

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2147 of 2020

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Sanjay Kumar Son of Late Kishori Choudhary Resident of Village- Paithana,
Post- Bhaganbiga, P.S.- Vena, District- Nalanda.

... .. Petitioner/s

Versus

1. The Employees State Insurance Corporation Through the Director General, Employees State Insurance Corporation, Panchdeep Bhawan, C.I.G. Road, New Delhi.
2. The Joint Director (Recruitment) Employees State Insurance Corporation, Panchdeep Bhawan, C.I.G. Road, New Delhi.
3. The Additional Commissioner and the Regional Director Employees State Insurance Corporation, Regional Chief, Panchdeep Bhawan, Ashram Road, Ahmedabad.
4. The Regional Director Employees State Insurance Corporation, Regional Office, Panchdeep Bhawan, Ashram Road, Ahmedabad.
5. The Deputy Director Employees State Insurance Corporation, Regional Office, Panchdeep Bhawan, Ashram Road, Ahmedabad.
6. The Joint Director I/C, Employees State Insurance Corporation, Sub Regional Office, ESI Hospital Campur, Civil Char Rastra, Surat Gujarat.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Chandra Moleshwar, Adv.
For the Respondent/s : Mr. Dr. Anshuman, Adv.
Mr. Sanjay Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)

Date : 03-02-2020

Heard learned counsel for the parties.

In the present case, the petitioner had appeared in the examination for the post of MTS (Multi Tasking Staff), he was given training of Multi Task Staff and vide memorandum dated 9.7.2012 was posted in the Employment State Insurance Corporation on the conditions stipulated therein. The petitioner



accepted the offer of appointment unconditionally and, in pursuance to which, the Deputy Director, respondent no.3, issued the office order no. 232/2012 dated 3.8.2012 whereby the petitioner has been appointed to the post of Multi Tasking Staff with effect from 6.8.2012 along with others. The petitioner was placed on probation for two years from the date of his joining having attached that the service under the Corporation will be liable to be terminated by giving one month notice in writing from either side, whereafter, vide order dated 28.1.2016, the Regional Director issued office order no. 33 of 2016 wherein mentioned the completion of probation satisfactorily with specific dates mentioned against their names. The name of the petitioner has been mentioned at item no.12 and and vide order no.341/2016 dated 28.10.2016, on the recommendation of the Departmental Promotion Committee held on 27.10.2016, the MTS personnel posted as LDC on regular basis. The name of the petitioner is standing on serial no.26. Accordingly, he was posted and was discharging the duty of LDC, SRO Surat. Later on, it transpired that the petitioner has obtained the service by playing fraud by way of impersonation as the thumb impression of the petitioner does not tally with the admitted thumb impression which led to dispensing with the services of the petitioner.



A plea has been taken by the petitioner that he will be deemed to have been confirmed and, as such, he is protected by the statutory provision incorporated by the ESI Corporation, inasmuch as, he cannot be dismissed from service, making an allegation of impersonation, without affording proper opportunity of hearing. So, the order passed by the Central Administrative Tribunal suffers from illegality as the Tribunal should have given direction to hold enquiry.

Learned counsel for the ESI Corporation submits that the petitioner has entered into service by fraud, so he cannot claim that he should have been given protection of hearing.

The person who has entered into service in illegal manner should be pushed out through the door by which he has entered into service. The petitioner has played fraud as the thumb impression does not tally with the admitted thumb impression and in an identical matter, this Court vide order dated 19.1.2017 passed in CWJC No. 4397 of 2016 has dismissed the writ petitioner.

Having considered the rival contentions of the parties, from the records, it is apparently clear that the thumb impression does not tally with the admitted thumb impression of the petitioner. In such circumstances, naturally the inference would be



drawn that he has entered into service by illegal method i.e. impersonation. The appellant cannot claim a right of protection by way of giving an opportunity of hearing when he himself has adopted a wrong method for entering into service.

In that view of the matter, we do not find any error in this writ application and the same is, accordingly, dismissed.

(Shivaji Pandey, J)

(Anjani Kumar Sharan, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.02.2020
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