

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P. No.2344/2018

Khan Anwar-ul-Haq

versus

OGDCL & 2 others.

Petitioner by: Ch. Afrasiab Khan, Advocate.

Respondents by: Mr. Mushtaq Hussain Bhatti, Advocate.

Date of Hearing: 25.11.2019.

MOHSIN AKHTAR KAYANI, J: Through the instant writ petition, the petitioner has called in question order of his dismissal dated 07.01.2016 together with order passed by the appellate authority dated 30.06.2016, whereby appeal preferred by the petitioner against his dismissal order has been dismissed.

2. Brief facts referred in the instant writ petition are that in the year 1977, Khan Anwar-ul-Haq/petitioner was appointed as Surveyor (CI-IV) in OGDCL and pursuant to several promotions he was ultimately promoted as Surveyor (Class-I) vide O.M. dated 02.03.2005. However, on 17.10.2011, for the purpose of promotion to the post of Assistant Survey Officer, when the petitioner verified his F.Sc./HSSC certificates, he learnt that the said certificate was mistakenly issued to the petitioner, rather the petitioner had failed in the said examination, whereafter the petitioner by submitting a written request along with an affidavit to forgo his promotion in EG-II. The petitioner continued serving as Surveyor (Class-I) and vide O.M. dated 09.01.2013, order of his retirement from service on attaining the age of superannuation was issued followed by clearance certificate dated 11.04.2014 and relieving order dated 14.04.2014. Meanwhile, the petitioner was served with a show cause notice that he had applied for the post of Surveyor on the basis of a bogus F.Sc./Diploma, which was challenged by the petitioner under Section 31 of the Industrial Relations Act, 2012, however the same was

dismissed by learned Member NIRC vide order dated 19.08.2015. Consequently, the OGDCL vide O.M. dated 07.01.2016 dismissed the services of the petitioner, against which the petitioner moved a departmental appeal, which was also dismissed vide impugned order dated 30.06.2016. Hence, the instant writ petition.

3. Learned counsel for petitioner contended that in the year 1977, F.Sc./HSSC was not a requirement for appointment to the Surveyor and no malafide on the part of petitioner was involved at all in submitting the same at the relevant time; that at the time promotion to the post of Assistant Survey Officer, to which FSc/HSSC was the requirement, the petitioner submitted an application coupled with an affidavit affirming that he does not want to be promoted to the post of Assistant Survey Officer; that both the impugned orders are passed in violation of the rules of natural justice, principles of *audi alteram partem* and due process contained in Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, therefore, the same may be set-aside and direction may kindly be issued to the respondent authorities to make payment of pensionary benefits and other retirement benefits in favour of the petitioner.

4. Conversely, learned counsel for respondents contended that the instant writ petition is not maintainable as this Hon'ble Court in earlier pronouncement had held in unequivocal terms that the petitioner had an alternate remedy in terms of Section 33 of the Industrial Relations Act, 2012 and as such constitutional jurisdiction of the High Court cannot be invoked; that the petitioner has already exhausted his remedy available to him under Section 33 of the Industrial Relations Act, 2012 by filing petition before the NIRC, which was disposed of vide order dated 17.05.2017, while the petitioner feeling aggrieved thereof preferred an appeal before the learned Full Bench of NIRC, which was dismissed vide order dated 08.05.2018; that pursuant to directive of the Cabinet

Secretariat (Establishment Division) dated 08.03.2011, the F.Sc. certificate submitted by the petitioner at the time of induction was verified from the concerned board, which proved as bogus, which resulted into issuance of show cause notice to the petitioner, whereupon a detailed departmental inquiry was conducted and ultimately the petitioner was dismissed from service vide impugned order dated 07.01.2016, which order was further maintained by the appellate authority vide impugned order dated 30.06.2016, therefore, the instant writ petition may be dismissed.

5. Arguments heard, record perused.

6. Perusal of the record reveals that the petitioner has assailed the order of his dismissal from service dated 07.01.2016 as well as order dated 30.06.2016, whereby the major penalty of dismissal from service has been maintained by the appellate authority. The petitioner, on the basis of Diploma of Surveyor, Matriculation and F.Sc. certificates, was initially appointed on 14.09.1977 as Surveyor (CI-IV) in Exploration Department of the OGDCL and later on promoted on different positions. The petitioner remained active in various union activities as well as in formation of the Collective Bargaining Agent (CBA). When the petitioner was promoted to the post of Assistant Surveyor Officer vide O.M. dated 17.10.2011, he himself submitted a written request on 31.10.2011 for withdrawal of his promotion and cancellation of the said O.M. of promotion with the claim that his F.Sc./HSSC certificate was mistakenly issued to him and he was failed in the said examination. The application was attached with affidavit in which he categorically stated that he does not want to be promoted to post of Assistant Surveyor Officer. Consequently, he continued rendering his services as Surveyor (Class-I), SP-5, and in the meanwhile order of his retirement from service on attaining the age of superannuation was issued vide O.M. dated 09.01.2013 notifying the date of his retirement from service as 14.06.2014.

However, the petitioner received a show cause notice dated 14.06.2014 with the allegation that his HSSC/F.Sc. certificate is fake and he has obtained his initial job on the basis of such certificate, which itself is a bogus certificate. The petitioner has assailed the said show cause notice before the NIRC, which was decided by the learned Single Bench, NIRC as well as by the Full Bench, NIRC against the petitioner and the matter was remanded with the direction to the petitioner to approach the proper forum. After the decision of the Full Bench, NIRC, the petitioner was terminated vide letter dated 07.01.2016 by the OGDCL authorities, followed by dismissal of his appeal against the said decision vide order dated 30.06.2016.

7. The perusal of entire record reveals that the petitioner has secured his job on the basis of his matriculation certificate, surveyor diploma and F.Sc. certificate, while the later certificate has been made basis for his termination for the same being bogus. The petitioner was aware of the fact that the said certificate is fake/forged and the claim of petitioner at this stage is to only convert his dismissal order into compulsory retirement on the ground that he has served for 37 long years in the OGDCL and he should not be deprived of his pensionary benefits.

8. As a matter of fact, such type of issue has already been dealt by the apex Court in 2013 SCMR 279 (Deputy District Officer (Revenue), Kasur vs. Muhammad Munir Sajid), wherein it has been held that the conduct of employee submitting a fake educational certificate at the time of employment, knowing it will boost his chances for selection, disentitled him even to be considered for selection. In that case, the department had imposed penalty of dismissal from service the employee for submitting a fake F.A. certificate, whereas the Punjab Service Tribunal had set aside the said penalty of dismissal from service on the ground that since the basic educational qualification required for the

appointment was Matric, and not F.A., the employee could not be dismissed for submitting a fake F.A. certificate. However, the apex Court had set aside the said decision of the Punjab Service Tribunal and restored the penalty of dismissal from service imposed on the employee by the department.

9. In order to further elucidate the situation, the relevant paragraph of judgment in the case of *Muhammad Munir Sajid supra* (2013 SCMR 279) is reproduced as under:

"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."

(Emphasis added)

10. On the contrary, the petitioner has not disputed the authenticity of the HSSC certificate at the time of getting employment in the OGDCL, and as such, he was in service when the show cause notice was issued to him, which he has challenged before the NIRC through grievance petition, which was dismissed on the question of jurisdiction, therefore, in such situation, no legal right has been accrued in his favor. Although, the petitioner, while relying upon 2019 CLC (CS) 263 (Zahid Hussain Makhdoom vs. The Secretary/Chairman, Railway Board), tried to persuade this Court that since other similarly placed employees have been given lesser penalty, therefore, a lenient view may also be taken up in his

favour considering his 37 years of service. However, at this stage, the decision passed by the three members Bench of the apex Court in case of *Muhammad Munir Sajid supra* has to be given preference over the case of *Zahid Hussain Makhdoom supra*, which has been passed by a two members Bench of the apex Court.

11. In view of above discussion together with the law laid down by the apex Court, a lenient view could not be taken at this stage, which is the prerogative of the department concerned under the rules and law of the OGDCL and this Court in constitutional jurisdiction of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 is not competent to convert the order of dismissal into compulsory retirement despite the fact that the petitioner has served the department for 37 long years and was served with a show cause notice on the very date of his retirement, which itself is a sorry state of affairs and, in other words, affects the basic right to life of the petitioner in terms of Article 9-A of the Constitution of the Islamic Republic of Pakistan, 1973. Nevertheless, all these grounds could not be considered at this stage when the very foundation laid down by the petitioner is based on a fake certificate, therefore, this Court is confident to hold that the instant writ petition is meritless, hence, the same is hereby **DISMISSED**.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: **29.11.2019**.

JUDGE

Khalid Z.