

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8310 of 2020

Ishwar Kumar Singh Son of Bhajan Singh Resident of Mohalla- Mahavir
Asthan Kuraich, Post Office and Police Station- Sasaram, District- Rohtas.

... .. Petitioner

Versus

1. The Bihar State Power (Holding) Company Ltd., Vidyut Bhawan, Bailey Road, Patna.
2. The General Manager- cum- Chief Engineer South Bihar Power Distribution Company Limited, Central Electric Supply Area 8, Serpentine Road, Patna.
3. The Deputy General Manager- cum -Electrical Superintending Engineer South Bihar Power Distribution Company Limited, Central Electric Supply Area 8, Serpentine Road, Patna.
4. The Senior Manager (Personnel) South Bihar Power Distribution Company Limited, Central Electric Supply Area 8, Serpentine Road, Patna.
5. The Special Executive Officer (Human Resources/ Administration), Bihar State Power (Holding) Company Ltd. Patna, Vidyut Bhawan, Bailey Road, Patna.
6. The Electrical Executive Engineer Electric Supply Division, Buxar.
7. The Electrical Assistant Engineer Electric Supply Sub- Division, Itarhi, Buxar (Rural).
8. The Electrical Junior Engineer Electric Supply Branch, Itarhi, Buxar (Rural).
9. Dinesh Kumar Son of Late Parshuram Thakur Resident of Mohalla- Barah Pathar, Post Office- Dehri, Police Station- Dehri-on- Sone, District- Rohtas, at present posted on the post of Switch Board Operator, 33/11 K.V. Electric Power Sub Circle Indrapuri, Dehri- on-Sone, Post Office and Police Station- Indrapuri, District- Rohtas.
10. Sudama Prasad Son of Kailash Sharma Resident of Mohalla- Barah Pathar, Post Office- Dehri, Police Station- Dehri-on- Sone, District- Rohtas, at present posted on the post of Switch Board Operator, 33/11 K.V. Electric Power Sub Circle Karwandiya, Dehri- on-Sone, District- Rohtas.
11. Kush Kumar Mishra Son of Amarnath Mishra Resident of Mohalla- Kuraich Mahavir Asthan, Ward No. 5, Sasaram, Post Office and Police Station- Sasaram, District- Rohtas, at present posted on the post of Switch Board Operator, 33/11 K.V. Electric Power Sub Circle Veda, Sasaram, Police Station- Sasaram, District- Rohtas.
12. Alok Kumar Son of Amarnath Mishra Resident of Mohalla- Kuraich Mahavir Asthan, Ward No. 5, Sasaram, Post Office and Police Station- Sasaram, District- Rohtas, at present posted on the post of Switch Board Operator, 33/11 K.V. Electric Power Sub Circle Takiya, Sasaram, Post Office and Police Station- Sasaram, District- Rohtas.

... .. Respondent/s



Appearance :

For the Petitioner/s : Mr. Rajani Kant Singh, Advocate
For the Respondent/s : Mr. Kumar Priya Ranjan, Advocate

**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT**

Date : 23-12-2020

As of now, the Courts have not resumed normal physical hearing. The matter has been listed today for consideration through Video Conferencing.

Learned counsel are appearing and making submissions from their residence. The Court master and Secretary are also part of this virtual Court proceedings with the aid of audio visual technology.

Heard learned counsel for the petitioner as well as learned counsel for the Respondents -Bihar State Power Holding Corporation Limited.

The writ petition has been filed with a prayer seeking quashing of the order dated 26.08.2020 bearing memo No.537 terminating the petitioner's services with the South Bihar Power Distribution Company Limited (hereinafter referred to as the "Company").

The brief factual background is that on the basis of a Vocational Training Certification in Electrician trade by issued by All India Board of Educational Training certifying that the petitioner had completed the course of training at Kanha



Industrial Training Institute, New Delhi, the petitioner applied for appointment as Switch Board Operator on contract basis pursuant to the advertisement No. 01 of 2010 issued by the Bihar State Electricity Board, Central Electricity Supply Area, Patna. Merit list was prepared and petitioner was selected. On 04.04.2011 the General Manager-cum-chief Engineer, Bihar State Electricity Board, Central Electric Supply area, Patna, appointed the petitioner on contract basis for a period of one year as Switch Board Operator. The petitioner, thereafter, continued to discharge his duties. It is the petitioner's case that under order dated 31.03.2015, the General Manager (HR/Admin) of the successor Bihar State Power (Holding) Company Limited Patna, regularized the services of the petitioner in pay band-1.

It is submitted by the petitioner's counsel that his salary was stopped all of a sudden after November, 2019. It would be relevant to mention here that the Bihar State Power Holding Company Limited had undertaken an exercise to verify the mark- sheet and I.T.I. certificate issued by the Kanha ITI, New Delhi, which was submitted by the petitioner. The Examination In-charge of the Directorate of Training and Technical Education, New Delhi (hereinafter referred to as the 'DTTE')



has sent an E-mail dated 23.12.2019 to the respondent-Company, wherein, they have communicated that the petitioner's certificate certifying that he has obtained Vocational Training in the trade of Electrician from the Kanha I.T.I., New Delhi, was not issued by the Department. No records were available with the Department in respect of the petitioner or with respect to the Industrial Training Institute. The copy of the E-mail is Annexure-B to the counter affidavit filed by the respondent-Company. This correspondence has apparently led to stopping of salary for the Month of December, 2019.

A show cause notice, dated 26.12.2019, has also been issued to the petitioner. The petitioner has been called upon to submit his explanation as to why his services be not terminated for having obtained regularization based on forged and fabricated certificate/ mark sheet. The Show cause notice also proposes initiation of legal proceedings against the petitioner.

In terms of the said show cause notice, the petitioner has submitted his reply dated 18.01.2020. In his reply, the fact that he has submitted Vocational Training Certificate and mark sheet issued by the Kanha I.T.I. has not been denied or disputed by the petitioner. The petitioner has asserted that after due verification his documents have been accepted at the time of appointment on



contractual basis. In the circumstances, the Authorities, now after regularizing the petitioner's services, could not have raised the issue of the mark sheet and Vocational Training Certificate being forged or fabricated. The petitioner has also stated that several other candidates who had applied in the same process of selection along with the petitioner, relying upon the certificate issue by the Kanha I.T.I., continued to be in employment of the respondent-Company. In effect, he has alleged discrimination. The petitioner has specifically named four persons, who have been continued in employment. Four such persons have also been impleaded as respondents in the instant writ proceedings.

Having considered the show cause of the petitioner, the respondent in the counter affidavit, have taken a specific stand that certificates of other persons, who are similarly situated as the petitioner, are under verification from the respective Institute. Such a statements of the respondents, in the counter affidavit, has not been denied or disputed by filing any reply or rejoinder. In the opinion of this Court, this clearly takes care of the alleged discrimination by the petitioner. Plea of discrimination, therefore, is clearly unsustainable.

In so far as the other submissions advanced by the petitioner's counsel to the extent that since he has now been



regularized, the Authorities could not have proceeded to look into the mark sheet or Vocational Training Certificate issued by the Kanha I.T.I. This Court, is in agreement with the submissions advanced by the counsel for the respondent-Company which is based on the order dated 31.03.2015 whereby and whereunder the petitioner claims to have been regularized. The regularization order (Annexure-A to the counter affidavit) is conditional. Clause (i) clearly specifies that the validity of the Educational Qualification shall remain the same as on the date of engagement on contractual basis. Clause (viii) clearly contemplates that if any information with regard to qualification and other parameters submitted by the candidates is found incorrect, or if any discrepancy is found in part or full, at any time during the period of their employment, their services will be terminated with retrospective effect and legal action will be initiated. It also contemplates recovery of pay and allowances received by them on this account. The competent Authority (DTTE) has communicated in unequivocal terms that the petitioner's certificate certifying his Vocational Education from Kanha ITI, New Delhi, has not been issued by the Department and that no records are available with the Department in respect of the petitioner or the Institute. This



communication which has been placed on record as Annexure-B to the counter affidavit, has not been denied or disputed by the petitioner by filing any rejoinder or reply thereto. This Court would further observe that the regularization order with the condition that the regularization would stand terminated with retrospective effect if the same was found to be obtained on the basis of incorrect information regarding qualification etc., has been accepted by the petitioner with open eyes. The petitioner was knowing well the consequences of submission of false/incorrect information regarding the qualification, in this case being Vocational Training Course, would result in his termination. It does not, therefore, lie in the mouth of the petitioner, today to contend that since the documents have been examined at the time of appointment on contractual basis, now the same cannot be re-examined /verified, and made the basis of terminating the petitioner's services, post regularization.

The respondents counsel has also relied upon the decision of the Apex Court in the case of ***Vijay Kishanrao Kurundkar & Anr. v. State of Maharashtra & Ors.*** in ***Civil Appeal No. 1865 of 2020***. He has laid stress on paragraph no.12 of the said judgment to support the termination assailed in the instant proceedings which reads as follows:



*12. The decision in **Punjab National Bank** must be read in light of these observations by the three-Judge Bench of this Court in **Food Corporation of India**. It is trite law that an appointment secured on the basis of a fraudulent certificate is void ab initio. It is not open to the government to circumvent the existing statutory mandate by indefinitely protecting the deceitful activities of such candidates through the use of circulars or resolutions.*

In view of the specific conditions contained in the order of regularization, the authorities retained the option to verify the documents submitted by the petitioner. Since the same have found to be false/fabricated, the Authorities, in the opinion of this Court, were well within their right to terminate the petitioner's services.

Another submission advanced by the counsel for the respondent Company is that the petitioner has not approached the writ Court with clean hands. The relevant conditions of regularization contained in the order of regularization was deliberately suppressed by the petitioner when he filed the writ petition. The order of regularization has been enclosed as Annexure-6 to the writ petition. However, the page containing the conditions (i) and (ix) have not been annexed. It is in this page that the relevant conditions have been imposed in the order of the regularization, relying upon which the certificate and mark sheet submitted by the petitioner has been verified, and on the same being found incorrect/false/fabricated the



petitioner has been visited with the consequence of termination. The respondents have placed the entire order of regularization along with these conditions at Annexure-A to the counter affidavit. The petitioner has not rejoined the averments made in the counter affidavit nor he has denied or disputed the fact that the regularization was conditional.

From the pleadings of the parties, this Court is inclined to accept the submission advanced by the learned counsel for the respondent-Company. The petitioner has approached this Court by filing his writ petition with incomplete order of regularization dated 31.03.2015. The petitioner has withheld the relevant page of the order of regularization, wherein, the conditions have been imposed in the order of regularization, relying upon which, the Authorities have terminated the petitioner's services. The suppression is clearly of a relevant and material fact which has a relevant bearing on the final disposal of the writ petition on merits. It is trite law that suppression of such relevant and material fact disentitles the petitioner to grant of relief under writ jurisdiction. In this connection, this Court would consider it useful to refer to the decision of the Apex Court in the case of *Arunima Baruah v. Union of India and others* reported in *2007(6) SCC 120*, wherein, the Apex Court



has considered that the High Court while exercising jurisdiction under Article 226 of the Constitution of India is a Court of equity. The petitioner was required to approach the Court with clean hands which, in the instant case, the petitioner has not done. Having failed to approach the Court with clean hands, this Court would observe that the petitioner is not entitled to any relief under the equitable writ jurisdiction of this Court. On this ground also the writ petition is fit to be dismissed.

In view of the above noted reasons, this Court finds no merit in the writ petition filed by the writ petitioner and the same is dismissed.

(Madhuresh Prasad, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24.12.2020
Transmission Date	

