



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-14052-2020 (O&M)
Date of Decision:08.08.2024

Sandeep

.....Petitioner

Versus

Uttar Haryaba Bijli Vitran Nigam Limited and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Vikas Kuthiala, Advocate for the petitioner.

Mr. Hitesh Pandit, Advocate for respondents.

JASGURPREET SINGH PURI J.(Oral)

1. The present petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of mandamus/certiorari for quashing the impugned termination order dated 01.09.2020 (Annexure P-6) whereby the services of the petitioner as Shift Attendant have been terminated with a further prayer for directing the respondents to reinstate the petitioner with all consequential benefits alongwith interest @12% per annum.

2. The brief facts of the present case are that the petitioner applied for the post of Shift Attendant in pursuance of an advertisement issued by the Haryana Staff Selection Commission (hereinafter called as 'Commission') in the year 2016 vide Annexure P-2. The petitioner



participated in the process and was selected to the aforesaid post. Thereafter he was issued an appointment letter for the post of Shift Attendant on 07.06.2019 vide Annexure P-4 and consequent upon the same he joined the aforesaid post in the office of respondent-UHBVNL (hereinafter called as 'Nigam') and started discharging his duties as a regular employee. He continued on the aforesaid post for more than one year. Thereafter vide Annexure P-5 dated 21.08.2020, respondent No.4- the Executive Engineer (OP) Division, UHBVN, Sonipat, issued a show cause notice to the petitioner stating therein as to why his services should not be terminated because the certificate on the basis of which he had sought selection is not a valid certificate. Thereafter, the services of the petitioner were terminated vide impugned order dated 01.09.2020 (Annexure P-6) by the Executing Engineer of the respondent-Nigam on the ground that after verification of documents, it has been found that the certificate submitted by the petitioner was not a valid certificate as per the terms and conditions of the advertisement. The aforesaid action of the respondent-Nigam and the aforesaid impugned order is under challenge in the present case.

3. Learned counsel for the petitioner submitted that the aforesaid impugned order (Annexure P-6) is passed without the authority of law and in violation of the Uttar Haryana Bijli Vitran Nigam Limited (Punishment and Appeal) Regulation, 2018, as amended by way of notification dated 12.05.2020 wherein the punishing authority of Shift Attendant is the Superintending Engineer whereas the order of termination



has been passed by an officer below the rank of the aforesaid punishing authority because the impugned order has been passed by an Executive Engineer. He further submitted that in view of the aforesaid facts and circumstances impugned order (Annexure P-6) is liable to be set aside and direction may be issued to the respondent-Nigam to take the petitioner back in service with all the consequential benefits.

4. He further submitted that the aforesaid termination order has been passed in gross violation of the statutory rules as the aforesaid order is passed by an officer who has no authority to pass the same which resulted in termination of service of the petitioner who had served the respondent-Nigam for more than one year on regular basis and it is not only the petitioner who was thrown on the road but his entire family had to suffer. He further submitted that after passing the order of termination even a matrimonial dispute has developed between the petitioner and his wife due to petitioner being unemployed and a divorce petition is also pending because of the financial constraints being faced by the petitioner.

5. Learned counsel for the petitioner also submitted that the present petition was filed in the year 2020 in which a specific ground was taken vide para 8 (c) that the order of termination is in violation of aforesaid regulation because the order has been passed by the authority which was not competent to the pass the same but when the reply was filed to the petition, the respondent-Nigam has justified their action by stating that it was passed by an authority who had the power.



6. On the other hand, Mr. Hitesh Pandit, learned counsel appearing on behalf of the respondent-Nigam has very candidly submitted that after the aforesaid notification dated 12.05.2020 came into force, the punishing authority for the petitioner is the Superintending Engineer of the respondent-Nigam not the Executive Engineer and the same cannot be disputed. He, however, submitted that the petitioner was not eligible for being appointed to the aforesaid post because he did not have the requisite certificates which were necessary even as per the advertisement and therefore on merits of the aforesaid order, the same was justified. He also submitted that prior to the aforesaid amendment of 12.05.2020, the punishing authority was the Executive Engineer and may be because of some mistake, the Executive Engineer has passed the impugned order. He submitted that it cannot be disputed that the officer i.e. the Executive Engineer who has passed the punishment order of termination (Annexure P-6) dated 01.09.2020 was not competent to pass the same.

7. I have heard learned counsels for the parties.

8. The issue involved in the present case is that the petitioner who was appointed as a Shift Attendant after a regular appointment process was followed by the respondent-Commission, he joined the office of respondent-Nigam and served as a regular employee for more than one year but thereafter show cause notice was issued to him on the ground that his ITI/Electrician trade-experience certificate was not in accordance with the terms and conditions of the advertisement and thereafter vide Annexure P-6 his services have been terminated on the aforesaid ground.

9. It is an undisputed position even as per learned counsel for the respondent-Nigam that the officer i.e. Executive Engineer who passed the order of termination was not competent to pass the same because the competent punishing authority was the Superintending Engineer. The relevant portion of the notification dated 12.05.2020 which was in operation at the time when the order of punishment was passed is reproduced as under:-

“UTTAR HARYANA BIJLI VITRAN NIGAM LIMITED

NOTIFICATION

12 May, 2020

Powers to inflict Punishment				
		Minor/Major Punishment		
Sr. No.	Rank	Punishing Authority	Ist Appellate Authority	2 nd Appellate Authority
42	Shift Attendant	SE	CE	Director

10. The petitioner was appointed on the post of Shift Attendant and worked for more than one year. His services have been terminated in the year 2020 which is almost four years ago by an officer who was not competent to pass the order of termination and was lower in rank than the officer competent to impose punishment. As per learned counsel for the petitioner, not only the petitioner but his entire family has been ruined because of the aforesaid order.

11. There is another aspect which is also of immense importance. In this case, notice of motion was issued on 28.10.2020 and thereafter



reply dated 08.07.2022 was filed. A specific ground was taken in the petition with regard to the lack of power and passing of an order of termination by the Executive Engineer being not competent but the same has been justified in the reply filed by the respondent. Had the respondent-nigam rectified their mistake at that point of time, perhaps 3-4 years of the petitioner would have been saved. It shows adamant attitude of the respondent-nigam wherein even after knowing that the order was passed by an officer lower in rank, still they did not rectify their mistake. This shows insensitive attitude of the respondent-nigam towards the petitioner.

12. In view of the aforesaid facts and circumstances, where undisputedly the impugned order of termination has been passed by an officer who was lower in rank and was not competent to pass the same, the present petition is allowed. Order dated 01.09.2020 (Annexure P-6) is hereby set aside and quashed. The respondent-Nigam is directed to reinstate and take back the petitioner on job forthwith and in any case within a period of one month and release all the consequential benefits to him.

13. So far as the grant of the monetary benefits pertaining to the salary for the time when he did not work, the law in this regard has been settled by Hon'ble Supreme Court in ***The Commissioner, Karnataka Housing Board vs. C. Muddaiah, 2007 (7) SCC 689*** wherein it was held that when it is proved on record that an employee has been deprived of discharging his duties because of the wrongful action of the organization-department and has been kept away from work because of the wrongful



action of the organization, then in that situation the principle of 'no work no pay' will not apply. This Court is satisfied that the petitioner has been kept out of service not because of the fault of the petitioner but because of fault of the respondent-Nigam who terminated the petitioner without the authority of law, therefore the petitioner shall be entitled for entire salary for the period for which he was kept out of service after i.e. 01.09.2020 till his reinstatement. The respondents-Nigam are directed to calculate the arrears of amount for aforesaid period i.e. after 01.09.2020 and pay to the petitioner within a period of three months from today alongwith interest @6% per annum (simple).

14. It has been held by Hon'ble Supreme Court in ***D.K. Basu Vs. State of West Bengal, 1997 (1) SCC 416*** that grant of compensation in proceedings under Article 32 or 226 of the Constitution of India for the established violation of the Fundamental Rights guaranteed under Article 21 is an exercise of the Courts under the public law jurisdiction for penalising the wrong-doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the Fundamental Rights of the citizen. It was further observed that the Courts have the obligation to satisfy the social aspirations of the citizens because the Courts and the law are for the people and expected to respond to their aspirations and a Court of law cannot close its consciousness and aliveness to stark realities. In the concluding part, it was further observed that it is a well accepted proposition in most of the jurisdictions that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established



infringement of the Fundamental Right to life of a citizen by the public servants and the State is vicariously liable for their acts.

15. Since the petitioner has been terminated by an officer who was not competent to terminate him and was rather lower in rank and the same is an undisputed position which not only affected the Right to Livelihood of the petitioner but also of his family, Right to Life guaranteed under Article 21 of the Constitution of India is also infringed. Hon'ble Supreme Court in *Olga Tellis and ors. vs. Bombay Municipal Corporation and ors. (1985) 3 SCC 545* observed that Right to Livelihood is a part of the Fundamental Right under Article 21 of the Constitution of India. Therefore, this Court is of the considered view that Fundamental Right of the petitioner under Article 21 of the Constitution of India has been infringed. Therefore the petitioner is also entitled for exemplary costs which is assessed as Rs.2,00,000/- (Two lacs) which shall be paid by the respondent-Nigam to the petitioner within a period of three months from today.

16. The aforesaid costs shall be paid by the respondent-Nigam at the first instance within the aforesaid period and thereafter the Managing Director of the respondent-Nigam shall fix the accountability of the official/officer(s) concerned with regard to the aforesaid lapse and thereafter shall be at liberty to recover the aforesaid costs from the concerned official/officer(s) in accordance with law.

17. The respondent-Nigam shall be at liberty to issue a fresh show cause notice to the petitioner and may proceed in accordance with law in



case so desired on the ground that the petitioner is not fulfilling the eligibility qualifications.

(JASGURPREET SINGH PURI)
JUDGE

08.08.2024
shweta

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No