

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.41118 of 2015 and 12643 of 2016
and

W.M.P.Nos.1 & 2 of 2015
and 11002 of 2016 & 26247 of 2017

Palaniappan
W.Ps.

.... Petitioner in both

Vs.

1. The Chief General Manager, H.R.,
Neyveli Lignite Corporation/Mine-1
Neyveli, Cuddalore District.
2. The Chief Manager,
Top Bench, Nine-1,
Neyveli Lignite corporation Ltd.,
Neyveli, Cuddalore District. Respondents in both W.Ps

Prayer in W.P.No.41118 of 2015: Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records in charge memo dated 21.01.2015 made in No.M1/HR/DAC/279-01/2015 and second show cause notice made in M1/HR/DAC/279-01/2015 dated 04.12.2015 on the file of the first respondent and quash the same as illegal to secure the ends of justice.

Prayer in W.P.No.12643 of 2016: Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records in PSC.No.MI/HR/DAC/279-01/2015 dated 29.03.2016 on the file of the Chief Manager/Mines.I, Neyveli Lignite Corporation Ltd., the Second respondent and quash the same as illegal and secure the ends of justice.

For Petitioner : Mr.K.Sankara Subbu

For Respondents : Mr.N.Nithianandam

COMMON ORDER

The charge memo dated 21.01.2015 and the second show cause notice dated 04.12.2015 are initially challenged by the writ petitioner in W.P.No.41118 of 2015.

2.The writ petitioner is working as S.G.S.M.E. Operator Top Bench Mine-1 (P.F.No.29910). The learned Senior Counsel appearing for the writ petitioner submits that the writ petitioner is working in the respondents Corporation for about three decades and he was initially appointed as Electrician Technician and got unblemished record of service.

3.On account of certain allegations a charge memo was issued to the writ petitioner in proceedings dated 04.12.2015 and the charges are extracted here under:

"Article-1

That the said Shri.D.Palaniappan, CPF No.29910 SM/Opr/SG/Mine-I engaging his relative Shri.Santhoshkumar. N. of Mettur as a conduit earned huge amount by way of collecting from many persons informing that as recruitment is to be made in NLC for new jobs and if money is paid to higher officials, the jobs can be obtained by him.

Shri D.Palaniappan, CPF No.29910, SM/Opr/SG/Mine-I thus cheated the public.

The said act of Shri.D.Palaniappan CPF No.29910, Sel.Gr.SME Opr.(SG3) Top Bench/Mine-I constitutes a misconduct punishable under Rule No.26(v), (vi), (xii) & (xxxii) of Neyveli Lignite Corporation Employees Conduct Rules, punishable under NLC Employees (Control and Appeal) Rules.

Article-2

That the said Shri.D.Palaniappan CPF No.29910 SM/Opr/SG/Mine-1 was found involved in the fly Ash transportation work at TPS-I 10 years back without permission from NLC.

The said act of Shri.D.Palaniappan CPF No.29910, Sel.Gr.SME Opr.(SG3) Top Bench/Mine-I constitutes a misconduct under Rule No.26 (Xiii) & (xxxii) of Neyveli Lignite Corporation Employees' (Conduct) Rules, punishable under NLC Employees' (Control and Appeal) Rules.

Article-3

That the said Shri.D.Palaniappan, CPF No.29910 SM/Opr/SG/Mine-I himself accepted that a Land case is pending with Bhavani Court. But, Shri.D.Palaniappan, CPF No.29910, SM/Opr/SG/Mine-I failed to inform this to the Management. This is suppression of fact.

The above said acts of Shri.D.Palaniappan, CPF No.29910 SM/Opr/SH/Mine-I, if established will constitute misconduct.

The said act of Shri.D.Palaniappan CPF No.29910, Sel.Gr.SME Opr.(SG3) Top Bench/Mine-I constitutes a misconduct under Rule No.20 of Neyveli Lignite Corporation Employees' (Conduct) Rules, punishable under NLC Employees (Control and appeal) Rules.

Article-4

The said act of Shri.D.Palaniappan CPF No.29910, SME/Opr/SG/Mine-I, Shri.Palaniappan.D, however, sued an arbitration case dated:28.07.2014 against the HDFC Bank.

But Shri.D.Palaniappan.D, CPF No.2990, SME/Opr/SG/Mine-I failed to inform this to the Management."

4.On a perusal of the nature of allegations, this Court is of the opinion that the allegations are certainly serious in nature and based on the set of allegations disciplinary proceedings were initiated and the writ petitioner also submitted his explanations denying the charges. It is disputed between the parties i.e., both the writ petitioner as well as the Presenting Officer participated in the Domestic Enquiry Proceedings and the domestic enquiry proceedings were concluded by the Enquiry Officer, so appointed in December 2015 itself. However, the final order is yet to be passed on account of the Interim Order granted by this Court in W.P.No.12643 of 2016.

5.The learned counsel appearing for the writ petitioner

contended that the deposition has not been properly recorded by the Enquiry Officer and there was no evidence against the writ petitioner and further, the original statements recorded during the Preliminary enquiry was not placed before the Enquiry Officer. However, the Enquiry Officer failed to examine the witnesses independently by recording the deposition. This apart, the writ petitioner was not allowed to examine the witnesses. Thus, the opportunity to defend the Enquiry Proceedings were denied to the writ petitioner. The learned Counsel for the petitioner urged before this Court that the writ petitioner was not permitted to engage an Advocate to defend his case before the Enquiry Officer. In this regard, it is stated that the Presenting Officer, who presented the case of the Management is a legally trained person and an Officer working in Lignite Corporation and, therefore the Disciplinary Authorities ought to have allowed the writ petitioner to engage an Advocate to defend his case in the Enquiry Proceedings.

6.The learned counsel appearing on behalf of the respondents Corporation strenuously opposed the contention raised by the petitioner stating that the allegations set out against the writ petitioner are serious in nature, affecting the very reputation of the Corporation and further, all reasonable opportunities contemplated under the rules and regulations are provided to the writ petitioner, during the course of enquiry.

7.The writ petitioner initially filed a Writ Petition in W.P.No.41118 of 2015, challenging the charge memo and this Court has not granted any interim order and therefore, the respondent Corporation had proceeded with the Domestic Enquiry and concluded the same in 04.12.2015. Pursuant to the enquiry report submitted by the enquiry officer, the second show cause notice was issued to the writ petitioner in proceedings dated 29.03.2016 and challenging the same, the present writ petition in W.P.No.12643 of 2016 is filed.

8.The second show cause notice was issued to the writ petitioner setting out the findings of the enquiry officer and a direction was issued to the writ petitioner to submit his further explanations/objections on the enquiry report, within a period of ten days from the date of receipt of a copy of the second show cause notice. The learned counsel further states that the writ petitioner has submitted his explanations/objections on 01.04.2016 and therefore, the present writ petition is unnecessary and after submitting the explanations to the second show cause notice and before passing final orders by the respondents Corporation, the present writ petition has been moved. Thus, the respondent shall be allowed to take a decision in accordance with the rules and a final order is to be passed in the disciplinary proceedings.

9. In respect of the deposition of the witness, the learned counsel for the writ petitioner made a submission that the writ petitioner has participated in the disciplinary proceedings and he has presented his case before the enquiry officer, it is not left open to the writ petitioner to urge his ground before passing the final orders and it is the prerogative of the disciplinary authorities to consider all these grounds and the materials available on record and take a final decision on the disciplinary proceedings as per Rules in force.

10. As far as the engagement of an Advocate is concerned, the Enquiry Officer is not an Advocate or a Judicial Officer. However, the enquiry officer is neither a Law Graduate nor a Judicial Officer. So also the Presiding Officer, who presented the case of the Management, is also not a Law Graduate and therefore, granting permission to the writ petitioner to engage an Advocate does not arise at all.

11. The learned counsel for the writ petitioner intervened and made a submission by stating that the Presenting Officer is an officer working in the Human Resources Department of the Corporation and he is a MBM Graduate (Master of Business Management). Thus, the writ petitioner ought to have been permitted to engage an Advocate in the Disciplinary Proceedings.

12. In this context, this Court is of the opinion that the first Writ Petition in W.P. No.41118 of 2015 is concerned, the charge memo itself is challenged. In respect of challenging of the charge memo this Court has taken a consistent view that the charge memo can be challenged if it was issued by an authority having no jurisdiction or incompetency or allegation of mala fides are raised or if the charge memo is in violation of statutory rules. Even in the case of rising the allegations of mala fides, the authority, against whom, such an allegation is raised, has to be impleaded as a party in the writ proceedings in his personal capacity. In the absence of any one of these legal grounds the charge memo cannot be challenged in the writ proceedings. Intermittent intervention in Departmental Disciplinary Proceedings are to be exercised cautiously and the Judicial review in this regard are certainly limited and the Courts cannot interfere in the Departmental Disciplinary Proceedings in a routine manner.

13. The allegations set out in the charge memo cannot be adjudicated on merits in writ proceedings and the same exercise can be under taken only on exceptional circumstances, where such a legal grounds are imminent for examination by the High Courts. In normal circumstances on initiation of disciplinary proceedings by the Competent Authorities, the Courts shall allow

the Departmental Disciplinary Proceedings to be concluded in all respects and such Departmental Disciplinary Proceedings should reach its logical conclusion. Such being the view taken consistency by the Courts intervention during the pendency of disciplinary proceedings by the Courts ought to be exercised cautiously. In the case on hand, the charge memo was challenged at the initial stage only with an idea to protract and prolong the disciplinary proceedings by the Delinquent Officials. The idea being to prolong the disciplinary proceedings, the Court cannot be an instrument for such ideas mooted out by the Delinquent Officials and at the outset, these kinds of writ petitions are to be rejected and the merits of the allegations can be canvassed only after passing the final orders in the disciplinary proceedings by the competent authorities.

14.This apart, in respect of W.P.No.41118 of 2015 is concerned, the charge memo issued to the writ petitioner was proceeded with by the disciplinary authorities by conducting the Domestic Enquiry. Accordingly, the Enquiry Officer conducted the Domestic Enquiry and concluded the proceedings and submitted his report in December 2015 and the second show cause notice was also issued to the writ petitioner in proceedings dated 29.03.2015. Thus, the question of quashing the charge memo at this stage does not arise at all.

15.In respect of the second W.P.No.12643 of 2016 is concerned, the learned Senior Counsel appearing on behalf of the writ petitioner made a submission that the writ petitioner has given a representation to the Disciplinary Authority stating that he must be permitted to engage a lawyer. Therefore, the request was not considered by the Disciplinary Authority and on this ground an Enquiry Proceeding is to be scrapped.

16.The writ petitioner filed four documents in the typed set of papers filed along with W.P.No.12643 of 2016. The first document filed is an Affidavit dated 22.12.2015 filed in W.P.No.41118 of 2015. The Second document is an impugned second show cause notice issued to the writ petitioner in proceedings dated 29.03.2016. The third document is a letter dated 01.04.2016 sent by the petitioner to the first respondent and the fourth document is also a letter dated 01.04.2016 sent by the petitioner to the second respondent. It is apparently clear that the above two letters were sent by the writ petitioner both to the first respondent as well as to the second respondent, after receiving the second show cause notice dated 29.03.2016.

17.This Court is curious in finding out the fact regarding the submission made by the writ petitioner in letters dated 01.04.2016. The writ petitioner has stated in his letters dated 01.04.2016 that the anonymous letter against the writ petitioner was sent based on some personal enmities, and the writ

petitioner has submitted his explanation. However, the respondent has under-taken an enquiry. Further, it is stated that no witnesses were examined on the side of the prosecution and no documents were marked through any witnesses. Then, the writ petitioner was denied an opportunity to engage a counsel of his choice. When the Presiding Officer is a law knowing person, however, the enquiry was not conducted in accordance with the principles of natural justice.

18.The writ petitioner further states that he has not committed any mistake. Thus, the enquiry itself is motivated and in violation of principles of natural justice. The Second letter dated 01.04.2016 also proceeds on the same line, but the same was sent to the second respondent. At the outset, this Court is of the opinion that the representation was submitted by the writ petitioner after receiving the second show cause notice from the competent authority in proceedings dated 29.03.2016. However, it is left open to the writ petitioner to submit his explanation/objection on the enquiry report in the manner known to law. But, it is for the competent authorities to consider all these grounds raised in the representation and take a final decision.

19.The question arises whether the Constitutional Courts during the intermittent period of the process of domestic enquiry can consider the case on merits. Certainly, the answer is negative and it is for the institutions moreso, the respondents Corporation including the competent authorities and the public officials are bound to follow the rules and regulations in conducting the Departmental Disciplinary Proceedings. Thus, the Courts must be very cautious, while interfering during the interregnum period.

20.In the case on hand, no doubt that the charges are serious against the writ petitioner. The disciplinary proceedings were initiated against him and he had submitted his explanation, moreso, participated in the Enquiry Proceedings. The writ petitioner had taken efforts to stall the entire disciplinary proceedings, by challenging the very charge memo in W.P.No.41118 of 2015. Since no interim order was granted by this Court, he has chosen to participate in the Enquiry Proceedings. Thus, the very intention of the writ petitioner just to prolong the disciplinary proceedings has not materialized. However, after participating in the disciplinary proceedings, the writ petitioner made a representation to the first and second respondent on 01.04.2016 by stating that the enquiry was not conducted by following the principles of natural justice and he was not permitted to engage a lawyer. Certainly such a statement is after thought and if writ petitioner had genuinely intended to have such an assistance, he would have submitted such explanation before the commencement of the

enquiry proceedings and not certainly after the completion of the enquiry proceedings. This being the factum of the case, the representation/explanation submitted by the writ petitioner may be considered by the disciplinary authorities before taking a final decision and passing a final orders in the disciplinary proceedings.

21. In this view of the matter, this Court is not inclined to consider the merits and the other contentions raised for the purpose of quashing the second show cause notice issued in the Departmental Disciplinary Proceedings. However, it is left open to the writ petitioner to urge the disciplinary authorities by way of further explanations/objections in relation to the Departmental Disciplinary Proceedings.

22. Thus, the writ petitions are devoid of merits and accordingly both the writ petitions stand dismissed. The learned Senior Counsel for the writ petitioner submits that the writ petitioner is in verge of retirement. Therefore, the respondents may consider all the documents and relevant materials on record and pass final orders as early as possible. However, there is no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

smn/ah

To

1. The Chief General Manager, H.R.,
Neyveli Lignite Corporation/Mine-1
Neyveli, Cuddalore District.

2. The Chief Manager,
Top Bench, Nine-1,
Neyveli Lignite corporation Ltd.,
Neyveli, Cuddalore District.

+1 CC to Mr.R. Sankara Subbu, Advocate sr 68931.

+1 Cc to Mr.N. Nithianandan, Advocate sr 68550.

W.P.Nos.41118 of 2015
and 12643 of 2016

SP(03/11/2017)