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BEFORE S. S. NIJJAR & NIRMAL YADAV, JJ

LEELA SINGH,—*Petitioner*

versus

PUNJAB STATE ELECTRICITY BOARD  
AND OTHERS,—*Respondents*

C.W.P. No. 17530 of 2004

17th August, 2005

*Constitution of India, 1950—Art. 226—P.S.E.B. (Punishment and Appeal) Rules, 1970—Sub Rule 5(v) i to ix—Board initiating vigilance enquiry against Linesmen for submission of bogus experience certificate—Enquiry proceedings remained pending for 13 years—Without completion of enquiry proceedings against the petitioner Administrative members ordering retention in service after forfeiting one year of service—Termination of services of petitioner without considering his case in any proceedings—Challenge thereto—Order of termination could not have been passed against the petitioner since on the same charges he had already been punished—Decision to terminate the services of petitioner held to be wholly arbitrary and in breach of rules of natural justice—Remedy of appeal—Petitioner failing to avail remedy of appeal available against order of termination—Order of termination set aside while directing the petitioner to file necessary appeal which shall be decided by the Appellate Authority by passing a speaking order.*

*Held*, that the order of termination could not have been passed against the petitioner since on the same charges, he had already been punished. By order dated 11th January, 2002 it had been decided by the Administrative Member of P.S.E.B. that the services of petitioner be continued after deducting one year of service. The aforesaid order was implemented as it is evident from order dated 22nd April, 2002. A perusal of this order shows that the proficiency step up payable to the petitioner was changed from 25th August, 1994 to 25th August, 1995. Similarly, nine year time scale was given to the petitioner with effect from 25th August, 1996 instead of 25th August, 1995, the date from which it was earlier given. Therefore, now to order termination of the services of the petitioner would amount to punishing the petitioner twice for the same misconduct.

(Para 7)

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*Further held*, that the decision to terminate the services of the petitioner is wholly arbitrary and in breach of rules of natural justice. It is, however, to be seen that the petitioner was directed to be retained in service without the completion of the enquiry proceedings against him. The petitioner did not care to file any appeal against the earlier order of punishment. The petitioner claims that had a proper opportunity of hearing been given, he would have been able to satisfy the respondents that he did not submit a bogus certificate of experience. The preliminary objection raised by the respondents with regard to the availability of the remedy of appeal to the petitioner has to be upheld. The petitioner shall be at liberty to raise all the points raised in the present writ petition before the Appellate Authority, including the point with regard to the gravity of the misconduct and the severity of the punishment inflicted upon him.

(Para 7)

Ashwani Talwar, Advocate, *for the petitioner*.

D. K. Nagar, Advocate, *for the respondents*.

### JUDGMENT

**S.S. NIJJAR, J.**

(1) The petitioner was selected and appointed as Lineman in Punjab State Electricity Board (hereinafter referred to as "The P.S.E.B."), in the year, 1986. He had applied for the aforesaid post in response to advertisement dated 10th December, 1985 (Annexure P-5). He was required to have one year practical experience in work-charge/regular capacity of Lineman. The petitioner alongwith numerous other candidates submitted bogus experience certificates. When this fact came to the knowledge of the respondent-Board, Vigilance Enquiry was initiated against the employees who had submitted bogus experience certificates. The petitioner was also served a chargesheet on 25th September, 2001 (Annexure P-3). After the vigilance enquiry was completed, he was informed that he did not submit the experience certificate during the enquiry which had culminated into Report No. 63/VU, dated 14th September, 1988 of IGP/V&S Office of P.S.E.B., Patiala. The experience certificate was also not available in his personal file. He was informed that he was not eligible for the job as he did not fulfil the condition

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stipulated in the advertisement. He had got the job by committing fraud with the department. Disciplinary action was proposed to be taken against him as per Sub Rule 5(v) i to (ix) P.S.E.B., (Punishment and Appeal) Rules, 1970. The Vigilance Enquiry had continued for 13 years. The petitioner was repeatedly asked to submit the requisite experience certificate. He, therefore, submitted a representation to the administrative member of the Board complaining that he had already submitted the original certificate to the Vigilance Department, but the same was never returned. He also submitted that the enquiry proceedings were pending for the last 13 years, his promotion has been withheld during the pendency of the proceedings. He, therefore, requested that the enquiry may be filed. The representation was considered at length by the Additional Director General of Police/V&S, P.S.E.B., Patiala. In his report, he submitted that the petitioner had not made available the original certificates for years together. Ultimately, in April 1994, the certificate were made available. But the Investigating Officer could not conclude specifically whether the certificates were the same on the basis of which he got the employment or he had destroyed any of them in order to escape. The report was sent to the Deputy Secretary (Personnel), Recruitment Section on 19th May, 1994 requesting them to lodge FIR against the employees whose certificate were found bogus. With respect to the remaining, they were directed to make available the relevant record produced by the candidates at the time of seeking the employment. It is also observed that a decision had been taken in the year 1992 to take action against the delinquent and to dispense with their services, after following procedure under the Punishment and Appeal Regulation, 1971. But no action appears to have been taken against various employees by the Chief Engineers. In order to bring the matter to finality, a vigilance enquiry is being detailed by the department to verify the experience certificate made available by the petitioner with respect to the record. It was observed that on receipt of the report of the Vigilance Inspector further communication will follow. It appears that charge-memo was issued to the petitioner, after the aforesaid report of the Additional Director General of Police. Before the completion of the enquiry against the petitioner, a decision was taken by the Administrative members of the Board on 21st November, 2001 that the services of the petitioner be continued

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after deducting one year of service. On the basis of the aforesaid order, the petitioner made a representation on 11th December, 2001 to respondent No. 3 that on the basis of the aforesaid order of the Administrative Member, the enquiry proceedings be filed. Pursuant to the order of the Administrative Member dated 21st November, 2001, consequential orders were passed on 22nd April 2002 (Annexure P-9) postponing the Proficiency Step up payable to the petitioner from 25th August, 1995 to 25th August, 1996. Thereafter, by order dated 25th June, 2002 (Annexure P-10), recovery of an amount of Rs. 48,725/- was ordered against the petitioner. This recovery started from the month of June, 2002. It appears that one Bhinder Singh, Lineman whose services had been terminated, made an application to the Board for reinstatement. He had been removed from Board service on 4th June, 2001 on the charge of submission of forged/ bogus experience certificate. He preferred an appeal against the dismissal before the Administrative Member who accepted the same. This decision of the Administrative Member was considered by whole time members in their meeting held on 15th January, 2004. In the aforesaid meeting, it was decided as under :—

“After deliberations, the WTMs decided to terminate the service of Shri Bhinder Singh, Lineman and others as indicated in Memorandum No. 12, dated 16th July, 2002 due to production of bogus apprenticeship certificates and tampering of official record which is grave misconduct on their part as per facts and figures brought out in the memorandum. The WTMs also desired to identify similar type of cases and take action accordingly. The decision be got ratified from the Board in its next meetings.”

(2) The decision of the Whole Time Members was ratified by the Board on 26th February, 2004. The aforesaid decision was communicated to the Chief Engineer (Operation). He was directed to submit the action taken report within two months. On the basis of the aforesaid communication, Chief Engineer (Operation)-respondent No. 2 directed Superintending Engineer of the petitioner to take necessary action. By letter dated 19th October, 2004 (Annexure P-12), the Superintending Engineer informed the Chief Engineer

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that the case of the petitioner has been decided by order dated 21st November, 2001. In spite of the aforesaid communication, the services of the petitioner have been terminated by order dated 2nd November, 2004 (Annexure P-1). It is this order which has been challenged by the petitioner by filing the present petition under Articles 226/227 of the Constitution of India. The petitioner seeks the issuance of a writ in the nature of Certiorari quashing the order of termination. He also seeks the issuance of a writ in the nature of Mandamus directing the respondents to reinstate the petitioner in service with all consequential benefits.

(3) The respondents have filed a written statement. Facts as narrated by the petitioner have not been disputed. It is, however, stated that a conscious decision was taken by the Whole Time Members in the meeting held on 15th January, 2001 in the overall interest of equity and law as other similarly situated Lineman had also tendered false and bogus experience certificates. The services of such employees had been terminated.

(4) Learned counsel for the petitioner vehemently argued that once the departmental proceedings against the petitioner had culminated in order of punishment, no further action could have been taken against the petitioner. Learned counsel submitted that the action of the respondents is violative of rules of natural justice as no departmental inquiry has been conducted against the petitioner. The orders of punishment passed against the petitioner had attained finality. Even consequential orders have been passed by giving effect to the order dated 21st November 2001. The respondents had even effected recovery from the petitioner. During the pendency of the writ petition, the petitioner had also placed on record instructions of the State of Punjab dated 24th April, 1972 (Annexure P-13). On the basis of these instructions, the learned counsel submits that a fresh enquiry cannot be conducted against the petitioner. In any event, it is argued by the learned counsel that the punishment of dismissal is too harsh as the petitioner had already put in 20 years of service.

(5) Learned counsel for the respondents has submitted that the remedy of appeal is available to the petitioner against the order of termination. These points can be raised in the appeal.

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(6) We have considered the submissions made by the learned counsel for the parties.

(7) We are of the considered opinion that the order of termination could not have been passed against the petitioner since on the same charges, he had already been punished. By order dated 11th January, 2002 (Annexure P-2), it had been decided by the Administrative Member of PSEB as under after considering the Vigilance Report :—

“The services of employee be continued after deducting one year of service”.

The aforesaid order was implemented as it is evident from Order dated 22nd April, 2002 (Annexure P-9) perusal of this order shows that the Proficiency Step Up payable to the petitioner was changed from 25th August, 1994 to 25th August, 1995. Similarly, nine years time scale was given to the petitioner with effect from 25th August, 1996 instead of 25th August, 1995, the date from which it was earlier given. Therefore, now to order termination of the service of the petitioner would amount to punishing the petitioner twice for the same misconduct. Even otherwise, it appears that the respondents never completed the enquiry proceedings against the petitioner, on the basis of the charge-sheet which had been issued on 25th September, 2001. The decision to forfeit one year service of the petitioner was based on the decision taken by the Administrative Member. The whole proceedings were re-opened by the Whole Time Members when Bhinder Singh, Lineman whose services were terminated, made an application to the Board for reinstatement. His services had been terminated on 4th June, 2001 on the charge of submission of forged/bogus experience certificate. This appeal of Bhinder Singh was accepted by the Administrative Member. This decision of the Administrative Member was considered by the Whole Times Members in their meeting held on 15th January, 2004. It was decided by the Whole Time Members to terminate the services of Bhinder Singh. A decision was also taken to terminate the services of others as indicated in Memorandum No. 12 dated 16th July, 2002 due to production of bogus apprenticeship Certificates and tampering with official record. The case of the petitioner was not considered in any of these proceedings, yet on the basis of the same, the services

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of the petitioner had been ordered to be terminated. We are of the considered opinion that the decision to terminate the services of the petitioner is wholly arbitrary and in breach of rules of natural justice. It is, however, to be seen that the petitioner was directed to be retained in service without the completion of the enquiry proceedings against him. The petitioner did not care to file any appeal against the earlier order of punishment. The petitioner claims that had a proper opportunity of hearing been given, he would have been able to satisfy the respondents that he did not submit a bogus certificate of experience. He had also submitted that remedy of appeal would not be an efficacious remedy as the decision to terminate his services had been taken on the direction issued by the Whole Time Members. We are unable to accept the aforesaid submission. As noticed earlier the Whole Time Members had directed action to be taken against the persons mentioned in Memorandum No. 12 dated 16th July, 2002. The petitioner has pleaded that his name does not figure in the aforesaid Memorandum. In such circumstances, we are of the considered opinion that the Preliminary Objection raised by the respondents with regard to the availability of the remedy of appeal to the petitioner has to be upheld. The petitioner shall be at liberty to raise all the points raised in the present writ petition before the Appellate Authority, including the point with regard to the gravity of the misconduct and the severity of the punishment inflicted upon him.

(8) In view of the above, the writ petition is partly allowed. We hereby quash and set aside the order of termination dated 2nd November, 2004 (Annexure P-1). The petitioner is directed to be reinstated in service forthwith with all consequential benefits. The petitioner is at liberty to file the necessary appeal before the Appellate Authority. In case such an appeal is filed within a period of 14 days of the receipt of a certified copy of this order, the same shall be decided on merits by the Appellate Authority, by passing a speaking order within a period of two months thereafter. No costs.

(9) Copy of this order be given dasti on payment of usual charges.

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**R.N.R.**