

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 16th OF JANUARY, 2025

WRIT PETITION No.17607 of 2022

RAM DAYAL YADAV

Versus

STATE OF M.P. AND OTHERS

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Appearance :

Shri Yogesh Singh Baghel – Advocate for the petitioner.

Shri D.R. Vishwakarma – Government Advocate for the respondent/State.

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Reserved on : 18.12.2024

Pronounced on : 16.01.2025

ORDER

Pleadings are complete. Parties agreed to argue the matter finally, therefore, it is finally heard.

2. By the instant petition filed under Article 226 of the Constitution of India, the petitioner is challenging the orders dated 05.01.2021 (Annexure-P/1) and 23.05.2022 (Annexure-P/2).

3. By order dated 05.01.2021 (Annexure-P/1), services of the petitioner have been terminated with immediate effect on the basis of enquiry report submitted by the Enquiry Officer in a disciplinary proceeding initiated against the petitioner and vide order dated 23.05.2022 (Annexure-P/2), the Appellate Authority has dismissed the appeal preferred by the petitioner affirming the order passed by the

Disciplinary Authority.

4. After hearing the rival submissions put forth by counsel for the parties and on perusal of record, it is apposite to take note of certain facts before giving any opinion about the correctness of impugned orders, which are;

- (4.1) The petitioner was initially appointed on the post of Bioler Attendant/Driver on collectorate rate somewhere in the year 1997 against the vacant post of Driver and granted wages @ Rs.1655/-. Thereafter, vide order dated 02.01.1998 (Annexure-P/4), the services of the petitioner as a Driver were regularized in the department on a pay scale of Rs.950-20-1150-25-1400 equal to the pay scale of Boiler Attendant.
- (4.2) The petitioner was issued a show cause notice on 15.07.2020 (Annexure-P/5) for initiating a departmental enquiry against him and was asked to submit his explanation and thereafter enquiry was conducted so as to test the appointment of the petitioner on the post of Driver and thereafter, enquiry report was submitted.
- (4.3) As per the enquiry report and the opinion given by the Enquiry Officer, the petitioner, at the time of appointment on the post of Driver, did not have requisite educational qualification as per the circular dated 07.10.1994 issued by the General Administration Department and as such, looking to the long service tenure of the petitioner, it was opined by the Enquiry Officer that a sympathetic decision may be taken in the matter.

- (4.4) Subsequently, the Disciplinary Authority vide its order dated 05.01.2021 (Annexure-P/1) has dismissed the petitioner from service.
- (4.5) The Appellate Authority in its order after discussing the facts of the case in a very elaborate manner has observed that the petitioner was initially appointed on the post of Boiler Attendant as per the-then requisite qualification i.e. 5th class pass and, therefore, against the vacant post of Driver, he was given a regular pay scale of Rs.950-1400. However, it has also been observed that though the petitioner was given appointment on the post of Driver but at the relevant point of time, he did not have requisite qualification of the said post. The only reason for inflicting major penalty upon the petitioner is that he did not have requisite qualification of the post of Driver i.e. 8th class pass certificate. Ultimately, the Appellate Authority vide order dated 23.05.2022 (Annexure-P/2) dismissed the appeal preferred by the petitioner affirming the order passed by the Disciplinary Authority on 05.01.2021 (Annexure-P/1).

5. The respondents have submitted their reply taking stand therein that at the relevant point of time, the circular dated 07.10.1994 (Annexure-R/1) prescribing the requisite qualification for the post of Driver was in force, which reads as under:-

“उपरोक्त ज्ञापन से वाहन चालक की शैक्षणिक योग्यता का स्पष्ट उल्लेख नहीं है । इस संबंध में स्पष्ट किया जाता है कि कार्यभारित एवं आकस्मिकता व्यय से वेतन पाने वाले वाहन चालक की नियमित नियुक्ति के लिए भविष्य में शैक्षणिक योग्यता आठवीं कक्षा उत्तीर्ण तथा ड्रायविंग लाईसेंस आवश्यक अर्हता निर्धारित की जाती है ।”

As per the respondents, at the relevant point of time, since the petitioner did not have a certificate of 8th class pass, therefore, his appointment was found illegal and accordingly, his services have been dismissed.

6. The core question which involved in this case for adjudication is, whether the services of the petitioner can be dismissed only on the ground that at the time of appointment, he did not have requisite qualification.

7. Considering the facts and circumstances of the case, I am of the opinion that the action of the respondents is very unreasonable, unjust and arbitrary for the reason that the petitioner was appointed somewhere in the year 1997 and after a long lapse of almost 25 years, the respondents have not only taken a decision for initiating an enquiry so as to test the petitioner's appointment on the post of Driver on the ground of his educational qualification, but on that lacuna alone they have terminated the petitioner from service.

8. First of all, in my opinion, the post of Driver has nothing to do with the educational qualification because practically it has no significance that the Driver is having 8th class pass certificate or not. Driver having a degree of Engineering or Doctorate cannot be a good driver but even an ill-literate person can be an experienced driver. It is something surprising that for a period of 25 years, the respondents were in a deep slumber and all of a sudden they woke up, initiated enquiry for ascertaining the validity of the petitioner's appointment on the post of Driver, which culminated into his dismissal only on the count that at the time of appointment, he did not have the requisite

educational qualification of 8th class pass. So far as the circular dated 07.10.1994 is concerned, it does not reveal any clarity about the educational qualification for the post of Driver but on the contrary, it clarifies that if a Driver is regularized in work charged contingency establishment, then the Authority should consider whether the said Driver is 8th class pass or having driving license.

9. Thus, it is clear that appointing the petitioner on the post of Boiler Attendant and thereafter giving him regular pay scale which was equal to the post of Driver, the authority did not consider the aspect as to whether the petitioner is having requisite qualification or not. However, there was no statutory provision prescribed for the post of Driver. Under such Circumstances, this Court has no hesitation to say that after such a long period of services, no departmental proceeding should have been initiated so as to test the validity of the petitioner's appointment on the post of Driver that too only on the ground that the he did not have the 8th class pass certificate.

10. The Supreme Court in a case reported in **AIR 1990 SC 371** parties being **Bhagwati Prasad v. Delhi State Mineral Development Corporation**, has considered the aspect that workers not possessing initial educational qualification at the time of appointment gaining sufficient experience after many years of service, their confirmation cannot be refused only on the ground that they did not possess requisite qualification. It was a case of granting similar treatment or a pay scale on the basis of claim of 'equal pay for equal work'. The Supreme Court in the said case has observed as under:-

“6. The main controversy centres round the question

whether some petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them. The indisputable facts are that the petitioners were appointed between the period 1983 and 1986 and ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years' experience, ignoring artificial break in service for short period/periods created by the respondent, in the circumstances, would be sufficient for confirmation. If there is a gap of more than three months between the period of termination and re-appointment that period may be excluded in the computation of the three years period. Since the petitioners before us satisfy the requirement of three years' service as calculated above, we direct that 40 of the senior-most workmen should be regularised with immediate effect and the remaining 118 petitioners should be regularised in a phased manner, before April 1, 1991 and promoted to the next higher post according to the standing orders. All the petitioners are entitled to equal pay at par with the persons appointed on regular basis to the similar post or discharge similar duties, and are entitled to the scale of pay and all allowances revised from time to time for the said posts. We.....”

11. Thus, it is clear that the observation made by the Supreme Court has made the picture clear that experience gained by discharging duties for a long is sufficient to hold that the employee is having requisite qualification. The petitioner rendering services on the post of Driver

for a considerable period of 25 years has gained sufficient experience to become a perfect Driver. However, apart from educational qualification, there is no other lacuna on the part of the petitioner showing any deficiency in his driving, as such, dismissal order of the petitioner on that count alone, in my opinion, is unjust and unreasonable. Accordingly, the impugned orders dated 05.01.2021 (Annexure-P/1) passed by the Disciplinary Authority and 23.05.2022 (Annexure-P/2) passed by the Appellate Authority, are hereby quashed.

12. The respondents are directed to reinstate the petitioner in service and permit him to join if he has not attained the age of superannuation so far. Naturally, the petitioner would be paid arrears of wages within a period of three months from the date of submitting a copy of this order. If the same is not done, the arrears so calculated would carry interest @8% till actual payment is made to the petitioner.

13. With the aforesaid observations, the petition stands **allowed** and **disposed of**.

(SANJAY DWIVEDI)
JUDGE

ac/-