

(2013) 03 CHH CK 0027
In the Chhattisgarh High Court
Case No : Writ Petition No. 238 of 2003

Mumtaj Khan

APPELLANT

Vs

Krishi Upaj Mandi Samiti, Rajnandgaon

RESPONDENT

Date of Decision : 04-03-2013

Acts Referred:

Citation : (2013) 4 CGLJ 366 : (2013) 3 MPJR 127

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Single Bench

Advocate : Jitendra Pali, for the Appellant; Anand Shukla, for the Respondent

Final Decision : Disposed Off

Judgement

Satish K. Agnihotri, J.—Being aggrieved by the order dated 31.05.2003, wherein the petitioner was removed from the service of Electrician cum Pump Attendant (for short "the EPA") on the ground that the petitioner did not possess the requisite certificate of ITI (electrical) for appointment on the post of EPA. Before the termination order was passed, the petitioner preferred another writ petition being W.P. No. 1808 of 2003 seeking a direction to the respondent-Mandi Board for treating the petitioner as regular employee since 07.11.1981 and to give all consequential benefits and seniority and also compensation for sufferance on account of not regularizing his services. Thus, both the above writ petitions are being considered and decided by this common order. The facts, in brief, as projected by the petitioner are that the petitioner was initially appointed on 05.06.1981 (Annexure P/1 to W.P. No. 238/2003) as Assistant Mechanic on temporary basis. Thereafter, he was appointed as EPA against the regular vacancy temporarily on the pay scale of Rs. 169-300/- p.m. Services of the petitioner was terminated by order dated 07.07.1982. A dispute was raised before the Labour Court. The Labour Court by order dated 26.04.1989 allowed the application and directed reinstatement of the petitioner with full back wages. The petitioner was consequently reinstated by order dated 22.12.1990 (Annexure P/4 to W.P. No. 238/2003). However, against the award dated

26.04.1989 passed by the Labour Court, a writ petition being MP. N. 3660/1990 was filed by the respondent/Mandi before the High Court of Madhya Pradesh at Jabalpur. The High Court, by order dated 31.10.1994 (Annexure P/6 to W.P. No. 1808/2003), dismissed the petition holding that the respondent-Mandi was bound to comply with the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947, which was not done. However, on the question of non-possession of the requisite certificate by the petitioner, it was directed that some time may be granted to the petitioner to produce the certificate within a particular date.

2. According to Shri Pali, learned counsel appearing for the petitioner, for the first time, the qualification was prescribed for EPA by order dated 27.05.1995 i.e. Higher Secondary School Certificate and I.T.I. certificate in Electrical. The petitioner had obtained wireman certificate which was produced before the Director, Mandi Board. The respondent No. 2 allowed the representation of the petitioner observing that the petitioner had stated in his representation that he had obtained the requisite certificate and as such, the petitioner be regularized w.e.f. 16.09.1997, on the post of EPA as there was no post of Assistant Mechanic. Pursuant thereto, the petitioner was appointed by order dated 01.07.1999 (Annexure P/17 to W.P. No. 1808/2003) on the post of EPA with a direction that the requisite certificate on the condition that the petitioner has to produce educational certificate of Higher Secondary and other certificates. The petitioner supplied the Higher Secondary School Certificate and a certificate of Wireman, however, the petitioner could not produce the requisite certificate of I.T.I. (electrical). Thus, by the impugned order dated 31.05.2003 (Annexure P/23 to W.P. No. 1808/2003), he was terminated from service. Thus, these petitions.

3. Shri Pali, learned counsel appearing for the petitioner submits that before passing the impugned order of termination, no show cause notice or opportunity of hearing was afforded. The requirement of eligibility criteria as aforesaid was not there when the petitioner was appointed on the post of EPA on 08.11.1981 and the petitioner had obtained experience of long period of more than two decades, thus, the petitioner could not have been thrown out on the ground of non-availability of requisite certificate which was introduced later after a period of 10 years of working of the petitioner on the post of EPA.

4. On the other hand, Shri Shukla, learned counsel appearing for the respondent/Mandi would submit that despite several reminders, the petitioner had not produced the requisite certificate and the certificate of Wireman is equivalent to I.T.I. (electrical) certificate for the post of EPA. The petitioner has not produced the said certificate till date, and as such, in view of the observation of the Supreme Court in Pramod Kumar Vs. U.P. Secondary Education Services Commission and Others, 7, for want of requisite qualification, the petitioner cannot be posted on the post of EPA.

5. Having heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto, there is no dispute that the petitioner did not

possess the requisite certificate of I.T.I. (electrician). He has obtained certificate of Wireman, which cannot be treated as equal to the I.T.I. (electrician) certificate. This is also not in dispute that the qualification of High School or I Higher Secondary School as well as certificate of I.T.I. (electrician) was introduced on 27.06.1997 (Annexure R/2-2 to W.P. No. 1808/2003) when indisputably the petitioner has been working on the post of EPA since 07.11.1981 as per (Annexure P/2 to W.P. No. 1808/2003). In the meantime, he was removed from service, however, the said removal order was found illegal by the Labour Court which was challenged by the respondent-Mandi before the High court of Madhya Pradesh at Jabalpur. On dismissal of the writ petition, the petitioner was reinstated in service. The requisite qualification as aforesaid was introduced after a period of 14 year. Thus, the petitioner cannot be thrown out on the ground of non-availability of requisite qualification which was introduced subsequently in June, 1995. The petitioner has obtained sufficient experience of more than two decades.

6. This Court, in the matter of Mahendra Budek Vs. State of Chhattisgarh and Others, , has observed as under:

18. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation (See: Keshavan Madhava Menon Vs. State of Bombay).

7. If the petitioner was fit and eligible for appointment on 07.11.1981, he cannot be thrown out on the ground that minimum qualification has been introduced subsequently in June, 1995. The petitioner was suitable, at the time of appointment, and on the said basis, he was allowed to continue for a long period.

8. In Pramod Kumar Vs. U.P. Secondary Education Services Commission and Others, the petitioner therein did not have the basic requisite qualification at the time of first appointment. Thus, it was held that if he did not have the basic requisite qualification to hold the post, he could not have any legal right to continue.

9. The facts of this case are different. In the case on hand, the petitioner possessed the requisite suitability and qualification at the time of appointment on 07.11.1981, but the instant qualification was introduced subsequently, thus, it cannot be said that the petitioner ought to have obtained subsequently the qualification after it was introduced.

10. The other basic requirement of following the basic principle of natural justice is that if an employee is condemned by way of termination, he ought to have been given proper opportunity of hearing to put forward his case. Though, in the case on hand, the representation of the petitioner, which could be held as opportunity of hearing, was duly considered and the respondent No. 2 had, directed to re-appoint the petitioner subject to submission of certificates which could not be submitted. Asking the petitioner to submit the certificate, which he had never acquired before joining the post would be a difficult task and the fact

remains that he was not asked to acquire I.T.I. certificate before his appointment on 07.11.1981. This was also not the criteria for obtaining the employment at that point of time.

11. In view of the above, it will be harsh to throw the petitioner on the ground that he did not have the requisite I.T.I. (electrical) certificate, when the same was introduced as requisite qualification, subsequently. Thus, the impugned order dated 31.05.2003 (Annexure P/23 in W.P. No. 1808/2003) is quashed. Accordingly the writ petition No. 1808/2003, is allowed.

12. In respect of other reliefs prayed for by the petitioner in W.P. No. 238/2003, the respondent authorities may consider the case of the petitioner in light of the aforesaid observation, if a representation is made by the petitioner. Consequently, W.P. No. 238/2003, also stand disposed of. No order as to costs.