, the petitioner had also signed the said proceedings.

10. Learned counsel for the petitioner has also drawn our attention to Annexure P-1, which is a proforma filled up by the Assistant Commandant. This proforma refers to Rule 25 of the Coast Guard (General) Rules, 1986, which relates to furnishing of false/wrong information at the time of recruitment. In such cases, officer may be discharged or released. This would not assist/help the petitioner, The proforma at page 43 (Annexure P-

1) warns and states that false/wrong information would result in dismissal from service. The final order passed by the Director General of the Coast Guard, dated 18th September, 2015 records that the petitioner has been awarded punishment of dismissal from the Coast Guard service.

11. Learned counsel for the petitioner submits that the respondents were confused and have passed an erroneous order for there is another Board, by the name of Board of Secondary Education, Madhya Bharat, Gwalior (M.P.) and the documents etc. relied upon relate to this Board and not the Board of Secondary Education, Madhya Bharat, Gwalior. We do not think the aforesaid contention has any weight and merit in the absence of any document or material on record to support the petitioner's contention. We have referred to and examined the certificate. It is issued by the Board of Secondary Education, Madhya Bharat, Gwalior, which is not a recognised Board. Strangely, the petitioner had purportedly studied in Kolkata in West Bengal.

12. Having examined the case from all angles, we do not see any reason to interfere with the impugned order. The writ petition is dismissed. No costs.

SANJIV KHANNA, J.

ANIL KUMAR CHAWLA, J.

APRIL 28, 2017
VKR