

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.10.2015

DATE OF DECISION : 13.10.2015

CORAM:

THE HONOURABLE MR. JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

W.P.No.30262 of 2014
and
M.P.Nos.1 and 2 of 2014

R.Natarajan

... Petitioner

Vs.

- 1.The Chairman-cum-Managing Director,
NLC Limited,
Neyveli,
Cuddalore District.
 - 2.The Director (Personnel),
NLC Limited,
Neyveli,
Cuddalore District.
 - 3.The Revenue Divisional Officer,
Kallakurichi,
Villupuram District.
 - 4.The Estate Officer/Eviction Authority
Assistant Township Administrator
Township Administrative Office
Neyveli Lignite Corporation,
Neyveli, Cuddalore District.
 - 5.The State Level Scrutiny Committee,
rep by its Chairman,
Adi Dravidar and Tribal Welfare Department,
Fort St. George,
Secretariat,
Chennai-600 009.
- .. Respondents

This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of writ of certiorarified mandamus to call for the entire records in pursuant to the termination order issued by the first respondent vide Memo No.CMD/NLC/Disc.Action/117/2014 dated 01.10.2014 and quash the same and direct the first respondent to reinstate the

petitioner in service with all consequential and attendant benefits within a stipulated time.

For Petitioner : Mr.T.P.Prabakaran

For Respondents: Mr.F.B.Benjamin George
for RR1,2 and 4
Mr.N.Sakthivel, GA for RR3 and 5

ORDER

Challenging the legality and validity of the order dated 1st October, 2014, whereby the services of the petitioner as Superintendent, Gr.II/SEcurity/TA, was terminated with immediate effect as void abinitio on the ground that the petitioner had obtained appointment on the post of Security Guards (Sainiks) against the reserved category of Scheduled Tribe without belonging to the said community, the instant writ petition has been preferred.

2 The facts in brief germane to the adjudication of the instant petition are that the petitioner was appointed as Security Guard (Trainee) on 9th August, 1985, thereafter, was confirmed on the post of Security Guard, vide proceedings dated 30th, January, 1986. The appointment of the petitioner was made against the Scheduled Tribe category on the basis of representation by the petitioner as belonging to "Konda Reddy" Scheduled Tribe community. The petitioner was called upon to produce the community certificate. After joining the employment, as aforesaid, the petitioner made an attempt to obtain the community certificate. However, the application of the petitioner for community certificate was rejected by the third respondent / Revenue Divisional Officer on 21st May, 2009. Thereagainst, an appeal was preferred before the District Collector, Villupuram. The petitioner has also preferred a writ petition, being W.P.No.11607 of 2010, seeking to forbear the fifth respondent therein/ first respondent herein from taking any disciplinary action against the petitioner on the basis of the proceedings dated 21st May, 2009 of the Revenue Divisional Officer pending disposal of the appeal by the District Collector. The said writ petition was disposed of on 2nd June, 2010, directing the District Collector to dispose of the appeal on or before 30th June, 2010 and a direction was also issued to the first and second respondents herein (fifth and sixth respondents therein) not to initiate any disciplinary action against the petitioner. The appeal was subsequently dismissed by the District Collector, confirming the order passed by the Revenue Divisional Officer.

3 Thereagainst, one more petition, being W.P.No.18982 of 2013, was filed challenging the correctness of the said orders

dated 21st May 2009 passed by the Revenue Divisional Officer and 28th March, 2013 passed by the District Collector. After disposal of the appeal, the services of the petitioner was terminated on 27th April, 2013. Thereagainst, one more writ petition, being W.P.No.24267 of 2013 was preferred. Both writ petitions were taken up together by a Division Bench of this Court. The Division Bench, by order dated 2nd December, 2013, disposed of the writ petitions, holding as under :

"(i) The Revenue Divisional Officer, Kallakurichi, is directed to consider the claim made by the petitioner, particularly with reference to the community certificates issued to the petitioner's relatives, namely J.Krishnamoorthi and B.Padmavathy, as stated supra. The Revenue Divisional Officer, Kallakurichi, is directed to afford an opportunity to the petitioner to prove his relationship and pass appropriate orders within a period of three months from the date of receipt of a copy of this order.

(ii) The Neyveli Lignite Corporation has passed the order of termination solely on the basis of the rejection of the request of the petitioner for issuance of community certificate by the Revenue Divisional Officer, Kallakurichi, which was confirmed by the District Collector in appeal. As the order passed by the Revenue Divisional Officer, Kallakurichi itself is set aside, the order of termination passed by the Neyveli Lignite Corporation is also set aside with a direction to the Neyveli Lignite Corporation to reinstate the petitioner with all benefits within a period of one week from the date of receipt of a copy of this order. It is made clear that the reinstatement of the petitioner is subject to the orders to be passed by the Revenue Divisional Officer, Kallakurichi."

4 Pursuant thereto, the petitioner was reinstated into service with all benefits. The competent officer, i.e., Revenue Divisional Officer, again, examined the matter at length and rejected the application by order dated 24th September, 2014, which was the subject matter of the writ petition, being W.P.No.26687 of 2014. The said writ petition was disposed of on 8th October, 2014 by a Division Bench of this Court. The division bench again set aside the order dated 24th September 2014 of the third respondent, remitting back the matter to the third respondent herein to reconsider the same with a direction to place the matter before the State Level Scrutiny Committee, fifth respondent herein, for conducting an enquiry and to pass appropriate order. In the meantime, the services of the petitioner was again terminated, vide impugned order dated 1st October, 2014, leading to filing of this petition.

5 The sole ground of the learned counsel for the petitioner is that once the order dated 24th September, 2014 passed by the Revenue Divisional Officer/ third respondent herein was quashed, the petitioner is entitled to reinstatement. The petitioner has further submitted that for termination of service, proper disciplinary enquiry ought to have been conducted before passing the order.

6 The learned counsel appearing for the petitioner further submits that the petitioner was appointed through due selection. Thus, the petitioner's service should not have been terminated without holding a detailed proper enquiry. It is also submitted that the impugned order, directing recovery of salary is unsustainable as the salary was paid for the work done by the petitioner.

7 Per contra, the learned counsel appearing for the first and second respondents would submit that in the case on hand, no enquiry was necessary as the petitioner has obtained appointment against the seat reserved for Scheduled Tribe community. The petitioner ought to have produced the community certificate to that effect. The petitioner was never granted any community certificate. The petitioner obtained appointment on misrepresentation of facts, impersonating that he belongs to Scheduled Tribe community. It is not a case where the community certificate granted earlier was rejected subsequently. The petitioner was never granted community certificate. Thus, the appointment of the petitioner was void abinitio and the payment made to the petitioner was unauthorised and the same is required to be recovered.

8 The learned counsel for the third and fifth respondents would submit that the case of the petitioner was duly examined in accordance with law and on its own merit. The petitioner has failed to establish that he belongs to Konda Reddy Scheduled Tribe community.

9 Heard the learned counsel for the parties, perused the pleadings and documents appended thereto.

10 During the pendency of this petition, since the earlier order dated 8th October, 2014 was not complied with, an enquiry was made in respect of non compliance of the order within the specified time made therein. In that process, certain informations were required. Eventually, the application was considered and decided on 5th August, 2015, rejecting the claim of the petitioner belonging to Konda Reddy Scheduled Tribe community, which is placed on record. Here, it is pertinent to mention that there is no challenge to the said order, till date.

11 In the case on hand, the grant of community certificate is not an issue, as there is no challenge to the order passed by

the State Level Scrutiny committee. Several opportunities, as aforesaid, were granted to the petitioner to establish his community as the matter was remanded back time and again to the competent authority and lastly, it was placed before the State Level Scrutiny Committee, fifth respondent to examine the case on its merit. The authorities have come to the conclusion that the petitioner does not belong to Konda Reddy scheduled tribe community.

12 Incontrovertibly, the petitioner sought appointment against the reserved seat of scheduled tribe on misrepresentation that he belongs to scheduled tribe community. In normal course, a candidate, seeking employment, is required to submit the certificate. In the case on hand, the petitioner was granted time to obtain the certificate and to produce the same. The fact that the petitioner does not belong to scheduled tribe community was raised by the NLC ST Employees Welfare Association, which was referred to the Revenue Divisional Officer. The Revenue Divisional Officer examined the fact and came to the conclusion that the petitioner does not belong to scheduled tribe community. The matter was also examined by the State Level Scrutiny Committee, the final competent authority to verify the community certificate of a person, which has come to the conclusion that the petitioner does not belong to Konda Reddy scheduled tribe community.

13 In that view of the matter, the termination order cannot be faulted with. It is not a case, wherein there are disputed facts and the petitioner was not afforded opportunity to rebut the allegations made against him and as such, usual disciplinary enquiry was not necessitated. The petitioner had sufficient opportunity to produce proper community certificate, establishing his community as Konda Reddy scheduled tribe community. But, the petitioner has failed. In that view of the matter, the appointment sought against the reserved vacancy of scheduled tribe community was rightly cancelled / terminated.

14 Insofar as the recovery of monetary benefits granted in terms of the salary and allowances, the authorities are not entitled to recover the same. The salary and allowances was paid for the work done by the petitioner. In that view of the matter, even if the services of the petitioner is terminated, the order to refund the entire monetary benefits is unsustainable in law. It is beneficial to refer to certain decisions of the Supreme Court in this regard.

15 In State of Bihar and others Vs. Pandey Jagdishwar Prasad¹, an employee was allowed to work beyond his age of retirement on account of wrong entry of date of birth and was

1 (2009) 3 SCC 117

paid salary also. Subsequently, the employer directed recovery of salary on the ground that the employee had wrongly continued in service beyond his actual retirement date. The Supreme Court while quashing the order of recovery, held as under :

"24. x x x x x x x Accordingly, we are in agreement with the Division Bench decision that since the respondent was allowed to work and was paid salary for his work during the period of two years after his actual date of retirement without raising any objection whatsoever, no deduction could be made for that period from the retiral dues of the respondent."

16 The question of recovery of money in case an employee, who is the holder of the public office, is held as usurper and not eligible to hold the post, came into consideration in the matter of Central Electricity Supply Utility of Odisha Vs. Dhobei Sahoo and others², wherein the Supreme Court held that the employee cannot be deprived of his salary for the services rendered by him. It is beneficial to quote the relevant passage as under :

"51. x x x x x x x Even in a writ of quo warranto while declaring that a person is not eligible to hold the post had rendered service, we are disposed to think, there cannot be recovery of amount. While exercising the power for issue of writ of quo warranto the Court only makes a public declaration that the person holding the public office is a usurper and not eligible to hold the post and after the declaration is made he ceases to hold the office. Till the declaration is made, the incumbent renders service and when he has rendered service he cannot be deprived of his salary. Denial of pay for the service rendered tantamounts to forced labour which is impermissible. When an appointment is admitted and the incumbent functions in the post and neither suspended nor removed from service, he is entitled to get salary, for it is his legal right and it is the duty of the employer to pay it as per the terms and conditions of the appointment. The matter may be different when someone continues after retirement by a false declaration or misrepresentation. Recovery of salary would amount to deprivation of payment while the incumbent was holding the post and had worked. Asking someone to work and when his appointment is nullified by issue of a writ of quo warranto by the Court, we think that neither the employer can

recover the amount nor the Court can direct for recovery of the same. There has to be some other reason for denial of payment, recovery of salary or honorarium."

17 In view of the foregoing, the impugned order dated 1st October, 2014 insofar as it relates to termination of the services of the petitioner is upheld, however, a portion of the impugned order relating to recovery of the entire amount of monetary benefits, is set aside. Accordingly, the writ petition is partly allowed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

vvk

To

- 1.The Chairman-cum-Managing Director,
NLC Limited,
Neyveli,
Cuddalore District.
- 2.The Director (Personnel),
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- 5.The Chairman,
The State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Fort St. George,
Secretariat,
Chennai-600 009.

+1 cc to Mr.T.P.Prabakaran, Advocate, sr.56066

W.P.No.30262 of 2014

vd co, kra 16/10