

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1421 of 2019

1. Sri Raj Kamal, son of Sri Jagdeo Hazara, resident of Village- Bandey, PO. Dharampur, Bandey, Via- Patori, District- Samastipur.
2. Prashant Kumar, son of Sri Suresh Prasad, resident of Village- Mahendrapur, P.O. and P.S.- Hathidah, District- Patna.
3. Arun Kumar Rai, son of Sri Chhathu Rai, resident of Village- Mahamada, Mangaltala, P.O. Mahamda, P.S. Garkha, District- Saran.
4. Vikash Kumar, son of Sri Vijay Kumar Singh, resident of Village- Bhalua, P.O.-Bhalua Bhikhari, P.S. Shankardih, District- Saran
5. Santosh Kumar Singh, son of Sri Rajendra Singh, resident of Village- Jigna, P.O. and P.S. Garkha, District- Chhapra.
6. Shashi Bhushan Kumar, son of Sri Baccha Singh, resident of Village and P.O. Derni, District- Saran, Chhapra.
7. Abhay Kumar, son of Sri Radha Singh, resident of Village- Dharampur, P.O. Rasalpora, P.S.- Doriganj, District- Saran.
8. Anil Kumar, son of Sri Radha Singh, resident of Village- Dharampura, P.O. Rasalpora, P.S. Doriganj, District- Saran.
9. Mritunjay Kumar Mishra, son of Sri Sunil Mishra, resident of Village- Mala, P.O.- Gurukalam, P.S. Ethiya, District- Saran.
10. Manmohan Singh Yadav, son of Sri Ram Narayan Singh, resident of Village and P.O.- Dulhipur, P.S. Simri, District- Buxar.
11. Balwant Singh, son of Sri Rameshwar Singh, resident of Village- Basadhi, P.O. Gurukul Mehiya, P.S. Town Thana Chapra, District- Saran.
12. Chandra Shekhar Singh, son of Sri Vijay Singh, resident of Village- Alekhtola, Sitabdiyara, P.O. Jayprakash Nagar, P.S. Bariya, District Ballia (U.P.).
13. Dheeraj Kumar Singh, son of Sri Nagendra Singh, resident of Village- Gigna, P.O. Gopur, Gharkha, P.S.- Gharkha, District- Saran.
14. Manoj Kumar, son of Sri Chandra Shekhar Prasad resident of Village- Sitalpur Pirganj, P.O. Shilpur, P.S. Dighwara, District- Saran.
15. Shailendra Kumar Singh, son of Sri Birbahadur Singh, resident of Village- Alekhtola, P.O. Garibatola, P.S. Ribilganj, District- Saran.
16. Sushil Kumar Yadav, son of Sri Surendra Yadav, resident of Village- Dumri Adda, P.S. Doriganj, District- Saran.
17. Gorakh Rai, son of Sri Dharmnath Ray, resident of Village- Gopalpur, (Mannchitwa Gopalpur), P.O.- Mastichak, P.S. Dariyapur, District- Saran.
18. Ganesh Prasad, son of Sri Rabinda Ray, resident of Village- Birra, P.O. Sarai, P.S. Hajipur Sadar, District- Vaishali.
19. Sonu Kumar Singh, son of Sri Bhagirath Singh, resident of Village- Bdurahi, P.O. and P.S.- Sonepur, District- Saran.

... .. Petitioner/s



Versus

1. The Bihar State Power Holding Company Limited through its Chief Managing Director, Vidyut Bhawan, Patna- 800001.
2. The Managing Director (Transmission), Bihar State Power Holding Transmission Company Ltd., Vidyut Bhawan, Patna- 800001.
3. The General Manager-cum- Chief Engineer, Transmission Zone, Bihar State Power Holding Transmission Company Ltd., Vidyut Bhawan, Patna- 800001.
4. The Senior Manager (Human Resources), Transmission Zone, Bihar State Power Holding Transmission Company Ltd., Vidyut Bhawan, Patna- 800001.
5. The Electrical Executive Engineer, Transmission Zone, Bihar State Power Holding Transmission Company Ltd., Vidyut Bhawan, Patna- 800001
6. The Electrical Superintending Engineer, Transmission Zone, Bihar State Power Holding Transmission Company Ltd., Vidyut Bhawan, Patna- 800001

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. YV. Giri, Sr. Advocate
		Mr. Sumit Kumar Jha, Advocate
For the Respondent/s	:	Mr. Vinay Kirti Singh, Sr. Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 16-05-2019

The petitioners along with many others, who were initially engaged as Assistant Operator on contract basis under Transmission Zone, Bihar State Power Holding Transmission Company Limited, Patna on a monthly remuneration of Rs. 5000/- per month with effect from the date of appointment till 30.04.2011 against an advertisement issued in this regard in the year 2009-10 by the erstwhile Bihar State Electricity Board have come



before this Court for quashing of the order dated 12.12.2018 contained in Memo Nos. 1305, 1306, 1307, 1308 issued under the signature of Senior Manager (Human Resources), Transmission Zone, Bihar State Power Holding Transmission Company Limited whereby the petitioners were restrained to work as Assistant Operator and their salaries were stopped.

2. The petitioners were posted in various grid sub-stations. The contracts of the petitioners were thereafter renewed on various occasions.

3. It has been submitted on behalf of the petitioners that vide Resolution No. 37-22 of the Board of Directors of Bihar State Power (Holding) Company Limited, the services of the petitioners were regularized on the post of Assistant Operator, Grade-II in PB-I, Pay Band-5200-20200, Grade Pay-2900 with effect from 01.04.2015 with certain terms and conditions including the candidates' requirement to submit their consent along with the affidavit sworn before an Executive



Magistrate that they are willing to be appointed on the terms and conditions specified with the company and that they will not be entitled to claim any benefit for the period of service spent on contract basis if they are promoted in the time scale of pay of the regular post.

4. It has been averred on behalf of the petitioners that ever since their regularization, they were not paid their salary and when an enquiry was made by the petitioners, they were intimated that the genuineness of the documents of the petitioners were being verified and scrutinized. On verification of the documents, by order dated 16.05.2016, contained in Office Order No. 59, issued under the signature of Managing Director-cum-Chief Engineer, Transmission Zone, Patna, Bihar State Power Holding Company Limited, the payment of salary to the petitioners were directed to be made with effect from 01.04.2015. With the aforesaid office order, the petitioners got their salary from 01.04.2015.



5. Thereafter, on 12.12.2018, the petitioners were prevented from performing work and no reason was assigned for the aforesaid order. On enquiry, it was found that the Senior Manager (Human Resources), Transmission Zone, Bihar State Power Holding Company Limited had directed the Electrical Superintending Engineer (respondent No. 6) and Accounts Officer to stop taking work from the petitioners and even stopped their salary till further orders.

6. The aforesaid orders have been challenged in the present petition.

7. This Court directed the respondent/ Transmission Company to respond to the petition.

8. During the pendency of this writ petition, an order was passed on 21.02.2019 by the Managing Director-cum-Chief Engineer, Transmission Zone, Patna (*Annexure-8*) whereby the services of the petitioners which were regularized with effect from 01.04.2015 were cancelled and the services of the petitioners were



terminated.

9. The aforesaid order indicates that the self certified certificates produced by the petitioners along with the mark-sheets of ITI were sent to Examination Training Council, Patna as well as Examination Controller, ITI, Digha. The Examination Controller, vide letter dated 16.09.2015 had sent an intimation that the documents submitted by the petitioners were not issued by the respective Institution.

10. Pending verification of such certificates and the mark-sheets of the petitioners, no salary was being paid to the petitioners. Later, the salary was resumed.

11. However, after a lapse of two years, the Assistant Director (Examination) in the office of the Examination Controller, Niyozan Bhawan, Bailey Road, Patna vide his letter dated 24.07.2018 confirmed that the ITI certificates and the mark-sheets with respect to all the writ petitioners were not issued by the Institution and therefore their self certification of such certificates



and mark-sheets were fraudulent.

12. The documents were therefore again caused to be re-examined and after such re-examination also the documents/certificates/mark-sheets furnished by the petitioners were found to be forged and fabricated.

13. The aforesaid order was brought on record and challenged vide I.A. No. 1 of 2019.

14. The counter affidavit on behalf of the respondent/Transmission Company admits of the fact that the contract of the petitioners was extended from time to time and on initial verification of the certificates after regularization of their services in the year 2015, the salary was resumed. However, it was found that the mark-sheets and the certificates of ITI which were self certified by the petitioners were found to be forged and fabricated and not issued by the Institution.

15. It has further been averred on behalf of the Transmission Company that the appointment of the petitioners on contract basis was void from the beginning



and therefore the order of regularization was also rightly cancelled because fraud vitiates everything.

16. Supporting the impugned order, the learned counsel for the Transmission Zone submitted that illegal appointment is no appointment and no sympathy can be had for such candidates/petitioners who had furnished wrong certificates. The principles of natural justice and fair play in action, it was alleged, is not available to a person who enters into service with fraud.

17. As against the aforesaid submissions made on behalf of the respondent/Transmission Company, it was reiterated by the petitioners that their employment was, in the first instance, contractual which was extended several times and ultimately it was regularized. Only after verification of the records, the salary of the petitioners were resumed.

18. It has further been averred that whatever be the decision, they were definitely entitled to a notice and an opportunity to explain that the certificates furnished



by them are not forged and fabricated.

19. It has also been stated that they have not violated any one of the terms and the conditions of the Office Order No. 395 dated 15.04.2015 (*Annexure-2*) by which their services had been regularized. That the petitioners had worked to the satisfaction of the Superior Officials and no complaint was ever lodged against them since last nineteen years of their service presupposes that they have the requisite expertise in the trade which could only have been obtained by their having pursued a regular course in any Institute.

20. The animadversion about the certificates of the petitioners being forged and fabricated appears to be rather strange and that also after so many years of their working with the Transmission Company.

21. However, once, it is found that the employment has been obtained on forged and fabricated certificates, it normally would not entail the requirement of issuing notice or providing opportunity of being heard



to such employees whose services are terminated on grounds of fraud. Nonetheless, in the present case, the contractual appointment was made in the year 2010 which was renewed from time to time and ultimately the services were regularized in 2015. A preliminary enquiry also was made with respect to the genuineness of the certificates furnished by the petitioners and only on finding it to be *prima facie* genuine, the salary to the petitioners was resumed.

22. In the aforesaid set of facts, it was absolutely necessary for the employer/respondent/Transmission Company to have noticed the petitioners and give them the opportunity of explaining as to why their services be not terminated as it was vitiated *ab initio*.

23. While saying so, this Court has taken special note of the fact that there was some enquiry in the beginning and only after a lapse of two years, another communication was made from the Director that the services were not genuine. What was the basis of



coming to such conclusion and on which factors and indices was this decision taken has remained obscure and it has had a water fall/cascading effect on the petitioners.

24. True it is that the principle of promissory estoppel which is based on equitable consideration is not applicable to a person who obtains his appointment on misrepresenting his educational qualification and such appointee cannot claim retention in service merely on the ground that he has worked for several number of years, nonetheless it has to be doubly ensured that the appointment was bad from the beginning and that it is vitiated by fraud.

25. In ***Kendriya Vidyalaya Sangathan vs Ajay Kumar Das 2002 (4) SCC 503***, it has been held that in cases of appointment orders which are nullity, the question of observance of principles of natural justice would not rise. Similarly, in ***Bar Council of India versus High Court of Kerela, 2004 (6) SCC 311***, it



has been held that the principles of nature justice cannot be stretched too far and their applications may be subject to the provisions of statutes or statutory rules.

26. However, the facts in the aforementioned cases were different and in the present case, there is nothing on record to know as to why the certificates on the basis of which the petitioners were engaged on contractual basis in the first instance and thereafter were regularized, have been found to be forged and fabricated after a long time. This therefore necessarily obligates the respondent/transmission company to notice the petitioners and seek their response.

27. In the present case, though strict application of ***Parshotam Lal Dhingra versus Union of India AIR 1958 SC 36*** and ***Kumari Shrilikha Vidyarthi versus State of UP & Ors 1991(1) SCC 212*** is not warranted, nonetheless, in order to avoid any arbitrariness in the action of the respondents Transmission Company, this Court holds that notice



ought to have been given to the petitioners.

28. For the aforesaid reasons, the orders impugned in the present petition are set aside.

29. The respondent company is directed to issue notice to the petitioners and seek their response and thereafter pass necessary orders in accordance with law.

30. It would not be open for the petitioners to seek their reinstatement in the meanwhile.

31. The aforesaid exercise shall be completed within a period of six months of the receipt/production of a copy of this order.

32. With the aforesaid observation/direction, the writ petition stands disposed of.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	06/07/2019

