

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.1225 OF 2007

ORDER:

1. This writ petition is filed seeking to issue a writ of Mandamus declaring the proceedings dated 14.3.2005 and Memo dated 6.5.2005 issued by the 3rd respondent, and the order of the 2nd respondent-appellate authority dated 16.12.2005, as illegal and arbitrary; to set aside the same and consequently, to direct the respondents to reinstate the petitioner into service, duly granting all other consequential benefits, such as continuity of service, back wages etc.

2. Heard Sri K. Vasudeva Reddy, learned Counsel for the petitioner; Smt. Aruna and Sri N. Siva Reddy, learned Counsel for the respondents.

3. It is the case of the petitioner that he was appointed as NMR in the erstwhile APSEB during the year 1971 and subsequently, he was absorbed as helper in the year 1979 and thereafter, he was promoted as Assistant lineman on 9.5.1982 and further promoted as Lineman on 21.6.1985. While so, during the year 1999, an enquiry officer was appointed to enquire into the allegation made against him that he resorted to production of false educational

certificates at the time of his employment. On receipt of charge sheet, he submitted his explanation. After completing the enquiry, a show cause notice dated 2.6.1999 was issued to him calling for explanation as to why he should not be dismissed from service. Aggrieved by the said show cause notice, the petitioner filed W.P.No.17448 of 1999 before this Court. This Court disposed of the said W.P. while observing that the petitioner approached this Court only in pursuance of show cause notice, the Court is not inclined to entertain WP, and it is open to the respondents to consider all the contentions and other contentions stated in the show cause notice and pass appropriate orders in accordance with law. Subsequent to disposal of the above writ petition, the petitioner submitted his representation on 11.9.2000 to the 3rd respondent. Thereafter, the petitioner was dismissed from service vide memo dated 24.1.2002. Aggrieved by the same, the petitioner filed appeal before the 2nd respondent on 22.4.2002. But the said appeal was also rejected. Hence, he filed W.P.No.12520 of 2002 before this Court. This Court vide order dated 22.10.2002 set aside the order of dismissal on the ground that the authority, who is a witness, cannot act as disciplinary

authority. However, this Court granted liberty to the respondents to conduct a de nova enquiry. After conducting de nova enquiry, basing on the report of the enquiry officer, a show cause notice was issued again to the petitioner, for which he submitted his explanation. Thereafter, the petitioner was kept under suspension vide memo dated 23.2.2005 and thereafter, he was dismissed from service vide proceedings dated 14.3.2005. Prior to issuance of proceedings dated 14.3.2005, the petitioner filed W.P.No.5676 of 2005 questioning the report of the enquiry officer. This Court disposed of the said W.P.No.5676 of 2005 directing the respondents to consider the additional explanation to be submitted by the petitioner and pass appropriate orders. The petitioner filed additional explanation on 7.4.2005. Further, aggrieved by the dismissal order, the petitioner filed appeal and the same was rejected vide memo dated 16.12.2005. Hence, the petitioner filed this writ petition.

4. Learned Counsel for the petitioner contended that the post of helper, in which the petitioner was appointed, does not require any educational qualifications and that the petitioner possessed minimum qualification of reading and

writing, and even without producing the alleged bogus educational certificate, the petitioner could have got promotions to the posts of assistant lineman and lineman and therefore, it cannot be said that the petitioner has secured the employment by playing fraud and based on the bogus certificate of educational qualification. In support of his contention, the learned Counsel for the petitioner placed reliance on the judgment of this Court in W.P.No.15787 of 1994, wherein it was held that if the employee produced a bogus certificate, which was not requisite qualification to hold the post, then, basing on the submission of such certificate, employee cannot be put to sufferance. He further contended that Regulation 10(2)(a) of the Disciplinary and Appeal Regulations of the 1st respondent-company mandates that the disciplinary authority is competent to frame the charge inviting explanation, and in the instant case, contrary to the statutory regulations, the disciplinary authority appointed the enquiry officer to frame the charge and conduct enquiry and therefore, the enquiry conducted against the petitioner would become vitiated.

5. The learned Counsel for the respondents contended that the respondents have rightly followed the principles of natural justice and the regulations while imposing the punishment of dismissal on the petitioner and that the punishment imposed on the petitioner is proportionate to the proven misconduct of the petitioner and therefore, the proceedings impugned do not warrant any interference by this Court.

6. This Court having considered the rival submissions made by the parties is of the view that the post in which the petitioner was initially appointed does not require any educational qualification, except reading and writing. Moreover, the department officials are the persons to speak anything as to the genuineness of the educational certificates produced by the petitioner, but none of the officials, who are alleged to have stated that the certificate produced by the petitioner was bogus, was examined in the enquiry. Except relying on the letter addressed by D.E.O, wherein it was stated that the certificate produced by the petitioner is fake, the respondents have not enquired the persons, who were responsible for issuing such certificate. The petitioner was asked to produce the certificate of

educational qualification and when he produced the certificate during the course of enquiry, the enquiry officer held that the certificate produced during the course of oral enquiry cannot be taken into consideration since he was promoted as Assistant Lineman and Lineman basing on the education certificate produced by him which was confirmed as bogus certificate by the DEO, Machilipatnam, and the alleged fake certificate was not produced before the enquiry officer. The finding recorded by the enquiry officer is perverse. The disciplinary authority and appellate authority passed the order of dismissal based upon such perverse enquiry report. Further, the punishment of dismissal is shockingly disproportionate to the proved misconduct, which was based on perverse findings of the enquiry officer. Apart from that, the respondents ought to have examined the case of the petitioner as to whether the qualification, for which the petitioner is alleged to have produced a fake certificate, is relevant qualification for the purpose of securing employment. Since the respondents have not considered the above aspects, the proceedings impugned are liable to be set aside.

7. Further, identical issue fell for consideration before this Court in W.P.No.8343 of 2003 and this Court vide order dated 20.9.2012 set aside the order of dismissal. The said order dated 20.9.2012 in W.P.No.8343 of 2003 was also confirmed by the Division Bench of this Court in W.P.No.37 of 2013.

8. In the above circumstances, the proceedings dated 14.3.2005 and Memo dated 6.5.2005 issued by the 3rd respondent, and the order of the 2nd respondent-appellate authority dated 16.12.2005, are set aside, with all consequential benefits.

9. Accordingly, the Writ Petition is allowed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 23rd November, 2018.
Nn.

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

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23/11 /2018

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