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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.03.2021

CORAM:

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.46360 of 2006
and
M.P.No.1 of 2006

A.Angelin Monica

...Petitioner

Vs.

1.The Chief General Manager (Mine I & IA)
Neyveli Lignite Corporation Limited
Block - 26, Neyveli - 607 803.

2.The Director (Personnel)
Neyveli Lignite Corporation Limited,
Office of the Chairman,
Block - I, Neyveli - 607 801.

3.The Disciplinary Authority
E.E. / Computer / Mine - I
Neyveli Lignite Corporation Limited,
Block - 26, Neyveli - 607 803.

... Respondents

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari calling for the records from the file of the 3rd respondent made in proceeding No.Proc.No.M-I/P&A/DAC/278-118/06 dated 19.10.2006 and quash the same.

For Petitioner : Mr.L.Chandrakumar
For Mr.B.Gopalakrishnan

For Respondents : Mr.N.Nithianandam

ORDER

The prayer sought for herein is for a writ of certiorari calling for the records from the file of the third respondent made in proceeding No.Proc. No.M-I/P&A/DAC/278-118/06 dated 19.10.2006 and quash the same.

2.The petitioner was working as an employee under the category of Industrial Worker at the respondent organisation viz., Neyveli Lignite Corporation (in short 'NLC').



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3.While so, there has been a disciplinary proceeding against her, pursuant to which, after enquiry, on the proven misconduct, a punishment of censure was imposed by order dated 19.10.2006. Challenging the said order of punishment of censure awarded against the petitioner, she has filed the present writ petition with the aforesaid prayer.

4.Heard Mr.L.Chandrakumar,learned counsel appearing for the petitioner who would submit that, insofar as the punishment of censure inflicted against the petitioner is concerned, the effect of the same, as per the Full Bench judgment of this Court reported in 2011 (3) CTC 129 [The Deputy Inspector General of Police, Thanjavur Range Vs. V.Rani], shall not have any bearing on the service benefits to be conferred on the petitioner including promotional avenues. Alternatively, the learned counsel would submit that, assuming that the petitioner was inflicted with the punishment of censure, the effect of the same would be for only six months and after completing the six months i.e., after undergoing the punishment period or after the currency of punishment period, whatever the service benefits accrued on the petitioner can be extended to her.

5.In this context, the learned counsel appearing for the petitioner would also submit that, in the meanwhile, i.e. before the disciplinary proceeding was initiated, there has been a recruitment process for executive post, for which, notification was issued on 16.01.2006 i.e. well before the disciplinary proceedings. Pursuant to the said notification issued by the respondent NLC, the petitioner, being one of the qualified candidate, had also applied and participated in the selection process and ultimately the petitioner had got selected to the executive post.

6.Though the selection was over and the petitioner got selected, no appointment order had been issued on the petitioner appointing her in executive post and therefore, during the pendency of this writ petition, the petitioner had sought for information about the selection made in respect of the petitioner for the executive post and the consequential action in appointing her by giving posting in executive level, under the Right to Information Act. In response to the same, the respondent NLC through its PIO has given the answer as well as necessary particulars to that effect.

7.Under the Right to Information Act query, the PIO of NLC has supplied the document viz., the order of appointment dated 21.05.2006 issued to the petitioner, whereby, the petitioner had been posted to work as Mine-I/Comp.Serv. and advised to report to the Unit Head concerned. Only after getting the said copy of the order of appointment and posting issued by the NLC dated



21.05.2006, the petitioner had approached the respondent and requested orally to implement the said order by posting the petitioner in executive level, pursuant to the order dated 21.05.2006. However, no such posting had been given even though the petitioner had been selected for placement and in fact, order of appointment had been issued on 21.05.2006, of course without the copy of the same being served on the petitioner. Therefore, by relying upon these documents, the learned counsel appearing for the petitioner would contend that, insofar as the prayer sought for against the order of punishment awarded against the petitioner i.e. censure dated 19.10.2006 is concerned, as the same since has been undergone or the period of six months, that is the effect of the punishment of censure also have gone by long back i.e. in the year 2006 itself, subsequently, i.e. after the six months period since there could have been no impediment for the respondents to implement the orders of appointment made in favour of the petitioner dated 21.05.2006, he seeks indulgence of this Court to issue a necessary direction to the respondents by moulding the relief sought for in this writ petition, so that the petitioner can get justice as she was selected for executive post in the year 2006 and in fact, order of appointment dated 21.05.2006 was issued, however, the same was not implemented because of the pendency of the disciplinary proceedings at that time.

8. Per contra, Mr. N. Nithianandam, learned Standing Counsel appearing for the respondents NLC, by relying upon the counter affidavit as well as the instruction received by him, would submit that, insofar as the punishment of censure is concerned, which is impugned in this writ petition, the same was inflicted on the petitioner only based on the proven charge. Now, the stand taken by the petitioner through the learned counsel appearing for the petitioner is that, since the period of censure that is the effect of the period of punishment on the petitioner for six months period already over in the year 2006 itself he seeks further or additional or a different relief than the one which has been sought for herein. The learned Standing Counsel appearing for the respondents would further submit that, the said stand taken by the petitioner through the learned counsel appearing for the petitioner would vindicate the stand of the respondents that the punishment of censure awarded against the petitioner is justifiable and sustainable, therefore, absolutely there is no ground for any interference in the said order of punishment, which is impugned herein, dated 19.10.2006. The learned Standing Counsel however would submit that, insofar as the plea now raised by the learned counsel for the petitioner for implementing the order of appointment dated 21.05.2006 in executive post is concerned, no such order has been ever passed, that means, the order or copy of the order now has been relied upon by the learned counsel appearing for the



petitioner is nothing but a document obtained through the Right to Information Act and therefore, based on such RTI Information, the petitioner cannot seek indulgence from this Court in this writ petition.

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9. In this regard, the learned Standing Counsel would also submit that, the order dated 21.05.2006 though was prepared, however was not issued or implemented, as at that stage the matter had been referred to the Vigilance Cell of the NLC, where, the Vigilance Cell has not made any clearance for issuing the appointment order or to execute the same in view of the pendency of the disciplinary proceedings against the petitioner. The disciplinary proceedings came to an end only by issuance of order of punishment dated 19.10.2006 and before the said date, the selection made pursuant to the notification dated 16.01.2006 for executive post has got lapsed and therefore, all those vacancies which were available at that time in executive post level or executive officer category level at NLC were filled up by other eligible candidates, therefore, at this length of time, the said selection pursuant to which the alleged order of appointment issued on 21.05.2006 as relied upon by the petitioner, cannot be required to be implemented.

10. The learned Standing Counsel would also submit that, once the prayer sought for in the writ petition is a certiorari to call for the records pertaining to the impugned order dated 19.10.2006 and quash the same and the said prayer almost has been given up now by the petitioner, as submitted by the learned counsel for the petitioner that the period of censure has already undergone, the very purpose of filing the writ petition has been fulfilled and therefore, recording the same, the writ petition should be dismissed, instead, if the prayer is now sought for that too orally by the learned counsel for the petitioner by relying upon the subsequent developments taken place, especially on the basis of the information supplied by the NLC through Right to Information Act and accordingly seek the indulgence of this Court to give a direction to execute the order of appointment dated 21.05.2006 and give posting to the petitioner in executive category, those prayers are beyond the scope of the writ petition.

11. In this context, the learned Standing Counsel appearing for the respondents would also contend that, it is also one of the settled legal proposition that, what has been prayed or what has been asked for by way of prayer alone shall be considered by the Court, because, based on such prayer only, the pleadings and counter pleadings would have been made before this Court and beyond the scope of the prayer sought for in the writ petition, if any new prayer or additional or a different prayer is sought for during the pendency of the writ petition or disposal of the



writ petition, the same cannot be normally entertained by this Court and therefore, on that ground, the plea now made by the learned counsel appearing for the petitioner cannot be entertained, with regard to the alleged appointment dated 21.05.2006 said to have been made in favour of the petitioner for the executive category, therefore, the learned Standing Counsel appearing for the respondents seeks dismissal of this writ petition for all these reasons, he has submitted.

12.I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

13.No doubt, there has been a disciplinary proceeding initiated against the petitioner and that ended in punishment by way of censure.

14.As has been rightly pointed out by the learned counsel appearing for the petitioner, the punishment of censure will not have any effect with regard to the service benefits to be conferred subsequent to the punishment of censure, as has been held by this Court in an authoritative pronouncement of a Full Bench of this Court reported in 2011 (3) CTC 129 (cited supra). It is to be noted in this case that, the punishment of censure was awarded on 19.10.2006, as admitted by the respondents, the effect of the such censure even otherwise would be for only six months and thereafter, there can be no impediment for the respondents to confer any service benefits on the petitioner including promotion avenues.

15.In the present case, the learned counsel appearing for the petitioner has taken a stand that, since the six months period was over long back i.e. in the year 2006 or 2007, thereafter 13 or 14 long years have gone by, therefore, questioning that punishment of censure that too after the import of the Full Bench judgment, referred to above, may not be required or appropriate at this juncture as it will have no effect.

16.However, the additional plea now raised on behalf of the petitioner based on the documents supplied by the respondent NLC, especially in the context of selection and appointment made to the petitioner for executive post is concerned, though it was vehemently contended by the learned counsel appearing for the respondent NLC, that kind of additional plea cannot be considered in the present writ petition, this Court feels that, in exercising the power under Article 226 of the Constitution, being an extraordinary power conferred in this Court, in order to ensure substantial justice to be rendered to the litigant, the Court can mould the relief always.



17. Under these context, if we look at the documents relied upon by the petitioner especially the order of appointment dated 21.05.2006, it has disclosed the following:

"Sir,

Sub: PERSONEL - Placement in higher scales -
Assessment for workmen - Orders issued - Reg.

Ref: Notification No.CORP/P&A/456/2006,

Dt. 16.01.2006

Further to the Assessment / Interview held on 10-02-2006, we are pleased to inform you that you have been provisionally selected for placement in the scale of pay of Rs.8300-235-13940 (E0 Grade) as Engineering Assistant with effect from the date of taking charge of the post at the posted Unit.

2.0 Your pay will be fixed as per rules in force in the Corporation.

3.0 You will be on probation for a period of one year on duty from the date of taking charge of the post. The period of probation may be extended without giving any notice or assigning any reason. You will be liable to be reverted to your original post / terminated from the service, if your work and or conduct is unsatisfactory during the period of probation.

4.0 Discipline: In the matter of discipline, you will be governed by the Neyveli Lignite Corporation Employees (Conduct) Rules and the Neyveli Lignite Corporation Employees (Control and Appeal) Rules.

5.0 In respect of any matters fro which no provision is made here, the provision in the rules or orders issued by the company shall apply and the decision of the company as to their applicability shall be final and binding.

6.0 You should be willing to work in any Unit/Area/Place situated in India under the control of Neyveli Lignite Corporation Limited, to which you may be posted /transferred.

7.0 You will be subject further to such other terms and conditions of service as may be prescribed by the Corporation from time to time.

8.0 You are posted to work as such in Mine-I / Comp. Serv. and advised to report to the Unit Head concerned. The above said orders of placement in E0 Scale and consequential monetary benefit i.e. pay fixation will be given only on joining the appointed posted and in the Unit to which you are posted.

9.0 This issues with the approval of the Competent Authority.

Yours faithfully,
for NEYVELI LIGNITE CORPORATION LIMITED,
Sd/-

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CHIEF GENERAL MANAGER (P&A).

This information furnished
under RTI Act, 2006

Sd/-

Authorised Signatory"

18.Though it was argued by Mr.N.Nithianandam, learned Standing Counsel appearing for the respondents that, this order has never been passed or never been issued, on perusal of the order, it discloses that, the order has been passed by the competent authority viz., Chief General Manager (P&A) on behalf of Neyveli Lignite Corporation Limited and it has been addressed only to the petitioner.

19.Para 8.0 of the order makes it clear that, the petitioner has been posted to work as an executive category employee in Mine-I/Comp. Serv. and in fact, the petitioner was advised to report to the Unit Head concerned. It has further been stated with the following words that, 'The above said orders of placement in E0 Scale and consequential monetary benefit i.e. pay fixation will be given only by joining the appointed post and in the Unit to which the petitioner are posted'. Therefore, it has been clearly conveyed in the order of appointment that posting is given to the petitioner in the executive category or executive scale position and the placement also had been given at Mine-I/Comp. Serv.

20.This order though might not have been served on the petitioner because of the non-clearance from the Vigilance Cell as on that there was a pendency of disciplinary proceeding against the petitioner, it cannot be said that the respondent has not at all selected the petitioner, not at all issued the appointment order and not at all issued the posting orders.

21.In the further information relied upon by the petitioner i.e. dated 27.07.2006 of the P & A Department of NLC issued by the authorised person, it has been further stated that, Vigilance Clearance was sought for in respect of 60 employees before issuing order of placement. The Vigilance Department has cleared employees while it did not clear the petitioner who has been provisionally selected in computer discipline, as disciplinary action was pending against her. Therefore, it has become clear that, the petitioner was selected and provisionally appointed, only the order of placement has to be issued to the petitioner.

22.In the further information dated 09.08.2006 of the respondent NLC, it has been made clear that, insofar as the petitioner's candidature is concerned, the offer of appointment was withheld as the Vigilance Department did not accord



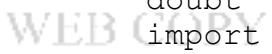
clearance on account of pending disciplinary proceedings against her.

23. Therefore, it has become clear that, there was a selection process where the petitioner was duly selected for the executive post or executive category post/salary and pursuant to which, an order of appointment was also made ready and issued without issuing the copy to the petitioner and subsequently, for want of clearance from the Vigilance Department, the order of appointment was only withheld by the respondent NLC. Therefore, except the statement that the order of appointment was withheld by the respondent NLC, no further statement has been given or document has been filed to state that, subsequently the order of appointment or the selection made or offer of appointment given to the petitioner has been cancelled.

24. In this regard Mr. N. Nithianandam, learned Standing Counsel appearing for the respondent NLC has contended that, just before the order of punishment dated 19.10.2006 was issued the period within which the order of appointment or offer of appointment issued to various selected candidates has been ceased to be in operation. Since the period of appointment time has come to an end and once the period got lapsed, the order of appointment also got lapsed and therefore, that need not be specifically cancelled.

25. The said argument advanced by the learned Standing Counsel appearing for the respondent NLC is not appealing to this Court for the reason that, if at all any selection process is made for appointment by selecting suitable candidates for public employment either from open market or from the internal candidates and once such selection is over and eligible candidates are selected based on interse merit, based on which, orders of appointment also had been issued, however, without serving the copy of the order of appointment to the particular candidate for certain clearances and in this case, it is Vigilance Clearance, hence the employer decided to withhold the said order of appointment or offer of appointment. In that case, certainly, that would have created a right to claim appointment, on the petitioner unless and until that right is extinguished by an explicit order to be passed in this regard by the employer on plausible reasons.

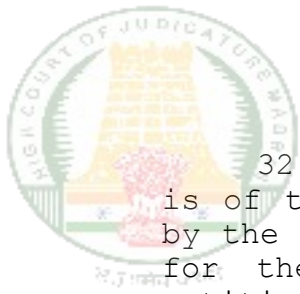
26. Here in the case in hand, no such order of cancellation of appointment was made against the petitioner and even according to the communication dated 09.08.2006, which is the last communication, the offer of appointment made in favour of the petitioner had been withheld as the Vigilance Department did not accord clearance. Hence this Court feels that, the arguments advanced in this regard or the defence taken in this regard by



27. However, it is also to be noted that, the petitioner no doubt was suffered with the punishment of censure before the import of Full Bench judgment referred to above, though the punishment of censure will have a bearing on the employee to get service benefits for a particular period either for six months or one year as the case may be and here in the case in hand, that effect will be for six months and assuming that for the six months period it will have the effect, it would have been over by 18.04.2007.

29. Assuming that, the respondent NLC had fixed some time limit within which all these appointees should join and after the particular period automatically the selection made and appointment given to the selectees would get lapsed, insofar as the case of the petitioner is concerned, in view of the decision taken by the respondents that the order of appointment made in favour of the petitioner had to be withheld for want of clearance from the Vigilance Department, certainly, the appointment made in favour of the petitioner should have been kept pending atleast till a decision is taken in the disciplinary proceedings.

31. Without taking any such decision on behalf of the respondents, making a plea now stating that, automatically the selection made in favour of the petitioner gets lapsed after a particular time, may not be justifiable in view of the peculiar facts, which, this Court is dealing with in this writ petition as the petitioner was suffered only with the punishment of censure and that punishment of censure cannot take away the right accrued on the petitioner for getting an appointment in the executive post, for which, due selection process went on where the petitioner based on interse merit had been selected and order of appointment or offer of appointment was made available.



32. Therefore, for these reasons discussed above, this Court is of the considered view that, certainly the relief sought for by the petitioner, as projected by the learned counsel appearing for the petitioner, can be moulded and be granted to the petitioner. Accordingly, this writ petition is disposed of with the following orders.

(i) That the order of punishment which is impugned herein dated 19.10.2006, in view of the stand taken by the petitioner that it has been implemented, will have no further effect beyond the six months period from 19.10.2006, accordingly, the said order dated 19.10.2006 need not be interfered with.

(ii) Consequentially, there shall be a direction to the respondents to implement the order of appointment dated 21.05.2006 made in favour of the petitioner by posting or placing the petitioner in executive post or executive position scale or category in Mine-I/Comp. Serv. or in any other Department. It is made clear that, since in the order of appointment dated 21.05.2006 itself, it has been stated clearly that the pay and emoluments i.e. consequential monetary benefits and pay fixation will be given only on joining the appointed post, since the petitioner has not joined in the said post till date, no benefits on such appointment monetarily would accrue on the petitioner except for notional benefits and all monetary benefits shall be paid to the petitioner only from the date actually the petitioner would join pursuant to the implementation of the order dated 21.05.2006, as directed above. The needful as indicated above, shall be undertaken by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

33. With these directions, this Writ Petition is ordered accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl



To

1. The Chief General Manager (Mine I & IA)
Neyveli Lignite Corporation Limited
Block - 26, Neyveli - 607 803.

2. The Director (Personnel)
Neyveli Lignite Corporation Limited,
Office of the Chairman,
Block - I, Neyveli - 607 801.

3. The Disciplinary Authority
E.E. / Computer / Mine - I
Neyveli Lignite Corporation Limited,
Block - 26, Neyveli - 607 803.

+2cc to M/s.B.Gopalakrishnan, Advocate, S.R.No.21083

W.P.No.46360 of 2006

CP(CO)
RGA(22/07/2021)