

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 3302 of 2011**

Surendra, Aged about 27 years, S/o. Jairam, R/o. Village Choura, Police Station Nursingpur, Tehsil Rajpur, District Surguja, Chhattisgarh, Presently working as General Labour Category-1, Navapara Project, Bhatgaon Area, SECL, District Surguja Chhattisgarh

---- Petitioner**Versus**

1. South Eastern Coalfields Ltd. Through: the Managing Director, Seepat Road, SECL Bilaspur, District Bilaspur, Chhattisgarh
2. The General Manager, Bhatgaon Area, SECL, District Surguja, Chhattisgarh
3. The Sub Area Manager, Sub Area Kalyani, Area Bhatgaon, SECL, District Surguja, Chhattisgarh
4. Mines Superintendent, Navapara, Mines, Area Bhatgaon, SECL, District Surguja, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. A.N. Pandey, Advocate
For Respondents	:	Mr. Shailendra Shukla, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****28/10/2020**

1. The challenge in the present writ petition is to the order of termination from service dated 29.05.2011 passed by the respondent No.2.
2. The facts relevant for the adjudication of the present writ petition is that the petitioner got an employment under the respondents in the capacity of a land oustee (whose land was acquired by the respondents). The petitioner was appointed vide order dated 16.08.2009 on the post of General Labour Category-1. He gave his joining on 03.09.2009. Subsequently, however the petitioner was

issued with a charge sheet-cum-suspension order (Annexure P/6) on 16.05.2011. The allegation against the petitioner was that he obtained employment fraudulently by providing false information. The petitioner thereafter gave a reply to the said on 18.05.2011 (Annexure P/7). Without further processing the matter, the respondents vide the impugned order (Annexure P/1) dated 29.05.2011 passed an order terminating him from service leading to the filing of the present writ petition.

3. The challenge to the impugned order is on the ground that the same is in total contravention of all the principles of natural justice. According to the petitioner, the action on the part of the respondents in the issuance of the termination order was firstly without conducting a departmental enquiry. Secondly, without scrutinizing as to whether the allegations made by the respondents was correct or not. Thirdly, it was contended that the decision of the respondents was on extraneous considerations like a correspondence received from the office of the Deputy Collector, which has been accepted to be gospel truth and the impugned order has been passed. According to the petitioner, he was not even issued with the alleged inquiry conducted by the Deputy Collector, nor was the petitioner taking into confidence on the inquiry report submitted by the Deputy Collector. The contention of the petitioner is that he has been removed on the alleged ground of the petitioner not being the relative of the actual owner of the property against which the employment has been given to the petitioner, whereas according to the petitioner, the name of the petitioner stands reflected in the revenue records, so also in the land acquisition proceedings. In the award also the name of the petitioner

is reflected. According to the petitioner, the entire action has been made on the basis of some false complaints made against the petitioner and without verifying the true contents of the complaint the services of the petitioner have been abruptly terminated and the same therefore requires to be set-aside/quashed and the petitioner is entitled for being given the consequential relief.

4. Per contra, Mr. Shailendra Shukla, learned counsel appearing for the respondents opposed the petition on the ground that the entire action has been taken by the respondents on an order received from the Deputy Collector, Bhatgaon who had intimated the respondents that the petitioner has obtained the employment by providing false information and that he was not in fact a land oustee, but has been able to manipulate the records in getting his name entered in the revenue records as also in the award under the land acquisition proceedings and thereafter has obtained employment. According to the counsel for the respondents, it was also informed by the Deputy Collector that the petitioner was nowhere directly or indirectly related to the original land oustee Smt. Muniya wife of Koduram, who is residence of village Choura, Tehsil Rajpur, District Surguja. The Deputy Collector further intimated the SECL that the petitioner in fact was not a resident of District Surguja, but in fact was a permanent resident of District Jashpur and for all these reasons, the Deputy Collector had advised the respondents-SECL to cancel the appointment of the petitioner. According to the counsel for the SECL, since there was an inquiry already conducted by the Deputy Collector, no purpose would have been served if the SECL would have again conduct an inquiry. It was further contended by the

learned counsel for the respondents that the petition suffers from non-joinder of necessary parties in as much as the State Government has not been made a party. According to the respondents, since the entire action on the part of the SECL was based on the correspondence made by the Deputy Collector, it was necessary for the petitioner to have also impleaded the State Government as a necessary party, and therefore the petition suffers from non-joinder of necessary party.

5. Having heard the contentions put forth on either side and on perusal of record, admittedly the petitioner was given an appointment vide order dated 16.08.2009 and the services of the petitioner was terminated vide Annexure P/1 dated 29.05.2011. Undisputedly, the petitioner had worked with the respondents for a period of almost two years. Another undisputed fact in the present case is that the petitioner was in fact issued with a charge sheet-cum-suspension order (Annexure P/6) dated 16.05.2011. The petitioner had specifically denied the allegation so made vide Annexure P/7 immediately on 18.05.2011.
6. By now it is a well settled proposition of law that whenever a decision which has a civil consequence is taken, the least that is expected is to conduct an inquiry ascertaining the truth of the matter and then take a decision. In the instant case there is a serious allegation of the petitioner having obtained an employment fraudulently. Another legal position that stands settled is that whenever there is a decision by the employer casting stigma on an employee, it becomes incumbent upon the employer to have first conducted an inquiry and

should have got the allegations verified before casting stigma upon the employee. Even the Constitution of India under Article 311 envisage that no person shall be dismissed or removed except after conducting an inquiry and after giving a reasonable opportunity of hearing in respect of the charges leveled against the person.

7. What has to be understood at this juncture is that the effect of the impugned order is that of termination from service. Another fact, which is reflected from the order is that the order of termination also reflects a stigma that has been casted and the stigma is the petitioner firstly obtaining employment by fraud. Secondly, playing fraud to the extent of manipulating the revenue records, so as to enable him an employment with the respondents. Both these stigmas are quite serious in nature and it would have a long lasting repercussion so far as the career of the petitioner is concerned.
8. Given the said fact that there are serious stigmas casted against the petitioner, the impugned order of termination cannot be considered to be a termination simplicitor. It is rather a termination of service punitive in nature. Termination simplicitor refers to a termination of the contract of service i.e. discontinuance of the contract or discontinuance on the expiry of a contract, which in other words means termination of employment otherwise than by way of punishment or penalty. There are en-number of judgments of the Hon'ble Supreme Court as also by the various High Courts including this High Court, which clearly lays down the principle that in the event of a service of an employee is terminated on a reason of a misconduct or a particular act on the part of the petitioner, which is

the bases for employment and when you compare the facts of the present case, it would be clearly reflect that the petitioner was issued with a charge sheet-cum-order of suspension. On 16.05.2011 petitioner did reply categorically denying all the allegations made. Under the such circumstances, it was incumbent upon the respondents to have conducted a fact finding inquiry, by which the allegations or the charges or the report that are submitted by the Deputy Collector could have been substantiated. The petitioner also would have got a fair and reasonable opportunity to substantiate his contention particularly when in the land acquisition proceedings, the name of the petitioner is reflected in the award as a beneficiary.

9. Moreover, the appointment of the petitioner was on the recommendation made by the State Authorities being a land oustee. Another fact which could have been examined in the course of the employment was the relationship that the petitioner had with the original land owner Muniya Bai and also evidence as to how and in what capacity and under what authority of law did he come in possession of the said property against which he has got his employment. Under such circumstances, the impugned order of termination from service dated 29.05.2011 is not sustainable in the eye of law and the same deserves to be and is accordingly set-aside/quashed.
10. As a consequence, the petitioner would be entitled for reinstatement in service. However, applying the principles of "No Work No Pay" and also taking the long duration of time that has lapsed from the date of termination till now, the petitioner would not be entitled for

any wages. However, he would be entitled for all other benefits of continuity of service. This Court having quashed the impugned order only on the ground of not conducting an inquiry, the right of the respondents stands reserved for conducting an inquiry and on being satisfied that the petitioner has fraudulently obtained employment, the respondents-Management would be free to take appropriate decision in accordance with the Service Rules or the standing order as the case may be governing the field.

11. The writ petition accordingly stands allowed to the aforesaid extent.

Sd/-
(P. Sam Koshy)
Judge

Ved