

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION Nos. 16295, 16296, 16298 & 16299 of 2009

COMMON ORDER:

As the issue raised in all these writ petitions is one and same, they are heard together and disposed of by way of this common order.

2. Heard Sri D. Linga Rao, learned counsel for petitioners, and Sri Zakir Ali Danish, learned standing counsel for respondent company.

3. For convenience sake, the facts in W.P.No.16295 of 2009 are discussed hereunder:

i) The writ petition is filed seeking to issue a writ of mandamus declaring the memo dated 17.07.2009 issued by the 1st respondent as illegal and arbitrary by holding that the petitioner is entitled to be continued in service as Lineman with all consequential benefits.

ii) It is the case of the petitioner that he was appointed as Helper in the respondent company on 03.08.1989 and later on promoted as Lineman on 04.07.1998. While so, he was issued with a charge memo dated 03.09.2003, on the allegations that he is unqualified person for promotion to next higher cadre in view of his educational qualification and he has willfully tried to get the required education qualification by unethical methods, and that after obtaining the hall ticket for IX class examination as private candidate, he managed to send substitutes for written examination. To the said charge memo, he submitted explanation denying the charges. Thereafter, the enquiry officer

conducted a regular enquiry and held that the charges leveled against him are proved, basing on which, the 1st respondent issued a show-cause-notice dated 17.07.2009 calling upon him to explain as to why he should not be dismissed from service for the proven misconduct. Challenging the same, he filed the present writ petition.

4. On 11.08.2009 this Court directed the respondents to consider the explanations that may be submitted by the petitioners to the impugned show cause notices and ordered that no final orders be passed until further orders. It is brought to the notice of the Court that by virtue of the interim orders, the petitioners are being continued in service.

5. Learned counsel for the petitioners has contended that the enquiry officer is not competent to issue the charge memo and the alleged charges cannot be gone into in the enquiry and on that ground alone, the impugned show cause notices are liable to be set aside.

6. On the other hand, learned standing counsel for the respondents has contended that for the show cause notices, the petitioners have already submitted explanation and that in pursuance of the interim orders granted by this Court, no final orders will be passed. He has further contended that out of four petitioners, three petitioners have retired from service and another petitioner has expired and that there are no merits in the writ petitions and therefore they are liable to be dismissed.

7. This Court, having considered the rival submissions made by the learned counsel on either side, is of the considered view that the enquiry officer cannot issue charge memo and the charges leveled against the petitioners are also vague. Charges should be definite and precise. The allegation of the respondents that the petitioners had unethically acquired the qualification by way of substituting some other candidates in their place for written examination, also cannot be enquired in a departmental enquiry. At best, the respondents can write to the educational authorities, if they have any doubt about the certificates possessed by the petitioners, but the respondents cannot on their own adjudicate the validity of the certificates issued by competent educational authorities. For the above reasons, the impugned show cause notices are liable to be set aside.

8. Accordingly, the all the writ petitions are allowed by setting aside the impugned show cause notices. The petitioners are entitled for all consequential benefits.

As a sequel, miscellaneous petitions, if any, pending in the writ petitions shall stand closed.

ABHINAND KUMAR SHAVILI, J

29th October, 2018
cbs

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Writ Petition Nos.16295, 16296, 16298 & 16299 of 2009
(allowed)

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