

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.03.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.6209 of 2019
and
W.M.P.No.7058 of 2019

S.Pasupathi

..Petitioner

vs

1.Neyveli Lignite Corporation Limited
Rep.by its Director(HR), Corporate office
Block-I,
Neyveli Township - 607 801

2.The Chief General Manager(HR)
Neyveli Lignite Corporation Limited
Corporate Office, Block-I
Neyveli Township - 607 801

3.The General Manager
Operation, Mine I,
Neyveli Lignite Corporation Limited,
Corporate Office, Block-I
Neyveli Township - 607 801

4.The Chief Manager, Shift office
Mine I, (Disciplinary Authority)
Neyveli Lignite Corporation Limited,
Corporate Office, Block-I
Neyveli Township - 607 801.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the impugned order in PSC No.M1/HR/DAC/278-48/2015 dated 12.02.2019 passed by the 4th respondent, issued to the petitioner on 21.02.2019 and quash the same.

For Petitioner : Mr.K.Sarath Babu

For Respondents : Mr.N.Nithyanandam

O R D E R

The show cause notice issued by the respondents in proceedings dated 12.02.2019 is under challenge in the present writ petition.

2.The learned counsel for the writ petitioner states that the writ petitioner is now working as Chief Wireless-cum-Communication Operator with Neyveli Lignite Corporation. His name was initially sponsored through the Employment Exchange for appointment to the Post of Wireless-cum-Communication Operator (Trainee) and the writ petitioner submitted all necessary documents. The Management of Neyveli Lignite Corporation, on verification, raised certain doubts regarding the educational certificate produced by the writ petitioner at the time of securing appointment. Based on the allegation, a charge memo was issued to the writ petitioner on 07.04.2015. Subsequently, the writ petitioner submitted his explanations and participated in the process of enquiry. The writ petitioner defended his case before the enquiry officer. The enquiry officer submitted his report and based on the report, the disciplinary authority issued the show cause notice, granting ten days time to the writ petitioner to submit his further explanations/objections for the purpose of imposing the punishment as proposed.

3.The learned counsel for the writ petitioner states that the punishment of Demotion to Lower Category as Industrial Worker GR.I. IN(W2) GRADE is now proposed in the show cause notice, which is a major punishment and prosecution of such a punishment is unknown to law. Therefore, the show cause notice itself is liable to be quashed.

4.This apart, the learned counsel for the writ petitioner states that the petitioner had produced genuine certificates and the merits also had not been considered by the authorities with reference to the certificates produced by the petitioner at the time of securing appointment.

5.In respect of the proposing to punishment, this Court is of an opinion that this issue had already been settled by the Apex Court that there is no error on the part of the disciplinary authority in proposing the punishment on receipt of the findings of the enquiry report, so that the delinquent will be in a position to submit their objections/explanations on the proposed punishment as well as the findings of the enquiry officer. The opportunity is twofold to the delinquent officials. One, the findings can be disputed by way of explanations/objections and proposed punishment also can be disputed on the ground of disproportionality or any other ground available to the writ petitioner. Mere prosecution of the

punishment in the second show cause notice will not be a conclusive one. Even after the receipt of the explanations/objections from the delinquent officials, the disciplinary authority is empowered to consider all the materials available on record and thereafter, take a decision, reducing the punishment, exonerating the writ petitioner or for imposing major penalty. The authorities competent, on receipt of explanations/objections from the delinquent officials should consider all the materials available on record with reference to the files and take a decision and pass orders.

6.This being the very purpose and scope of the procedure of enquiry, the Hon'ble High Court cannot intervene in the process and more specifically, during the intermittent period.

7.Intermittent interference in departmental disciplinary proceedings are certainly not preferable. The disciplinary proceedings initiated against the officials must be allowed to complete and the same should reach its logical conclusion. The frequent interference of the Hon'ble High Court in each and every stage, would hamper the very completion of the disciplinary proceedings against the delinquent officials. Such interference are mostly taken undue advantage by the delinquent officials.

8.For instance, the delinquent official, if no reasons are given in the show cause notice, then also, they file a writ petition by stating that no details are providing in the show cause notice, enabling the employee to submit his explanations/objections on that score. The writ petitions are filed, if details are provided in the show cause notice, then they are coming out with the writ petition by stating that the authorities have already predetermined the issue and therefore, the notice is to be scrapped. Either way, the writ petitions are filed only with an intention to protract and prolong the issues. However, it is made clear that the authorities competent must deal with the issues independently and with reference to the files and based on the issues. The transparency and impartiality must be the character of the disciplinary authority, while deciding all such cases against the delinquent officials. However, providing certain details or proposing certain punishment would not provide a cause of action for the purpose of filing the writ petition in order to stall the entire departmental disciplinary proceedings. If such a procedure is encouraged, this Court is of an opinion that the disciplinary proceedings initiated against the delinquent officials will never be concluded and it will be prolonged and protracted on such flimsy grounds. Thus, a pragmatic approach is required in all these kind of matters. The very object of disciplinary proceedings is to ensure that the public servants maintain good conduct and utmost integrity, while performing his public duty.

This being the very purpose and object of the disciplinary proceedings of initiation of such proceedings based on some allegations, the delinquent officials must establish his innocence or otherwise by producing documents and by adducing evidences by availing the opportunities to be provided by the competent authorities.

9.No writ proceedings can be entertained against the show cause notice in a routine manner and the judicial review in this regard is certainly limited. A writ can be entertained against a show cause notice only on certain exceptional circumstances, where show cause notice has been issued by an incompetent authority having no jurisdiction or if an allegation of mala fides are raised or if the notice is in violation of the statutory rules in force. Even in case of raising an allegation of mala fides, the authorities against whom such an allegation is raised, is to be impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence of any one of these legal grounds, no writ petition can be entertained against the show cause notice.

10.Intermittent intervention in administrative proceedings are not desirable. Only in the event of any gross injustice, the High Courts would be intervening with such notices. In all other circumstances, the competent authorities must be permitted to proceed with the initiation of the proceedings by following the procedures as contemplated. In the event of intermittent interventions, actions initiated are not only diluted and by taking undue advantage of the delay, the offenders are attempting to escape from their liability.

11.The learned counsel for the petitioner raised certain points on merits, which cannot be adjudicated in the present writ petition in view of the fact that the second show cause notice itself is under challenge. Such disputed and complex issues in relation to the allegations set out in the charge memo or the enquiry report can never be adjudicated in a writ proceedings under Article 226 of the Constitution of India. All such complex facts and circumstances must be adjudicated by the competent authorities at the time of passing the final orders.

12.This being the legal principles settled by the Hon'ble Supreme Court of India as well as by this Court, the writ petitioner is bound to face the enquiry proceedings by submitting his explanations/objections in respect of the details set out in the show cause notice, enabling the authorities to consider the issues and pass orders on merits and in accordance with law. However, the writ petitioner has not established any acceptable legal ground for the purpose of quashing the show cause notice and the writ petitioner is entitled to submit his

explanations/objections pursuant to the show cause notice to the authorities.

13.With these observations, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

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Corporate Office, Block-I
Neyveli Township - 607 801

+1cc to Mr.K.Sarath Babu, Advocate, S.R.NO.19678

W.P.No.6209 of 2019

SSV(CO)

RRS (02/04/2019)

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