

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
03.02.2020	03.06.2020

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.29844 of 2016

M.Sadasivam

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Petitioner

Vs.

1. The Chairman cum Managing Director,
Neyveli Lignite Corporation Ltd.,
Neyveli, Cuddalore District - 607 802.
2. The Director, (Personnel)
Neyveli Lignite Corporation Ltd.,
Neyveli, Cuddalore District - 607 802.
3. The General Manager,
Operation/Mine II/Appellate Authority,
Neyveli Lignite Corporation Ltd.,
Neyveli, Cuddalore District - 607 802.
4. The Deputy General Manager,
Lignite Bench/Mine II/Disciplinary Authority,
Neyveli Lignite Corporation Ltd.,
Neyveli, Cuddalore District - 607 802.
5. The Chief Manager,
Lignite Bench/Mine II,
Neyveli Lignite Corporation Ltd.,
Neyveli, Cuddalore District - 607 802.

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Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the entire records in pursuant to the order passed by the third respondent vide Memo No.M.II/HR/DA CELL /552/1221 / 2012, dated 5.7.2016 confirming the order of removal from service passed by the 4th respondent M.II/HR / DA CELL / 552 / 1221 / 2012, dated 24.3.2014 and quash the same.

For Petitioner : Mr.T.P.Prabakaran
For Respondents : Mr.N.Nithianandam

O R D E R

THE FACTUAL BACKGROUND OF THE WRIT PETITION IS AS FOLLOWS:

The petitioner was appointed under land displaced persons quota on 19.6.1989 and have completed 24 years of service under the respondent Corporation.

(i) On 2.11.2012, the 5th respondent issued a charge memo vide Memo No.M.II/HR/DA CELL / 552 / 1221 / 2012, dated 2.11.2012, alleging that the petitioner had secured appointment in NLC under Land Displaced persons Quota for having acquired house site under Award No.1/87, dt 30.6.1987 which was found to be belongs to one Pitchaikaran, S/o Narayanan. The legal heir certificate of Pitchaikaran indicate that Smt.Anajaltchi, 60 years and Smt.Dhanalakshmi, aged 27 years as legal heirs viz. Wife and daughter respectively and it was also ascertained that no land/house site either owned by the petitioner or his father. Therefore, the 5th respondent came to the conclusion that the petitioner got appointment in the respondent Corporation in violation of norms prevailed under Land Disposed Quota and therefore, his appointment is invalid. Thus, charge memo was issued to the petitioner.

(ii) The petitioner submitted his explanation vide letter, dated 19.11.2012 denying the charge levelled against him. The 5th respondent / disciplinary authority being not satisfied with the explanation submitted by the petitioner, decided to conduct enquiry and enquiry officer was appointed.

(iii) The enquiry officer conducted enquiry proceedings and submitted his report to the 5th respondent vide letter No.075/EO/M-II/2012, dated 27.7.2013 holding that the charge levelled against the petitioner as proved.

(iv) Thereafter, the petitioner was issued a show cause notice vide Memo No.M-II/HR/DA CELL / 552/ 1221 / 2012, dated 29.7.2013 along with enquiry report, to submit objections if any, against the findings of the enquiry officer's report within seven days from the date of receipt of the said notice.

(v) After receiving objections to the enquiry report from the petitioner, a memo No.M.II/HR/DA CELL/552/1221/2012, dated 17.1.2014 issued to the petitioner, proposing to impose a major punishment of removal from service.

(vi) Challenging the enquiry report and consequential show cause notice, proposing to impose a punishment of Removal from service, the petitioner has filed W.P.No.1141 of 2014 before this Court and the same was withdrawn by the petitioner.

(vii) Again, the petitioner has filed W.P.No.10263 of 2014 before this Court challenging the charge memo and all consequential proceedings such as enquiry report, show cause notice, dated 29.7.2013 and memo, dated 17.1.2014 issued by the fourth respondent.

(viii) Meanwhile, the service of the petitioner was

terminated by the fourth respondent, vide order, dated 24.3.2014. Aggrieved by the termination order passed by the fourth respondent, the petitioner has filed an appeal before the Appellate Authority, viz., third respondent herein. The third respondent passed the impugned order, dated 5.7.2016 by confirming the order of removal from service passed by the fourth respondent.

(ix) Therefore, the petitioner has filed the present writ petition before this Court, challenging the order passed by the fourth respondent, dated 24.3.2014 and the order passed by the Appellate Authority, viz., the third respondent, dated 5.7.2016.

2. Counter affidavit has been filed by the 5th respondent wherein it is stated as under:

(i) According to the 5th respondent, any misrepresentation in securing the employment under Land Displaced Persons category is serious and recurring misconduct since it is a back door entry. A candidate who did not possess/satisfy the Scheme and who had been appointed on misrepresentation or by fraudulent means, is ineligible to continue in employment, since the appointment itself was ab-initio void and non est in the eyes of law.

(ii) There was no requirement under law to departmentally proceed with the petitioner in the case of securing employment under the Scheme meant for Land displaced persons, by misrepresentation or by fraudulent means. However, the petitioner was proceeded with departmentally affording all opportunities to defend the charges and after due enquiry, the petitioner was removed from service for the proven misconduct.

(iii) The petitioner was a workman governed by the Certified Standing Order of the answering respondents and by the Industrial Disputes Act, 1947. The departmental proceedings were initiated against the petitioner under the Certified Standing Orders.

(iv) The petitioner has efficacious remedy under the provisions of Industrial Dispute Act, 1947. Further, the writ petition involves disputed questions of facts, which cannot be adjudicated under Article 226 of the Constitution of India. As such, the remedy against the impugned proceedings is to approach the Labour Court and not under Article 226 of the Constitution of India.

(v) Further, it is stated that an extent of 0.005 Hectares (less than 1 and 1/2 Cents) of House site with a thatched house comprised in R.S.No.32, Plot No.23 situated at Veppankurichi Village belonging to one Pitchaikaran, S/o Narayanan came to be acquired in the year 1987 by Award No.1 of 1987, dated 30.6.1987. The statutory compensation and enhanced compensation for the said house site and the thatched house was determined under the Land Acquisition Act and the said

compensation was paid to the owner of the house site, viz., Pitchaikaran, S/o Narayanan as per the Award No.1 of 1987, dated 30.6.1987.

(vi) Awardee, Awardee's Spouse, son or daughter and in case, there is no qualified son or daughter or spouse of Awardee, Son-in-law or daughter-in-law of the Awardee are eligible members for employment under Land Displacement Quota.

(vii) The family details of the Awardee Pitchaikaran was not known to the respondent Corporation and they proceeded on the basis of the information furnished by the family members of the Pitchaikaran and on the request of Pitchaikaran, employment was offered to his Son-in-law, namely, Rajakannu by letter, dated 17.4.1989. In the said letter, the respondent erroneously mentioned Rajakannu as son of Pitchaikaran.

(viii) Taking advantage of the inadvertent mistake of the respondent, Rajakannu made representation claiming to be son of Pitchaikaran, requested the respondent to provide employment to his Son-in-law namely, the petitioner herein on health grounds. It is apparent from this representation that the petitioner and his father-in-law, namely, Rajakannu had connived to secure employment fraudulently under Land Displacement Quota contrary to the terms and conditions of the Scheme. It is the boundan duty of the petitioner and his father-in-law to disclose the correct relationship of the family members to satisfy the terms and conditions of the Scheme.

(ix) Admittedly, the petitioner is husband of the grand daughter of the Awardee, who was/is ineligible for employment under the Scheme meant for the Land Displaced persons.

(x) As such, it is evident that the petitioner in connivance with his father-in-law, Rajakannu, fraudulently suppressing material information secured employment, which is void, ab-initio and illegal.

(xi) The petitioner was afforded opportunity to cross examine the management witnesses. The petitioner examined two witnesses and marked exhibits CPD-1 to CPD-8 in the enquiry. The depositions of the witnesses have unambiguously established the charges against the petitioner. The documents produced by the petitioner have no relevancy to the charges for justifying his appointment under the Scheme.

(xii) Principles of natural justice were correctly followed. A copy of the enquiry report, dated 27.7.2013 was furnished to the petitioner. The petitioner did not submit any valid objections/remarks against the findings of the enquiry officer.

(xiii) There are no illegalities or infirmities in the orders of the Disciplinary Authority and the Appellate Authority.

(xiv) In support of his submissions, the learned counsel appearing for the respondents placed reliance on the following decisions:

1.UNION OF INDIA VS. M.BHASKARAN [1996 AIR (SC) 686]
2.R.VISHWANATHA PILLAI VS. STATE OF KERALA AND OTHERS [2004 AIR (SC) 1469 = 2004 (3) MLJ 19]

3.VICE CHAIRMAN, KENDRIYA VIDYALAYA SANGATHAN AND ANOTHER VS. GIRDHARILAL YADAV [(2004) 6 scc 325]

4.DEVENDRA KUMAR VS. STATE OF UTTARANCHAL AND OTHERS [(2013) 9 SCC 363]

5.CHAIRMAN AND MANAGING DIRECTOR, FOOD CORPORATION OF INDIA AND OTHERS VS. JAGDISH BALARAM BAHIRA AND OTHERS [(2017) 8 SCC 670]

3. Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the respondents, perused the materials available on record and the decisions cited supra.

4. One Anjalachi, 2nd wife of the Awardee Pitchaikaran along with her daughter Dhanalakshmi said to have given a complaint to the NLC Management stating that they are the legal heirs of Pitchaikaran on the basis of the legal heir certificate issued to them, dated 14.9.2005. Based on the said complaint, the respondent Corporation initiated disciplinary proceedings against the petitioner by issuing charge memo, dated 2.11.2012 and the petitioner has submitted written explanation on 19.11.2012, wherein the petitioner has stated that the petitioner did not suppress any material facts nor mislead the concern authorities for getting appointment at the relevant point of time.

5. The learned counsel appearing for the respondent Corporation relied on the decision rendered by the Hon'ble Supreme Court in Vice-Chairman, Kendriya Vidyalaya Sangathan v. Girdharilal Yadav, (2004) 6 SCC 325 wherein it has been held as under:

"12. Furthermore, the respondent herein has been found guilty of an act of fraud. In our opinion, no further opportunity of hearing is necessary to be afforded to him. It is not necessary to dwell into the matter any further as recently in the case of Ram Chandra Singh v. Savitri Devi [(2003) 8 SCC 319] this Court has noticed: (SCC p. 327, paras 15-19)

"15. Commission of fraud on court and suppression of material facts are the core issues involved in these matters. Fraud as

is well known vitiates every solemn act. Fraud and justice never dwell together.

16. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter.

17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.

18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.

19. In Derry v. Peek [(1889) 14 AC 337 : (1886-90) All ER Rep 1 : 58 LJ Ch 864 : 61 LT 265 (HL)] it was held:

In an action of deceit the plaintiff must prove actual fraud. Fraud is proved when it is shown that a false representation has been made knowingly, or without belief in its truth, or recklessly, without caring whether it be true or false.

A false statement, made through carelessness and without reasonable ground for believing it to be true, may be evidence of fraud but does not necessarily amount to fraud. Such a statement, if made in the honest belief that it is true, is not fraudulent and does not render the person making it liable to an action of deceit."

13. In view of our findings aforementioned that the respondent was guilty of an act of fraud, in our opinion, the Central Administrative Tribunal as also the High Court committed a manifest error in setting aside the order of the appointing authority as also the Appellate Authority.

6. The learned counsel appearing for the respondent to contend that even after appointment is made, when it is brought to the knowledge of the respondent authorities, they have every right to take action against the petitioner including terminating him from service, relied on the judgment rendered by the Hon'ble Supreme Court in R. Vishwanatha Pillai v. State of Kerala, [(2004) 2 SCC 105] wherein the Hon'ble Supreme Court held as under:

15. This apart, the appellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eye of the law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of a false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Castes. In view of the finding recorded by the Scrutiny Committee and upheld up to this Court, he has disqualified himself to hold the post. The appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. As the appellant had obtained the appointment by playing a fraud, he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the

post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practising fraud or deceit, such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all.

16. In *Ishwar Dayal Sah v. State of Bihar* [1987 Lab IC 390 : 1987 BBCJ 48 (Pat)] the Division Bench of the Patna High Court examined the point as to whether a person who obtained the appointment on the basis of a false caste certificate was entitled to the protection of Article 311 of the Constitution. In the said case the employee had obtained appointment by producing a caste certificate that he belonged to a Scheduled Caste community which later on was found to be false. His appointment was cancelled. It was contended by the employee that the cancellation of his appointment amounted to removal from service within the meaning of Article 311 of the Constitution and was therefore void. It was contended that he could not be terminated from service without holding departmental inquiry as provided under the Rules. Dealing with the above contention, the High Court held that if the very appointment to the civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 of the Constitution can possibly flow. It was held: (Lab IC pp. 394-95, para 12).

If the very appointment to civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 can possibly flow from such a tainted force. In such a situation, the question is whether the person concerned is at all a civil servant of the Union or the State and if he is not validly so, then the issue remains outside the purview of Article 311. If the very entry or the crossing of the threshold into the arena of the civil service of the State or the Union is put in

issue and the door is barred against him, the cloak of protection under Article 311 is not attracted.

17. The point was again examined by a Full Bench of the Patna High Court in Rita Mishra v. Director, Primary Education, Bihar [AIR 1988 Pat 26 : 1988 Lab IC 907 : 1987 BBCJ 701 (FB)] . The question posed before the Full Bench was whether a public servant was entitled to payment of salary to him for the work done despite the fact that his letter of appointment was forged, fraudulent or illegal. The Full Bench held: (AIR p. 32, para 13)

"13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of the law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow from it."

26. We have heard learned counsel for the parties. In Kumari Madhuri Patil case [(1994) 6 SCC 241 : 1994 SCC (L&S) 1349 : (1994) 28 ATC 259] the Court while upholding the cancellation of the social status fraudulently obtained by the candidate allowed her to appear in the final year examination of MBBS course with the rider that she would not be entitled to take any benefit in future on the basis of the social caste certificate obtained by her. It was observed: (SCC p. 258, para 18)

"18. The delay in the process is inevitable but that factor should neither be considered to be relevant nor be an aid to complete the course of study. But for the fact that she has completed the entire course except to appear for the final examination, we would have directed to debar her from prosecuting the studies and

appearing in the examination. In this factual situation no useful purpose would be served to debar her from appearing for the examination of final year MBBS. Therefore, we uphold the cancellation of the social status as Mahadeo Koli fraudulently obtained by Km Suchita Laxman Patil, but she be allowed to appear for the final year examination of MBBS course. She will not, however, be entitled in future for any benefits on the basis of the fraudulent social status as Mahadeo Koli. However, this direction should not be treated and used as a precedent in future cases to give any similar directions since the same defeats constitutional goals." (emphasis supplied)''

7. Yet another decision relied on by the learned counsel appearing for the respondent in the case of Devendra Kumar v. State of Uttaranchal, [(2013) 9 SCC 363] the Hon'ble Supreme Court held as under:

''13. It is a settled proposition of law that where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eye of the law. "Fraud avoids all judicial acts, ecclesiastical or temporal." (Vide S.P. Chengalvaraya Naidu v. Jagannath [(1994) 1 SCC 1 : AIR 1994 SC 853] .) In Lazarus Estates Ltd. v. Beasley [(1956) 1 QB 702 : (1956) 2 WLR 502 : (1956) 1 All ER 341 (CA)] the Court observed without equivocation that: (QB p. 712)

"... No judgment of a court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything."

24. In the instant case, the High Court has placed reliance on the Government Order dated 28-4-1958 relating to verification of the character of a government servant, upon first appointment, wherein the individual is required to furnish information about criminal antecedents of the new appointees and if the incumbent is found to have made a false statement in this regard, he is liable to be discharged forthwith without

prejudice to any other action as may be considered necessary by the competent authority. The purpose of seeking such information is not to find out the nature or gravity of the offence or the ultimate result of a criminal case, rather such information is sought with a view to judge the character and antecedents of the job seeker or suitability to continue in service. Withholding such material information or making false representation itself amounts to moral turpitude and is a separate and distinct matter altogether than what is involved in the criminal case.

25. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. *Sublato fundamento cadit opus* – a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court. In such a case the legal maxim *nullus commodum capere potest de injuria sua propria* applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. (Vide Union of India v. Major General Madan Lal Yadav [(1996) 4 SCC 127 : 1996 SCC (Cri) 592 : AIR 1996 SC 1340] and Lily Thomas v. Union of India [(2000) 6 SCC 224 : 2000 SCC (Cri) 1056] .) Nor can a person claim any right arising out of his own wrongdoing (*jus ex injuria non oritur*).

26. The courts below have recorded a finding of fact that the appellant suppressed material information sought by the employer as to whether he had ever been involved in a criminal case. Suppression of material information sought by the employer or furnishing false information itself amounts to moral turpitude and is separate and distinct from the involvement in a criminal case. In view of the above, the appeal is devoid of any merit and is accordingly

dismissed.''

8. The learned counsel appearing for the petitioner placed reliance on the decision rendered by the Hon'ble Supreme Court In Chairman and Managing Director, Food Corporation of India v. Jagdish Balaram Bahira [(2017) 8 SCC 670] wherein it has been held as under:

'16 .State of Maharashtra v. Vijaya Deorao Nandanwar [Civil Appeal No. 9107 of 2015]

103. The claim of the respondent of belonging to the Halba Scheduled Tribe has been invalidated by the Scrutiny Committee by its order dated 7-11-2009. The respondent was appointed as an Assistant Teacher on a post reserved for the Scheduled Tribes. Following the invalidation of the claim, the services of the respondent were terminated. The High Court by its impugned order dated 5-7-2013 [Vijaya Deorao Nandanwar v. Municipal Council, Wardha, 2013 SCC OnLine Bom 787 : (2013) 5 Mah LJ 153] set aside the order of termination and granted protection to the service of the respondent.

104. For the reasons contained in the body of the judgment, the impugned order of the High Court is unsustainable and is accordingly set aside. The writ petition filed by the respondent shall, in the circumstances, stand dismissed. The civil appeal is allowed in these terms. No other submission has been urged. There shall be no order as to costs.

22.State of Maharashtra v. Rupesh [Civil Appeal No. 8610 of 2017 arising out of SLP (C) No. 2299 of 2017]

114. The respondent was appointed as a clerk on a post earmarked for the Vimukta Jatis on 26-3-1999 claiming that he belongs to the Rajput Bhamta Vimukta Jati. The caste claim of the respondent was referred to the Scrutiny Committee for verification and was invalidated by an order dated 29-7-2011. As the caste claim was invalidated the respondent was terminated from service by an order dated 16-8-2011. Being aggrieved, the respondent filed a writ petition before the High Court. After hearing both the parties, the

court remanded the matter back to the Scrutiny Committee. The caste certificate was again invalidated by an order dated 21-1-2014 and the Committee observed that the respondent obtained a false caste certificate and directed the registration of an FIR against the respondent, pursuant to which the services of the respondent were terminated. Being aggrieved, the respondent filed a writ petition before the High Court. The High Court by its impugned judgment and order dated 3-2-2016 [Rupesh v. Div. Caste Verification Committee, 2016 SCC OnLine Bom 15729] allowed the writ petition relying upon its Full Bench judgment in Arun v. State of Maharashtra [Arun v. State of Maharashtra, 2014 SCC OnLine Bom 4595 : (2015) 1 Mah LJ 457] with a direction to the appellant to reinstate the respondent on his original post.

115. The facts narrated above indicate the manner in which the process has been abused by the respondent. For the reasons contained in the body of the judgment, the impugned order [Rupesh v. Div. Caste Verification Committee, 2016 SCC OnLine Bom 15729] of the High Court is unsustainable and is accordingly set aside. The civil appeal is accordingly allowed in these terms. No other submission is urged. There shall be no order as to costs.'

9. In the aforesaid cases, the appointments were made as per the procedure contemplated under the relevant rules and on verification, it is found that the documents like community certificate, etc. furnished to the authorities were forged or fabricated or suppressed the material facts in the application. Therefore, the employees were removed from service since they have secured jobs by fraudulent means. Whereas in the case in hand, based on the request made by one Rajakannu, the petitioner was appointed. Taking advantage of the letter, dated 17.4.1989 sent by the respondent Corporation to one Rajakannu, father-in-law of the petitioner, the petitioner with the help of Rajakannu, had secured employment fraudulently under Land Displacement Quota. According to the Scheme, Awardee, Awardee's Spouse, son or daughter and in case, there is no qualified son or daughter or spouse of Awardee, Son-in-law or daughter-in-law of the Awardee are eligible members for

employment under Land Displacement Quota. Since the petitioner is not a blood related family member of the Awardee, is not eligible for employment under the Land Displacement Quota. Therefore, this Court is of the view that the petitioner secured employment contrary to the terms and conditions of the Scheme. To that extent, there is some force in the contention of the respondent.

10. Now, the question before this Court is that whether it is appropriate for the respondent Corporation to remove the petitioner from service at this distance of time i.e after the lapse of 24 years that too, when there is no case of suppression of material facts or misrepresentation against the petitioner.

11. At this juncture, it would be appropriate for this Court to consider other aspects in respect of the appointment of the petitioner:

The petitioner has not submitted any application or representation seeking appointment in the respondent Corporation and he has not submitted any declaration or misrepresentation claiming appointment in the respondent Corporation. The respondent authorities sought for particulars from the family members of the Awardee. In the counter affidavit filed by the respondent Corporation, it is stated that the family details of the Awardee Pitchaikaran was not known to the respondent Corporation and they proceeded on the basis of the information furnished by the family members of the Pitchaikaran. The respondent Corporation presuming that Rajakannu is son of the Awardee Pitchaikaran, offered employment to Rajakannu by a letter, dated 17.4.1989. Accepting the request made by Rajakannu, the respondent Corporation offered employment to the Son-in-law of Rajakannu, viz., petitioner, based on his request. The respondent Corporation came to know that the appointment of the petitioner is false only after the complaint received from one of the family members of the Awardee. Therefore, the respondent Corporation has not produced any materials before this Court as to whether any specific declaration has been furnished by the petitioner or the information furnished by the petitioner is false or misrepresentation under the Scheme to prove that the petitioner suppressed the material facts.

12. Furthermore, the authorities failed to initiate disciplinary proceedings within a reasonable time against the petitioner as well as concerned officials. The petitioner has served in the respondent Corporation for more than 24 years and at the age of 54 years, the respondent passed the impugned order on the basis of complaint from one of the family members of the Awardee. The petitioner's father-in-law namely, Rajakannu submitted an application for providing job to the petitioner under Land Displaced persons quota. Based on the request made

by him, the petitioner was appointed in the respondent Corporation. The respondent Corporation without scrutinising the relevant documents under the Scheme at the relevant point of time, the petitioner was given appointment in the respondent Corporation. The petitioner cannot be blamed for undue mistake on the part of the respondent Corporation and the same was came to light after a lapse of 24 long years. No doubt, as per the principles laid down by the Hon'ble Supreme Court, a person who secured employment through backdoor method, by illegal means, by forged or fabricated documents or by way of suppressing material information, are not entitled to continue in service.

13. In an unreported judgment of this Court in W.RUBEN FRANKLIN Vs. THE GOVERNMENT OF TAMILNADU [W.P.No.10040 of 2006, dated 9.6.2008] it has been held as under:

'8. The petitioner had further submitted that by an order, dated 21.3.2006, the Joint Director of School Education, (Personnel), had removed the petitioner from service on the ground that his appointment is contrary to G.O.Ms.No.155, Labour and Employment Department, dated 16.7.1993, and that he had deceived the Government by his misrepresentation. The said order of removal from service was passed on the basis of the order of the Government, dated 16.3.2006. In the said order, it has been stated that as per G.O.Ms.No.155, Labour and Employment Department, dated 16.7.1993, no family member of the deceased Government servant should be in any employment at the time of the death of the Government servant. In the case of the petitioner, his mother was in employment, on 28.10.1985, when his father had died. However, the petitioner had submitted his application for appointment on compassionate grounds only after his mother had retired from service. The show cause notice, dated 31.10.1997, regarding removal of the petitioner from service, issued after a period of 7 years from the date of the appointment of the petitioner is illegal and the respondents are estopped from denying the eligibility of the petitioner for appointment on compassionate grounds.

9. The respondents had failed to see that on 1.6.1994, the Director of School

Education, had sent a proposal to the Government for relaxation and for regularisation of the service of the petitioner from the date of his appointment. No order had been issued on the proposal sent by the Director of School Education. On 5.12.1991, the petitioner had applied for selection through the Teachers' Recruitment Board, pursuant to the order of his appointment, dated 16.11.1990. The representation of the petitioner had been forwarded by the Headmaster of the School to the concerned authorities. However, no order had been passed on the petitioner's representation. The petitioner had been removed from service by the impugned order on the ground that he is not eligible for appointment on compassionate grounds as per G.O.Ms.No.155, Labour and Employment Department, dated 16.7.1993. In such circumstances, the petitioner has filed the present writ petition under Article 226 of the Constitution of India praying for the reliefs as stated therein.

16. Per contra, the learned counsel appearing for the respondents had denied the claims made by the petitioner. It was submitted that the petitioner was not qualified to be appointed on compassionate grounds on the death of his father, on 28.9.1985, since his mother had been working as a Secondary Grade Teacher at that time. Once it is found that the petitioner is not eligible for such appointment, he cannot be regularised in service based on the order of the appointment made, on 5.11.1990. An irregular appointment cannot be regularised, after it is found that the necessary conditions required for the appointment of the petitioner on compassionate grounds were not existing at the time of the death of his father, on 28.9.1985. Further, it is for the petitioner to prove his claims by sufficient evidence in order to establish that his appointment on compassionate grounds could be sustained in the eye of law.

17. Considering the submissions made by the learned counsels appearing for the parties concerned, this Court is of the considered view that the appointment of the petitioner as a BT Assistant on compassionate grounds, by an order, dated 5.11.1990, cannot be nullified by the subsequent impugned order of the third respondent, dated 21.3.2006. The appointment of the petitioner, on 5.11.1990, was based on the particulars given by the petitioner and it has not been shown by the respondents that the particulars given by the petitioner are wrong or misleading. There has been no misrepresentation by the petitioner with regard to the relevant details, which were necessary for the respondents to pass the order appointing the petitioner. When it was found by the respondents, based on the certificate issued by the Tahsildar, that the petitioner and the members of his family were in indigent circumstances and when his appointment had been made, based on such finding it may not be open to the respondents to find fault in the petitioner's appointment at this point of time. The show cause notice, dated 31.10.1997, has been issued after nearly 7 years from the date of his appointment. Further, it has not been shown by the respondents that the appointment is illegal or contrary to the established scheme relating to appointment on compassionate grounds. When the Chief Educational Officer had recommended the case of the petitioner for appointment on compassionate grounds by his proceedings, dated 29.5.1990 and the petitioner's appointment had been made by the proceedings, dated 5.11.1990, the respondents would be estopped from raising the plea of disqualification of the petitioner for such appointment after a lapse of 7 long years. Further, it is seen from the records available that this Court, by an interim order, dated 27.4.2006, made in W.P.M.P.No.11361 of 2006 in W.P.No.10040 of 2006, had granted an order of interim stay of the impugned

order of the third respondent, dated 21.3.2006, removing the petitioner from service.''

14. In Secretary, [State of Karnataka v. Umadevi [(2006) 4 SCC 1], it has been held by the Constitution Bench of the Hon'ble Supreme Court as under:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [State of Mysore v. S.V. Narayanappa, AIR 1967 SC 1071] , R.N. Nanjundappa [R.N. Nanjundappa v. T. Thimmiah, (1972) 1 SCC 409] and B.N. Nagarajan [B.N. Nagarajan v. State of Karnataka, (1979) 4 SCC 507 : 1980 SCC (L&S) 4] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per

the constitutional scheme."

(emphasis in original)''

15. The Hon'ble Supreme Court in the case of State of Jharkhand v. Kamal Prasad, [(2014) 7 SCC 223] held as under:

''46. In view of the legal principles laid down in the aforesaid decisions, we are of the opinion that the decision of the High Court does not fall in either of the categories mentioned above which calls for our interference. The Division Bench of the High Court having regard to the glaring facts that the respondent employees have continuously worked in their posts for more than 29 years discharging permanent nature of duties and they have been paid their salaries and other service benefits out of the budget allocation, no objection was raised by CAG in this regard and therefore, it is not open for the appellants to contend that the law laid down in Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] has no application to the fact situation. The action of the appellants in terminating the services of the

respondent employees who have rendered continuous service in their posts during pendency of the letters patent appeals was quashed by the High Court after it has felt that the action is not only arbitrary but shocks its conscience and therefore it has rightly exercised its discretionary power and granted the reliefs to the respondent employees which do not call for our interference. Therefore, we are of the opinion that this Court will not interfere with the opinion of the High Court and on the contrary, we will uphold the decision of the High Court both on factual and legal aspects as the same is legally correct and it has done justice to the respondent employees.''

16. In S.VAIKUNDAM Vs. STATE OF TAMILNADU [(2012) 4 MLJ 728] this Court held as under:

''15. In the said letter, it is stated

that already certain applications are rejected and those applications could not reopened. There is no whisper in the said letter that no application could be entertained, if the Government servant died prior to the date of issuance, of G.O.Ms.No.155. In any event, the first respondent is not correct in relying on the letter dated 27.7.1994 of the Labour and Employment Department particularly, when the first respondent issued a clarificatory letter dated 31.12.1994, permitting the second respondent to appoint the petitioner on compassionate grounds. Therefore, even assuming that the letter dated 27.7.1994 of Labour and Employment Department gave direction not to provide compassionate appointment in the

case of death of Government servant prior to the issuance of G.O., the same could not be applied, as in the instant case, the 1st respondent has already issued a direction on 31.12.1994 to entertain the application of the petitioner, when the 2nd respondent sought clarification from him. In these circumstances, I do not find any irregularity in the order of appointment of the petitioner. Hence, the impugned order dated 19.4.1999 is liable to be interfered with. Furthermore, as rightly contended by the learned counsel for the petitioner, if there is some irregularity in the appointment of the petitioner, the same could not be cited to terminate the services of the petitioner, after he rendered very long years of service, particularly, when there was no suppression of fact on the part of the petitioner and if there was any mistake committed by the Department, for which the petitioner should not be made to suffer. The judgment relied on by the learned counsel for the petitioner in V.Balakrishnan vs. The Joint Director of Agriculture, Tiruvannamalai, and three others, W.A.No.1559 of 2009 dated 3.11.2009 squarely applies to the facts of this case. In the said judgment, the

First Bench of this Court relied on the decisions of the Hon'ble Apex Court, (cited supra), wherein at paragraph No.6, it has been held as follows:

"We have noted the submissions of both the parties. We quite see the force in the submission of the learned Government Pleader, Compassionate appointment is not meant for persons who do not in fact face the difficulty. It is meant to tide over the immediate difficulty of the family. For a moment, we do not approve the manner in which he has obtained the employment. At the same time, it is also to be seen that in the instant case nearly after four years, the State Government has moved to cancel the appointment. Nothing is placed on record as to what action was taken against the officers, who are responsible for the disputed appointment and delayed action on the part of the Government. Almost similar facts were there in the two matters which have been referred herein in the sense that the persons were sought to be removed after passing of good number of years. Besides, by now, nearly 15 years have gone since the time the appellant has been initially appointed, and therefore, we do not think that it will be fair to disturb his employment."

17. Admittedly, the writ petitioner is not eligible for appointment under Land displacement persons Quota. Taking note of the service rendered by the petitioner under the respondent Corporation for more than 24 years without any adverse remarks against the petitioner and the disciplinary proceedings initiated against the petitioner and imposing punishment of terminating the services of the petitioner after the lapse of 24 years, i.e. at the age of 54 years, the livelihood of the petitioner and his family members might have ruined. If the respondents would have taken action against the petitioner at the right time, he might have got employment in elsewhere. It is also admitted fact that there is no misrepresentation or fraud on the part of the petitioner or suppression of material fact and secured job under the respondent Corporation. The respondent Corporation has not placed any material before this Court to prove that the petitioner by way of misrepresentation

or fraud secured job. In Kendriya Vidyalaya Sangathan case cited supra, it has been held by the Hon'ble Supreme Court that misrepresentation or fraud must be proved that a false representation has been made knowingly or without belief in its truth or recklessly, without caring whether it be true or false. The respondent Corporation has not placed any materials to establish that the petitioner made misrepresentation or false representation to secure job. The appointment made by the respondent Corporation under the Land displaced persons Quota for the benefit of the family members of the awardee. The respondent Corporation ought to have verified the genuineness of the candidature of the petitioner at the time of appointment. Therefore, this Court is of the view that the punishment of dismissal from service is disproportionate. In the interest of justice, the punishment of dismissal from service required modification, so that the petitioner would get retiral benefits from the respondent Corporation.

18. In view of the facts and circumstances of the case and the decisions cited supra, and in order to grant equity to the petitioner, this Court is inclined to pass the following order:

(i) To the extent stated above, the impugned order of dismissal from service passed by the 4th respondent, dated 24.3.2014 and consequential confirmation order passed by the third respondent dated 5.7.2016 are quashed.

(ii) The respondents are directed to modify the punishment of dismissal from service to the punishment of compulsory retirement.

(iii) The petitioner is directed to make an application in the prescribed form to the respondent Corporation within a period of two weeks. On receipt of such application, the respondent Corporation is directed to settle all the monetary and attendant benefits to the petitioner as expeditiously as possible preferably within a period of three months from the date of receipt of such application.

19. Accordingly, the writ petition is allowed on the above terms. No costs. सत्यमेव जयते

Sd/-

Assistant Registrar(CS IV)

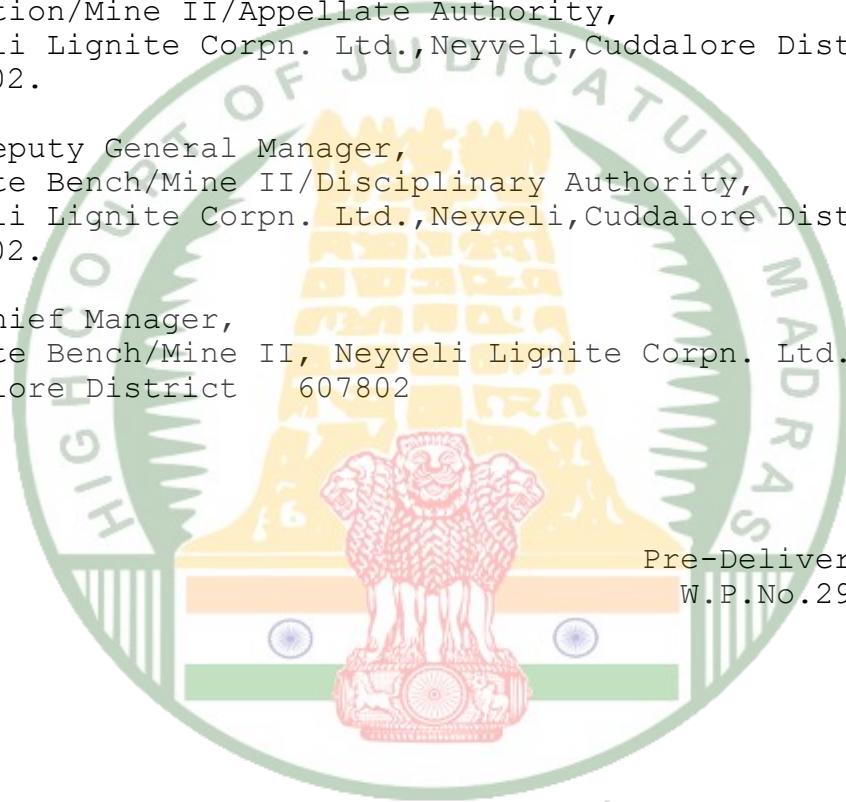
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Sub Assistant Registrar

vaan

To

1. The Chairman cum Managing Director,
Neyveli Lignite Corpn. Ltd., Neyveli, Cuddalore District-
607 802.
2. The Director,
Neyveli Lignite Corpn. Ltd., Neyveli, Cuddalore District-
607802.
3. The General Manager,
Operation/Mine II/Appellate Authority,
Neyveli Lignite Corpn. Ltd., Neyveli, Cuddalore District-
607802.
4. The Deputy General Manager,
Lignite Bench/Mine II/Disciplinary Authority,
Neyveli Lignite Corpn. Ltd., Neyveli, Cuddalore District
607802.
5. The Chief Manager,
Lignite Bench/Mine II, Neyveli Lignite Corpn. Ltd., Neyveli,
Cuddalore District 607802



Pre-Delivery Order in
W.P.No.29844 of 2016

MR (CO)
GS (23/07/2020)

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