

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-21672-2019 (O&M)
Date of decision: 17.07.2023

Surender Singh	VS.	... Petitioner
HVPNL & Ors.		... Respondents

CWP-35943-2019
Date of decision: 17.07.2023

Surender Singh	VS.	... Petitioner
HVPNL & Ors.		... Respondents

CWP-35941-2019
Date of decision: 17.07.2023

Surender Singh	VS.	... Petitioner
HVPNL & Ors.		... Respondents

CORAM: HON’BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Aashish Aggarwal, Sr. Advocate with
Ms. Aashma Aggarwal, Advocate for the petitioner

Mr. Hitesh Pandit, Advocate for respondent No.3

Sandeep Moudgil, J.

- (1). This Court intends to dispose of both the writ petitions by this common order, which involve identical question of law on similar set facts.
- (2). The instant writ petitions have been preferred under Article 226 of the Constitution of India for issuance of a writ in the nature of *certiorari* to quash the order dated 22/29.07.2019 (Annexure P-10) passed by respondent No.2, whereby the petitioners were placed under suspension.
- (3). To avoid repetition the facts are being taken from CWP-21672-2019, titled “*Surender Singh vs. HVPNL & Ors..*” in which the petitioner was appointed as Shift Attendant on 22.09.2010 in the respondent-Nigam. Subsequently, he was promoted as Grid Sub-Station Assistant in the year

2013 followed by further promotion as Grid Sub-Station Operation in the year 2015. Presently, the petitioner is working as Junior Engineer since the year 2018 and is posted at 66KV Sub-Station Hodal, District Palwal. The petitioner has attached matriculation certificate dated 01.08.2005 (Annexure P1) and ITI Diploma in Electrician Trade issued by the Government Industrial Training Institute, Bulandshahr dated 30.01.1994 (Annexure P2).

(4). A complaint was received questioning the validity of the ITI certificate of the petitioner firstly in the year 2014 and thereafter in the year 2016. After conducting an inquiry on the complaint, the first report was furnished by the Principal, ITI, Bulandshahr dated 27.06.2014 (Annexure P-4) followed by second report by the same Principal dated 27.08.2016 (Annexure P-7), whereby third report was dated 30.11.2016 (Annexure P-8), which duly verified and certified that he has completed his ITI training and passed the Trade Test successfully. It was further verified in the said reports that the certificate dated 30.01.1994 (Annexure P-2) is genuine, as the same was issued by the Uttar Pradesh Industrial Training Institute duly signed by the Principle, Government Industrial Training Institute, Bulandshahr.

(5). However, in the meanwhile, again a complaint was received from the same complainant Chatter Singh s/o Dhani Village Nagal Jat, Tehsil Hathin, addressed to the Superintending Engineer, Haryana Vidyut Prasaran Nigam Limited (hereinafter referred to as 'HVPNL/respondent No.2') stating that the petitioner has not passed any course from ITI and instead, he has purchased the said certificate. The said complaint was forwarded to the DSP/Vigilance, HVPNL, Gurugram by DGP-cum-Director/Vigilance, HVPNL, Panchkula on 26.10.2018, which was got investigated through

DSP/Vigilance and it was concluded vide investigation report dated 08.04.2019 (Annexure R-4) that the petitioner entered the service of the Nigam by submitting fake/false ITI certificate. Accordingly, the petitioner has been placed under suspension vide order dated 22.07.2019 (Annexure P-10) and a charge-sheet was issued under Regulation 7 read with Regulation 4(B) of the erstwhile HSEB Employee (Punishment & Appeal) Regulations, 1990 on 05.09.2019 (Annexure R-5). Besides, it was proposed to file a criminal case of forgery against the petitioner.

(6). Mr. Aashish Aggarwal, learned senior counsel for the petitioner contended that before passing the order of suspension, he was not given any notice to show cause nor any opportunity of hearing was provided. He averred that the impugned action has been taken with pre-meditated mind and arbitrarily just to victimize the petitioner. He further submitted that the question of authenticity of the certificate was got verified and authenticated from the Principal of the ITI on three occasions and in spite thereof, on the same set of allegations, the petitioner has now been illegally placed under suspension.

(7). Reliance has been placed on the Karnataka High Court decision in **Sri Divakar V. vs. State of Karnataka & Ors. 2021 (5) SLR 120**, to contend that conducting fresh enquiry/verification by the employer in respect of an incident which had already been enquired into by the appropriate authorities, amounts to vexing the innocent employee again and again for the same alleged misconduct and as such, the second or more enquiries/verification is impermissible.

(8). Learned senior counsel would contend that the doctrine of *res-judicata* is not a technical doctrine but a fundamental principle which sustains the rule of law in ensuring finality in litigation and promote a fair administration of justice to prevent abuse of process of the court on the issues which have become final between the parties, on the principle, namely, '*interest reipublicae ut sit finis litium*' which means that it is in the interest of the State that there should be an end to litigation and another principle i.e. '*nemo debet bis vexari si constat curiae quod sit pro una et eadem causa*' meaning thereby that no one ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause. He urged that the principle of finality of litigation is based on a sound firm principle of public policy, which in default, might result under the colour and pretence of law inasmuch as there will be no end to litigation. Reference has been made to (i) **UOI vs. Major SP Sharma & Ors. (2014) 6 SCC 351**; (ii) **Md. Alimuddin vs. State of Bihar & Ors. 2011 (26) SCT 917**.

(9). Notice of motion was issued and the operation of the impugned suspension order was stayed by this Court vide order dated 19.08.2019. Pursuant thereto, the respondent-Nigam has filed reply dated 04.07.2022 was issued by Munish Bhalla, Under Secretary/HR-III, HVPNL wherein it has been submitted that the petitioner has misrepresented and misinterpreted the facts and obtained interim order dated 19.08.2019 by this Court and thereafter, the services of the petitioner have been reinstated on 14.10.2019 (Annexure R7) pending disciplinary proceedings initiated against him.

(10). Mr. Hitesh Pandit, Advocate for the respondents submitted that the petitioner has deliberately with dishonest intention furnished fake/false

ITI certificate in the Nigam to procure appointment on the post of GSA and thus defrauded the respondent No.2. He further states that a charge-sheet was issued, however, the petitioner has neither inspected the records nor submitted his reply, till date. Learned counsel informed that vide office memo dated 20.03.2019 it had directed the Principal of the said institute to submit year wise attendance record of the petitioner from the year 1991, 1992 and 1993, however, vide memo dated 27.03.2019, the institute intimated to DSP Vigilance that the petitioner has not passed the Diploma in ITI/Electrician from their Institute and the certificate i.e. mark sheet No.2424 is fake as the same has not been issued by Government ITI Bulandshahr in spite of the fact that the ITI certificate was earlier verified and authenticated from the Principal, Government Industrial Training Institute vide reports dated 27.06.2014, 29.08.2016 and 30.11.2016 (Annexures P4, P7 & P8, respectively). Mr. Hitesh Pandit concluded the submissions pressing upon that the disciplinary action initiated against the petitioner is fully justified and accordingly, the writ petition deserves to be dismissed.

(11). Replication has been filed by the petitioner controverting the averments made by the respondents in their written statement. Learned counsel submitted that once the complaints, which were made by an individual person with mala fide and ulterior motive, have been got verified by the respondents themselves and in all the three reports, the certificate has been categorically found to be genuine and authentic, there was no occasion or reason left for the respondents to again call for fresh verification by the same authority which, on previous three occasions, had himself returned a categoric finding as to the genuineness of the certificate. He urged that the

petitioner has 9 years of unblemished service to his credit and being competent and qualified in all respects, he has even earned 3 promotions.

(12). Heard.

(13). In sum and substance, the allegations sought to be fortified by the respondents, on the basis of memo dated 27.03.2019 (Annexure P-8) sent by the Principal, Government ITI, Bulandshahr, is that the petitioner has not passed the Diploma in ITI/Electrical from the said Institute and as such, the appointment has been secured by him fraudulent means taking benefit of such fake certificate and mark sheet.

(14). It is noteworthy that the petitioner, in the year 2010, was appointed as Shift Attendant through regular process and earned two promotions in the year 2013 and 2015 and followed by his promotion as Junior Engineer in 2018. It was pursuant to a complaint made by Chatter Singh regarding the genuineness of the certificate of ITI, the respondent-Nigam sought report from concerned institute i.e. Government Industrial Training Institute, Bulandshehr regarding its veracity. The Principal vide report dated 27.06.2014 (Annexure P-4) verified the same to be correct and again in the year 2016 i.e. 1.8.2016, notice was issued by Deputy Superintendent of Police, HVPNL Gurugram regarding veracity of certificate and information sought from Institute was found to be correct as per letter/report dated 29.08.2016 (Annexure P-7). Still not satisfied, the respondent-Nigam again got re-verified and Principal still certified it to be correct vide intimation dated 30.11.2016 (Annexure P-8).

(15). Since for the fourth time, the complainant again submitted a complaint on same set of facts, this time, the authorities went ahead and the

DGP, HVPNL called upon the Principal Government ITI, Bulandshahr to submit the year wise attendance record of the petitioner. Thereafter, the same Principal, ITI, Bulandshehr intimated vide memo dated 27.03.2019 (Annexure P-8) that the petitioner has not passed any Diploma from ITI.

(16). In the current scenario as set up before this Court, the petitioner might have obtained the appointment by producing a fake certificate and by playing a fraud. His appointment can be said to be void and *non est* in the eye of the law. A person who entered the service by producing a false certificate and obtained appointment, thus depriving a genuine candidate for appointment to that post, does not deserve any sympathy or indulgence of this Court.

(17). A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. I am of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud.

(18). The issue regarding entry into service on the basis of a false certificate came up for consideration before Supreme Court in **Union of India v. Dattatray and others, (2008) 4 SCC 612**, wherein, while referring to earlier judgments on the issue in **Bank of India v. Avinash D. Mandivikar,**

(2005) 7 SCC 690, it was opined that when a person secures employment by making a false claim regarding caste, he deprives a legitimate candidate.

(19). Subsequently, the issue came up for consideration before the Supreme Court in Regional Manager, Central Bank of India v. Madhulika Guruprasad Dahir and others, (2008) 13 SCC 170, wherein while reversing the judgment of the Bombay High Court, the Supreme Court opined that when selection of an employee was conceived in deceit, the same could not be saved by equitable consideration. Even delay in verification of the certificate in such cases is not fatal and the same will not validate the certificate and consequential the illegal appointment. In that case, the employee had worked on a fake caste certificate for a period of 20 years, but still the Supreme Court opined that sympathy, equity or generosity have no place where the original appointment rests on a fake certificate, as the same results in depriving a genuine candidate of appointment.

(20). In the case in hand, it has come on record that the ITI certificate pertaining to Diploma in Electrical, which was one of the essential qualification for being appointed in the respondent-Nigam, was found to be fake on verification and upon calling for the records of attendance, but still the petitioner was given appointment. The same resulted in depriving other eligible candidates opportunity to get employment though more meritorious. It is a matter of trial, as criminal case has also been initiated by the respondent-Nigam, if the allegations are proved, the claim of the petitioner of having served the respondent-Nigam for 9 years now and having earned 3 promotions, the equity would not come to his rescue in such case as the very foundation of his appointment vanished since the post was usurped by

misrepresentation and deception. Since the trial against the petitioner is underway, this Court fights shy off in drawing any inference much less to direct the respondent-Nigam and the trial court to expedite the trial by giving full opportunity to the petitioner to lead evidence, and decide the same within 6 months from the date of order.

(21). Accordingly, with the above observations and directions, this writ petition is dismissed being devoid of any merit.

(22). The expression of views by this Court shall not, in any way, influence the criminal trial before the trial court or the departmental proceedings initiated by the respondent-Nigam.

(23). Ordered accordingly.

17.07.2023
V.Vishal/Meenu

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned?	Yes/No
2. Whether reportable?	Yes/No