
(2007) 09 OHC CK 0044
In the Orissa High Court

Manoranjan Khatua

APPELLANT

Vs

Mahanadi Coal Fields Ltd. and Others

RESPONDENT

Date of Decision : 12-09-2007

Acts Referred:

Citation : (2007) 104 CLT 652 : (2008) 116 FLR 150 : (2008) 1 LLJ 976 :
(2007) 2 OLR 810 Supp

Hon'ble Judges : A.K. Ganguly, C.J;I. Mahanty, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Mahanty, J.—The Petitioner Manoranjan Khatua has filed the present writ application seeking to challenge the order of termination of his service dated 9.1.1997 (Annexure-1) issued by the Deputy General Manager (M.P. & R)-O.P. No. 2 terminating his services as Laboratory Technician.

2. Mahanadi Coal Field Ltd., a subsidiary of Coal India Ltd. issued an advertisement for filling up the post of Laboratory Technician and the Petitioner made the necessary application for being considered for the said post and also appeared at the written test held on 25.6.1994 conducted by Opposite Party No. 1. Thereafter, a practical test and personal interview were held on 30.9.1994 and on being found suitable for appointment, Opposite Party No. 2 vide his letter No. 424 dated 13.4.1995 (Annexure-5) was pleased to offer an appointment to the Petitioner in the post of Laboratory Technician "(Trainee) on the terms and conditions contained in the said letter. It is further averred that pursuant to the said letter (Annexure-5) the Petitioner joined his duty as Laboratory Technician (trainee) at Anand Vihar Dispensary, MCL Headquarters, Burla on 19.4.1995.

3. The Deputy General Manager (M.P. & R), Personnel Department, vide his letter No. 2123 dated 11.9. 1996 intimated the Petitioner that on verification it was revealed that he had submitted a false certificate for securing appointment in the company and accordingly the Petitioner was issued with a show cause notice. In

response to the said show cause notice, Petitioner submitted his explanation thereto vide a letter dated 21.9.1996 and his supplementary explanation dated 27.9.1996, denying the allegations levelled against him and stating therein that he was a student of the State Institute of Medical Science and Technology-cum-Hospital (in short SIMST), located at Bhubaneswar, which was a private registered institution, registered with the Govt. of Orissa and was offering the Diploma in Medical Laboratory Technique under the Institute of Medical and Technological Research (in short IMTR), Calcutta. The Petitioner claims that he undertook the Diploma course in Medical Laboratory Technique from SIMST, Bhubaneswar as a regular student and having completed the diploma course was registered with the examining body, i.e., Institute of Medical and Technological Research (IMTR), Calcutta and was issued with a registration certificate and admit card for appearing in the examination of Diploma in Medical Laboratory Technique which was to commence from 5.12.1992 (Annexure-2). It is further averred that the Petitioner appeared in the said examination and having qualified was issued with the "Certificate" by SIMST, Bhubaneswar and "Diploma" dated 25.2.1993 issued by the IMTR, Calcutta vide Annexures 3 and 4 respectively. Thereafter the Petitioner was called for personal hearing on 15.10.1996 and subsequent thereto was issued with the impugned letter of termination dated 9.1.1997.

4. It may be noted here that although notices were issued to all the Opposite Parties in the present writ application only the Opposite Party No. 1 Mahanadi Coalfields and Opposite Party No. 2 Deputy general Manager (M.P. & R), Personnel Department have entered their appearance. But Opp. Party No. 3 Managing Director, State Institute of Medical Science and Technology-cum-Hospital and Opposite Party No. 4 Principal, Institute of Medical and Technology and Research, Calcutta did not enter appearance, although notices were served on them through special messenger and service of the same has been earlier held to be sufficient.

5. In the back ground of the fact as narrated above Mr. Panda, Learned Counsel for the Petitioner submitted that the Petitioner as a bonafide student of the State Institute of Medical Science and Technology, Bhubaneswar had appeared the examination and passed Diploma course examination conducted by the State Institute of Medical Science and Technology, which is affiliated to the Institute of Medical and Technological Research, Calcutta and averred that the "Certificate" and "Diploma" issued to the Petitioner are genuine. In this respect Mr. Panda placed great reliance upon the letter dated 13.9.1996 issued by Opposite Party No. 3. vide Annexure-9 to the Writ Petition, in which the SIMST (Opposite Party No. 3) has stated that its institute was registered under Government of Orissa under Registration No. 297/89 and was also affiliated by IMTR, Calcutta (O.P. No. 4). Accordingly, Annexure-9 supports the case of the Petitioner about the validity and correctness of both the Certificate and Diploma granted to the Petitioner.

6. Apart from the above, Mr. Panda further placed reliance on Annexure-10

series, which are the "Diploma certificate", "Mark-sheet", "Admit card" and "Registration" granted to one Susanta Kumar Bisi by the Principal, IMTR, Calcutta". Further in order to establish his bonafide, the Petitioner has also produced his Registration, Admit card (Annexure2) granted to him to appear at the respective examination, Diploma Certificate (Annexure-4) issued by the IMTR, Calcutta and Certificate (Annexure-3) issued by the SIMST, Bhubaneswar. Learned Counsel submitted that while the certificates granted in favour of Sri Susanta Kumar Bisi have been accepted by Opposite Parties 1 and 2 as genuine, there exists no reason whatsoever for questioning the Petitioner's "Certificate/ Diploma issued by the self-same institute.

7. Mr. Panda further averred that in term of the letter of appointment issued to the Petitioner dated 13.4.1995, his period of probation, i.e., one year being over, the Petitioner was no longer a probationer and therefore his termination could not be deemed to be a termination simpliciter since the letter of termination "dated 9.1.1997 was issued beyond the period of probation and therefore the same could not be deemed to be a termination simpliciter. Therefore, he submits that the order of termination is unlawful and to be quashed on this ground as well.

8. Mr. Mohanty, Learned Counsel appearing for Opposite Parties 1 and 2 on the other hand supported the order of termination under Annexure-1, on the plea that the certificate of Diploma provided by the Petitioner has been found to be false since the IMTR, Calcutta denied having issued such certificate of Diploma to the Petitioner and re-confirmed the same vide their letter dated 23.10.1996 addressed to Opposite Party No. 2. and therefore, the certificate having been found to be false/forged, the termination is justified in terms of Clause-5 of the terms and conditions of the appointment letter dated 13.4.1995(Annexure-5) which provides that in case any adverse report regarding character and antecedents is received from any source on the basis of verification of the character and antecedents, services of a candidate will be terminated without notice and without assigning any reasons thereof even person is confirmed. The services were also liable to be terminated in case the certificate(s)/documents produced are found to be unrecognized/false and declaration given are found to be false.

9. Mr. Mohanty in this respect drew Court's attention to its pleading made in the counter affidavit and in particular to the letter of the IMTR, Calcutta dated 6.8.1996 (Annexure A/1) addressed to Opposite Party No. 1 by the Principal of the IMTR, Calcutta intimating that the certificate in the name of Manoranjan Khatua, S/o. Balamukhunda Khatua has not been issued by us. As well as the letter date 23.10.1996(Annexure-D/1) which repeated the aforesaid statement and further alleged that "the State Institute of Medical Science and Technology-cum-Hospital, Bhubaneswar had no such right as they could issue the relevant certificate at any time in favour of any candidate in lieu of us."

10. On the basis of the aforesaid two communications of the IMTR, Calcutta, the

order of termination of the Petitioner was passed. On a closer reading of these two documents it is apparent that what had been sent for verification by the IMTR, Calcutta was a certificate appearing the name of Manoranjan Khatua S/o. Balamukunda Khatua and the said certificate has been stated to have been issued by the SIMST, Bhubaneswar. On a closer reading of Annexure:3, which is titled as " Certificate" issued In favour of Manoranjan Khatua, S/o. Balamakunda Khatua, we find that the said certificate has been issued by the SIMST, Bhubaneswar. The said certificate does not disclose that it was issued by the IMTR, Calcutta. It is further certified that the Petitioner has, been qualified in Diploma in an examination under the IMTR, Calcutta held in the month of December 1992 and placed in the Honours Division. It is clear from the said document that such certificate does not purport to have been issued by the IMTR, Calcutta.

On a closer reading of Annexure-4 which is a "Diploma" issued by the IMTR, Calcutta, the name of the Petitioner has been mentioned as Manoranjan Khatua and most importantly the name of the father of the Petitioner has not been mentioned in the said document which is designed and styled as" "Diploma". The aforesaid facts would give rise to a conclusion that obviously it was Annexure 3 "Certificate" issued by the SIMST, Bhubaneswar, which had been sent to IMTR, Calcutta for verification and not the "Diploma" issued by the IMTR, Kolkata under Annexure-4.

11. In course of hearing of the writ application, by Order Dated 11.7.2007 the Opposite Parties 1 and 2 were called upon to file a further affidavit, whether Mahanadi Coalfields had sent the Diploma certificate of the Petitioner to the IMTR, Calcutta for verification. In compliance thereof, Opposite Parties 1 and 2 have filed a further affidavit on 7.8.2007 claiming therein that the Diploma (Annexure-4) had been sent to IMTR, Kolkata for their verification and that said authorities intimated that no such Diploma certificate has been issued by them. Apart from that the original certificates of the Petitioner were also produced for the Court's verification. On a verification of the records produced in the course of hearing the original letters were verified and it was seen that both the letters dated 6.8.1996(Annexure-A/1) and dated 23.10.1996(Annexure-D/1) merely referred to the "Certificate" issued in the name of Manoranjan Khatua S/o. Balamukunda Khatua. From this fact it is clear that there was in fact no reference to the "Diploma" which was issued in favour of the Petitioner Manoranjan Khatua by the IMTR, Calcutta. On verification of the record it is seen that the said record also contained a statement of "mark-sheet" of the Petitioner issued by the IMTR, Calcutta, which has been marked as Annexure 13 to the rejoinder affidavit filed by the Petitioner on 27.7.2007. In course of hearing the Learned Counsel for the Opposite Parties was asked why various documents such as Marksheet, Registration certificate and Admit card issued by the IMTR, Calcutta, which had been supplied by the Petitioner had not been sent for verification, no adequate response was forth coming.

12. The other aspect of the matter relates to affiliation of the SIMST, Bhubaneswar with IMTR, Calcutta. Opposite Parties 1 and 2 relied upon the Annexure-D/1 claiming that SIMST, Bhubaneswar was not affiliated with IMTR, Calcutta. Yet a matter of great relevance is that Opposite Parties 1 and 2 have themselves accepted the Diploma, Mark-sheet, Admit card and Registration certificates issued in favour of one Susanta Kumar Bisi, issued by IMTR, Calcutta. The Petitioner has provided similar documents of his educational qualification to the IMTR, Calcutta vide letter dated 15.10.1996 (Annexure-12) which has confirmed that the certificates issued in favour of Susanta Kumar Bisi are genuine. Therefore, it is clear that IMTR, Calcutta has taken two distinct and contradictory stands, one by confirming the genuineness of the certificate issued in favour of the Susanta Kumar Bisi, while at the same time disputing the genuineness of the certificates issued in favour of the Petitioner.

13. It is most important in this regard to take note of the fact that the Petitioner averred in Para-14 of the Writ Petition, as follows:

Thereafter the Petitioner represented before the Opposite Party No. 2. and the Opposite Party No. 2. received the letter of representation on dated 21.9.96. On receiving the letter, the Opposite Party No. 2. wrote a letter to the Opposite Party No. 4 to comment on the letter of the Opposite Party No. 3, but Opposite Party No. 4 has replied the same that the certificate has not been issued by them (Opposite Party No. 4) vide its letter dated 23.10.96 filed here along with Annexure-1)

After the above noted letter of Opposite Party No. 2. was sent to Opposite Party No. 4 the Petitioner had been to the Opposite Party No. 4 to ascertain the reason as to why they are saying that the certificate has not been issued by them. The Opposite Party No. 4 asked the Petitioner for Rs. 10,000/-(Rupees ten thousand) only for giving a reply that on further verification we found the certificate has been issued by us. But the Petitioner did not agree to pay any amount as he was a student of the institution and has completed and passed the course and as such is entitled to the certificate issued by the Opposite Party No. 4. The Petitioner was astonished to find the letter dated 23.10.96 that the Opposite Party No. 4 could write such a letter denying its certificate to have been issued by it for the sake of non-payment fee and career of its students.

14. Although notices and copies of the petition were served on Opposite Party No. 4 through special messenger, the said Opposite Party No. 4 has failed to appear in the matter and therefore, on the principle of non traverse, we have no alternative but to accept the aforesaid assertions in Para-13 above since it is supported by an affidavit filed by the Petitioner.

15. The other most important point for adjudication is that the Petitioner has been appointed as a Laboratory Technician (Trainee) vide appointment letter dated 13.4.1995(Annexure-5) and the letter of termination was issued to the Petitioner on 9.1.1997(Annexure 1) whereas the period of probation is one year.

In the counter affidavit the Opposite Parties 1 and 2 have further admitted in Para-5 of their affidavit dated 7.8.2007, which is set out below:

It is submitted that though the probation period of the Petitioner was closed w.e.f. 21.4.1996 but the Petitioner remains on training for a period of three years as per appointment Order Dated 13.4.1995.

16. In view of such admission of fact by Opposite Parties 1 and 2 disclosing that the order of termination vide Annexure-1 dated 9.1.1997 was issued after the period of probation came to an end and therefore, the order of termination is clearly not an order of termination simpliciter and therefore the same could not have been issued without complying with the requirement of initiating a regular departmental proceeding before issuing the impugned order of termination.

17. For the reasons as noted hereinabove, we are of the view that no justifiable basis exists for questioning the genuineness/ authority of the certificate of Diploma in Medical Laboratory Technique Course and the Mark-sheet submitted by the Petitioner for securing employment in the Mahanadi Coalfields Limited as Laboratory Technician (Trainee) and further hold that the order of. termination dated 9.1.1997 under Annexure-1 is unlawful and therefore, is quashed.

18. The Writ Petition is accordingly allowed, but under the circumstances without any order as to costs.

A.K. Ganguly, C.J.

19. I agree