

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16818 of 2023

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Jay Krishna Kumar, Son of Chhatu Prasad Singh, Resident of Nirpur, District
- Khagaria

... .. Petitioner/s

Versus

1. The Bihar State Power Holding Co. Ltd. Vidyut Bhawan through its Managing Director.
2. The North Bihar Power Holding Company Ltd., through its Managing Director, Vidyut Bhawan, Bailey Road, Patna.
3. The General Manager (HR/Admin), Bihar State Power Holding Co, Ltd.
4. The Deputy General Manager, Electrical Supply Region, North Bihar Power Holding Company Ltd., Muzaffarpur.
5. The Electrical Superintendent Engineer, Electrical Supply Circle, Raxaul.
6. The Electrical Executive Engineer, Electric Supply Division, Raxaul.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Aishwarya Shree, Advocate
For the Respondent/s	:	Mr.Vinay Kirti Singh, Advocate
For the BSPHCL	:	Kunal Tiwary, Asst. Standing Counsel

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

- 2 30-04-2024 1. The facts of the case are more or less indisputable.
- The petitioner got his employment as Switch Board Operator on contract basis under Bihar State Power Holding Company Ltd. on 29th of November, 2010. By an order, dated 31st of May, 2015, his appointment was regularized. On or about 3rd of October, 2019, the petitioner was served with a show cause notice, directing him to clarify as to why the mark-sheet submitted by the petitioner at the time of his employment did not tally with the mark-sheet that was sent by the Controller of



Examination, ITI, on verification. The petitioner submitted reply to the show cause notice on 14th of October, 2019, denying the allegations. Subsequently, on 7th of July, 2023, without holding any inquiry, service of the petitioner was terminated. Being aggrieved, the petitioner has approached this Court for the following reliefs:-

“i). For issuing of the writ in the nature of certiorari for quashing the letter 149 dated 7.7.2023, whereby and where under the services of the petitioner has been terminated without any due process of law as major punishment have been inflicted without initiating departmental proceeding.

ii). For issuing of the writ in the nature of certiorari for quashing the letter dated 3.10.2019, whereby and where under the salary was stopped till further order followed by issuance of letter of termination.

iii). For issuing of the writ in the nature of mandamus commanding the respondent to pay salary of arrears of due since November, 2019 as well as to ensure the payment of salary of petitioner in accordance with law.

iv). Also for any other appropriate relief(s) to which the petitioner is found entitled either in the eye of law or in the facts



and circumstances of the case.”

2. It is contended by the learned Advocate for the petitioner that at the time of regularization, petitioner's documents relating to academic qualification was called for and it was verified with the Controller of Examinations, ITI. The Controller submitted a report, stating, *inter alia*, that the petitioner submitted his mark-sheet at the time of his appointment, where it was stated that he secured 617 marks in the ITI Examination, but on scrutiny of the official record, it appeared that he actually secured 561 marks. Thus, the mark-sheet which was submitted by the petitioner was forged and not genuine, and, therefore, his service was terminated without any departmental proceeding.

3. Learned Advocate for the petitioner submits that under Article 311 of the Constitution of India, service of an employee working under the State cannot be terminated without due process of law.

4. In the instant case, the respondent authority did not follow the due process of law. No charge was framed against the petitioner. He was not directed to give reply to charges for which he was allegedly terminated. No departmental proceeding was held, and the order of termination *per se* is illegal, invalid and violative of Articles 14, 16 and 21 of the Constitution of



India.

5. The petitioner's livelihood was taken away just by a stroke of pen. The Administrative Law does not permit such arbitrary action being taken by the respondents. So, the learned Advocate for the petitioner submits that the instant writ petition may be disposed of, directing the respondents to take decision following the established principle of departmental proceeding under Bihar C.C.A. Rules, 2005.

6. The learned Advocate on behalf of the respondents, on the other hand, submits that the issue is no longer *res integra* that a person who got his employment on practising fraud upon the employer, he is liable to be terminated on detection of fraud because the said employment is *void ab initio* and the petitioner cannot claim any right on such employment which he got by practising fraud upon the employer. In support of his contention, learned Advocate for the respondents refers to the decision of the Hon'ble Supreme Court in ***R. Vishwanatha Pillai v. State of Kerala & Ors.*** reported in ***(2004) 2 SCC 105***. It is submitted by the learned Advocate for the respondents that a person procuring appointment in a post by practising fraud cannot be said to hold a civil post.

7. In the above-mentioned report, the writ petitioner



procured appointment in a post meant for reserved category candidate on the basis of a false caste certificate. The Hon'ble Supreme Court held that he is not a person holding a civil post within the meaning of Article 311 of the Constitution of India. It is also held by the Hon'ble Supreme Court that the appointment procured against reserved post by producing false caste certificate is *void* and *non est*. Therefore, the service of the petitioner would have been terminated on discovery of the fact that he procured employment on the basis of false caste certificate.

8. The learned Advocate for the respondents next draws my attention to a Full Bench decision of this Court in the case of ***Rita Mishra vs. Director, Primary Education, Bihar***, reported in ***AIR 1988 Pat 26 (FB)***. It is held by this Court that if an employee gets his employment on the basis of a forged, fraudulent or illegal letter of appointment, his service is liable to be terminated immediately and he is not entitled to adherence of the principle of natural justice of *audi alteram partem*.

9. Learned Advocate for the petitioner has distinguished the judgment in the case of ***R. Vishwanatha Pillai (supra)***, referring to paragraph 5 of the said report. It is submitted by the learned Advocate for the petitioner that in the



said reported decision, the requirements of Article 311 and Rules 6 and 7 of All India Services (Discipline and Appeal) Rules, 1969, had been complied with. Practically, the petitioner approached the Hon'ble Supreme Court in second round of litigation. Prior to that, he faced disciplinary proceeding, he suffered punishment. He challenged the order of punishment before the CAT and subsequently to the High Court. The High Court was directed to form a five men committee and decide the case of the petitioner. The Committee decided against the petitioner. He again moved to the High Court and against the judgment of the High Court, he moved before the Hon'ble Supreme Court. Thus, the petitioner got adequate opportunity to prove his innocence. In the instant matter, the petitioner did not get any opportunity to prove his innocence.

10. It is also submitted by the learned Advocate for the petitioner in reply that the principles laid down by the Full Bench of this Court in *Rita Mishra (supra)* is also not applicable because the petitioner did not get his appointment on the basis of a forged letter of appointment. Admittedly, the petitioner was appointed as a contractual employee in the year 2010 and subsequently, he was employed as a regular employee. So, the basis upon which the ratio of the Full Bench decision of



this Court stands is different from the facts and circumstances of the case.

11. On due consideration of the submissions made by the learned counsels for the parties and taking into consideration the ratio of the Hon'ble Supreme Court in the case of ***R. Vishwanatha Pillai (supra)***, who got his employment on the basis of a forged caste certificate, this Court likes to record that petitioner, at the time of regularization of his employment, submitted a mark-sheet where it was stated that he secured 617 marks in ITI Examination. The mark-sheet was sent to the concerned authority for verification. At the time of verification of document, it was ascertained that the mark-sheet which was filed by the petitioner was false because of the fact that he obtained 561 marks in ITI Examination.

12. It is needless to say that successful candidates who passed ITI Examination is qualified for service. If an employee gets his employment placing a false mark-sheet of his educational qualification, and the authority employed him on the basis of such mark-sheet, which is found to be false and forged, subsequently, his employment is liable to be terminated immediately because the employment on the basis of a false and forged certificate regarding educational qualification, which is



the basis of an employment, when found forged and false, the employment is treated as *non est* and *void ab initio*.

13. When an employment is found to be *void ab initio*, the employee cannot claim that he was terminated without following the disciplinary proceeding in terms of Bihar C.C.A. Rules, 2005. The employment of the petitioner was rightly terminated for the reasons stated above.

14. Therefore, I do not find any illegality or violation of legal right of the petitioner by the act of the respondents.

15. The instant writ petition is accordingly dismissed on contest.

16. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

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