

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 299 of 2019**

*{Arising out of Order Dated 11.04.2019 passed in Writ Petition(S) No. 481 of 2013 by
the learned Single Judge}*

Nawal Kishore Mishra S/o Late Nageshwar Mishra, Aged about 52 years,
R/o Subhash Nagar, Charcha Colliery, PS Charcha, District Koriya,
Chhattisgarh

----Appellant**VERSUS**

1. South Eastern Coalfield Limited, Through: The Chief General Manager, SECL Area, Baikunthpur, PS Baikunthpur, District Kororia, Chhattisgarh
2. The President/Managing Director, SECL Bilaspur, Seepat Road, P.S. Sarkanda, Tahsil and District Bilaspur Chhattisgarh

-----Respondents

For Appellant	:	Shri, Ashok Shukla, Advocate
For Respondent No. 1/SECL	:	Shri Vinod Dekhmukh, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per Parth Prateem Sahu, J.****03/07/2019**

1. The Appellant/Petitioner has assailed the order passed by the learned Single Judge dated 11.04.2019 whereby his petition has been dismissed in *limine*.
2. The case of the Appellant is that he was appointed as General Majdoor, Category-I on 22.10.1995. Subsequently, he was terminated from service on 22.10.1997 without conducting any departmental enquiry.

3. As per the materials available on record, it shows that earlier, the order of termination dated 22.10.1997 was challenged by the Appellant herein before the learned Single Judge in Writ Petition No. 1685 of 2001, which was allowed and the order of termination was set aside. The said order passed by the learned Single Judge was assailed by the Respondent-SECL in Writ Appeal No. 59/2007 before the learned Division Bench which set aside the order of the learned Single Judge *vide* the judgment dated 01.04.2009. The subsequent writ petition was filed by the Appellant seeking quashing of the termination order and reinstatement in service with consequential benefits, on the ground that he has been acquitted of the criminal charges in the trial conducted by the Judicial Magistrate, First Class, Baikunthpur, District Koriya.
4. On perusal of the order passed by the Judicial Magistrate First Class, Baikunthpur, it would show that the Appellant has been acquitted of the charges on the ground that the prosecution failed to prove the charges.
5. Service of appellant was terminated on the ground that I.T.I. examination certificate produced by him for getting employment was not genuine. Conditions of appointment have been discussed by a Division Bench of this Court in Writ Appeal No.59/2007 (Annexure P-7) and relevant portion of the same is reproduced herein below.

“(2)According to the terms and conditions of the appointment, the services of the respondents/petitioners were terminable at any time, if it is found that the respondents/petitioners have produced false certificates of educational qualifications, residence, caste etc., either at the time of interview or at the time of appointment. The respondents had also given verification that their services may be terminated in case the information submitted by them is false.

The service of the respondents were terminated *vide*

order dated 22/23-10-1997 (Annexure P-3 in the writ petition) on the ground that the I.T.I. examination certificate produced by the respondents/petitioners were not genuine as on verification of their certificates from the Secretary, State Board of Examination, Sanchanalay, Rojgar Evam Prasikshan, Madhya Pradesh, Jabalpur, it was informed to the appellants that the certificates are forged (Annexure A-5). The respondents were not given show cause notices before passing the impugned order of termination dated 2/23-10-1997 which was a common order in relation to six such persons including two respondents. This order was challenged before the writ court in the said writ petition only on the ground of non-observance of principles of natural justice. The writ court (learned single Judge) took the view that even in order to come to conclusion that the certificates were false and were not genuine, there should be an enquiry and the employees cannot be condemned without affording them an opportunity of hearing to present their case. The writ court relied upon the decision of the Supreme Court rendered in the matter of **Basudeo Tiwary v. Sido Kanhu University and others, AIR 1998 S.C. 3261** and quashed the impugned order Annexure P-3 and allowed the writ petition by further allowing the entitlement of the respondents to receive 30% of back-wages. This has been challenged by the appellants/management in this appeal.”

6. After discussing various judgments passed by Hon'ble Supreme Court, the Division Bench has held thus:

“(11) Shri D.N. Prajapati, has also argued that I.T.I. pass was not an essential qualification for appointment to the post of General Mazdoor Category-I. He referred to a document, Letter dated 14/15-3-2008 addressed to the Public Information Officer, S.E.C.L., Bilaspur, by the Regional Public Information Officer, Baikunthpur area in a matter of information sought by a third party, which was filed along with I.A. No. 3 before us. In the said document, at pg. No. 4, para 6 it has been mentioned that no educational qualification is required for the post of General Mazdoor, but the standard of I.T.I. has been fixed by the State Government. His submission was that since no qualification was required for appointment to the said post, termination on the ground of production of such

certificates of I.T.I. was not good. We are unable to accept such argument. In *A.P. public Service Commission case (supra)*, the false/incorrect information was given in that part of the form which was not applicable to the candidate. Holding the rejection proper, the Apex Court laid down that "As to the purpose for which the information was called, the employer is the ultimate Judge. Relevance of the information cannot be judged by the candidate". In the present case also, it may be that selections would have been made on the basis of I.T.I. certificates as the standard of I.T.I. has been fixed by the State or such certificates may have been given some weightage in the process of selection of the candidates which we do not know because the employer was the ultimate Judge for all this. What was the relevance of these certificates is not to be judged by the respondents/petitioners and the respondents cannot be allowed to pray for ignoring the said certificates.

(12) For the foregoing discussions, the writ appeal is allowed. The impugned order passed by the learned single judge is set aside and the writ petition is dismissed.

7. In the writ petition, subject matter of this appeal, appellant has prayed for following reliefs:-

"10.1 That, this Hon'ble Court may kindly be pleased to call for the entire records pertaining to the case of the petitioner.

10.2 That, the Hon'ble High Court may kindly be pleased to declare that in view of the acquittal in criminal case, the termination order dated 22/10/1997 (Annexure P-5) is in-operative in the eyes of law.

10.3 That, the Hon'ble High Court may kindly be pleased to issue an appropriate writ/direction to the

respondents commanding/directing them to reinstate the services of the petitioner with all consequential benefits including full back wages as well.

10.4 That, this Hon'ble court be further pleased to pass any other order or any such writ or direction or relief in favour of the petitioners and against the respondents as it deems fit under the facts and circumstances of the case."

8. Learned counsel for appellant submits that as appellant has been acquitted of the charge by the competent criminal Court, therefore, the order of termination dated 22.10.1997 is inoperative and learned single Judge committed error in dismissing writ petition only on the ground that his challenge to order of termination dated 22.10.1997 has been affirmed by Division Bench of this Court. He further submits that as he was acquitted from criminal charges, he is entitled for reinstatement.
9. We are not convinced with the submissions made by learned counsel for the Appellant. Acquittal in criminal case is on different consideration and in this case, criminal Court has come to conclusion that the prosecution failed to prove charge under Section 420 of IPC leveled against the appellant. Whereas the termination of appellant was on the ground of submission of document for procuring employment which was not found to be genuine. While upholding the order of termination of service, the Division Bench categorically recorded that the appellant never claimed that the documents pointed out to be not genuine are authentic and genuine documents.
10. Once the order of termination dated 22.10.1997 was challenged by appellant before this Court by filing petition on the grounds mentioned therein and ultimately, the same was decided against him upholding the

order of termination then the appellant cannot be permitted to re-agitate that issue which has already been decided by this Court and has also attained finality.

11. In view of above facts and circumstances of case, we do not find any illegality or infirmity in the order passed by learned single Judge calling interference of this Court.
12. Accordingly, the appeal being devoid of any substance is liable to be and is hereby dismissed.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

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