

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.15312 of 2010

and

M.P.No.1 of 2010

and

M.P.No.1 of 2011

S.Mahesh

... Petitioner

Vs.

1.The Chairman cum Managing Director,
Neyveli Lignite Corporation Limited,
Neyveli - 607 801.

2.The Director (Power),
Neyveli Lignite Corporation Limited,
Neyveli - 607 801.

3.The Director (Personnel),
Neyveli Lignite Corporation Limited,
Neyveli - 607
801.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records in Memo No.CORP/D.(power)/0623/2010 dated 7.7.2010 on the file of the second respondent and quash the same.

For petitioner : Mr.N.R.Chandran,
Senior Counsel
for M/s.Sri Vidhya Aravindan

For respondents : Mr.N.Nithyanandam
standing Counsel for NLC

O R D E R

Prayer in the Writ Petition is for a Writ of Certiorari calling for the records in Memo No.CORP/D.(power)/0623/2010 dated 7.7.2010 on the file of the second respondent and quash the same.

2. The short facts leading to the filing of this Writ Petition is as follows:-

(i) The petitioner having completed Diploma in Engineering in the First Class in the year 1987 attended the interview called by the respondent Corporation for the appointment of the post of Diploma Engineer/Trainee Gr.II (Electrical). The petitioner claims that he belonged to Kondareddy Caste, which is a Scheduled Tribe Community and he attended the interview and was selected for the said post. Though the petitioner did not produce the original certificate claiming his community status, the respondent allowed the petitioner to attend the interview and ultimately selected for the said post. An order of appointment was issued on 28.1.1988 and the petitioner joined as Diploma Engineer/Trainee Gr.II (Electrical) on 8.2.1988.

(ii) In response to the request for production of community certificate of the petitioner to claim the status of Scheduled Tribe, the petitioner by letter dated 3.3.1988 had informed to the respondent Corporation that since there was some difficulty in obtaining the certificate, he made a request to the respondents to treat his appointment under the General Category as he was allowed to attend the interview only under the General Category for which he was having necessary qualification.

(iii) Thereafter, by proceedings dated 2.5.1988, the petitioner was permitted to join the respondent Corporation and accordingly, he joined on 2.5.1988 only under General category. In fact, in the year 1992, the petitioner was allotted a quarters by the respondents only under the General category. All these factors would go to show, according to the petitioner, that the petitioner was selected and appointed as such only under the General category and not under the Scheduled Tribe Category.

(iv) While so, suddenly, by proceedings dated 25.4.1993, the respondent Corporation issued a Charge Memo stating that the petitioner had produced a false Community Certificate claiming that he belonged to Scheduled Tribe for which the petitioner on 9.6.1993 sent a reply stating that he was appointed only under the General category and not under Scheduled Tribe category. Thereafter, the petitioner was promoted as Junior Engineer, Grade I, with effect from 1.6.1993 by order dated 1.6.1993. Thereafter, an enquiry officer was appointed to conduct the Charge Memo dated 24.5.1993. Though enquiry was conducted, the result of the enquiry was not made known to the petitioner.

(v) Thereafter, without disclosing the result of the enquiry conducted against the charges dated 24.5.1993, the respondents issued a fresh Charge Memo on 11.8.1995 wherein the previous Charge had been slightly altered as if the petitioner had produced a bogus Community Certificate and he had kept silent while opening the Service Book recording his name and community status as belonging to Scheduled Tribe Community. Even in the said Charge Memo dated 11.8.1995, the respondent Corporation has specifically admitted that the petitioner had been appointed under the General category as a special case. The petitioner had given his reply to the said Charges on 7.9.1995 by denying those charges and thereafter, an enquiry officer was appointed and enquiry was also conducted but the petitioner's specific case is that he had never been considered for appointment under the Scheduled Tribe category and he had been considered for appointment only under the General category. Therefore, what was entered in the Service Book was not under the control of the petitioner. However, the disciplinary authority, viz., the Chief Engineer had passed an order on 30.8.1997 imposing a punishment of reduction to a lower stage by two stages in the time scale for a period of 2 years with cumulative effect by holding that the petitioner had produced a false Community Certificate. Even the proceedings of the disciplinary authority dated 30.8.1997 wherein the said punishment was imposed clearly enumerates that he will be considered as General Category i.e., open category candidate and the petitioner would not be eligible for availing any special benefits extended to any reserved category employee. Even that observation passed by the disciplinary authority in the order dated 30.8.1997 was objected by the petitioner treating him as "OC" candidate only from the date of punishment instead he has requested that he may be considered as "OC" candidate from the date of his appointment. The said order passed by the disciplinary authority was confirmed by the appellate authority by proceedings dated 6.12.1997.

(vi) Even though the said subject matter of Community Certificate was closed, once again, on 20.9.2000, the respondent Corporation directed the petitioner to produce the original Community Certificate, for which the petitioner sent reply on 3.11.2000. In spite of that, the respondent Corporation sent a Memo dated 15.2.2001, even for the said memo also, the petitioner had replied on 2.3.2001. Thereafter, a complaint was given in respect of the said issue of Community Certificate against the petitioner at the instance of the respondent Corporation to the Inspector of Police, Neyveli Township Police station and a case was registered in Crime No.219/2001 under Sections 467, 468 and 471 of IPC. The said case was committed to the Judicial Magistrate, Neyveli, in R.C.No.56 of 2008 for adjudication. In the said case, the Investigating Officer

filed a final report on 19.2.2008 stating that the case may be closed on the ground that the complainant failed to produce the necessary documents required by the Investigating Officer for investigating the complaint and hence, it was referred to as a mistake of fact. The learned Judicial Magistrate, Neyveli also closed the said R.C.No.56 of 2008 on 15.7.2008 holding the same as a mistake of fact considering the long pendency of the FIR and non-production of the document by the complainant to the Investigating Officer.

(vii) Thereafter, the respondent Corporation issued a letter dated 27.2.2008 once again directing the petitioner to produce the Community Certificate to file before the Judicial Magistrate, Neyveli in Crime No.219/2001. Thereafter, the petitioner had made representations on 11.11.2008 and 7.7.2009 to the respondent Corporation to consider his pending promotions with all backwages, arrears, allowances and all other monetary benefits in accordance with law ignoring the complaint given against the petitioner for the false allegation since the same was dismissed by the learned Judicial Magistrate holding it as a mistake of fact.

3. While the matter stood thus, the petitioner had received a Memo from the second respondent in Memo No.CORP/D.(power)/0623/2010 dated 07.07.2010 wherein the punishment imposed on him was cancelled forthwith by stating that the petitioner's appointment itself was 'void ab initio'. This Order dated 7.7.2010 passed by the second respondent invoking Rule 30 of the NLC Employees' (Control and Appeal) Rules on the face of it illegal and therefore, challenging the same, the present Writ Petition has been filed with the aforesaid prayer.

4. Heard the learned Senior Counsel appearing for the petitioner and the learned standing Counsel for the respondents.

5. Mr.N.R.Chandran, learned Senior Counsel, appearing for the petitioner would contend that the very impugned order invoking Rule 30 of the NLC Employees' (Control and Appeal) Rules on the face of it is not sustainable one. The learned Senior Counsel, in support of his said contention, has drawn attention of this Court to the said Rule. Rule 30 of the NLC Employees' (Control and Appeal) Rules is as follows:-

"30. Review of Orders in Disciplinary Cases:

(1) The appellate authority or any higher authority may of his/its motion or otherwise call for the records of any case in which a penalty has been imposed and pass such orders as he/it deems fit.

(2) Where the punishment is proposed to be enhanced, notice to show cause against

such enhancement shall be given to the employee concerned and the procedure as laid down in the provision of Rule 29(d) shall be followed.

(3) No order enhancing the punishment under this rule shall be made after a period of 90 days from the date on which the original order of punishment was served on the employee charged.

Rule 29(d) of the NLC Employees' (Control and Appeal) Rules is as follows:-

"29. Consideration of Appeals:

(1) In the case of appeal against an order imposing any punishment specified in Rule 6, the appellate authority shall consider:-

(a) x x x x

(b) x x x x

(c) x x x x

(d) Whether the punishment is excessive, adequate or inadequate; and after such consideration shall pass such order as it thinks just and equitable having regard to all circumstances of the case,

i) setting aside, reducing, confirming or enhancing the penalty or

ii) remitting the case to the authority which imposed the penalty, or any other authority, with such direction as it may deem fit in the circumstances of the case.

6. By quoting the said rule, the learned Senior Counsel, would contend that, for invoking Rule 30, either the appellate authority or any higher authority can invoke the said provision where there must be a proposal to enhance the punishment and of course that has to be done only after giving a notice as per the procedure laid down in the provision of Rule 29(d). Moreover, no order of enhancement of punishment under Rule 30 shall be made after a period of 90 days from the date on which the original order of punishment was served on the employee charged. Though Rule 30 gives power to the appellate authority as well as to the hither authority to initiate suo motu proceedings in case there is any proposal to enhance the punishment already awarded, the said proceedings can go only as has been contemplated under Rule 30 itself including by following the procedure established under Rule 29(d). Here, in the case on hand, according to the learned Senior Counsel, the impugned order has been straight away passed cancelling the earlier punishment awarded against

the petitioner which the petitioner had already undergone, by simply observing that the very appointment of the petitioner itself was 'void ab initio' as the petitioner could not produce the Community Certificate to establish that he belonged to Scheduled Tribe Community. The natural corollary of this order which is impugned herein would be that the petitioner would be sent out of service from the respondent Corporation without any notice, without any charge, and without any enquiry. Assuming that the higher authority who passed the impugned order on 7.7.2010 has invoked Rule 30 of the said Rules for proposal of enhancement of punishment, the same ought to have been done only in the manner known to law, especially, as has been provided and contemplated in the said Rule 30 as well as Rule 29(d) of the Rules. Here, in the case on hand, before passing the impugned order, the respondents have not followed any of the mandatory procedures required under the said Rules and therefore, on this ground alone, the impugned order would not stand and therefore, the same is liable to be quashed.

7. The learned Senior Counsel would further contend that even though a call letter was issued for the appointment, the petitioner, even at the time of interview itself, was not considered for appointment in the category of Scheduled Tribe instead he was considered only under the Open Competition category. This position has been further reiterated in the proceedings of the respondent Corporation dated 30.8.1997 wherein the General Manager of the respondent Corporation in the order imposing punishment on the petitioner has passed the following order:-

"ORDER: Sri S.Magesh be awarded with the punishment of reduction to a lower stage by two stages in his time scale for a period of two years with cumulative effect.

An appeal against this lies with GM/TSII within 10 days from the date of receipt of this memo.

Further he is informed that he will be considered as general category i.e. (OC) and he will not be eligible for availing any special benefits extended to any reserved category employee."

8. The learned Senior Counsel would further submit that in view of the said categoric finding by the disciplinary authority/General Manager of the respondent Corporation who would state that the petitioner would be considered as General Category i.e. OC candidate and he may not be eligible for availing any special benefits extended to any reserved category employee, the issue has been totally concluded and closed. Therefore, the learned Senior Counsel would submit that the case

of the petitioner right from the beginning was considered only as a General Category Candidate under Open Competition competing with others and not under the special category viz., reserved for ST community. Therefore, the question of production of any Community Certificate/false Certificate or otherwise need not be gone into and the same position has been accepted by the authority competent to consider the same and is reflected in the order dated 30.8.1997. Suo motu invocation of power under Rule 30 of the Rules, by the second respondent, to pass the impugned order would totally unlawful and unjustifiable. In that view of the matter, the learned Senior Counsel would contend that the impugned order is liable to be quashed and therefore, he prays that the Writ Petition be allowed.

9. On the other hand, the learned standing Counsel appearing for the respondents would contend that the very recruitment of appointment where the petitioner was appointed was a special recruitment drive for "ST" community where his name was sponsored by the Employment Exchange under the category of "ST" community along with yet another candidate and only on that strength, he was considered and selected even though he did not produce the Community Certificate in original claiming to be "ST" Community and he was considered for appointment in the said post pending producing of the Community Certificate. Even though several requests have been made by the respondent Corporation to produce the said Certificate, the petitioner had not produced the same instead he has chosen to give a request and explanation that he had to be treated as a candidate of Open Category as he could not produce Community Certificate as Scheduled Tribe and his appointment may also be considered as the appointment made under the Open Category.

10. The learned standing Counsel for the respondents would further contend that this sort of request was never accepted by the respondent Corporation, instead, initially a charge was framed against the petitioner and before it concluded, a fresh charge was framed as if he claimed to be Schedule Tribe Community as his service record shows that the entries have been made denoting that the petitioner belonged to Scheduled Tribe Community and having known of the said fact, the petitioner continued his service as if he belonged to Scheduled Tribe Community without producing valid certificate. His continuance and wrong entries in the Service Register is only an inaction on the part of the petitioner. Therefore, in that aspect, the respondents have framed charges and enquiry was conducted and ultimately, punishment was imposed on the petitioner as stated above and the petitioner has undergone the punishment without challenging the same.

11. However, the fact remains that the petitioner, though has been selected and appointed under the Scheduled Tribe Category, has never produced genuine original Certificate showing his Community status as Schedule Tribe at any point of time, inspite of several requests were made by the respondent Corporation. These factors were brought to the notice of the higher authority, the higher authority, viz., the second respondent invoking Rule 30 of the NLC Employees' (Control and Appeal) Rules has passed the impugned order declaring that the very appointment of the petitioner itself is illegal and void ab initio. Therefore, the question of imposing any punishment on him would not arise. Therefore, the earlier punishment pursuant to the charges framed against him and enquiry conducted was cancelled in the impugned order. The same is totally inconsonance with the said Rule. Therefore, the impugned order is sustainable and need not be interfered with.

12. In support of his contention, the learned Standing Counsel for the respondents would heavily relying upon the judgment of the Hon'ble Apex Court in Regional Manager, Central Bank of India v. Madhulika Guruprasad Dahir and others reported in JT 2008 (8) SC 265.

13. This Court have considered the rival submissions made by the learned Senior Counsel appearing for the petitioner as well as the learned Standing Counsel appearing for the respondents.

14. Though the recruitment drive was made under the special category of Scheduled Tribe Community and the names of such community candidates including the petitioner were also sponsored by the Employment Exchange, the petitioner was permitted to attend the interview and was selected for the post even though he did not produce original community certificate claiming his status as Scheduled Tribe Community. Even thereafter, when several requests were made by the respondent Corporation to the petitioner to produce the Community Certificate, inability was expressed by the petitioner in writing stating that, that is why he is not claiming the status of Scheduled Tribe Community and therefore, his selection which was made only under the Open Competition Category should be treated as such and he would continue only as Open Competition Category and not as Scheduled Tribe Community Candidate.

15. When this controversy went on for some time, charges were framed against the petitioner for wrong entries made in the Service Register claiming the status of Scheduled Tribe Community. During enquiry, the department witness deposed before the enquiry officer stating as follows:-

" ... He had represented that he may be considered for appointment as DET/Ele as general candidate. His request was agreed to and he was permitted to join duty. (as per Letter No.4489/P&AIII-3/93 dt. 9.4.93). The reason for taking disciplinary action has been mentioned in the letter dt. 09.04.03 may be taken as my statement as already given."

16. Ultimately, by order dated 30.8.1997, the disciplinary authority has passed the order which has already been reproduced in this order where also the disciplinary authority having accepted the request of the petitioner to treat him as "OC" candidate has informed to the petitioner in the order itself that he will be considered as General Category "OC" and he would not be eligible for availing any special benefits extended to any reserved category employee. Only in that circumstances, now the present impugned order has been passed invoking Rule 30 of the Rules. Insofar as invocation of Rules 29 and 30 which would go to show that Rule 30 can be invoked by the appellate authority or higher authority where the punishment is proposed to be enhanced. Even in that case, show cause notice should be issued following the provision of Rule 29(d) and moreover, no such invocation of Rule 30 can be made after a period of 90 days from the date on which the original order of punishment was served on the employee charged. Here, in the case on hand, original order was passed on 30.8.1997 imposing punishment whereas invocation of Rule 30 was made on 7.7.2010, certainly, beyond 90 days, which is mandatorily required to be followed under Rule 30, which the respondents have not followed. That apart, the procedures contemplated under Rule 29 has not been followed as no notice was given in the manner known to law, especially, under Rule 29(d) of the Rules. Therefore, there is every force in the contention of the learned Senior Counsel appearing for the petitioner that the invocation of Rule 30 is bad in law and therefore, the same is accepted and on this ground, the impugned order cannot sustain.

17. The categorical contention of the learned Standing Counsel appearing for the respondents is that once it is prima facie found that the petitioner has produced a false certificate or not produced the certificate which is required for confirming the appointment under the Scheduled Tribe Community, it is for the employer to take a decision on the face of the ingenuineness of the certificate (xerox copy already produced). The genuineness of the certificate has been disputed by the issuing authority, viz., the Assistant Collector, Cheranmahadevi, who sent a communication dated 23.9.1992 to the respondent Corporation stating that the certificate received along with letter was verified with their office records and found that no

such certificate was issued to Thiru.Mahesh, S/o.Subba Reddy from their office. Further, the signature, designation seal and Gopuram Seal do not tally with their office seals and stamp. In view of this categorical letter issued by the Assistant Collector, Cheranmahadevi, who is the competent authority to issue the certificate for the Scheduled Tribe Community, there is no further enquiry need be conducted as the very appointment was made in respect of the petitioner itself is illegal at the threshold and therefore, such illegality cannot be allowed to continue at any stage as law is well settled in this regard, especially, in the decision of the Hon'ble Apex Court in Regional Manager, Central Bank of India v. Madhulika Guruprasad Dahir and others reported in JT 2008 (8) SC 265.

18. Insofar as the ratio of the said judgment reported in JT 2008 (8) SC 265 is concerned, the facts are different where also, a Scheduled Tribe Community Certificate was issued and the same was referred to a Scrutiny Committee to verify the same where the Committee granted an opportunity of hearing to the employee and enquiry was conducted and the Scrutiny Committee cancelled the Community Certificate holding that the Certificate was a bogus one. This was challenged before a Court of law in a Writ Petition before the High Court concerned where the matter was once again remanded for re-consideration by the Scrutiny Committee. The Scrutiny Committee to which reference was made to verify the genuineness of the Community Certificate had conducted further enquiry and gave a finding once again confirming earlier finding about the genuineness of the Certificate based on which the employee was terminated and the same was put under challenge before the High Court concerned where the High Court had accepted the case of the employee and allowed the Writ Petition and the matter went on appeal before the Hon'ble Apex Court and ultimately, the Hon'ble Apex Court at Paragraphs 10 and 16 observed as follows:-

"10.The sequence and the narration of facts above leaves little doubt in our mind that the caste certificate, on the basis whereof the employee got employment, was false to her knowledge. Based on that the Scrutiny Committee, on reconsideration after remand by the High Court, vide order dated 29th May, 2003, again invalidated employee's caste certificate, resulting in termination of the services by order dated 28th June, 2003 (supra). As noted above, the said order of the Scrutiny Committee having not been challenged, has attained finality and remains in operation. It is, thus, not a case of mere

rejection of a claim and the cited authorities are inapplicable.

* * *

16. Having considered the matter in the light of the afore-stated legal position, in our judgment, the decision of the High Court is untenable. As noted supra, the employee having accepted the finding of the Scrutiny Committee, holding that the caste certificate furnished by the employee was false, the very foundation of her appointment vanished and her appointment was rendered illegal. Her conduct renders her unfit to be continued in service and must necessarily entail termination of her service. Under these circumstances, there is absolutely no justification for her claim in respect of the post merely on the ground that she had worked on the post for over twenty years. The post was meant for a reserved candidate but she usurped the same by misrepresentation and deception. In our opinion, the fact that caste certificate was referred to the Scrutiny Committee for verification after ten years of her joining the service and a long time was taken by the Scrutiny Committee to verify the same is of no consequence inasmuch as delay on both the counts does not validate the caste certificate and the consequent illegal appointment."

19. Therefore, in the judgment cited above, the issue was referred to the Scrutiny Committee. The Scrutiny committee, after issuing notice and opportunity to the employee therein, gave a finding, which was also set aside and the matter was remanded and once again, finding was given and that finding of the Scrutiny Committee was not challenged by the employee. Without having challenged the same, the employee challenged the order of termination and therefore, in that context, the Hon'ble Apex Court has come to the rescue of the employer.

20. Herein, in the case on hand, the facts are totally different. After enquiry, in the order of punishment, the very employer has stated that the petitioner would be considered in the "General Category" and he would not be eligible for availing any special benefits being extended to any reserved category employee. This is what the request made by the petitioner all along from the day one of his appointment. The case of the petitioner since accepted by the very disciplinary authority and

an order to that effect was also passed on 30.8.1997 and the same has been confirmed by the appellate authority, the issue has reached its finality. Therefore, if at all, the same has been re-opened by the respondents, it ought to have been done only in the manner known to law. Assuming that Rule 30 of the Rules gives some power to the appellate authority as well as to the higher authority, it is only with regard to the enhancement of punishment imposed on the employee and it has to be done in the manner provided under Rule 30. In the case on hand, as discussed above, Rule 30 was invoked beyond 90 days period. Moreover, Rule 29 has not been followed. That apart, a major lacunae, on the part of the respondent Corporation is that if, prima facie, the certificate produced by the petitioner is false, they could have very well referred the matter to the Committee constituted in this regard in the manner known to law. No such attempt has been made by the respondent Corporation. Moreover, having accepted the plea made on behalf of the petitioner that he should be treated as General Candidate and selected under O.C. Category and declaration to that effect having been made by the disciplinary authority himself, the same cannot be re-done by invoking Rule 30.

21. Therefore, this Court has no hesitation to hold that the impugned order is unjustifiable on the face of it and therefore, it is liable to be quashed and accordingly quashed. Since the petitioner has been with the benefit of stay during pendency of the Writ Petition and has been continuing in the job in the respondent Corporation for all these years, of course, pursuant to the earlier order passed by the disciplinary authority treating him as General Category employee, this Court feels there is no further scope for initiation of disciplinary proceedings against the petitioner.

22. With this observation, the Writ Petition is allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

asvm

Copy to:

1.The Chairman cum Managing Director,
Neyveli Lignite Corporation Limited,
Neyveli - 607 801.

2.The Director (Power),
Neyveli Lignite Corporation Limited,
Neyveli - 607 801.

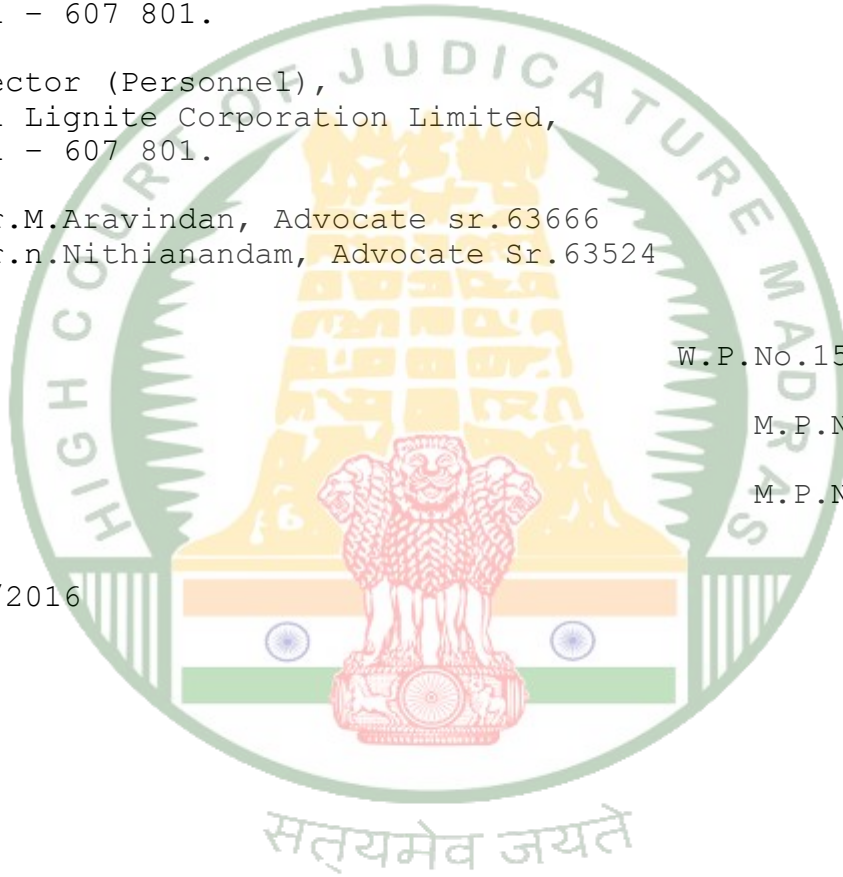
3.The Director (Personnel),
Neyveli Lignite Corporation Limited,
Neyveli - 607 801.

+2cc to Mr.M.Aravindan, Advocate sr.63666

+1cc to Mr.n.Nithianandam, Advocate Sr.63524

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