

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2020

CORAM :

The HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.23417 of 2008

and

M.P.No.1 of 2008

NLC Officers Association

Represented by its General Secretary

E-47, Zakir Hussain Road,

Block - 16, Neyveli - 607801. Petitioner

-vs-

1.Neyveli Lignite Corporation Limited

Represented by its Chairman cum Managing Director,

Corporate Office, Block - 1,

Neyveli - 607801.

2.Director/Personnel

Neyveli Lignite Corporation Limited

Corporate Office, Block -1,

Neyveli - 607801. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the respondents to implement the agreement dated 26.03.2008 in Cir.No.CORP/P&A/IR/781/2008 insofar as the issue No.2 of the agreement concerning the review of promotions of the members of the association is concerned.

For Petitioner : Mr.A.V.Arun

For Respondents : Mr.N.A.K.Sarma

ORDER

(Heard through Video Conferencing)

1.This Writ Petition has been filed, by the NLC Officers Association, represented by its General Secretary, to issue a Writ of Mandamus, directing the Respondents to implement the agreement, dated 26.03.2008 in Cir.No.CORP/P&A/IR/781/2008, in so far as Issue No.2 of the said agreement, concerning the review of promotions of the Members of the Petitioner Association, is concerned.

2.This Court heard the learned counsel for the Petitioner and the Respondents.

3.The issue No.2 of the agreement dated 26.03.2008, which has

been impugned in this Writ Petition, reads as under:-

S.N o.	Issue	Request of Associations	Status
2	Issue of Promotions delayed on account of pending disciplinary cases pertaining to wrong interpretation of LTC/LTA Rules.	Dates of promotions in respect of Executives involved in the LTC case shall be advanced to the normal eligible dates, since the issue was a common one and cannot be attributed to the officers/employees who passed the bills.	Case relating to alleged misuse of LTC was taken up for investigation and based on the enquiry disciplinary action initiated, punishment was imposed in respect of certain executives in non-technical cadre. Even though advancement of dates of promotion to normal eligible dates could not be considered in normal circumstances, during the discussion, Management has agreed to review for providing possible relief in respect of Time Bound promotions, after seeking the views of Vigilance, since the cases have been referred by vigilance, are to be decided on merits and on DPC recommendations. The management is willing to examine all such cases for any review on merits. Incidentally, NLC Officers Association has filed certain writ petitions challenging managements action on LTC related issues and the matter is subjudice.

4. According to the learned counsel for the Petitioner, the Petitioner Association is a registered Trade Union, consisting of Management Staff, Non-Managerial cadre and other Staff and promotions have been delayed, deliberately and intentionally, on account of pendency of the disciplinary proceedings and the Management had agreed to review for providing possible relief in respect of time bound promotions. The impugned circular, based on deliberations has been took place, not to implement the 'status' mentioned in the circular mentioned supra, depriving the time bound promotion to the Members of the Petitioner Association, is illegal.

5. The learned counsel for the Respondent Corporation would contend that this Writ Petition itself is not maintainable,

as the Association is consisting of Supervisors, Executives and Managers and that it is not an agreement at all and that in any term it cannot be termed as an agreement under the Industrial Disputes Act, 1947. He would further submit that though deliberation has taken place, the Management has agreed to review the time bound promotion, but the Petitioner Association, as a matter of right, cannot demand the time bound promotion, irrespective of the pendency of the disciplinary proceedings and that the Petitioner Association has got an alternative remedy.

6. In reply, the learned counsel for the Petitioner would submit that the Petitioner is entitled to raise the present dispute and that the issue as to whether the Members of the Petitioner Association are workmen or not, has got to be adjudicated and it will be a long process and hence de hors alternative remedy, the petitioner is entitled to the relief as sought for in this Writ Petition.
7. This Court considered the submissions of the learned counsel on either side and perused the materials placed on record.
8. It is not in dispute that the Members of the Petitioner Association are workmen, but with regard to issue of time bound promotion, the Management has agreed to review the status, but has not categorically stated that the Employees/Supervisors/Executives/Managers will be given promotion, de hors the pendency of disciplinary proceedings. It is only a circular and not a settlement agreement as stipulated in the Industrial Dispute Act or can it be termed as an agreement.
9. The contention that the Petitioner Association cannot raise the dispute cannot be accepted, and if the Union is able to establish that there is a community interest, they can raise a dispute on behalf of the Officers and others who may not be a workman. The said contention is supported by the decision of the Honourable Supreme Court rendered in the case of Mukand Ltd vs. Mukand Staff & Officers' Association, reported in 2004 (10) SCC 460.
10. At this stage, this Court is not inclined to render any finding on the issue raised by the Petitioner Association, as any finding rendered on merits would defeat the rights of either of the parties in the industrial dispute, if any, raised by the Association. Therefore, leaving all the issue open, this Court is inclined to dismiss this Writ Petition on the ground that the Petitioner Association has got an alternative remedy before appropriate forum. It is open to the Petitioner Association to lead evidence and to mark the circular as a part of the evidence and establish their case that they are entitled for promotion irrespective of the pendency of the disciplinary proceedings. The Petitioner Association, representing the Supervisors, Executives, Managers, in view of the Mukand's case [cited supra], raises any industrial dispute, it is open to them to lead evidence that they are entitled to the benefits of the impugned circular as it should be termed as an Agreement or a Settlement and that they are workers and even if they are

not workmen, the industrial dispute can be raised by the Union on taking note of the community interest. The limitation of three years prescribed for raising a dispute that came into effect in October, 2010, will not apply to a dispute under Section 2(k) of the Industrial Disputes Act 1947.

11. With the above observations, this Writ Petition is dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

sni/srcm/ar

To:

1. Chairman cum Managing Director,
Neyveli Lignite Corporation Limited,
Corporate Office, Block - 1,
Neyveli - 607801.
2. Director/Personnel
Neyveli Lignite Corporation Limited,
Corporate Office, Block -1,
Neyveli - 607801.

+1cc to Mr.N.Nithianandam, Advocate, S.R.No. 28892

+1cc to Mr.A.V.Arun, Advocate, S.R.No. 29077

सत्यमेव जयते

W.P.No.23417 of 2008

VG II(CO)
GN(21/10/2020)

WEB COPY