

CWP-17101-2017 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-17101-2017 (O&M)
Date of decision : 06.09.2019**

Azad Rakib

... Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd. and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Satish Chaudhary, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana,
for the respondents.

AMIT RAWAL, J.

Challenge in present writ petition is to the suspension order dated 22.03.2017 (Annexure P1) and show cause notice dated 05.06.2017 (Annexure P-2).

Facts which emanate from the pleadings are that petitioner in the year 2010, was appointed as Assistant Lineman, after due process of selection by the Haryana Staff Selection Commission (Annexure P-4). After appointment, all credential/certificates of petitioner were verified from their respective institutions, found to be genuine and in original condition.

Mr. Satish Chaudhary, learned counsel counsel for petitioner submitted that certificates (Annexure P5 & P-6) were not touched, during all this period, though petitioner, in Model Industrial Training Institute,

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Rewari, remained regular student for the period of two years w.e.f. August 2004 to July 2006, for obtaining ITI Trade Certificate (Electrician). Vide letter dated 05.12.2016 (Annexure P-7), Principal of the aforementioned Institute, certified that petitioner was regular student of the Institute. Even, respondents at their own level, sought information from the Principal regarding his verification, which has been found satisfactory. Even, petitioner in the year 2015 i.e. on 10.07.2015, was promoted to the posts of Lineman. At no stage i.e. submission of employment application before the Commission or the Employer, during selection, petitioner ever misrepresented or any objection was taken regarding ITI Trade Certificate (Electrician), thus, Annexure P-1, dated 22.03.2017 and show cause notice dated 05.06.2017 (Annexure P-2) qua termination, are wholly uncalled for, much less, fallacious.

Mr. Hitesh Pandit, Addl. A.G., Haryana, submitted that as per Regulation No.1.2 of Recruitment and Promotion Policy of Non-Gazetted Technical Staff, as applicable to Dakshin Haryana Bijli Vitran Nigam (DHBVN), requisite qualification for appointment of Assistant Lineman was Matric with two years' ITI Electrician/Wireman Trade or two years' Vocational Course under Trade of Lineman. At the time of joining, petitioner submitted certificates issued by the aforementioned Institute, but on verification, it was found that Institute was not in existence. In fact, certificate was not issued by the Department and reliance has laid to letter dated 07.11.2016 and 06.02.2017 (Annexure R-1 and R-2), respectively. As per Annexure R-3, Deputy Director (Training), Industrial Training Department, Haryana, informed the Superintendent Engineer, Operation

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City Division, South Haryana Bijli Vitran Nigam, Faridabad, that
aforementioned Institute was bogus as the Department had not, at any point
of time, given any affiliation to this Institute, which is evident from the
web-site of the Government. In support of his contentions, relies upon *ratio
decidendi* culled out by Hon'ble the Supreme Court in **“Rakesh Kumar
Sharma V/s Govt. of NCT of Delhi and others” 2013 (11) SCC 58** as well
as **“Vice-Chairman, Kendriya Vidyalaya Sangathan and another V/s
Girdharilal Yadav” (2004) 6 Supreme Court Cases 325.**

I have heard learned counsel for parties and appraised paper
book.

It would be apt to reproduce Regulation No.1.2 of Recruitment
and Promotion Policy of Non-Gazetted Technical Staff i.e. criteria for
taking incumbent on post of respondents as Assistant Lineman, which reads
as under:-

*"1.2 Assistant Lineman 1.2.1 97% posts of ALM will be filled
up by direct recruitment from amongst the persons having
minimum qualification of Matric with 2 years ITI
Electrician/Wireman trade or having 2 years Vocational
course under the trade of Lineman conducted by Director, ITI
and Vocational Education, Haryana from any institute
recognized by the State Govt. must have passed Hindi/Sanskrit
up to Matric standard."*

Correspondence exchanged between Director, Industrial
Training Department, Haryana and DHBVN, reveals that on verification,
ITI Certificate in Electrician Trade of petitioner was not issued by the
Department as the Institute, aforementioned, was bogus. The contents of
letters (Annexure R-1 to R3) are extracted hereinbelow:-

"Letter dated 07.11.2016 (Annexure R-1)"

Subject: Verification of certificates.

In reference to your letter Memo No. 3803 Dated 03.10.2016 on subject cited above.

With regard to subject cited above this is hereby informed that the certificate of student Azad Rakeeb son of Sh. Shamshudin, Occupation Electrician of year 2006 is not issued by this department and certificate of student Rajesh Kumar son of Ram Nath, Occupation Wireman be verified on your own level from the concerned institution and the certificate of Digambar Singh son of Girdhari Lal is found correct as per record and has been issued by this department.

"Letter dated 06.02.2017 (Annexure R-2)"

Subject: Verification of certificates.

In reference to your letter Memo No. 3716 Dated 16.12.2016 on subject cited above.

With regard to subject cited above this is hereby informed that the certificate of student Azad Rakeeb son of Sh. Shamshudin, Occupation Electrician of year 2016 is not issued by this department. This is for your information please.

"Letter dated 02.03.2017 (Annexure R-3)"

Subject: With regard to affiliation of Model Industrial Training Institute, Rewari.

In reference to your letter No. 3716 Dated 16.12.2016 on subject cited above.

This is hereby informed that Model Industrial Training Institute, Rewari is a bogus institute because this department has not given affiliation to this institute. The list of institutes affiliated with this department is available at www.itiharyana.gov.in."

There is no rebuttal to the aforementioned document, in other

words, the aforementioned documents, in the absence of any rejoinder, remain uncontroverted.

It would be in the fitness of things to extract Clause 7, 9 and 10 of the appointment letter which reads as under:-

"Clause 7

7. The above offer of appointment is being made to you on the distinct understanding:-

7.1. That you actually possess the following qualification and will produce all the original certificates in its support:-

7.1.1 Matric with 2 year ITI in Electrician/wireman trade or having 2 year Vocational course under the trade of lineman conducted by Director, ITI & Vocational Education, Haryana from any institute recognized by the State Govt.

7.1.2 Must have passed Hindi/Sanskrit up to Matric standard.

7.2. That you are not a dismissed Govt. servant or a person convicted of an offence involving moral turpitude.

7.3. That you have not got more than one living wife/you are not married to a person who has get more than one living wife.

7.4. That you fulfill eligibility criteria of age i.e. were not less than 18 years and not more than 35 years of age on the last date of submission of application against Advt.no. 13/2007 Category No 18 and Advt. No. 04/2008 Category No.1. of HSSC Panchkula.

7.5 That you will produce at your cost, a health and age certificate required during the first entry into service from the Civil Surgeon of your Home District, if you belong to Haryana State or from the Civil Surgeon, Faridabad, if you belong to any other state.

7.6 That you will be required to serve and liable to be transferred to any office under the Dakshin Haryana Bijali Vitran Nigam or any place within the jurisdiction of the Bhakra Management Board, Beas Construction Board, or out

side the Haryana State or any other at the discretion of the Nigam.

7.7. If at present you are employed in Central/State Govt./ Semi Govt./ Autonomous Body etc. you will have to resign your present post before you are allowed to join the Nigam's service. It should be clearly understood that you will be treated as a new entrant in the service of the Nigam for all intents and purposes.

7.8 If you are prepared to accept the post offered to you on the above conditions, please signify your acceptance to this office within 15 days.

Clause 9

9. The following particulars/documents concerning your self should also be supplied at the time of joining the duty:-

- a) All the original certificates in support of your educational qualifications.*
- b) University Matriculation/school leaving certificate in support of your date of birth.*
- c) Medical certificate of fitness required as per 7.5 above.*
- d) An affidavit to the effect that you have not got more than one living wife/you are not married to a person, who have got more than one living wife and are not a dismissed Govt. servant or a person convicted of an offence involving moral turpitude.*

Clause 10

10. You are allowed to join the duty without verification of your character and antecedents, which will be got verified in due course of time. In case any adverse facts are reported by the concerned authorities against your character and antecedents your services will be liable to be terminated without any notice."

The law with regard to not possessing requisite qualification on the date of submission of application form and appointment letter being subject to condition of verification of documents, is no longer *res integra* in view of judgments cited *supra*, wherein after deliberating on the aforementioned proposition, Hon'ble Supreme Court in **Rakesh Kumar Sharma's (supra)**, has held as under:-

"16. In the instant case, the appellant did not possess the requisite qualification on the last date of submission of the application though he applied representing that he possessed the same. The letter of offer of appointment was issued to him which was provisional and conditional subject to the verification of educational qualification, i.e., eligibility, character verification etc. Clause 11 of the letter of offer of appointment dated 23.2.2009 made it clear that in case character is not certified or he did not possess the qualification, the services will be terminated. The legal proposition that emerges from the settled position of law as enumerated above is that the result of the examination does not relate back to the date of examination. A person would possess qualification only on the date of declaration of the result. Thus, in view of the above, no exception can be taken to the judgment of the High Court.

17. It also needs to be noted that like the present appellant there could be large number of candidates who were not eligible as per the requirement of rules/advertisement since they did not possess the required eligibility on the last date of submission of the application forms. Granting any benefit to the appellant would be violative of the doctrine of equality, a backbone of the fundamental rights under our Constitution. A large number of such candidates may not have applied

considering themselves to be ineligible adhering to the statutory rules and the terms of the advertisement."

Keeping in view the aforementioned facts, action of the respondents in suspending the petitioner, cannot be faulted with. No ground is made out for interference. Writ petition sans merit.

Dismissed.

Interim order dated 03.08.2017 is hereby vacated.

06.09.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No

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YOGESH SHARMA
2019.09.24 09:51
I attest to the accuracy and
integrity of this document **9**