

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 07.02.2018	Delivered on 05.03.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.273 OF 2017

- 1 The Chairman cum Managing Director,
Neyveli Lignite Corporation Ltd., Neyveli.
- 2 The Director, (Power)
Neyveli Lignite Corporation Ltd., Neyveli.
- 3 The Director (Personnel)
Neyveli Lignite Corporation Ltd.,
Neyveli. ... appellants/Respndent

versus

S.Mahesh ... respondent/Petitioner

prayer: Appeal filed Under Clause 15 of letters patent against the order passed by this Court dated 07/11/2016 in WP.No.15312 of 2010.

PRAYER IN WP.15312 OF 2010: Writ Petition 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 dt 7.7.2010 on the file of 2nd respondent and quash the same

For appellant : Mr.N.Nithyanandam

For Respondents : Mr.N.R.Chandran, Senior Counsel,
for Mr.M.Aravindan

J U D G M E N T

K.K.SASIDHARAN, J.

Introductory:-

The Hon'ble Supreme Court in Chairman and Managing Director, Food Corporation of India v. Jagdish Balaram Bahira, (2017) 8 SCC 670, observed that when a person who does not belong to a caste, tribe or class for whom reservation is meant, seeks to pass off as its member, such a stratagem constitutes a fraud on the Constitution and it is also a fraud on the statutes which implement the provisions of the Constitution besides a fraud on State policy.

2. This case is a classic example as to how a General category candidate secured employment in Neyveli Lignite Corporation Ltd., against a post reserved for Schedule Tribes, claiming that he is a member of the said community, on the basis

of a photocopy of the community certificate and thereafter, when disciplinary action was taken, took a "U" Turn and claimed that there were no candidates from the ST Community for the selection, and as such, his appointment treating him as a reserved candidate, no way caused prejudice to the Schedule Tribe candidates and that he should be treated as a General candidate henceforth. The appointment cancelled by the employer treating it as void ab initio, was set aside by the learned Single Judge purely on a technical reason, notwithstanding the judgment of the Supreme Court that such appointments would be vitiated by fraud and void ab initio and non est.

The facts:-

3. The Neyveli Lignite Corporation Ltd. (hereinafter referred to as NLC) is a Navaratna company owned by the Government of India. The NLC, as per letter dated 7 September 1987, called for a list of candidates from the District Employment Officer, Cuddalore, for filling up the posts of Diploma Engineer Trainee (Electrical), under various category. The name of the respondent was sponsored for appointment to the post of Diploma Engineer against the quota reserved for Schedule Tribe. The respondent produced a photocopy of the community certificate and claimed that he belongs to ST Hindu Kondareddy community. The respondent undertook to produce the original later. The respondent was selected and appointed to the post of Diploma Engineer Trainee (Electrical) as a schedule Tribe candidate. The NLC in the appointment order dated 28 January 1988, clearly mentioned that the appointment was against the vacancy earmarked for ST candidates and he must produce the original certificate before the completion of the training. The respondent accepted the terms and conditions of the appointment and joined the service.

4. The respondent was directed to produce the community certificate on multiple occasions. Since he failed to produce the original of the community certificate, disciplinary proceedings were initiated against him. The Disciplinary Authority issued a charge memo dated 11 August 1995 alleging that he secured employment knowing fully well that he belongs to General Community and with a mala fide intention of deriving the benefits of reservation. Before the Enquiry Officer, the respondent took up a contention that he never claimed as an Schedule Tribe candidate and his appointment was only as a General Candidate. The Enquiry Officer submitted the report holding the charges proved and thereafter, the Disciplinary Authority awarded penalty of reduction to a lower stage by two stages, by order dated 30 August 1997. The Disciplinary Authority in the said order indicated that the respondent would be treated as a General candidate henceforth, and he would not be eligible for availing special benefits extended to the reserved category candidates.

5. The respondent filed an appeal challenging the order dated 30 August 1997. Before the Appellate Authority, the respondent contended that his community certificate was not in the prescribed form and as such, his appointment was only as a

General candidate. The appeal was dismissed by order dated 6 December 1997.

6. The NLC conducted general scrutiny of community status certificates based on the report from the Vigilance Department. The respondent was once again directed to produce the community certificate in original. The respondent maintained that his appointment was only as a General candidate and it would not be possible for him to produce the ST Certificate.

7. The Director (Power), NLC invoked Rule 30 of NLC Employees' (Control & Appeal) Rules, which empowers the Appellate Authority or higher authority, to call for the records of any case in which a penalty has been imposed and pass such orders as he deems fit. The higher authority than the Appellate Authority in the order dated 7 July 2010 made it very clear that the question of awarding punishment for the failure to establish the community status does not arise as the very appointment was void ab initio. The authority therefore cancelled the appointment with an indication that it was illegal and void ab initio.

8. The respondent challenged the order dated 7 July 2010 before the writ court in W.P.No.15312/2010. The learned Single Judge quashed the order and observed that there was no scope for initiation of disciplinary proceedings afresh against the respondent. Feeling aggrieved by the order dated 7 November 2016, the NLC is before this Court.

Submissions:-

9. The learned counsel for the appellant contended that the appointment of the respondent was against the post reserved for Schedule Tribe candidates. The respondent, produced a photocopy of the community certificate, and agreed to produce the original at a later point of time. Though sufficient time was given to the respondent to produce the community certificate in original, there was no response. The Disciplinary Authority therefore rightly took disciplinary proceedings against him. The authority, higher than the Disciplinary Authority, at a later point of time verified the entire back papers and found that punishment disproportionate to the misconduct was imposed, and rightly invoked Rule 30 of NLC Employees' (Control and Appeal) Rules and cancelled the punishment. The learned counsel further contended that appointment of the respondent was void ab initio and as such, Disciplinary Authority was not correct in imposing a lesser punishment. The contention taken by the respondent with regard to the scope of Rule 30 was answered by the learned counsel by contending that there was no enhancement of the punishment awarded by the Disciplinary Authority and as such, there was no need for either notice to the respondent or further enquiry in the matter. The learned counsel submitted that by way of the impugned order, the higher authority declared the appointment as void ab initio. The declaration given by the authority that the appointment is void ab initio would not amount to a modification of the punishment and as such, the learned Single Judge was not correct in setting aside the order.

10. The learned Senior counsel for the respondent contended that by appointing the respondent to a reserved post, there was no denial of right to the members of the ST community, as there were no candidates from the said community available for appointment. The learned Senior counsel further contended that the respondent was appointed only as a General candidate. The learned Senior Counsel by placing reliance on the application form submitted by the respondent for residential accommodation contended that even in the said application, the respondent claimed that he belongs to General candidate. The learned Senior counsel further contended that Rule 30 of NLC Employees' (Control and Appeal) Rules was invoked by the higher authority without issuing notice to the respondent. According to the learned Senior counsel, no prejudice was caused to the NLC by giving employment to the respondent, as ST candidates were not in the fray for appointment at that point of time. The learned Senior counsel finally submitted that the respondent would not claim the benefit of reservation and that he would continue to be a General candidate for all purposes.

Discussion:-

11. The NLC by notification dated 7 September 1987, called upon the District Employment Officer, Cuddalore, to sponsor sufficient number of general candidates, Schedule Caste and Schedule Tribe candidates, for appointment to the post of Diploma Engineer Trainee (Electrical). The name of the respondent was registered before the Employment Exchange as a Schedule Tribe candidate. Therefore, his name was sponsored by the Employment Exchange against the post reserved for Schedule Tribe.

12. The NLC vide communication dated 6 November 1987, called upon the respondent to appear for an interview on 20 November 1987. The NLC in the said communication, directed the respondent to produce his Schedule Tribe certificate in original.

13. The respondent submitted a proforma dated 16 November 1987 to the NLC wherein it was indicated that he belongs to Schedule Tribe. The proforma is found in page 12 of the typed set of papers.

14. The NLC on the basis of the interview and taking into account the reserved community status, appointed the respondent to the post of Diploma Engineer Trainee (Electrical). The appointment order was issued on 28 January 1988. Even in the appointment order, there was a clear indication that the respondent having been appointed against a post reserved for Schedule Tribe Candidate, must produce the original of the community certificate before the completion of his training.

15. The respondent accepted the terms and conditions of the appointment order. The respondent, through his representation dated 3 February 1988, pleaded that he should be given one month time to join the service on account of the difficulty to obtain community certificate in original.

16. The respondent joined the service on 2 May 1988 without producing the community certificate in original. Though the respondent appears to have made a request to treat his appointment as a General candidate, there is nothing on record to show that such a request was entertained by the NLC and his illegal appointment was regularized.

17. The photocopy of the certificate produced by the respondent was forwarded to the Assistant Collector, Cheranmadevi for verification. The Assistant Collector informed the NLC that no such certificate was issued to the respondent from his office. The Assistant Collector in his communication dated 23 September 1992, further stated that the signature, designation, seal and Gopuram seal contained in the certificate do not tally with the office seal and stamp maintained by the office of the Assistant Collector at Cheranmahadevi, indicating that it was fabricated.

18. The Disciplinary Authority issued a charge memo to the respondent dated 24 May 1993, taking into account the report submitted by the Assistant Collector, Cheranmahadevi. The respondent was directed to show cause as to why disciplinary action should not be taken against him for claiming appointment under the Schedule Tribe category, knowing fully well that he was not from the said community. The explanation submitted by the respondent with a prayer to treat him as General Candidate was not accepted by NLC.

19. The NLC appointed Enquiry Officer to conduct enquiry, pursuant to the charge memo issued to the respondent. Before the Enquiry Officer, reasonable opportunity was given to the respondent to produce materials to prove that he belongs to schedule tribe community. The respondent submitted that he has not availed any concession granted to the members of the schedule tribe community and even his application for residential quarters was only as a General category candidate. The respondent further contended in his letter dated 3 March 1988 that a request was made to the NLC to treat him as a general candidate in the absence of a valid community certificate produced by him and that he was under the bona fide impression that he was treated only as a General category candidate. The respondent pleaded that he was not aware of the entry made in the records relating to his community status.

20. The Disciplinary Authority forwarded a copy of the enquiry report to the respondent and called upon him to submit his comments. The respondent in his explanation dated 3 December 1996, reiterated his contention that on account of his difficulty to secure the community certificate, a request was made to treat his appointment as a General category and as such, there is no reason to punish him for the alleged misconduct.

21. The Disciplinary Authority by order dated 30 August 1997 imposed a punishment of reduction to a lower stage by two stages in the time scale for a period of two years with cumulative effect. The Disciplinary Authority held that the

respondent would be treated as a General candidate henceforth and that he would not be eligible for any special benefits extended to the members of the reserved category. The order dated 30 August 1997 was challenged by the respondent before the Appellate Authority. The Appellate Authority by order dated 6 December 1997 rejected the appeal.

22. Thereafter, the General Manager, NLC, by proceedings dated 20 September 2000, called upon the respondent once again to produce the caste certificate in original for verification. This was necessitated on account of the mass verification of SC/ST certificates by the Vigilance Wing, due to large scale complaints regarding employment of General candidates as Schedule Caste/Schedule Tribe candidates, by producing false community certificates.

23. The respondent in his explanation dated 3 November 2000 pleaded his inability to produce the ST certificate. The respondent reiterated his submission that he should be considered only as a General category candidate.

24. The General Manager vide communication dated 15 February 2001, once again called upon the respondent to produce the original of his community certificate, failing which, it was indicated that the management would take appropriate action against him. The respondent in his reply dated 2 March 2001, informed the NLC that till date he has not availed any benefits reserved for the members of the ST community.

25. The appointment of the respondent was against a post reserved for Schedule Tribe. However, the respondent failed to produce the community certificate in original. The show cause notice dated 20 September 2000 and 15 February 2000 and the explanation submitted by the respondent dated 3 November 2000 and 2 March 2001 were produced before the authority higher than the Appellate Authority.

26. The Higher Authority considered the entire background facts and arrived at a conclusion that the appointment of the respondent was void ab initio. While making such a declaration, the higher authority cancelled the punishment imposed by the Disciplinary authority earlier by order dated 11 August 1995.

27. The learned single Judge quashed the order dated 7 July 2010, primarily on the ground that after imposing the punishment, the disciplinary authority made it clear that the respondent would henceforth be considered only as a general candidate and that he would not be eligible for availing any special benefits extended to the reserved candidates and therefore it was not correct to cancel the appointment. The learned single Judge observed that Rule 30 was invoked beyond 90 days period and as such, the order is bad in law.

28. The core question is whether the appointment of the respondent, who is a General candidate, to a post reserved for

the members of the Schedule Tribe community is void ab initio and non est and whether the employee is entitled to retain the benefit obtained by playing fraud, by taking shelter under the disciplinary proceedings taken earlier.

29. The issue is not as to whether the higher authority committed a jurisdictional error by invoking Rule 30 of NLC Employees' (Control and Appeal) Rules, for cancelling the appointment which is void ab initio and non est.

30. There is no doubt that the respondent claimed that he belongs to Schedule Tribe Community. The appointment was against the post reserved for the members of the Schedule Tribe Community. The respondent was given sufficient opportunity to produce the community certificate in original. The respondent took time under one pretext or the other for production of the community certificate in original. The Assistant Collector, Cheranmadevi, in his report dated 23 September 1992, made it very clear that no such certificate was issued to the respondent.

31. The learned Senior counsel for the respondent contended that the NLC ought to have sent the photocopy of the certificate for verification to the State Level Scrutiny Committee, constituted by the State Government, pursuant to the judgment of the Hon'ble Supreme Court in Kumari Madhuri Patil vs. Additional Commissioner, (1994(6) SCC 241). There is absolutely no merit in the said contention.

32. There is no dispute that in case the employer is of the view that the employee produced a false community certificate, such certificate should be sent for verification to the Scrutiny Committee. However, in the present case, it is not the case of the respondent that he is a member of Schedule Tribe Community. The respondent though initially claimed that he belongs to Schedule Tribe, subsequently took a "U" turn and claimed that he is only a general candidate. There is absolutely no dispute with regard to the community status of the respondent. His parents and brothers and sisters do not belong to Schedule Tribe Community. Since the respondent subsequently admitted that he does not belong to Schedule Tribe Community, there was no need to send the certificate for verification to the State Level Scrutiny Committee. The respondent at no point of time called upon the appellant to send his certificate for verification. When notice was issued to the respondent to produce the community certificate in original, a reply was sent that he is not relying on the certificate produced earlier. The respondent replied that it would not be possible for him to produce the certificate and that he should be treated as a General candidate. Since the respondent has no case after securing employment against a reserved post that he is from an Schedule Tribe Community, the NLC is legally not bound to send the photocopy of the Schedule Tribe certificate for verification to the State Level Scrutiny Committee.

Query as to whether the parents or relatives belong to Schedule

Tribe:

33. When a line of argument was taken by the learned senior counsel for the respondent that the photocopy of the community certificate ought to have been sent for verification to the Scrutiny Committee, we posed a question to him as to whether the parents, brothers or sisters of the respondent were given Schedule Tribe certificate by the revenue authority. The learned Senior counsel on instruction from the counsel on record fairly submitted that they have not claimed the status as Schedule Tribe and none of them are in possession of Schedule Tribe certificates. Therefore, it is very clear that the respondent is not a member of Schedule Tribe community.

34. The respondent made a fraudulent entry in the proforma while joining service that he belongs to Schedule Tribe. Even in the proforma submitted to the NLC dated 16 November 1987, a false entry was made by the respondent that he belongs to schedule tribe community.

35. The appointment order dated 28 January 1988 contain a clear statement that in case any of the particulars are later found to be incorrect, the NLC is at liberty to terminate the services without issuing notice. It was only this right which was later invoked by the higher authority to declare that the appointment of the respondent was void ab initio. It is true that a wrong provision was quoted by him for passing such an order. The fact that Rule 30 of NLC was quoted to give such a declaration would not make the order bad in law in view of the fraud played by the respondent not only against NLC but also on the Constitution.

36. The proceedings initiated by notice dated 15 February 2001 was by invoking the liberty granted to the NLC to terminate the services, in case it is made out later that the information given is false. The impugned order dated 7 July 2010 was passed only after giving notice to the respondent on 20 September 2000 and 15 February 2001. The respondent has given his reply on 2 March 2001. Since the appointment itself was a nullity, the higher authority issued the declaration. The wrong provision quoted in the order, or cancellation of the minor punishment would not invalidate the order declaring the appointment illegal and void ab initio. The employer is having power independent of Rule 30 of NLC Employees' (Control & Appeal) Rules, to take action for cancellation of appointment secured by playing fraud. The higher authority exercised the said right taking into account the mandate of the Constitution.

The Law Declared:-

37. The Hon'ble Supreme Court in Chairman and Managing Director, Food Corporation of India v. Jagdish Balaram Bahira, (2017) 8 SCC 670, held that the legal system cannot be an avenue to support those who make untrue claims to belong to a caste or tribe or socially and educationally backward class and that the credibility not merely of the legal system but also of the judicial process will be eroded if such claims are protected in exercise of the constitutional power.

The Supreme Court said :

"Where a candidate had been appointed to a reserved post on the basis of the claim that he or she was a member of the group for which the reservation is intended, the invalidation of the claim to belong to that group would, as a necessary consequence, render the appointment void ab initio. The rationale for this is that a candidate who would otherwise have to compete for a post in the general pool of unreserved seats had secured appointment in a more restricted competition confined to the reserved category and usurped a benefit meant for a designated caste, tribe or class. Once it was found that the candidate had obtained admission upon a false representation to belong to the reserved category, the appointment would be vitiated by fraud and would be void ab initio. The falsity of the claim lies in a representation that the candidate belongs to a category of persons for whom the reservation is intended whereas in fact the candidate does not so belong. The reason for depriving the candidate of the benefit which she or he has obtained on the strength of such a claim, is that a person cannot retain the fruits of a false claim on the basis of which a scarce public resource is obtained. The same principle would apply where a candidate secures admission to an educational institution on the basis of a false claim to belong to a reserved category. A candidate who does so causes detriment to a genuine candidate who actually belongs to the reserved category who is deprived of the seat. For that matter, a detriment is caused to the entire class of persons for whom reservations are intended, the members of which are excluded as a result of an admission granted to an imposter who does not belong to the class. The withdrawal of benefits, either in terms of the revocation of employment or the termination of an admission was hence a necessary corollary of the invalidation of the claim on the basis of which the appointment or admission was obtained. The withdrawal of the

benefit was not based on mens rea or the intent underlying the assertion of a false claim. In the case of a criminal prosecution, intent would be necessary. On the other hand, the withdrawal of civil benefits flowed as a logical result of the invalidation of a claim to belong to a group or category for whom the reservation is intended."

(emphasis supplied)

38. The respondent knowing fully well that he has no justifiable claim for appointment under reserved category, made a false claim and secured employment in 1988. When he was called upon to produce the community certificate in original, the respondent invented a novel device for non production by submitting a request that he should be treated as a general candidate. However, the fact remains that his appointment was only under the reserved category. In case his application was under the General category, the respondent should have been interviewed along with the other candidates from the General category. The respondent secured employment only as a Schedule Tribe candidate. Therefore, it is not open to him to contend at a later point of time that he is not claiming the benefits of the reservation. Such a contention cannot be accepted by a Constitutional Court.

39. The declaration dated 7 July 2010 that the appointment of the respondent was void ab initio should be considered in the light of the false claim made by the respondent, the statement made by him in the proforma and the condition of appointment providing that if any statement is found incorrect subsequently, the appointment would be cancelled without notice. It was this power which was exercised by the authority higher than the Appellate Authority, by order dated 7 July 2010.

40. The respondent approached the High Court with a false contention. The respondent in paragraph 2 of the affidavit filed in support of the Writ Petition contended that since he do not have the certificate, the NLC directed him to attend the interview under General Category. The falsity of this statement is proved by the appointment order and the attestation form signed by the respondent. The respondent made a deliberate attempt to mislead the Court. The Writ Petition ought to have been dismissed on the sole ground of approaching the Court with unclean hands and with contentions known to be false.

41. Even now the respondent has no case that he belongs to Schedule Tribe community. His parents and brothers and sisters are not from Schedule Tribe community. Since it is the admitted case of the respondent that he does not belong to schedule tribe community, it cannot be said that the NLC was not correct in declaring his appointment as void ab initio. This fundamental aspect was not considered by the learned Single Judge. We are therefore of the view that the learned Single Judge was not

correct in allowing the Writ Petition. The order is liable to be set aside.

42. The technicality should not come in the way of a case of this nature when a fraud on the constitution is made out. The equity jurisdiction under Article 226 of the Constitution is not for aiding those who are guilty of making false claims to snatch the benefits earmarked for the members of the reserved community. The Courts must shut its doors to such unscrupulous litigants. As observed by the Supreme Court in Jagdish Balaram Bahira that protection of claims of a usurper is an act of deviance to the constitutional scheme as well as to the statutory mandate. The Supreme Court in paragraph 65 of the said judgment made it very clear that "Protecting the services of a candidate who is found not to belong to the community or tribe for whom the reservation is intended substantially encroaches upon legal rights of genuine members of the reserved communities whose just entitlements are negated by the grant of a seat to an ineligible person."

Disposition:-

43. The order dated 7 November 2016 is set aside. The Writ Petition in W.P.No.15312 of 2010 is dismissed. We confirm the order dated 7 July 2010 passed by the NLC and reiterate the declaration that the appointment of the respondent is void ab initio and non est.

44. In the upshot, we allow the intra court appeal. No costs. Consequently, connected M.P.s, are closed.

Sd/-
Assistant Registrar (CO)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

- 1 The Chairman cum Managing Director,
Neyveli Lignite Corporation Ltd., Neyveli.
- 2 The Director, (Power)
Neyveli Lignite Corporation Ltd., Neyveli.
- 3 The Director (Personnel)
Neyveli Lignite Corporation Ltd., Neyveli.

+1cc to Mr.N.NITHIANANDAM, Advocate, S.R.No.16621
+2cc to Mr.M.ARAVINDAN, Advocate, S.R.No. 16737

Judgment in
W.A.No.273 of 2017