JUDGMENT SHEET IN THE ISLAMABAD HIGH COURT, ISLAMABAD JUDICIAL DEPARTMENT

W.P. No.953/2018
Kaloo Khan and others
Versus
OGDCL and others

Date of Hearing: 13.04.2018

Petitioners by: Ch. Afrasiab Khan, Ch. Hannan Din, Rai Azhar

Iqbal Kharal, Abdul Hafeez Amjad, Advocates

and Barrister Saad Khan.

Respondents by: M/s Khurram M. Hashmi, Kashif Ali Malik,

Sultan Mazhar Sher, Javaid Iqbal Wains and

Mushtaq Hussain Bhatti, Advocates, Mr. Arfan Ullah, Law Officer, O.G.D.C.L.

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I propose to decide writ petitions No.953/2018, 758/2018, 759/2018, 760/2018, 883/2018, 911/2018, 930/2018 and 962/2018, since they entail common questions of law and fact.

- 2. Through the abovementioned writ petitions, the petitioners, who were all employees of respondent No.1, impugn office memoranda issued by respondent No.1 between November, 2017 to January, 2018, whereby major penalty of "dismissal from service" was imposed on the petitioners after having being found guilty of misconduct (submission of bogus educational testimonials during the course of their employment with respondent No.1).
- 3. Learned counsel for the petitioners submitted that the petitioners had served with respondent No.1 for several years; that the educational certificates in question had not been submitted by the petitioners in order to gain employment with respondent No.1; that the imposition of major penalty of dismissal from service on the petitioners was too harsh for submitting bogus educational testimonials during the course of their employment; that the imposition of the said penalty carries a stigma and operates to the petitioners' detriment; that the imposition of the said penalty had prejudiced the petitioners' chances of gaining employment elsewhere; that since some of

the petitioners are on the verge of retirement, the imposition of a major penalty on them would deprive them of all their retirement/pensionary benefits; that the petitioners had never been found wanting or deficient in the performance of their duties; that the petitioners are low paid employees and therefore should have been dealt with in accordance with labour laws applicable to workmen; that the submission of bogus educational testimonials does not fall within the definition of "misconduct" as defined in O.G.D.C.L. Employees Service Rules, 2002 ("the Service Rules, 2002"); that the very institution of the disciplinary proceedings against the petitioners was unlawful; that out of the four major penalties contained in Rule 122(2) of the Service Rules, 2002, the harshest penalty of "dismissal from service" was imposed on the petitioners; that the petitioners could have been awarded a lesser penalty under the said Rules; that penalties of "fine" or "withholding of increment or promotion" or "reduction to a lower post" could have been imposed on the petitioners; that no reasons have been given for the imposition of major penalty of dismissal from service on the petitioners; and that the petitioners had been discriminated against inasmuch as other similarly placed persons had been awarded major penalty of "reduction to lower post".

4. Furthermore, it was submitted that all the petitioners had completed their probationary periods; that since the petitioners have had a long association with respondent No.1, equity weighs in their favour; that as per respondent No.1's policy contained in circular dated 01.09.2015, an employee who is compulsory retired from service is entitled to retiring benefits as admissible under the applicable rules/regulations; that since the petitioners were "workmen", the penalties contained in Section 15 of the West Pakistan Commercial and Employment (Standing Orders) Ordinance, 1968, should have been imposed on the petitioners; that since the petitioners had not been informed in writing about the alleged misconduct within one month of the submission of the educational testimonials (which have been alleged to be bogus),

disciplinary proceedings could not have been initiated against the petitioners; that the approval of the petitioners' employer had not been obtained before the said penalties were imposed on the petitioners; that the definition of misconduct contained in Rule 118 of the Service Rules, 2002, does not include the submission of bogus educational certificates by any of respondent No.1's employees; and that the submission of bogus educational certificates does not fall in the "instances of misconduct" listed in Rule 119 of the said Rules. Learned counsel for the petitioners prayed for the writ petitions to be allowed and for the impugned office memoranda to be set-aside.

On the other hand, learned counsel for respondent No.1 submitted that the petitioners had submitted fake educational certificates in order to either gain employment with respondent No.1 or to obtain service benefits/increments during the course of their employment with respondent No.1; that respondent No.1 initiated proceedings against the petitioners after the various educational boards had verified that the petitioners' educational certificates were found bogus; that initially when action was taken against the petitioners, they had filed writ petitions No.1489/2016 etc. before this Court, which were dismissed, vide judgment dated 31.07.2017; that in the said judgment, this Court endorsed the observation made by the National Industrial Relations Commission in its order dated 19.08.2015 that an inquiry could not be dispensed with while proceeding against the petitioners; that thereafter, regular inquiries were conducted against the petitioners; that the petitioners were issued show cause notices and charge sheets; that respondent No.1 meticulously followed the procedure for a regular inquiry against the petitioners set out in Rules 125 to 127 of the Service Rules, 2002; that in none of the writ petitions has it been pleaded that the educational certificates submitted by the petitioners were not found bogus; and that lesser punishments were awarded to those employees, who had submitted genuine educational certificates but had been tempered with.

- 6. Furthermore, it was submitted that a writ petition filed by O.G.D.C.L. employee who had submitted a bogus B.A. certificate in order to gain service increments was dismissed by the Division Bench of this Court, vide judgment dated 10.05.2016, passed in intra Court appeal No.53/2016; that the said judgment was upheld by the Hon'ble Supreme Court, vide order dated 22.01.2018, passed in civil petition No.4016/2016; that in the said order, it was observed that action was expected to be taken against those employees of respondent No.1 who had availed service benefits on the basis of fake degrees; that the regular inquires against the petitioners culminated in the imposition of major penalties of dismissal from service upon them; and that since no legal infirmity in the proceedings conducted against the petitioners have been identified, the instant writ petitions are liable to be dismissed. Furthermore, it was submitted that the instant petitions were not maintainable, since the petitioners had not availed the alternative remedy of an appeal provided in Rule 133 of Oil and Gas Development Regulations, 1994.
- 7. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.
- 8. On 08.03.2011, the Management Services Wing of the Establishment Division (Government of Pakistan), informed the Secretary, Petroleum and **Natural** Resources Islamabad, that the Prime Minister of Pakistan had directed that measures should be taken to authenticate degrees/certificates of all Federal Government employees of the respective Ministries/Divisions, their Departments, Subordinate Offices and Autonomous Bodies under their administrative control. As a first step, the degrees/certificates of employees of both Federal Government well as Autonomous/Semi-Autonomous Bodies/Corporations working in BS-17 to BS-22 or equivalent verified be by making a reference Universities/Institutions concerned which had issued the degrees/certificates. The concerned Secretaries and Heads of

the Departments/Organizations were to satisfy themselves about the genuineness of the degrees/other documents. A certificate along with the list of officers whose degrees/certificates had been verified was to be furnished to the Establishment Division within a period of forty five days.

- 9. On 09.05.2012, the Managing Director of respondent No.1 ordered that all degrees, diplomas and certificates submitted by all existing employees (officers and staff) should be verified on priority basis but not later than six months. It was also ordered that in future all degrees, diplomas and certificates of new inductees should be verified from the issuing authorities within six months of the appointment.
- 10. On 24.04.2013, the management of respondent No.1 issued the following circular:-

"Management has taken a serious note of cases where fake degrees/certificates have been submitted to acquire employment/benefits associated with services.

- 02. To eliminate the practice, following guidelines should be adopted:
- i) All cases of fake degrees/certificates are to be processed on the basis of uniform standards & principles and no exceptions is to be made.
- ii) Obtaining appointment, by meeting minimum qualification, through the use of fake testimonial(s) should invariably lead to a dismissal case.
- iii) Cases where fake degrees/certificates have been used to obtain promotions or increments should be dealt with strictly. Necessary instruction for stoppage of benefit, disqualification, debarment, etc. to be issued in such cases."
- 11. On 03.12.2013, the management of O.G.D.C.L. issued the following circular, which was distributed to all the employees, including the petitioners:-

"Management has taken a serious note of cases where fake degrees/certificates have been submitted to acquire employment/benefits, etc. associated with service at a later stage.

02. To eliminate the practice, management has decided that irrespective of the fact that fake degree/educational certificates, etc. are submitted to the Company at the time of induction i.e., Joining the service of the Company or at a later stage to seek some other benefits, etc., the employee found guilty of submission of fake degrees/certificates should be terminated from the service of the Company."

- 12. The management of any organization is well within its rights to issue such a circular and to verify the authenticity and genuineness of the educational testimonials of all its employees whether such testimonials were submitted by the employees in order to gain employment or subsequently in order to gain service benefits. In the event, after such a verification process it is found that the educational certificates submitted by the employee to the employer, were not genuine, the employer can proceed departmentally against such an employee.
- In pursuance to the abovementioned decisions and circulars of respondent No.1, the verification process of the educational certificates/degrees respondent of employees was initiated. The correspondence on the record between respondent No.1 and the educational Boards shows that the educational certificates/degrees submitted by the petitioners were found to be bogus. This caused respondent No.1 to initiate disciplinary proceedings against the petitioners. Some of the petitioners were issued show cause notices who invoked the jurisdiction of N.I.R.C. by filing grievance petitions. The said petitions were dismissed by the N.I.R.C. with the observation that an inquiry could not have been dispensed with while proceeding against employees who were alleged to have committed misconduct by submitting bogus educational testimonials. Writ petitions filed against the judgments of N.I.R.C. were dismissed by this Court. Thereafter, admittedly regular inquiries were conducted against the petitioners. These inquiries culminated in the issuance of office memoranda, whereby major penalty of "dismissal from service" was imposed on the petitioners. The petitioners were found guilty of having submitted bogus educational testimonials either to gain employment with respondent No.1 or during the course of their employment with respondent No.1. The bogus educational certificates and the purpose for which such certificates were used by the petitioners are set out in "Schedule-A" hereto.

- 14. I have gone through the petitioners' pleadings in their writ petitions. It is pertinent to note that none of the petitioners have taken the position that their educational certificates submitted in order to gain employment in respondent No.1/Company or during the course of their employment with respondent No.1/Company were genuine. The petitioners' primary concern is that the imposition of major penalty of "dismissal from service" is too harsh a penalty for the submission of bogus educational certificates. None of the petitioners have pointed out any legal defect in the procedure adopted by respondent No.1 in conducting inquiries against the petitioners.
- As regards the contention of the learned counsel for the petitioners that employment was not gained by the petitioners by submitting the bogus degrees in question, because no academic qualifications were required by O.G.D.C.L. for appointing the petitioners, suffice it to say that the Hon'ble' Supreme Court in the case of **Deputy District Officer** (Revenue), Qasoor Vs. Muhammad Munir Sajid (2013 SCMR 279), has held that the conduct of an employee submitting a fake educational certificate at the time of his employment knowing it will boost his chances for selection, was not entitled to be considered for selection. In that case, the department had imposed the penalty of dismissal from service on the respondent/employee for submitting a fake F.A. certificate at the time of his employment. The Punjab Service Tribunal set-aside the penalty of "dismissal from service" on the ground that since the basic educational qualification required for the respondent's appointment was matriculation, and not F.A., the respondent could not be dismissed for submitting a fake F.A. certificate. The Hon'ble Supreme Court set-aside the decision of the Punjab Service Tribunal and restored the penalty of "dismissal from service" imposed on the respondent by the department. Paragraphs-4 and 5 of the said report are reproduced herein below:-
 - "4. The learned counsel for the respondent was not in a position to dispute that the F.A. certificate produced by the respondent was fake. The respondent, who was present in-

person, when confronted about the genuineness of the certificate, admitted that he had not passed F.A. examination but alleged that the certificate was included in his testimonial by another candidate to spoil his chances of selection. We do not see any sense in this argument as to why would a competing candidate furnish a fake certificate, which if not detected would give an edge to the respondent. Furthermore this was not his case during the inquiry or before the Tribunal where he asserted that the certificate was genuine. There can be no two opinions that the certificate was indeed forged.

- 5. The Tribunal holding that the respondent was even otherwise eligible for selection on the basis of Matric certificate and thus his F.A. was not relevant has lost sight of the fact that this would have entitled the respondent to additional marks, which in fact he was granted. The main question here is the conduct of the respondent by producing a fake F.A. certificate in his testimonials, knowing well that it boosted his chances, disentitled him to be even considered for selection."
- As regards the contention of the learned counsel for the petitioners that the submission of a bogus educational degree/certificate does not come within the meaning of "misconduct" and therefore the petitioners could not have been subjected to disciplinary proceedings, I am of the view that the submission of a bogus educational degree/certificate by a person in order to gain employment or during the course of his employment comes within the meaning of "fraud". It is not just a fraud on the organization where employment is sought or where service benefits/increments are obtained on the basis of bogus educational degree/certificate but it is also a fraud on the deserving candidates/applicants who would have deservedly gained employment but for the despicable act of submission of such educational degree/certificate by the delinquent employees. The submission of bogus educational degrees/certificates, in my view, is not just a fraud but a 'cardinal sin' which ought to be dealt with in the strictest possible terms. Through such an act other deserving candidates are deprived of their livelihood. Recently, the Hon'ble Supreme Court, in its order dated 22.01.2018, passed in civil petition No.4016/2016, has held as follows:-
 - "2. It has been noticed that during the course of hearing before the learned Islamabad High Court, the Petitioner admitted that he had presented fake degree to the Respondents, which

admission is reflected in paragraph No.6 of the impugned judgment dated 10.05.2016. In this view of the matter, the Petitioner could not invoke the equitable jurisdiction of the learned High Court nor any relief could be granted, hence, the Writ Petition has been correctly dismissed. The learned counsel states that other employees of the OGDCL are also in similar situation but no action has been taken against them. This fact has not been conceded by the Respondents. However, we except that similar action will be taken against all the employees who have enjoyed the benefits from the OGDCL on the basis of fake degrees. A compliance Report, in this behalf, shall be filed within three months from today for examination by us in Chambers.

- 3. We are also surprised to note that in the eyes of OGDCL, preparation and utilization of the fake degree is not a criminal offence, as no criminal proceedings have been initiated. This laxity on the part of the OGDCL is not acceptable. We expect, the OGDCL which is a public sector entity to fulfill its duty and initiate criminal proceedings against all those persons who have violated the law and presented fake documents."
- **17**. The management of respondent No.1 is cautioned that in awarding penalties, it must not discriminate amongst the employees who are found guilty of submitting bogus educational degrees/certificates. Any discrimination in this regard would render the management liable to be proceeded against in accordance with the law. The anomalies and the disparity in the award of penalties in such cases must be rectified at the earliest. 18. Rule 131 of the Oil & Gas Development Company Limited Employees Service Rules, 2002 provides that a person on whom a penalty is imposed shall have a right to appeal to the appellate authority provided where a penalty is imposed by order of the Board of Directors, there shall be no appeal but the person concern may apply for review of the orders. In the case at hand, it is an admitted position that the major penalties of dismissal from service were not imposed on the petitioners by the Board of Directors of respondent No.1. Additionally, Regulation No.133 of the Oil & Gas Development Corporation Employees (Service) Regulations, 1994 is couched exactly in the same terms as Rule 131 (ibid). There is nothing on the record to show that any of the petitioners had availed the remedy of the appeal in accordance with the above mentioned Rules and Regulations. This is an added reason why these writ petitions ought to be dismissed.

19. Finding no illegality, irregularity or procedural impropriatory in the proceedings conducted by respondent No.1 against the petitioners, the writ petitions are <u>dismissed</u> with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2018.

(JUDGE)

APPROVED FOR REPORTING

Qamar Khan*

Uploaded By: Zulqarnain Shah

"SCHEDULE-A"

Writ Petition No.953 of 2018

Sr. #	Petitioner's Name	Date of Appointment	Date of Dismissal	Educational Document declared Fake / Forged	Purpose for Submitting Fake Document
1.	Kaloo Khan	13.10.1988 as Causal Store Helper	18.12.2017	SSC (Matric)	Used for regularization as Well Operator
2.	Bakhtiar Gul	25.03.1995 as Laboratory Tester	02.01.2017	SSC (Matric)	Used for appointment and promotion
3.	Muhammad Mushatq	20.03.1995 as Lower Clerk Division	19.12.2017	SSC (Matric)	Used for appointment and promotion.

Writ Petition No.758 of 2018

Sr. #	Petitioner's Name	Date of Appointment	Date of Dismissal	Educational Document declared Fake / Forged	Purpose for Submitting Fake Document
1.	Muhammad Tariq	15.06.1991 as LDC / Typist	19.12.2017	HSSC	Used for appointment & promotion
2.	Naeem Shahzad	05.07.2006 as LDC / Typist	18.12.2017	HSSC	Used for appointment
3.	Muhammad Suleman	06.04.1996 as Well Attendant	18.12.2017	HSSC	Used for getting weightage in promotion
4.	Syed Raza Hussain Shah	04.09.1990 as Mechanic Helper	19.12.2017	SSC (Matric)	Weightage of 2 marks was given for job & 2 advance increments w.e.f. 01.03.1995

Writ Petition No.759 of 2018

Sr. #	Petitioner's Name	Date of Appointment	Date of Dismissal	Educational Document declared Fake / Forged	Purpose for Submitting Fake Document
1.	Sheikh	27.05.1990	19.12.2017	B.A degree	Used to acquire
	Muhammad	as			04 advance

	Shafique	LDC			increments
		1			
		Typist			
2.	Ghani	01.06.1995 as	19.12.2017	Failed to	Used to acquire
	Rehman	LDC		Submit B.A	04 advance
		1		degree	increments
		Typist			

Writ Petition No. 760 of 2018

Sr. #	Petitioner's Name	Date of Appointment	Date of Dismissal	Educational Document declared Fake / Forged	Purpose for Submitting Fake Document
1.	Mumtaz Hussain	06.04.1986 as Assistant Store Man	19.12.2017	SSC (Matric)	Used for appointment as Assistant Store Man & further promotions
2.	Khurram Shahzad	29.08.1996 as Well Attendant	19.12.2017	SSC (Matric)	Used for appointment
3.	Ikhlaq Ahmad	03.07.1994 as Naib Qasid but later re-designated as Medical Helper	18.12.2017	HSSC	Granted advance increment on higher qualification i.e. F.A basis.
4.	Shahid Akhtar	18.02.1986 as Store Helper	19.12.2017	SSC (Matric)	Used for promotion & 2 advance increments
5.	Safeer Hussain	20.08.1996 as Well Attendant	18.12.2017	SSC (Matric)	Used for appointment as Well Attendant &2 time promotion in service
6.	Saleem Masih	29.08.1993 as Store Helper	18.12.2017	SSC (Matric)	Used for promotion in service & 02 advance increment based on qualification
7.	Gultasib Hussain	03.08.2004 as Helper	18.12.2017	SSC (Matric)	Used for conversion as Engine Driver Class-IV and then promotion to Engine Driver Class III

8.	Jamshaid Iqbal	27.10.2005 as Lab Attendant	19.12.2017	SSC (Matric)	Used for promotion 5 marks were granted on Matriculate basis
9.	Khalil-ur- Rehman	08.09.1991 as Ferro printer	18.12.2017	SSC (Matric)	Used for appointment
10.	Yasir Rauf Qureshi	03.08.2004 as Lab Attendant	18.12.2017	SSC (Matric)	Used for promotion
11.	Shafqat Mehmood	12.08.2004 as Helper Survey	19.12.2017	SSC (Matric)	Granted 3 advance increments on SSC basis
12.	Adeel Mehmood	09.04.2005 as Helper (Communicati on)	18.12.2017	SSC (Matric)	Used for job - 2 marks were given as higher then requisite qualification. Weightage of 5 marks w.e.f. 01.12.2013
13.	Muhammad Aslam	29.04.1992 as Shooting Helper	18.12.2017	SSC (Matric)	Used for application for grant of three advance increments & promotion
14.	Mumtaz Ahmed	17.12.1990 as Shooter Helper	18.12.2017	SSC (Matric)	Used for 2 extra marks for job and weightage of 5 Marks from Shooting Helper to Shooter
15.	Hakim Khan	23.12.1990 As Well Attendant	19.12.2017	SSC (Matric)	Used for appointment
16.	Abid Mehmood	20.13.1979 As Production Attendant	18.12.2017	SSC (Matric) & DAE	Used for appointment and further redesignation - Weightage of 5 marks was given for SSC & 5 marks for DAE for APT to Plant Tech on 01.12.2011

17.	Naeem Akhtar	07.12.1994 as Sample Catcher	18.12.2017	SSC (Matric)	Used for appointment – was given extra marks and granted three advance increments
18.	Rafiq Bhatti	27.01.1991 As Store Helper	25.01.2018	SSC (Matric)	Used for promotions
19.	Muhammad Shabbir	17.06.1991 As Naib Qasid	18.12.2017	SSC (Matric)	Used for conversion as dispatcher and promotion
20.	Mr. Fayyaz Hussain	15.11.1994 as Telephone Lineman	18.12.2017	SSC (Matric)	Used for appointment and promotion

Writ Petition No. 883 of 2018

Sr. #	Petitioner's Name	Date of Appointment	Date of Dismissal	Educational Document declared Fake / Forged	Purpose for Submitting Fake Document
1.	Syed Muhammad Abbas Shah	21.11.1994 as Daftri	18.12.2017	HSSC	For grant of 2 Advance increments w.e.f. 02.05.2005

Writ Petition No. 911 of 2018

Sr. #	Petitioner's Name	Date of Appointment	Date of Dismissal	Educational Document declared Fake / Forged	Purpose for Submitting Fake Document
1.	Saeed Ahmed	20.08.1996 as Well Attendant	18.12.2017	SSC (Matric)	Used for appointment & promotion
2.	Kamran Nawaz	03.08.2004 as Well Attendant	18.12.2017	SSC (Matric)	Used for appointment
3.	Tariq Mehmood	16.11.2005 as Well Attendant	18.12.2017	SSC (Matric)	Used for appointment Weightage 5 marks w.e.f. 01.07.2011

4.	Abdul Rauf	03.08.2004 as (Initially appointed as Helper on casual basis)	18.12.2017	SSC (Matric)	Used for appointment& promotion as Dispatcher
5.	Muhammad Ejaz Hussain	23.11.2005 as Mud Attendant	17.12.2015	SSC (Matric)	Used for appointment/as per Clause 8.5 of 21st MOS, was placed from NMG-6 to NMG 12 based on SSC
6.	Kamran Bashir	03.08.2004 as Store Helper	10.02.2015	SSC (Matric)	Used for appointment Applied for 2 increments but not given due to fake SSC

Writ Petition No. 962 of 2018

Sr. #	Petitioner's Name	Date of Appointment	Date of Dismissal	Educational Document declared Fake / Forged	Purpose for Submitting Fake Document
1.	Hassan Muhammad	07.12.2005 as Helper	05.01.2018	SSC (Matric)	For grant of 2 Advance increments w.e.f. 02.05.2005
2.	Sajid Mehmood	17.11.2005 as Engine Driver	20.01.2015	SSC (Matric)	Used for appointment& promotion
3.	Muhammad Jalil	20.06.2005 as Well Attendant	25.02.2016	SSC (Matric)	Used for appointment
4.	Malik Nazar Hussain	30.06.2003 as Dispenser	19.12.2017	SSC (Matric)	Used for Appointment

Writ Petition No.930/2018

Sr. #	Petitioner's Name	Date of Appointment	Date of Dismissal	Educational Document declared Fake / Forged	Purpose for Submitting Fake Document
1.	Maqbool	30.01.1995	19.12.2017	B.A.	Used for
	Hussain	as			appointment&
		Plant Operator			promotion
2.	Muhammad	10.07.1995 as	19.12.2017	HSSC	Used for
	Sadique	Junior Plant			appointment &
		Operator			promotion
3.	Rahim Gul	14.05.1995 as	19.12.2017	SSC	Used for
		L.D.C.		(Matric)	regularization

					as Well Operator
4.	Amir Qasim	02.05.2005 as Helper Electrician	19.12.2017	SSC (Matric)	Used for appointment & promotion
5.	Maqsood Khan	01.03.1990 as Engine Driver	19.12.2017	SSC (Matric)	Used for regularization
6.	Fazal Usman	24.01.1995 as Lab Assistant	19.12.2017	SSC (Matric)	Used for appointment & promotion
7.	Kamran Mirza	01.10.1987 as Helper (Electrician)	19.12.2017	SSC (Matric)	Used for regularization
8.	Muhammad Azam	13.01.1996 as Helper (Store)	19.12.2017	SSC (Matric)	Used for appointment & promotion