

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 7463 of 2011**

Chhattisgarh State Power Generation Company Limited Korba (East),
through Executive Engineer Korba (East), Tahsil and District Korba, CG

---- Petitioner**Versus**

1. Vishal Das S/o Ganesh Das, Ex- Conductor Class-III, R/o Tulshinagar, CSEB Colony Korba, Thasil and District Korba, CG
2. State Industrial Court, Bench Bilaspur (CG) Through Member Judge, Bilaspur (CG)

---- Respondents

For Petitioner	:	Mr. Vinay Pandey, Advocate
For Respondent No.1	:	Mr. Shivendu Pandya, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****15.03.2021**

1. The challenge in the present writ petition is to the order Annexure P-1 dated 04.11.2011 passed by the State Industrial Court, Bilaspur in Civil Appeal No. 8/CGIR/A-II/2011 where the learned Industrial Court in an appeal under Section 65 of the Chhattisgarh Industrial Relations Act (hereinafter referred "CGIR Act") has set aside the order of the Labour Court, Korba dated 09.03.2011 passed in Case No. 49/CG.I.R./Act 2009.
2. The brief facts relevant for adjudication of the present writ petition are that the respondent no.1 in the instant case was appointed under the petitioner establishment, on the post of daily wage employee in the year 1976 and in due course of time, he was regularized in service as Assistant Grade-III. The respondent-employee continued to discharge

his duties up till 27.11.2009 when the services of the petitioner was terminated only 3 days before the date of his retirement on 30.11.2009.

- 3.** The order of termination was subjected to challenge before the Labour Court in a proceeding under Section 31(3) of CGIR Act and the Labour Court finally vide its order dated 09.03.2011 rejected the application stating that the respondent-employee has not been able to provide sufficient justification in respect of his date of birth in the transfer/school leaving certificate while obtaining employment.
- 4.** The order of the Labour Court was subjected to challenge by the respondent-employee under Section 65 of the CGIR Act in an appeal before the State Industrial Court and the State Industrial Court vide impugned order dated 04.11.2011 allowed the appeal setting aside the order of the Labour Court and ordered the respondent-employee to be permitted to retire from service and to grant all the retiral dues which he was entitled for.
- 5.** It is this order of the Industrial Court subjected to challenge in the present writ petition, which was filed as early as on 07.12.2011 and this Court, at the first instance itself, had declined to pass an interim order except for grant of back wages for the period during which the employee was out of employment which in the instant case is only for 3 days.
- 6.** Today, when the matter is taken up for hearing, on a query being put to the learned counsel for the petitioner, he fairly concedes that since the High Court had declined to grant an interim protection, the petitioner establishment has released the entire retiral dues payable to the respondent-employee and as such, the order passed by the Industrial Court stands duly complied with, except for the challenge in the present

writ petition.

- 7.** From perusal of the record it appears that some complaint was received by the petitioner establishment in respect of the respondent-employee obtaining employment by relying upon fake and fraudulent documents in respect of his educational qualification as also his date of birth.
- 8.** The Department served the respondent-employee with a charge sheet on 25.11.2009 i.e. 5 days before his retirement on 30.11.2009. The employee was granted 24 hours time for submitting his explanation to the charge sheet. The employee submitted his explanation on the very next day i.e. on 26.11.2009. However, before the employee could submit his reply, the Department along with the charge sheet on 25.11.2009 itself appointed Inquiry Officer and Presenting Officer. The inquiry proceedings were initiated whereby the respondent-employee was called upon to lead evidence in his defence and thereafter, an inquiry report was submitted on 27.11.2009 and an order of termination was also issued on the very same day on which the inquiry report was submitted on 27.11.2009 without even issuing a second show cause notice to the employee concerned.
- 9.** According to the petitioner, the impugned order of the Industrial Court is bad to the extent that the Industrial Court has failed to appreciate the fact that there was no justification or defence provided by the respondent-employee to substantiate his contention or to disprove the allegations/charges levelled against him. It was contended that there was no evidence whatsoever led by the respondent-employee to hold that the charges were without any basis or that the certificate which is said to be fake by the Management was in fact an authenticated

document duly issued by the school authorities. Therefore, the finding of the Industrial Court is liable to be recalled and the order of the Labour Court rejecting the claim of the respondent-employee needs to be affirmed.

10. Per contra, counsel appearing for the respondent-employee submits that it is a case where the Management has totally failed to prove their case before the Inquiry Officer as also before the Labour Court establishing the charges or the allegations levelled against the employee and in the absence of any evidence, the finding given by the Industrial Court does not warrant any interference and the same is based on the finding of fact available on record. He further submits that from the proceedings drawn by the petitioner it would be evidently clear that sufficient and fair opportunity of defence has not been provided to the employee before issuance of the termination order and for this reason also the finding of the Industrial Court being a finding of fact does not warrant interference.

11. Having heard the contentions put forth on either side and on perusal of the record, the admitted factual position as it stands is that the respondent no.1 i.e. the employee was engaged as a daily wager initially in the year 1976. Down the line the respondent-employee was regularized in service in the year 1983. The employee was to retire from service on attaining the age of superannuation on 30.11.2009. 5 days before his retirement, the employee was issued with a charge sheet on 25.11.2009. On the same date, Inquiry Officer and Presenting Officer were also appointed without permitting the employee to submit his reply to the charge sheet. This by itself shows that the authorities were predetermined to proceed against the employee

irrespective of what defence he would take in his reply to the charge sheet.

12. Further admitted position as it stands is that even in the departmental inquiry, no witness was examined on behalf of the Management and the Inquiry Officer straightaway called the delinquent employee i.e. the respondent no.1 in this case to produce his evidence in defence to the allegations/charges levelled against him. The said procedure adopted by the Inquiry Officer is apparently in contravention to the procedure for conducting a departmental inquiry particularly under Rule 14 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules which provide for specific procedure for initiating disciplinary action involving major misconduct. The requirement is first to issue a charge sheet, call for the reply and not being satisfied with the reply, the authorities are expected to initiate disciplinary proceedings. In the instant case, the issuance of charge sheet was along with an order of appointment of Inquiry Officer and Presenting Officer which shows that the reply of the employee was not of much relevance so far as the petitioner is concerned. Further, as per procedure, the Management has not led any evidence particularly of the Head Master who had issued the letter dated 19.11.2009 stating that the school leaving certificate submitted by the respondent-employee to be fake or fraudulent nor any employee from the education department or from the particular school was examined to substantiate this contention. Another fact which is revealed is that along with the charge sheet the petitioners had cited certain witnesses but those witnesses also were not examined.

13. Another fact which needs consideration is that though the Inquiry

Officer was appointed on 25.11.2009 i.e. the date on which the charge sheet was issued and the petitioner was granted 24 hours to give his reply, without waiting and appreciating the reply that the respondent employee has submitted, the Inquiry Officer on 26.11.2009 itself conducted an inquiry by calling upon the respondent-employee to lead his evidence in support of his contention and closed the evidence, and submitted the inquiry report on 27.11.2009. Further that on the same day the order of termination from service was also issued. This further establishes the fact that even the enquiry report and the show cause notice before termination was not given to the employee and the entire disciplinary proceedings got completed in 48 hours time which includes from the time of the issuance of charge sheet and the issuance of termination order.

14. Another aspect which needs consideration is that the Labour Court at the first instance had found that the departmental inquiry to be in violation of the principles of natural justice and thereafter the Management was required to lead evidence. However, there does not seem to be any evidence led by the Management before the Labour Court to substantiate the charge/allegation of the respondent-employee having obtained employment on the basis of fake documents. The Labour Court only on the basis of a presumption drawn on the basis of no evidence having been led by the respondent-employee has held that the order of termination was justified. However, the Industrial Court, in the course of hearing the appeal reached to the conclusion that the entire inquiry proceeding conducted by the Management was in utter violation of the principles of nature justice as would be evident from its being concluded within a period of 48 hours. Secondly, there

was no evidence led on behalf of the petitioner establishment to prove the allegations or the charges. No witnesses were examined both before the departmental inquiry as also before the Labour Court in spite of the departmental inquiry being vitiated by the Labour Court.

15. It is settled position of law that in the event of initiating disciplinary proceedings against an employee on the issuance of a charge sheet it is the Management's duty to first prove the charges and then grant the opportunity to the delinquent employee to adduce evidences in rebuttal. It can never be expected from the Management to issue a charge sheet and ask the employee concerned to disprove the charges without there being any evidence on the part of the Management being adduced. Such a proceeding is totally in contravention to the service rules and regulations governing the service conditions of the employees under the petitioner establishment and the same would not be sustainable.

16. For both these reasons, firstly the departmental inquiry being conducted in a hasty manner inasmuch as of its conclusion within a period of 48 hours time and secondly, on the ground that the petitioner establishment themselves have failed to lead any evidence before the Labour Court as also before the Inquiry Officer, the charges do not seem to have been proved even reasonably so as to hold that the appointment given to the employee was in any manner bad.

17. For the aforesaid reasons, this Court does not find any strong case made out by the petitioner calling for an interference with the impugned order of the Industrial Court Annexure P-1 dated 04.11.2011. The equity also at this juncture runs in favour of the respondent-employee for the reason that when the writ petition was filed the

respondent-employee was 62 years of age. Today, in the year 2021, the petitioner must have crossed the age of 71 years. At this juncture remitting the matter to the disciplinary authority for an inquiry afresh would be detrimental and prejudicial to the interest of the employee.

18. Hence, the writ petition fails and is accordingly rejected.

**Sd/-
P. Sam Koshy
Judge**