

Court No. - 2

Case :- WRIT - A No. - 6898 of 2022

Petitioner :- Employees State Insurance Corporation, Thru. Its Additional Commissioner, New Delhi And Others

Respondent :- Surendra Singh (Thru. Joint Director I/C, Lucknow) And Others

Counsel for Petitioner :- Pankaj Kumar Tiwari

Counsel for Respondent :- Praveen Kumar,A.S.G.I.

Hon'ble Devendra Kumar Upadhyaya,J.

Hon'ble Saurabh Srivastava,J.

1. Heard Sri Pankaj Kumar Tiwari, learned counsel for the petitioners and Sri Sameer Kalia, learned counsel representing the respondent No.1.

2. By instituting these proceedings under Article 226 of the Constitution of India, the petitioners have challenged the judgment and order dated 01.07.2022, passed by the Lucknow Bench of Central Administrative Tribunal whereby Original Application No.332/00494 of 2019 filed by the respondent No.1 has been allowed and the order terminating his services, dated 23.07.2019 has been set aside. The Tribunal has further observed that the petitioners will have liberty to take fresh disciplinary action against the respondent No.1, however, the same shall be subject to supply of reports of the expert bodies/related documents which have been relied upon by the petitioners against the respondent No.1 in relation to the charge relating to impersonation. The Tribunal further provided that in case disciplinary proceedings are initiated, the same shall be completed not later than four months from the date of receipt of a certified copy of this order.

3. The facts of the case are that the petitioner-Organization, namely, Employees State Insurance Corporation initiated the process of recruitment on the post of Social Security

Officer/Manager Grade-II/Superintendent by issuing advertisement, against which the respondent No.1 is said to have applied for his appointment to the post in question and accordingly submitted his application, dated 15.02.2011. A written examination is said to have been conducted on 03.07.2011 and thereafter Computer Skill Test was held on 11.12.2011 and finally interviews were conducted from 27.02.2012 to 05.03.2012.

4. In the said selection, the respondent No.1 is said to have been declared selected provisionally for the post in question and during the course of selection process, his signatures and thumb impressions were obtained on the Attendance Sheets, Computer Skill Test and Admit Card. On the basis of selection, an appointment order was issued in favour of the respondent No.1 on 16.04.2012 requiring him to report for his joining at Sub Regional Office, Varanasi. The respondent No.1 is said to have reported for his joining at Varanasi on 08.05.2012, however, it is alleged that at the time the respondent No.1 submitted his joining at Varanasi, the authorities in the office of the petitioner-Organization at Varanasi observed that his signatures available on the joining report and in the family particulars form did not, prima-facie, match with his signatures available on the application form submitted by him for recruitment and accordingly he was not allowed to join and the matter was referred to the Headquarter of the petitioner-Organization.

5. It is also submitted by the learned counsel for the petitioners that the respondent No.1 was allowed to join on the post in question on a communication received from the Vigilance Branch at Headquarter of the petitioner-Organization, after taking an affidavit from him that in case any discrepancy is found

proved, his services would be liable to be terminated immediately. His thumb impressions and signatures were again obtained on some dates at the same Sub Regional Office, Varanasi.

6. It is also stated that the specimen signatures and hand writing obtained from the respondent No.1 at different points of time were sent to the Central Forensic Science Laboratory, Chandigarh for comparison with the signatures and hand writing of the respondent No.1 which were taken at different points of time during the process of selection. The Central Forensic Science Laboratory, Chandigarh submitted its opinion/report on 22.08.2013, however, a request was made for furnishing other documents containing the signatures of respondent No.1 for further examination. Finally the Central Forensic Science Laboratory, Chandigarh submitted its report by means of letter dated 11.09.2015 expressing its opinion that his signatures did not match with the signatures on the attendance sheet of the written examination held on 03.07.2011. Thereafter, as stated by the learned counsel for the petitioners, the petitioner-Organization made a request to the Central Finger Print Bureau, New Delhi to examine/identify the thumb impression of the respondent No.1. In response thereof, the Central Finger Print Bureau, New Delhi gave its opinion that finger print impression on attendance sheet of written examination held on 03.07.2011 is different from the specimen left hand thumb impression of respondent No.1 obtained on 17.10.2012.

7. On receiving the reports from Central Forensic Science Laboratory, Chandigarh and Central Finger Print Bureau, New Delhi, a show cause notice was given to the respondent No.1 on 08.08.2018 giving the aforesaid details in the said show cause

notice and requiring the respondent No.1 to show cause as to why disciplinary action should not be taken against him for the alleged misconduct.

8. Respondent No.1 instead of furnishing his reply to the said show cause notice is said to have made an application on 14.09.2018 requesting the Director (Incharge) of the petitioner-Organization to provide him certain documents. The list of documents demanded by the respondent No.1 contains 23 items. However, in fact he appears to have demanded certain unnecessary documents such as the internal correspondence between the different offices of the petitioner-Organization.

9. It is not in dispute that the documents demanded by the respondent No.1 by means of letter dated 14.09.2018 were not provided to him; neither the reports of the Central Forensic Science Laboratory, Chandigarh and Central Finger Print Bureau, New Delhi, which were the basis of issuing show cause notice dated 08.05.2018 and which were also the basis of the order terminating the services of the respondent No.1, dated 23.07.2019, were provided to him.

10. Before the Central Administrative Tribunal, various grounds were taken by the respondent No.1 including the ground that in terms of the relevant regulations governing the conditions of service, he had completed his probation period and as such he was a confirmed employee and accordingly, he was entitled to the protection emanating from Article 311 of the Constitution of India or any other similar provision which might be available in the rules framed by the petitioner-Organization relating to disciplinary matters. The other ground taken by the respondent No.1 before the Central Administrative Tribunal was that the documents/reports which formed the basis of the order of

termination of his services, dated 23.07.2019 were not provided to him which vitiated the said order.

11. When we consider the judgment rendered by the Central Administrative Tribunal, what we find is that the issue as to whether the respondent No.1 had completed his probation period and was he or was he not a confirmed employee has no relevance for the reason that it is not a case of termination of services on account of his unsatisfactory services; rather it is a case where the petitioner-Organization has sought to terminate the services of the respondent No.1 on the ground that the respondent No.1, in fact, had impersonated and claimed his appointment on the basis of selection held where in place of respondent No.1 someone else had participated. It is, thus, a case of claiming appointment by impersonation and in case impersonation is established by the respondent No.1, there is no doubt, in our mind that the same will render the petitioner's services liable to be terminated.

12. The only question, thus, in this case is as to what should have been the appropriate procedure for carrying out an intended action by the petitioner-Organization against the respondent No.1 having been found to have impersonated while claiming his appointment.

13. The conduct amounting to impersonation, if any, cannot be said to have been indulged into by the respondent No.1 during the course of his employment with the petitioner-Organization for the reason that impersonation in this case, if any, had occurred at the time of selection process itself and before appointment and not after the appointment. Accordingly, application of misconduct in case of a regular employee and consequences thereof in the shape of disciplinary proceedings will have no bearing in this case.

14. Accordingly, as observed above, the question which falls

for our consideration in this case is as to what should have been the process to be adopted by the petitioner-Organization in case any action was intended to be taken by it on the ground of respondent No.1 obtaining his appointment by indulging in impersonation. Termination of service of an employee, on whatever ground, necessarily visits him with severe civil consequences. In the instant case, if termination order is allowed to sustain, the same will render the respondent No.1 jobless and he shall lose his employment thereby avenues of earning bread and butter which not only will affect him but his family members as well. Accordingly, no doubt, termination of services of respondent No.1 has a severe civil consequences and in such a situation the minimum ingredients of principles of natural justice are, in our considered opinion, necessary to be followed by the petitioner-Organization.

15. When we observe that the petitioner-Organization is required to follow at least minimum of the principles of natural justice before taking any action against the respondent No.1 for alleged impersonation, what we mean is that such an action need not to precede full-fledged disciplinary proceedings or inquiry, however, it will be incumbent upon the petitioner-Organization to provide at least the documents which are the basis of the order of termination or on the basis of which the petitioner-Organization intends to take action against the respondent No.1.

16. From a perusal of the show cause notice, dated 08.08.2018, it is abundantly clear that the basis of initiating action against the respondent No.1 were two documents, namely, (1) the report of Central Forensic Science Laboratory, Chandigarh and (2) the report of Central Finger Print Bureau, New Delhi. However, the petitioner-Organization did not enclose these two documents

which were intended to rely upon by it, while issuing show cause notice, dated 08.08.2018 to the respondent No.1. It is also worth noticing that though the respondent No.1 by means of his letter dated 14.09.2018 demanded scores of documents, all of which may not be relevant, however, in pursuance of the said demand made by the respondent No.1, even the reports of Central Forensic Science Laboratory, Chandigarh and Central Finger Print Bureau, New Delhi were not provided to him. These two documents formed the basis of the intended action on the part of the petitioner-Organization.

17. It is needless to say that if any action which has severe civil consequences is intended to be taken on the basis of some material, such material needs to be provided to the person against whom action is intended to be taken.

18. In the aforesaid view, we are of the opinion that by not providing at least two documents, namely, the report of Central Forensic Science Laboratory, Chandigarh and the report of Central Finger Print Bureau, New Delhi, the principles of natural justice in this case have been violated by the petitioner-Organization. The material having a bearing on the intended action, in our considered opinion, was to be necessarily provided to the respondent No.1

19. Thus, we do not find any good ground to interfere in the judgment and order, dated 01.07.2022, passed by the Central Administrative Tribunal, Lucknow Bench in Original Application No.332/00494/2019. However, we provide that the petitioner-Organization shall take appropriate action for inquiring into the alleged indulgence of respondent No.1 in impersonation and in this process shall provide him final report submitted by the Central Forensic Science Laboratory, Chandigarh and also the

final report of the Central Finger Print Bureau, New Delhi and call upon him to file his reply. The appropriate authority of the petitioner-Organization shall also consider the prayer made by the respondent No.1 in his application, dated 14.09.2018 which has been annexed at pages 194 to 196 to this writ petition and provide only the relevant documents. This direction being issued by us in respect of the application, dated 14.09.2018 made by the respondent No.1, does not mean that all the documents which have been demanded by the respondent No.1 shall be supplied to him; it is rather left to the discretion of the appropriate authority of the organization to consider the relevance of the documents demanded by the respondent No.1 and supply the same. In this regard, we permit the respondent No.1 to make an application giving therein the justification/relevance for demanding the documents and such an application shall be considered by the appropriate authority of the petitioner-Organization.

20. We also direct that the inquiry under this order shall be completed and final decision shall be taken by the petitioner-Organization within a period of five months from today.

21. The writ petition is, thus, **disposed of** with the aforesaid observations/directions.

Order Date :- 18.10.2022

Sanjay