

CASE NO.:
Appeal (civil) 262 of 1997

PETITIONER:
M/S. NATIONAL ALUMINIUM CO. LTD.

Vs.

RESPONDENT:
DEEPAK KUMAR PANDA & ORS.

DATE OF JUDGMENT: 10/07/2001

BENCH:
S. Rajendra Babu, P. Venkatarama Reddi.

JUDGMENT:

P. VENKATARAMA REDDI, J.

The respondent herein was appointed as French Interpreter by the petitioner-company (a public sector undertaking) on contract basis on 25.1.1985 after holding an interview. It was in the nature of contract appointment on a consolidated pay, which was initially for a period of one year. The contract of employment was being extended from time to time up to 1.1.1990, the latest order of extension being 30.10.1989. He was drawing a consolidated pay of Rs.1800/- per month. By a telegraphic Communication dated 8.1.1990, the respondent was notified that his contractual appointment had expired on 1.1.1990 and that he was free to collect the dues from the Finance department. It is this order that was challenged in the High Court of Orissa. The specific relief the respondent sought for was to direct the grant of renewal/extension of service. It is the case of the respondent- writ petitioner that the persons junior to him, were appointed on similar terms, were continued and later on their services were regularized. It may be mentioned that the respondent's application for permanent absorption was negated by an order dated 13.10.1989 (at Annexure-F), the ground of rejection being that he failed to produce the original certificate of Sri Aurobindo International Centre for Education, Pondicherry in proof of having passed the three year higher course, which is equivalent to graduation. It was stated in the said order that the respondent represented at the time of joining the service that he possessed the qualification of graduation, but he failed to produce the original certificate inspite of several communications sent from 12.12.1988 onwards. One more opportunity was given to him to produce the original certificate with a warning that in case of failure to do so, it would be presumed that he did not pass the 'higher course' from Sri Aurobindo International Centre and that he had given false declaration. The respondent wanted five days time to produce the certificate, but he failed to furnish the same. Another communication was sent on 16.11.1989 directing the respondent to produce the certificate on or before 25.11.1989. At that stage, the respondent sent a representation dated 27.11.1989 stating as follows :

"In view of the above facts, I would like to draw your kind attention that whatever documents which had been submitted by me regarding my educational qualification to the company at the time of joining may be treated as final. Copies of the previously submitted documents

during my joining in service are attached herewith for necessary action."

The petitioner-company, in answer to the writ petition, took the stand firstly, that the respondent stayed away from duties from 21.12.1989 onwards without waiting for sanction of leave and therefore his name was liable to be struck off from the muster rolls in terms of clause (31) of the Standing Orders and secondly, the contractual appointment having come to an end, the respondent has no legally enforceable right to continue in service. The third and more important stand taken by the petitioner-company was that the respondent did not produce satisfactory proof of possessing the requisite educational qualification for being appointed as French Interpreter or to the post of Assistant and therefore the question of extension of service or regularization did not arise. The High Court did not accept any of the contentions raised by the Management in answer to the writ petition. Accordingly, the writ petition was allowed by the impugned judgment with the following directions :

"In the result, we direct the opposite parties, to consider the case of the petitioner for regularization and appointment in the post of Assistant of the Company, with effect from the date other French Interpreters were so regularized, on the premise that the petitioner has the requisite educational qualification and without insisting on age bar. However, we hope and trust that the only ground on which he was denied consideration being lack of requisite qualification, there would be no further impediment in the way of regularization in service, the petitioner having been held to have the requisite qualification. However, on regularization and permanent absorption in service, the period from such date till the joining, shall only be counted for the purpose of pensionary benefits but he shall not be entitled to salary for those period he has not rendered any service to the company inasmuch as there is no tangible material on record that he was not gainfully employed during that period."

As regards the first contention that on account of unauthorized absence of the respondent, his services automatically stood terminated in terms of clause (31) of the Standing Orders, no exception can be taken to the conclusion reached by the High Court. The High Court rightly held that even on admitted facts, S.O. (31) was not attracted. Further, it is not the case of the petitioner that any decision was taken on the leave application submitted by him by the date of the impugned order or that the ground of sickness urged by the respondent was negatived. This is apart from the question whether there could be, in law, automatic termination of service without enquiry or even show cause notice.

The second contention advanced by the petitioner does not appeal to us and it has been rightly rejected by the High Court. The respondent may or may not have the right to continue in service after the expiry of duration of contractual appointment, but the non-extension of service and the refusal to regularize the respondent's service as French Interpreter or as Assistant is primarily inspired by the fact that he failed to produce reliable proof of having requisite qualification. It is the correctness or validity of this ground that has to be tested. It is not as if the respondent's services were not extended for any other administrative reasons. In fact, it is an undisputed fact that juniors to the respondent employed on similar terms were continued in service and thereafter absorbed on regular basis. Thus, the only question that falls for consideration is whether the petitioner was justified in treating the respondent as unqualified and whether the finding of the High Court, in this regard, is legally sustainable? It is obvious that if the respondent does not possess the requisite qualification, viz., graduation or its equivalent, he

cannot be considered for regularization and no inference can be drawn in such a case that the non-extension of his service was arbitrary or discriminatory.

As regards the educational qualification, it is apparent from the pleadings and materials placed before us that the respondent did not submit the original or authenticated copy of the certificate of having passed three-year higher course in Aurobindo International Centre, Pondichery. It seems that at the time of initial appointment, he produced a testimonial or certificate from the Registrar of the Centre to the effect that he completed three-year higher course. A doubt was entertained on the aspect whether the date of completion of course as found in the photostat copy produced by the respondent in 1990 was an interpolation. The High Court found, on the basis of a clarificatory letter of the Registrar issued subsequent to the termination, that there was factually no tampering with the certificate dated 19.11.1980. Be that as it may, the fact remains that the respondent failed to produce the original certificate of having attained the qualification or authenticated copy thereof, though number of opportunities were given to him. The reason for his inability to produce the certificate has not been explained. He is only harping on the secondary evidence in the form of testimonial/letter issued by the Registrar bearing the date 19.11.1980. In these circumstances, the High Court ought not to have entered into the factual finding that the respondent possessed the necessary qualification. The High Court clearly misdirected itself in doing so. At the same time, it cannot be presumed that the respondent had not passed the three-year higher course in Aurobindo International Centre, which is undisputedly equivalent to graduation. It is pertinent to note, at this juncture, that the petitioner-company failed to produce, either before the High Court or before this Court, the certificate dated 19.11.1980 issued by the Registrar which according to the High Court is a genuine one. In this fluid state of things, the proper course would be to give a final opportunity to the respondent to produce the original or authenticated certificate issued by the competent authority of Sri Aurobindo International Centre, Pondicherry. For this purpose, two months time is granted to the respondent to produce the same. On approach being made by the respondent, we do hope that the authorities of Sri Aurobindo International Centre would take expeditious steps to verify the concerned record and issue the certificate in original or a certified copy thereof. On production of such certificate, the respondent shall be appointed on regular basis as Assistant (French Interpreter post not being available now) with effect from the date of judgment of the High Court i.e., from 29.7.1996 and the respondent be fixed up in appropriate pay scale. As the respondent has to partly blame himself for the situation in which he is placed, we are not inclined to grant the benefit of retrospective regularization from an earlier date or to award any back-wages.

The impugned order of the High Court is set aside and the appeal is disposed of in terms of the directions given above. We make no order as to costs.