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WP(MD)No.16542 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.02.2022
Pronounced on : 12..01.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)No.16542 of 2020
and
WMP(MD)No.13762 and 15569 of 2020

Dax Mohan

Vs

... Petitioner

- 1.The Bharath Petroleum
Corporation Limited
Represented by its
Chairman & Managing Director,
Bharath Bhavan,
4 & 6 Currimbhoy Road,
Ballar Estate,
Mumbai - 400 001.
- 2.The Director (Marketing),
The Bharath Petroleum
Corporation Limited,
Bharath Bhavan,
4 & 6 Currimbhoy Road,
Ballar Estate,
Mumbai - 400 001.
- 3.The Executive Director (Retail) /
Disciplinary Authority,
The Bharath Petroleum
Corporation Limited,
12 E & F, Maker Towers,
Cuff Parade,
Mumbai - 400 005.



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4.The General Manager,
Human Resource (Retail),
The Bharath Petroleum
Corporation Limited,
12th Floor - E Wing Market Tower,
Cuffe Parade, Mumbai,
Maharashtra - 400 005.

5.The Territory Manager,
The Bharath Petroleum
Corporation Limited,
Trichy Retail Territory,
1st Floor Towers, Near Kalaigiar Arivalayam,
Karur By pass road,
Trichy - 620 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for a writ of certiorarified mandamus calling for the records relating to the impugned order passed by the 2nd respondent Director (Marketing) in Ref.No.HRD.ENT.COn.18.DM, dated 14.10.2020 removing the petitioner from the post of Territory Coordinator (Retail), Trichy, quash the same and further direct the respondents 2 and 3 to reinstate the petitioner into service forthwith with continuity of service and all attendant benefits including arrears of salary and allowances, which the petitioner is legally entitled to.

For Petitioner : Mr.Isaac Mohanlal,
Senior Counsel,
for M/s. Isaac Chamber

For Respondents: Mr.J.P.Camal,
Senior Counsel
for M/s.T.S.Gopalan & Co
assisted by Ms.P.Malani



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ORDER

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This writ petition is filed challenging the order passed by the 2nd respondent The Director (Marketing) of the Bharath Petroleum Corporation Limited in Ref.No.HRD.ENT.COn.18.DM, dated 14.10.2020 removing the petitioner from the post of Territory Coordinator (Retail), Trichy and for a consequential direction for reinstatement into service with all benefits.

2.The petitioner, who was serving as a Territory Coordinator (Retail) in the Bharath Petroleum Corporation Limited [herein shall be referred to as 'respondent Corporation'] was removed from service by the impugned order dated 14.10.2020.

3.The petitioner while he was studying B.Tech., [Mechanical Engineering] at Government College, Tiruchur, in Kerala, the respondent Corporation conducted campus interview in the college and selected the petitioner and 11 others as Officer Trainees on 28.04.1999 subject to the following conditions:



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"i.their passing the final examination in the first attempt itself;

ii.their being declared passed in the programme/degree examination with first class or with 60% marks as per the norms of the university/institution/deemed university as the case may be (relaxed to second class with a minimum of 50% marks for SC/ST candidates);

iii.their being declared medically fit as per the Corporation norms, by a Company Medical Officer or company nominated Doctor.

Consequently the selectees were inducted into service by order dated 13.07.1999 as Officer Trainees with a probation period of one year subject to certain conditions. Clause 5(a) of such conditions is that the appointment and continuance is subject to the petitioner's passing the final degree / post graduation examination of the current academic year in first attempt itself. After completion of the probation period, the services of the petitioner were confirmed by the 4th respondent in reference P&A:STF:4539, dated 01.08.2000. Thereafter the petitioner was promoted as Area Manager (Job Group-B) in the year 2006, as Area Manager (Job Group-C) in the year 2009, was transferred to



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various places and was posted finally as Territory Coordinator (Retail), Trichy in the year 2017. The petitioner has rendered more than 20 years of service in the respondent corporation.

4.While so on 12.02.2018 the 3rd respondent issued show cause notice that the petitioner had not cleared one or more of the degree examinations of the final academic year in the first attempt as mentioned in clause 5(a) of the conditions of the appointment letter dated 13.07.1999. The petitioner has offered his reply. Not satisfied with the reply, the 3rd respondent proceeded with further by issuing charge sheet dated 23.04.2019, which reads as follows:

"Article of Charge #I;

Giving false information regarding one's... qualifications germane to the employment at the time of employment.

Shri.Dax Mohan knowingly concealed and deliberately did not disclose information regarding his educational qualification with respect to the supplementary examinations taken by him in January / June / July 1999 for the 4



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subjects of 6th semester and 2 subjects of 7th semester in his undertaking dated 09.08.1999 while joining the services of the Corporation.

By the above actions, Shri.Dax Mohan has violation clauses 4(a)(b) & (c) of the Conduct Rules under Part-II and committee misconduct '5' under part-III Discipline and Appeal Rules as per Conduct, Discipline and Appeal Rules applicable to the management employees of the Corporation".

The petitioner has submitted his explanation to the charge sheet on 16.02.2018 refuting the charges that there was concealment of his qualification. However, the 3rd respondent proceeded with the departmental enquiry by appointing enquiry officer. The enquiry was commenced on 16.09.2019, concluded on 07.11.2019 and the enquiry officer has submitted his report on 11.12.2019. Based on the enquiry report further explanation was called for from the petitioner on 03.01.2020 and the petitioner was removed from service by the impugned order dated 14.10.2020.

5.This writ petition is filed challenging the impugned order of dismissal on the following grounds:



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I.the impugned order suffers from lack of competency / jurisdiction in as much as the order of removal is not passed by the disciplinary authority, [respondent No.3]but by the appellate authority (respondent No.2);

II.Non supply of documents relied on in the impugned order;

III.The expression passing the "last year degree examination" as passing the last year of the degree examination was never the case either in the appointment letter or in the show cause notice or in the charge sheet and therefore, introduction of a new thing in the final order and deviation is not permissible beyond the charge sheet or the show cause notice; and

IV. There is no concealment by petitioner.

6.Mr.Isaac Mohanlal, learned Senior Counsel, appearing for the petitioner has made his submissions as follows:

i.Lack of competency;

The petitioner was serving as a Territory Coordinator (Retail), Trichy under the respondent Corporation and he



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falls under C-Category. As per the Discipline and Appeal Rules for management staff of the Bharath Petroleum Corporation Limited, the Functional Head of the Region / Department is the Disciplinary Authority and the Director is the Appellate Authority and the Chairman is the Reviewing Authority. In this case, the punishment of removal of service was imposed by the appellate authority and therefore, the impugned order is passed without jurisdiction. The impugned order has taken away the statutory right of the appeal. Hence it suffers the inherent defects and is liable to be quashed since it denied the substantive right of appeal on the petitioner. He further submits that since the impugned order is passed by the appellate authority, even on this ground if the matter is remitted back to the Disciplinary Authority, he being subordinate to the Appellate Authority, cannot be in a position to take a different stand than the Appellate Authority. On this ground, the learned Counsel has relied on the following decisions:



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a.Surjit Ghosh Vs Chairman & Managing Director, United

Commercial Bank and Ors reported in **(1995) 2 SCC 474** and

the relevant portion reads as follows:

"5.Some grievances have been made by the appellant in the present appeal touching upon the illegalities in the conduct of the proceedings such as that [a] the disciplinary proceedings were initiated by an incompetent disciplinary authority in breach of Regulation 8 [2] (iii) read with Regulation 3 [g] of the Regulations; [b] the statement of witnesses recorded earlier were not supplied to him in breach of Regulation 8 [10] [b] (iii) and [c] he was denied opportunity to explain circumstances appearing against him in evidence in breach of Regulation 6 [17] of the Regulations. However, it is not necessary to go into the merits of the said grievances since we are of the view that one of the objections taken by the appellant to the dismissal viz., that the appellant was deprived of an opportunity to prefer an appeal provided under-the Regulations, goes to the root of the dismissal order. The undisputed facts relating to the said grievance of the appellant are that the disciplinary action was taken against him by the Deputy General Manager. As the Regulations stood then, the disciplinary authority for officers in Grades E, D, C and B [excepting Divisional Managers in Grade B] was



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the Divisional Manager/AGM [Personnel] and the appeal against their order lay to the Deputy General Manager or any other officer of the same rank. Against the order of the Deputy General Manager, the review lay to the General Manager. It is not disputed that the appellant was an officer in Grade D. Hence in his case, as per the said Regulations, the disciplinary authority was either the Divisional Manager or the AGM [Personnel] and if the action was taken by either of them, he had an opportunity to appeal to the Deputy General Manager or any other officer of the same rank, and thereafter he had a further right of review to the General Manager. However, since the action against him was taken by the Deputy General Manager although the Divisional Manager and AGM [Personnel] were available for taking the action, the appellant was denied the right of an appeal and also the right of a review which lay only against the appellate order. The impugned order of dismissal passed by the Bank, therefore, suffers from an inherent defect.

6. The respondent-Bank in its submission contended that although it is true that the Deputy General Manager had acted as the disciplinary authority when he was in fact named under the Regulations as an appellate authority, no prejudice is caused to the appellant because the Deputy General Manager is higher in rank



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than the disciplinary authority, viz., the Divisional Manager/AGM [Personnel]. According to the Bank, it should be held that when the order of punishment is passed by a higher authority, no appeal is available under the Regulations as it is not necessary to provide for the same. It was also contended that there is no right to appeal unless it is provided under the Rules or Regulations. Although the argument looks attractive at first sight, its weakness lies in the fact that it tries to place the Rules/Regulations which provide no appeal on par with the Rules/Regulations where appeal is provided. It is true that when an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided to such authority. However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal,



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exercises the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned. This is particularly so when there are no guidelines in the Rules/Regulations as to when the higher authority or the appellate authority should exercise the powers of the disciplinary authority. The higher or appellate authority may choose to exercise the power of the disciplinary authority in some cases while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/appellate authority which patently results in discrimination between an employee and employee. Surely, such a situation cannot savour of legality. Hence we are of the view that the contention advanced on behalf of the respondent-Bank that when an appellate authority chooses to exercise the power of disciplinary authority, it should be held that there is no right of appeal provided under the Regulations cannot be accepted.

8. The question, however, is what consequential order should be passed in the present case. It will not be fruitful to send the matter back to the Bank for rehearing of the matter by the named disciplinary authority since the appellate authority which is the higher authority has already taken a decision in the matter and it cannot be expected that the lower



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authority will take a different decision. These proceedings have been pending against the appellant right from the year 1982 till this day and the appellant has been out of employment for all these years. At one stage, the appellant had offered to forego all the arrears of his salary provided he was reinstated in service on the post to which he would be entitled at present on the basis of his continuous service till date. We had suggested to Shri Gupta appearing for the respondent-Bank to take instructions in the matter: The respondent-Bank, however, has chosen to reject the offer and has instead suggested that the Bank would like to pay compensation to the appellant since it has lost confidence in him. We have considered the charges against the appellant and we find that apart from the fact that much can be said in favour of the appellant in support of his contention that the charge has been trumpeted against him. The inquiry also prima facie suffers from defects as pointed out above, though we must add that we have not gone into the merits of the said defects. The appellant is an ex-Army officer. What is further, the compensation amount, if directed to be paid would come to about Rs.20 lakhs.

The Bank is a nationalised Bank and the money belongs to the public. A huge amount on this scale cannot be paid to anyone for doing no work during this long period just because the



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Bank feels that it has lost confidence in the employee. He can certainly be placed in a department where he has nothing to do with the monetary transactions of the Bank, such as the establishment section etc., even assuming that the Bank has reasons to lose confidence in him.

9. We are informed at the Bar that the post to which he would be entitled would be in Grade Scale IV with the basic pay of Rs.5,350/- per month which is on par with the contemporary existing officers of the Bank who have been promoted to Grade Scale IV on and from 29th May, 1993. We, therefore, direct as follows[a] the appellant should be paid a compensation of Rs. 50,000/- in lieu of his claim for arrears of salary; [b] he should be reinstated in service with continuity of service and without loss of seniority in the post to which he would be entitled today on the basis of his continuous service, within four weeks from the date of receipt of this order".

b.Electronics Corporation of India Vs G.Muralidhar,
reported in (2001) 10 SCC 43, wherein it has been held as follows:

"2.Mr Rohatgi, the learned Additional Solicitor-General appearing for the appellant contended that the judgment in Surjit Ghosh



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case[(1995) 2 SCC 474, must be limited to the facts of that case and in the case in hand when a higher forum is available to scrutinise the legality and correctness of the decision of the Chairman-cum-Managing Director (CMD), namely, the Board, it would be meet and proper to direct that an appeal should be presented to the said Board, leaving the matter to the Board to take an ultimate decision. It is however conceded before us by the learned Additional Solicitor-General that under the rules governing the conditions of service of the Corporation, the CMD is not the disciplinary authority in respect of the respondent and, in fact, he is the Appellate Authority and, therefore, undoubtedly a right of appeal which was otherwise available to the respondent, has been denied. It is also stated to us that there is no general provision which confers a power of review or revision on the Board against any order passed by the CMD. In that view of the matter, even if the Board may be a superior authority to the CMD, to hold that an appeal would lie against an order of termination passed by the CMD, would tantamount to a fresh legislation which we are not inclined



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to adopt. Necessarily, therefore, a valuable right of appeal having been denied to the respondent-delinquent, in view of the judgment of this Court in Surjit Ghosh case, the order of punishment gets vitiated and the respondent employee is entitled to a direction for reinstatement and back wages, though the back wages could be limited depending upon the facts and circumstances of the case. In the case in hand, a sum of Rs 50,000 has already been paid to the respondent by virtue of the interim order of this Court dated 23-2-1996 following the direction in the case of Surjit Ghosh".

c.Manohar Lal (dead) by Lrs Vs ugrasen (dead) by Lrs Vs Ors, reported in (2010) 11 SCC 557, wherein the Hon'ble Supreme Court has held as follows:

"23. Therefore the law on the question can be summarised to the effect that no higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the statutory authority nor can the superior authority mortgage its wisdom and direct the statutory authority to act in a particular manner. If the appellate or revisional authority takes upon itself the



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task of the statutory authority and passes an order, it remains unenforceable for the reason that it cannot be termed to be an order passed under the Act."

d.In Zuari Cement Limited Vs Regional Director, Employees' State Insurance Corporation, Hyderabad and Others, reported in (2015) 7 SCC 690 the Hon'ble Supreme Court reiterated that if the manner of doing a particular act is prescribed in Statute, the act must be done in that manner or not at all.

ii.Non supply of relied on documents:

The documents, which are relied on by the respondents were not provided to the petitioner, which is violative of the principles of natural justice and therefore, the impugned order is liable to be quashed on this ground also. The petitioner was appointed in the year 1999, his services were confirmed in the year 2000, show cause notice was issued in the year 2018 based on a complaint received by the Vigilance Department in the year 2015, but neither in the show cause notice nor in the charge sheet this complaint of the year 2015 was referred to, but it was



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referred to for the first time, only in the impugned order by the respondent Corporation. No such a complaint was brought to the knowledge of the petitioner to defend the same and copy of the same was also not served upon the petitioner. Therefore, he pleaded that this is a clear case of violation of the principles of natural justice and that vitiates the impugned order for non supply of vital document.

iii. Perverse:

a.The expression passing final degree examination in the first attempt, as passing last year degree examination in a single attempt was never the case of the respondents either in the appointment letter or in the show cause notice or even in the charge sheet. However it was introduced in the final order and therefore, the impugned order is perverse.

b.The petitioner was provisionally selected, when he was studying 8th semester in the year 1999, in the campus interview and he was issued with the proceedings dated 28.04.1999 with condition that the selection shall be



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subject to "passing of final examination in the first attempt". The petitioner cleared the final examination (8th semester) in the first attempt and also cleared the arrears of the 7th semester in the final examination conducted during the month of July 1999. He was inducted into service on 09.08.1999. The respondents have obtained an undertaking letter from the petitioner at the time of appointment for producing the mark statement for the remaining papers. Only on production of those marks statements, his appointment was also confirmed vide proceedings dated 01.08.2000. While things stood so, all of a sudden in the year 2018, show cause notice was issued that the petitioner must have passed all semesters in the first attempt. This requirement of completion of the degree examination in the first attempt was introduced in the year 2017 appointment order, but no such condition was imposed in the earlier appointment orders. However without considering the same, the impugned order is passed.

c.The learned Senior Counsel has demonstrated the change in the phrase from the earlier appointment order and



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the appointment orders issued in the year 2017,
as follows:

Sl No	appointment order dated 13.07.1999 clause 5(a)	appointment order issued on 17.05.2017 it is stated in clause 4(a)
	5) However your appointment and continuance is subject to: a) Your passing the final degree / post graduation examination of the current academic year in the first attempt itself.	4) However your appoint and continuance in employment is provisional and subject to: a) Your producing proof, in original, of having passed the Degree Examination of B.E/B.Tech (Mechanical Engineering) in the 1 st attempt with minimum 60% marks in aggregate of all the semesters (in respect of General / Other Backward Class - Non Creamy Layer Candidates) and minimum 50% marks in aggregate of all semesters in respect of Scheduled caste/ Scheduled Tribe/ Persons with Disabilities.

This phrase found in the appointment order of the year 2017 is reflected in the show cause notice dated 12.02.2018. However no such phrase was used in the provisional selection communication dated 28.04.1999. The charge sheet



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dated 12.02.2008 was also issued in the same line that of the show cause notice and the final order was also passed that this petitioner had not passed the last year degree examination in a single attempt. The course and conduct certificate issued by the Government Engineering College, Trichur dated 17.07.1999 reads as "Dax Mohan a student of the college has completed the prescribed course of study for B.Tech degree in Mechanical Engineering and has appeared for the final year examination in Engineering conducted by the University of Calicut in June 1999. This clearly states that the final year examination was conducted in June 1999, which was the 8th semester examination and the petitioner passed the same in the first attempt.

iv.No concealment by the petitioner:

a. There is no concealment on the part of the petitioner. The respondent corporation conducted campus interview on 28.04.1999, when the petitioner was studying final semester. The interview was conducted after verifying



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the mark sheets of all the students upto 6th semester and the results of the 7th semester were not declared at that point of time. Even in the 5th semester the petitioner had 4 arrears and in the 6th semester was also he had 4 arrears. However, the petitioner was selected based on his performance in the interview. The respondent corporation was well aware of the petitioner's arrear papers of the 6th semester.

b.The respondent vide communication dated 28.04.1999 had communicated the list of 12 candidates provisionally selected for the post of Officer Trainee including the name of the petitioner with the condition that the same is subject to their passing the final examination in the first attempt itself.

c.The results of the 7th semester were published during the month of May 1999, which clearly indicated that the petitioner had 2 arrears and the final examination was conducted during June 1999. Having been well aware of the fact about non-publication of the results of the final examinations, the 1st respondent issued the order of



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d.The learned Senior Counsel has also relied on the counter affidavit of the respondents and submits that the respondent corporation was in possession of the consolidated mark statement cum 8th semester mark sheet, course completion certificate, provisional certificate and degree certificate. The relevant portion of the counter affidavit reads as follows:

"2.I state that the disciplinary action was initiated against the petitioner based on a complaint received by the vigilance department in 2015. During the preliminary investigation in the matter by the vigilance, it was found that only four documents, viz., consolidate mark sheet cum 8th semester mark sheet, course completion certificate, provisional certificate and degree certificate were available in the dossiers of the petitioner and therefore, pleaded to quash the impugned order of removal from service".

The learned Senior Counsel prayed that for all these reasons, the impugned order is liable to be set aside.



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7.The learned Counsel for the respondent corporation has made his submissions as follows:

a. This writ petition itself is not maintainable, since the petitioner seeks for private remedy. The right, which is sought to be enforced is a private right and it is not a public duty, hence writ petition is not at all maintainable. The petitioner is an employee of the respondent Bharath Petroleum Corporation Limited appointed by the Bharath Petroleum Corporation Limited Conduct, Discipline and Appeal Rules, wherein, the appeal remedy is provided and the petitioner is having remedy of appeal before the Chairman of the respondent Corporation. However, the petitioner took a plea that his appeal remedy was denied. Without exhausting the appeal remedy this writ petition is filed and therefore, this writ petition is not maintainable.

b.The petitioner is not having the required qualification. The petitioner is not entitled to hold the post, if he does not possess the requisite educational qualification. The petitioner was provisionally selected in



the campus interview conducted by the respondent Corporation in the year 1999. The procedure for conducting campus interview as claimed by the respondent is as follows:

"a)The Corporation writes to the college indicate date, time and stream for which selection process (interviews / group discussions) will be conducted.

b)For engineering courses, students who have passed / appeared for the 7th semester exams and are yet to appear for the 8th semester exams are allowed to appear for the interviews.

c)Post the selection processes, such as group discussion, interview by a panel of subject matter experts, the list of provisionally selected students is sent to the institute. Their selection is subject to:

i)passing the final examination in first attempt.

ii)securing a graduation degree or post graduation degree/ diploma with first class or with 60% marks or appropriate points on CPI or CGPI Scale, as the case may be (in respect of General / Other Backward Class candidates) relaxed to 50% for candidates of SC/ST category.

iii) being declared medically fit as per the corporation norms."



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c.The petitioner has not produced the mark sheet of the 7th semester examination at the time of the campus interview that it was not available at the relevant point of time. Even at the point of time, there is a specific clause in the appointment order, ie., clause 5(a), which reads as follows:

"5(a)Your possessing of the final degree/
post graduation examination of the current /
academic year in the first attempt itself."

d.The academic year comprises of two semesters and the candidate must clear all the examinations in both semesters. Therefore, the current academic year in the appointment clause 5(a) of the appointment letter refers to entire 7th and 8th semesters. At the time of joining service, the petitioner did not produce the relevant mark sheet and therefore an undertaking letter was obtained from him on 09.08.1999. Even in the undertaking letter he has not stated that he has failed in two subjects in 7th semester and he has deliberately concealed the information to the respondent corporation. The petitioner does not qualify the basic eligibility condition as mentioned in the appointment



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letter and therefore, his appointment itself is void *ab initio* that he is not having required educational qualification. He cannot take advantage of the number of years of service, he rendered in the respondent Corporation.

e.The Hon'ble supreme Court and the High Court has repeatedly held that not possessing of the requisite educational qualification would be a ground to set aside the order of employment, which a person had obtained by fraud. The petitioner does not have the basic educational qualification, concealed the same and obtained an order of appointment and the appointment itself is illegal and therefore, the writ petition is liable to be dismissed. The learned Counsel for the respondent relied on the following judgments in support of his contention:

i.Binny Limited and Another Vs V.Sadasivan and Others, reported in (2005) 6 SCC 657;

ii.Syndicate Bank and others Vs Venkatesh Gururao Kurati, reported in (2006) 3 SCC 150;



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iii.S.Jagadeesan Vs Ayya Nadar Janaki Ammal College and another, reported in (1984) 1 SC 158;

iv.State of Punjab and Others Vs Ram Singh Ex-constable reported in (1992) 4 SCC 54;

v.Ashok Kumar Sonkar Vs Union of India and others reported in (2007) 4 SCC 54;

vi.Uttar Pradesh Power Corporation Limited Vs Virendra Lal (dead) Through Lrs. Reported in (2013) 10 SCC 39.

8.This Court considered the rival submissions and perused the materials placed on record.

9.The petitioner, who was provisionally selected in the campus interview conducted in the year 1999, was inducted into service in the year 1999. After completion of the probation period, his services were confirmed in the year 2000. He has been removed from service after a period of twenty years of service that the petitioner is not possessing required educational qualification of pass in the final degree examination in the first attempt.



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10.The campus interview was conducted on 28.04.1999, as on that date 7th semester results were not declared. However, the mark statement upto 6th semester was verified by the respondent Corporation and the candidates have been selected based on their performance in the campus interview conducted by the interview committee. The petitioner was having 4 arrears in the 5th and 6th semesters. After completion of the campus interview, the Manager of the corporation in his letter dated 28.04.1999 addressed to the Principal Government Engineering College, Thrissur, had stated that 11 students including the petitioner were provisionally selected for appointment as Officer Trainee subject to the following conditions:

" i.Their **passing the final examination in the first attempt itself.**

ii.their being declared passed in the programme / degree examination with the first class or with 60% marks as per the norms of the University / Institution/ Deemed University as the case may be (relaxed to second class with a minimum of 50% marks for SC/ST candidates)

iii.Their being declared medically fit as per the Corporation norms, by a company medical officer or company nominated doctor."



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11. Based on the provisional selection list, the respondent issued appointment order to the petitioner on 13.07.1999 and the relevant portion is extracted as under:

"Appointment : Officer Trainee

With reference to the interview and subsequent medical examination you had undergone, we are pleased to offer you employment as an "Officer Trainee" in our corporation, on the terms and conditions mentioned in this appointment letter (issued in duplicate)

Please report for your induction/ initial training on 9th August 1999 at 9.30 am at the following address:

Bharat Petroleum Corporation Limited,
Bharat Bhavan I, First Floor,
4 & 6 Currimbhoy Road,
Near Grand Hotel, Ballard Estate,
Mumbai - 400 001.

(Tel.No.2618281 / 2694580)"

12. The petitioner was on probation / training for a period of 1 year from the date of appointment as Officer Trainee and thereafter, his appointment was confirmed by the General Manager (P&A) on 01.08.2000. The petitioner subsequently was promoted as Area Manger (Job-Group B) in



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the year 2006 and promoted as Area Manager (Job Group C) in the year 2009. He was also transferred to various places. Show cause notice was issued in the year 2018 and after enquiry he was removed from service on 14.10.2020.

13.The petitioner was provisionally selected based on the performance in the campus interview and on the medical examination. The respondent corporation alleges that the petitioner is not having the basic required educational qualification and the lack of educational qualification, according to the respondent Corporation is that the petitioner has failed in two subjects in the 7th semester. Even at the time of campus interview, 7th semester results were not declared. However, the results were available at the time of appointment of the petitioner in on 13.07.1999 and it was verified, thereafter, his services were confirmed on 01.08.2000. The petitioner was having arrears even in 5th and 6th semesters, those semester mark sheets were produced before the interview committee at the time of campus interview. The interview committee selected this petitioner based on his performance in the interview and



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after completion of the probation period his services were confirmed. At the time of confirmation also the respondent corporation had verified the mark statement of the 7th and 8th semesters, proceeded to confirm his service, did not raise any issue at the relevant point of time. It is pertinent to note that in the provisional selection list / letter, the Chief Manager informed that the students are provisionally selected for appointment subject to their passing the final examination in the first attempt itself.

14.However clause 5(a) of the appointment order dated 13.07.1999 reads that the appointment and continuance is subject to passing the final degree / post graduation examination of the current academic year in the first attempt itself. This clause has further been tuned in the subsequent appointment orders in the year 2017 that the candidates must have passed degree examination of BE/B.Tech Mechanical Engineering in the first attempt with minimum 60%marks in aggregate of all the semesters. Clause 4(a) of the appointment orders of the year 2017 stipulates that the candidate has to clear all the semester



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examinations in the first attempt. In the appointment order issued in the year 1999, the condition stipulates that passing of the final degree / post graduate examination of the current academic year alone in the first attempt. However, it was not a condition in the provisional selection list / letter dated 28.04.1999. The respondents have confirmed that the mark statements of the 7th and 8th semesters were verified by the interview committee. However, they have failed to verify whether this petitioner had cleared 7th semester in the first time or not. All these grounds are now incorporated in the show cause notice in the year 2018 and the final orders removing the petitioner from service was passed in the year 2020, after completion of 20 years of service in the Corporation. It appears that this petitioner was also promoted twice based upon his performance and admittedly there is no remark in the services in the past 20 years. The respondent Corporation, which was not particular about Clause 5(a) of the appointment at the time of appointment of the petitioner, after confirming the services of the petitioner, now after completion of 20 years of service cannot take a stand that he is not having the basic educational qualification, which



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has not been prescribed in the selection list dated 28.04.1999. Therefore the petitioner cannot be found fault on these material facts. It is seen that this condition in the appointment order appears to be not a relevant condition at the time of appointment of the petitioner in the year 1999. Therefore, this Court is of the opinion that the impugned order is liable to be set aside.

15.In the light of the above discussion, the writ petition is allowed. The impugned order is set aside. Consequently connected miscellaneous petitions are closed.

.01.2023

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To
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- 1.The Chairman & Managing Director,
Bharath Petroleum Corporation Limited
Bharath Bhavan, 4 & 6 Currimbhoy Road,
Ballar Estate, Mumbai - 400 001.
- 2.The Director (Marketing)
The Bharath Petroleum Corporation Limited,
Bharath Bhavan, 4 & 6 Currimbhoy Road,
Ballar Estate, Mumbai - 400 001.
- 3.The Executive Director (Retail) /
Disciplinary Authority,
The Bharath Petroleum Corporation Limited,
12 E & F, Maker Towers,
Cuff Parade, Mumbai - 400 005.
- 4.The General Manager,
Human Resource (Retail),
The Bharath Petroleum Corporation Limited,
12th Floor, E Wing, Market Tower,
Cuffe Parade, Mumbai,
Maharashtra - 400 005.
- 5.The Territory Manager,
The Bharat Petroleum Corporation Limited,
Trichy Retail Territory,
1st Floor Towers, Near Kalaigiar Arivalayam,
Karur By pass road,
Trichy - 620 002.



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B.PUGALENDHI, J.

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