

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
AND
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Appeal No.1088 of 2012

1.Indira Antony Mary
2.Arul Nirmala
3.Arul Anbarasi
4.Minor Arokia Aruldoss
Rep. By his mother Indira Antony Mary
5.Periya Nayagam ...Appellants

Vs.

Deputy General Manager/OPN/Mine-1
Disciplinary Authority
Office of the Chief General Manager/Mine 1 & 1A
N.L.C.Limited
Neyveli 607 803 ...Respondent

Writ Appeal filed Under Clause 15 of the Letters patent against the order of this Court dated 28.03.2012 in W.P.No.17573 of 2010.

Prayer Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, Calling for the records relating to the impugned proceedings namely PROC.No.M-1/P & A/DAC/279-01/2008 dt.16.7.2010 from the respondent and quash the same and direct the respondent to give an opportunity to the petitioner to make his representation on the punishment porposed in accordance with clause 47(h) of the certified standing order.

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For appellants :Mr.N.G.R.Prasad for Mr.R.Rajaram

For respondent :Mr.N.Nithianandam

JUDGMENT

(Judgment of the Court was made by HULUVADI G. RAMESH, J.)

Heard the learned counsel appearing for the appellants/Legal Representatives of the deceased employee and the learned counsel appearing for the Respondent/Neyveli Lignite Corporation.

2. This Writ Appeal is filed as against the order passed by the learned Single Judge in W.P.No.17573 of 2010 dated 28.03.2012, wherein, the challenge made to the order of dismissal dated 16.07.2010 and a direction seeking to grant opportunity to make a representation was dismissed.

3. The short facts of the case are as follows:-

(3.1) A.Lawrence (P.F.No.25724) was employed as Sr.Tech.II/Mini Auto/Mine-1 under the respondent and he was issued with a charge memo for the following charges:-

(i) He has actively involved in running a commercial institute namely St.Joseph Teacher Training Institute at Poovam, Karaikal;

(ii) He was on unauthorised absence for the period from 15.12.2006 to 31.12.2006 and without prior intimation and without submitting leave requisitions for more than 15 occasions in the year 2007 repeatedly;

(iii) He suppressed the fact that a Criminal case had been registered against him vide Crime No.76/07 u/s.365 IPC, r/w.34 IPC, dated 11.06.2007;

(iv) Posed himself as Vice Chairman-cum-Correspondent of the institution against the NCTE norms, harassing, humiliating and misbehaving with the students and a case was also registered against him for kidnapping a student of the institution, which made Pondicherry Police to issue a crime circular against him;

(v) While claiming LTA for the block year 2002-2005 & 2006-2009, suppressed the fact of his wife's employment in Panchayat Union Middle School, Oothangal, as a teacher;

(vi) He has not informed about the wife's involvement in running the educational institution in Form-III as on 05.12.2006;

(vii) He had sublet the NLC Quarters, B-11, Souther Potter Lance, Block1-6 to one Smt.M.Matha, by violating the allotment conditions of quarters.

(3.2) The delinquent / employee received the charge memo on 10.04.2008 and submitted his explanation on 22.04.2008, in which he denied the charges levelled against him. Enquiry was conducted and after detailed examination of witnesses and documents, the Enquiry Officer held that the charges are proved beyond doubt. The copy of findings and enquiry report was served to the employee for which the employee submitted his objections on 14.04.2009, stating that he has not committed the above misconduct and requested to drop the disciplinary action. The Disciplinary Authority, after careful examination of the enquiry report, the objections raised by the charge sheeted employee, provisionally concluded to inflict the punishment of 'Dismissal from service without notice or pay/wages in lieu of notice.'

(3.3.) The delinquent / employee, was given an opportunity for making a representation on the punishment proposed within 10 days. In the meantime, the delinquent / employee filed a Writ Petition in W.P.No.19945/2009 and obtained an interim stay order and accordingly, further action was kept in abeyance. Subsequently, this court dismissed the Writ Petition No.19945/2009 by order dated 11.11.2009. The delinquent/employee filed Writ Appeal No.1852/2009 and the said Writ Appeal was also dismissed by this Court on 12.07.2010. Finally, the Disciplinary Authority, taking note of all the above passed the Dismissal Order dated 16.07.2010 in the following lines:-

"Shri.A.Lawrence has failed to avail these opportunities and did not submit any explanation/representation on the provisional show cause notice till date. As the charges levelled and proved are very serious and grave in nature, the punishment proposed is therefore commensurate with the gravity of the proven misconducts.

Hence I the Disciplinary Authority taking into consideration of the gravity of the proven misconducts, hereby confirm the Punishment of "DISMISSAL FROM SERVICE WITHOUT NOTICE OR PAY/WAGES IN LIEU OF NOTICE" and accordingly, he is dismissed from service with immediate effect. "

(3.4) Aggrieved by the said order, the A.Lawrence filed W.P.No.17573 of 2010. Pending the Writ Petition, A.Lawrence/delinquent employee died on 01.09.2010 and therefore, the Legal Representatives were impleaded as petitioners 2 to 6 in the Writ Petition.

4. The contention raised by the appellants herein before the learned Single Judge was that the principles of natural justice has been violated. After going through the case of the delinquent employee and the decision of the Supreme Court relied on by the appellants/writ petitioners in the case of State Bank of India and others Vs. Ranjit Kumar Chakraborty and another [2009-II-LLJ-487 (SC)], the learned Single Judge gave a finding that the final order dated 16.07.2010 was passed after granting all the opportunities and the delinquent employee had failed to avail the same and the charges proved against him are very serious and grave in nature. The learned Single Judge also came to a conclusion that the final order of dismissal dated 16.07.2010 is in accordance with law. Against the order of the learned Single Judge, this Writ Appeal is filed.

5. The contention of the learned counsel for the appellants is that without hearing the view of the delinquent employee about the proposed punishment of dismissal, dismissal order was passed against him, which is in violation of principles of natural justice. He also submitted that sub-clause (h) of Clause 47 of the standing orders of the respondent / Corporation clearly speaks about the said principles of natural justice, i.e, hearing the employee about proposed major punishment of dismissal from service. He further contended that without giving opportunity to give his representation on the proposed punishment, the order of dismissal was passed by the respondent and therefore, the dismissal order is erroneous and, the same has to be set aside.

6. As a residual contention, the learned counsel appearing for the appellants requested that in view of the fact that the delinquent employee died on 01.09.2010 leaving his Legal Representatives, they may be given monetary benefits and any other benefits to which they are entitled to.

7. On the other hand, the learned counsel for the respondent/Corporation contended that having regard to the nature of charges framed against the delinquent employee and in view of the grave misconduct committed by him, no leniency should be shown against him and as such granting of monetary benefits to his legal representatives would not arise. He also argued that having regard to the nature of charges and the same being proved beyond any doubt, the order of dismissal has rightly been passed and therefore, he prayed for confirming the order of the learned Single Judge.

8. On going through the charges framed against the deceased employee, the order of dismissal and the impugned order passed by the learned Single Judge, it is seen that the charges framed

against the deceased employee are grave in nature and therefore, the major punishment has been imposed. During the pendency of the Writ Petition No.17573 of 2010, the employee died and his legal representatives were brought in record. Having regard to the nature of misconduct, it is seen that the actions committed by him are extraneous to the nature of duties that he is required to discharge in the course of his employment under the respondent. Further without seeking permission and against ethics, he had diverted himself from discharging his duties and absented himself unauthorisedly. Considering the gravity of the charges levelled against the delinquent employee and the same having been proved, the order of dismissal has been passed by the Disciplinary Authority.

9. However, the grievance of the appellants herein, who are the legal representatives of the deceased employee is that, without giving an opportunity to the deceased employee on the proposed punishment, the order of dismissal has been passed and the same is in total violation of principles of natural justice.

10. Be that as it may. Though a contention has been raised on behalf of the appellants that there is total violation of principles of natural justice, in that, the deceased employee was not granted an opportunity to represent his case on the proposed punishment, however, without going to the merits of the issue, considering the plight of the family and keeping in mind the ultimate object in the dispensation of justice is to render substantial justice and that this Court as the protector of rights, to do substantial justice to the bereaved family of the deceased employee, is of the considered view that the order of dismissal from service without notice or pay in lieu of notice could be modified to one of compulsory retirement so as to enable the appellants herein/the legal representatives of the deceased employee to get the monetary benefits due to the deceased employee under the statutory enactments.

11. Accordingly, the order of the learned single Judge is set aside and the order of dismissal from service without notice or pay in lieu of notice passed by the respondent / Corporation is modified to one of compulsory retirement. In view of the above modification in punishment, the appellants herein would be entitled to all monetary and other benefits as would be available to them under the statutory enactments.

12. In the result, this Writ appeal is allowed in part modifying the order passed by the respondent/Corporation in the above terms. The respondent/Corporation is directed to settle

the monetary benefits due to the legal representatives of the deceased employee within a period of four months from the date of receipt of a copy of this order. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

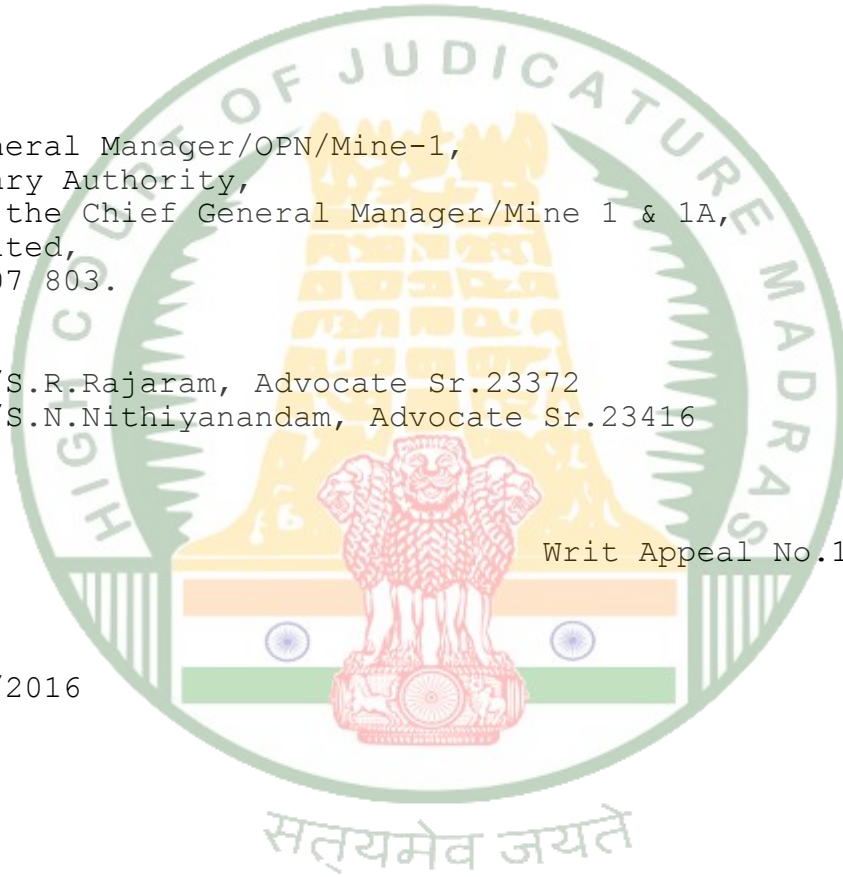
To

Deputy General Manager/OPN/Mine-1,
Disciplinary Authority,
Office of the Chief General Manager/Mine 1 & 1A,
N.L.C.Limited,
Neyveli 607 803.

+1cc to M/S.R.Rajaram, Advocate Sr.23372
+1cc to M/S.N.Nithiyanandam, Advocate Sr.23416

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srg 17/06/2016



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