

(2004) 09 AHC CK 0155

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8502 of 1989

R.P.Garg

APPELLANT

Vs

Indian Oil Corporation Ltd.& Anr.

RESPONDENT

Date of Decision : 27-09-2004

Acts Referred:

Citation : (2004) 09 AHC CK 0155

Hon'ble Judges : R.B.Misra, J

Final Decision : Disposed Of

Judgement

R.B. Misra, J.—Heard Sri V.K. Agarwal, learned Counsel for the petitioner and Sri V.R. Agarwal along with Sri Vivek Ratan, learned Counsel for the respondents.

In this petition prayer has been made to quash the order dated 2641999 whereby the petitioner's service as Electrician Grade III as a probationer was terminated by simplicitor order with payment of Rs. 1763 by demand draft drawn on State Bank of India.

2. The brief facts necessary for adjudication of the present case are that the petitioner was appointed as Electrician Grade III by appointment letter dated 2141986 consequent upon petitioner joined duty on 20th May, 1986 and petitioner's service was to be confirmed after completion of 12 months. However, the service of the petitioner was abruptly terminated on 2641989 i.e., after three years. According to the letter of appointment dated 2141986 the petitioner was appointed in the scale of Rs. 5401064, where he was to abide by the Rules and Regulation of Indian Oil Corporation (in short called "Corporation") amended from time to time and appointment was subject to his furnishing a good conduct certificate from his previous employer/employers at the time of reporting for duty and the management had reserved the right to terminate the appointment after giving one month notice or on payment of one month wages in lieu of notice. According to the petitioner without any notice or show cause or without any opportunity of hearing the service of the petitioner was terminated, whereas, the petitioner, a deemed confirmed employee was not to be terminated

by the above order dated 26/4/1989.

3. Counter affidavit has been filed according to which before joining the service the petitioner had to give a declaration in the "Declaration Form" as well as in the "Attestation Form" which provides as below:

?Furnishing a false information of suppression in the declaration form would be disqualification and condition No. 2 in declaration form will render the candidate unfit for employment in the Corporation.? Similar condition No. (i) of Attestation Form provides the furnishing of false information by suppression of any factual information the attestation form would be disqualification and is likely to render the candidate unfit for employment in the Corporation.?

4. The counter affidavit reveals as below:

The petitioner joined his duties on 20th May, 1986. At the time of interview, the petitioner was required to give undertaking in the "Declaration Form" as indicated above while presenting his "Declaration Form" on 4/4/1986. The petitioner was also required to disclose in the aforesaid ? Declaration Form ? his past experience and as to whether he had obtained a "No Objection Certificate" from his earlier employer.

5. Before filing the aforesaid declaration form, the petitioner was employed in the U. P. Rajya Vidyut Utpadan Nigam Limited (in short called Nigam?) on 3rd February, 1986, to 4th July, 1986 however for reasons best known to him, he did not disclose his employment or attachment or "No Objection Certificate" from the aforesaid employer.

6. Even when, the petitioner was offered employment, he was asked to fill up an ?Attestation Form? once again, non disclosure of the petitioner the true factual information in the `Attestation Form" was likely to render the candidate unfit for employment in the Corporation.

7. Despite his previous employment, Under this head, he only stated that he was employed with M/s Mathura Switch Gear Private Limited from 16th September, 1981, to 24th January, 1986. Thus, it is clear that he once again deliberately the petitioner had suppressed his employment after 24th January, 1986.

8. After coming to know of the aforesaid suppression of material facts, enquiries were made by Nigam through its letter dated 14th July, 1988. An enquiry was made from the Chief Engineer. Thermal Power Station, Personnel Training Institute, Sought Ambazan Road, Gopal Nagar, Nagpur, regarding the training undertaken by the petitioner in that institute in early 1986. The Chief Superintendent (Training) of the aforesaid Institute informed the by his letter, dated 19th July, 1988, that the petitioner was sponsored for training by the "Nigam" in operator course from 3rd February, 1986, to 4th July, 1986 and the petitioner absented during the course of training from 19th May, 1987.

9. The "Nigam" informed that it sponsored the petitioner for undergoing 22

weeks training from 3rd February, 1986, but he abandoned the training of his own and submitted a resignation on 19th May, 1986. Since the petitioner executed a service bond to serve the "Nigam" for three years after completion of such training therefore, the "Nigam" did not accept the resignation of the petitioner and had preferred a suit for recovery of Rs. 8,493/from the petitioner.

10. As the letter of appointment itself recites, the period of probation could be either reduced or extended. Significantly however, there is no clause in the aforesaid letter of appointment prescribing any maximum period of extension of probation. Thus, it cannot be said by any stretch of imagination that on the expiry of the period of six months or 12 months, as the case may be, the petitioner stood automatically confirmed.

11. According to the learned counsel for the respondent the "Corporation" has provided certification of Standing Orders in respect of Salaya Mathura Pipeline of Indian Oil Corporation Ltd. under the Industrial Employment (Standing Orders) Act, 1946 where paragraph 20.24 has provided: "Furnishing false information regarding name, age of his own or dependents, father's name, qualification, ability or previous service or any other matter germane to the employment," at the time of appointment or during the course of employment with clause 21.0 PENALTIES FOR MISCONDUCT provides as below.

21.1 The following penalties may be imposed on any workman who is found guilty of misconduct or for other good and sufficient reasons.

21.1.1 Censure

21.1.2 Fine (Subject to the provisions of the Payment of Wages Act, 1936)

21.1.3 Recovery from pay for the whole or part of any pecuniary loss caused to the company's property by rash and negligent act or violation of any rules or circular or order of the company or its authorized officers.

21.1.4 Reduction in pay/wages.

21.1.5 Reduction to lower service, grade or post; withholding of annual increment subject to the provisions of the Payment of Wages Act, 1936.

21.1.6 Suspension without pay nor exceeding ten days.

21.1.7 Dismissal

21.2 The following shall not amount to penalty:

21.2.1 A warning, either oral or written.

21.2.2 Nongrant of increment in accordance with the specific terms of appointment.

21.2.3 Reversion to the lower service, grade or post of workman officiating in a higher service, grade or post.

21.2.4 Reversion to the parent department of a workman appointed on deputation or on foreign service (deputation) terms to any post in the establishment.

21.2.5 Termination of service of a workman(SC)

(i) On Medical grounds (as per Para 5 of this S.O.)

(ii) On account of retrenchment/in accordance with the provisions of I.D. Act Or

(iii) During or at the end of the period of his probation in accordance with the terms of his employment.

(iv) If such workman has been employed on temporary basis. Or

(v) On attaining the age of superannuation.

12. Clause 21.2.5 (iii) the termination of service of a workman during the end of the period of his probation in accordance with the terms of his employment shall be treated as penalty. However, it has been indicated on behalf of the petitioner as well on behalf of the respondents that the Standing Order is not applicable in the case of petitioner.

13. I have heard learned counsel for the parties, I find that in terms and condition of the appointment the petitioner without any order of confirmation continued as probationer and could not be deemed to have been confirmed and treating the petitioner as a probationer and keeping in view the service of the petitioner and material on record passing of an order simplicitor is not illegal. The respondents have not proceeded to punish the petitioner after making departmental inquiry therefore the punishment is an order simplicitor without stigma. I do not find any illegality or impropriety in the termination order therefore, the writ petition is dismissed.