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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Writ Petition Nos.10603 and 10604 of 2005

R.Gowthaman ...Petitioner in W.P.No.10603 of 2005

P.Thamizhazhagan ...Petitioner in W.P.No.10604 of 2005

Vs

1. The Additional Chief Manager/WSD/TA
Neyveli Lignite Corporation Limited
Neyveli-607 803

...1st respondent in both WPs.

2. The Chief Manager/Civil
Neyveli Lignite Corporation Limited
Neyveli-607 803

...2nd Respondent in W.P.10603/2005

3. The Deputy General Manager C &I
Neyveli Lignite Corporation Limited
Neyveli 607 803

...2nd respondent in W.P.10604/2005

Prayer in W.P.10603/2005 : Writ Petition filed praying to issue a writ of Certiorari to call for the records of the 1st respondent herein in his proceedings Memo No.TA/ACM(P)/Estt./102/002-4/2004 dated 29.06.2004 and quash the same.

Prayer in W.P.10604/2005 : Writ Petition filed praying to issue a writ of Certiorari to call for the records of the 1st respondent herein in his proceedings Memo No.TSI/P&A/DV/0170/1840/2003 dated 10.08.2004 and quash the same.

For Petitioners : Mr.G.Purushothaman
in both WPs

For Respondents : Mr.N.Nithianandan
in both WPs



COMMON ORDER

The petitioner in W.P.No.10603 of 2005 joined the service of the respondent-Corporation as Artisan Trainee on 09.01.1987. His services were regularized and promoted as Senior Technician II. He belongs to one of the major Central Trade Union by name U.T.U.C.(L.S). and the Treasurer of the N.L.C., unit by name N.L.C.Thozhilalar Ottrumai Maiyam.

The petitioner in W.P.No.10604 of 2005 was employed as Technician Gr.I. 'A' in Thermal Station-I.

2. It is submitted by the petitioners that the N.L.C. Management had issued a circular dated 06.06.1992 seeking option letter (Part-A) among the employees on a condition that the employees can opt either of the pension scheme of 1971 or 1995. The Management in contrary to the Honourable Supreme Court orders, sought for option letter (Part-B) wherein those opted for 1995 pension scheme has to compulsorily accept the N.L.C.pension scheme. So, he submitted a representation dated 19.06.2003 to the management not to compel the workmen to give option forcefully.

3. Thereafter, the Management, found the activities of the petitioners as misleading the employees/workmen and they actively disrupting the process of options being exercised by the employees of the Corporation, by spreading false information regarding the pension schemes and preventing them from exercising options as between Employees' Family Pension Scheme, 1971 and Employees' Pension Scheme, 1995. The Management therefore, charge sheeted the petitioners for their mis-conducts in employment viewed as willful disobedience as per the Standing Orders of the Corporation. The petitioners submitted their explanation for the charges levelled against them. Not satisfied with the explanation, an Enquiry Officer was appointed. The enquiry officer after going through the charges and the submissions of the petitioner, held that the gravity of the misconduct committed by the petitioners is grave in nature warranting severe punishment. Holding so, the Disciplinary Authority imposed the punishment of demotion to lower grade.

4. Challenging the said demotion order passed by the 1st respondent, the petitioners are before this court.

5. The petitioners submit that based on the perverse findings of the enquiry officer, the impugned order is passed. The enquiry officer failed to allow the petitioners to cross examine the management witness. There is no reasonable and acceptable evidence to establish the charges. The only evidence was the union representation dated 19.6.2003 and the enquiry

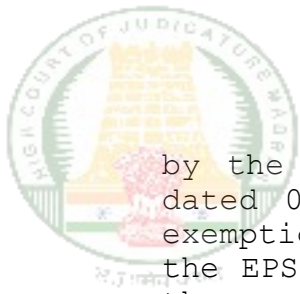


officer closed the evidence. The impugned order is not sustainable for the reason that it did not speak as to how the delinquent had committed act of willful disobedience, spreading false rumours, interfering with the dispensation of justice and breach of standing orders. The representation dated 19.06.2003 is nothing but a request to the management not to compel the workers for giving option for those who are opting for 1995 pension scheme should also to give willingness to the N.L.C pension scheme.

6. The learned counsel for the petitioners submits that the impugned order suffers on the face of it that at no point of time, the representation dated 19.06.2003 was an act of breach of standing orders.

7. The respondents filed counter affidavit. It is submitted that the petitioners are workman as defined under Section 2(s) of the Industrial Disputes Act, 1947. The workmen of the respondent corporation are governed by the Certified Standing Orders of the Corporation. The disciplinary proceedings were initiated against the petitioners under the Standing Orders of the Corporation. The petitioners have an effective alternate remedy under the provisions of the Industrial Disputes Act, 1947. Therefore, the writ petition is not maintainable. The punishment of demotion has been imposed on the petitioners for the proven misconduct based on the material on record and after a full-fledged departmental enquiry. The issues involved are disputed questions of facts and Article 226 is not the appropriate forum to adjudicate disputed questions of fact.

8. It is further submitted that Employees Pension Scheme, 1995 came into force with effect from 16.11.1995 and as a result, the Family Pension Scheme, 1971 ceased to be in force from 15.11.1995. Employees Pension Scheme, 1995 was beneficial to employees and families and many trade unions opposed the scheme on various grounds. The Corporation issued a notice to all its employees requiring them to exercise option under the EPS, 1995 if they so wished. The employees were afforded opportunity by various circulars, including Circular No.CD/P&A/2002/02 dated 06.06.2002, calling upon the employees to exercise their option to join EPS, 1995. Further, at the request of the Joint Council of Unions, the respondent Corporation devised a superannuation scheme in consultation with the Life Insurance Corporation of India intending to provide improved benefits. Respondent Corporation thereupon made an application to PF authorities seeking exemption from the EPS, 1995 on the basis of the said superannuation scheme evolved by NLC and LIC. Pension consideration of the request for exemption, the employee's and employer's contribution with respect to the NLC-LIC, superannuation scheme were being separately maintained



by the respondent corporation and LIC. However, by proceedings dated 05.02.1997, the PF authorities rejected the proposal for exemption and directed the respondent corporation to implement the EPS, 1995 and also issued consequential directions requiring the respondent corporation to remit a sum of Rs.8,95,27,574/-, being the sum due under the EPS, 1995.

9. It is also submitted that the action of the respondent corporation calling for the option by Circular dated 06.06.2002 from the employees to either join EPS, 1995, or join NLC Superannuation Scheme, or remain with FPS, 1971 was in compliance with the order of the Supreme Court which was communicated by the PF authorities by proceedings No.C/TN/Genl./REGL/2001 dated 12.04.2001 and due to the pendency of W.P.No.8594 of 1997, the respondent corporation had not resorted to compelling or forcing the employees of the Corporation to exercise option in any particular manner or in unjust and unreasonable manner. The activities of the petitioners and some other individual workmen jointly constituted a misconduct under Standing Order 46 of the Corporation. As a result, the petitioners were issued with a charge memo dated 23.07.2003 calling upon him to submit his explanation. Thereupon, the petitioners had submitted explanation dated 05.08.2003 and 13.08.2003 respectively wherein they did not deny the charges. On the other hand, the petitioners had stated that their activities did not amount to misconduct as per the Standing Orders of the Corporation. The Disciplinary Authority, having been not satisfied with the explanation of the petitioners instituted departmental enquiry by appointing a Retired District and Sessions Judge as Enquiry Officer to enquire into the charges. The Additional Chief Manager of the Corporation was appointed as Presenting Officer. The petitioners were permitted to engage an employee of the Corporation as Defense Assistant. In the departmental enquiry, principles of natural justice were adhered to and the delinquents were given adequate opportunity to put forth their defence. The disciplinary action was conducted in accordance with the Certified Standing Orders of the Corporation in a fair and proper manner following the principles of natural justice. The enquiry officer submitted the enquiry report holding that the charges against the petitioners stood proved. Upon consideration of the enquiry report dated 17.05.2004, the Disciplinary Authority came to the conclusion, based on the evidence and material available on record, to award punishment of 'demotion to lower grade with immediate effect' and the petitioners were called upon to show cause why they should not be awarded the proposed punishment by the Provisions Show Cause Notice dated 04.06.2004. Thereupon, the petitioners by their representation dated 19.06.2004 and 26.06.2004 respectively requested the Disciplinary Authority to furnish the copy of the



Enquiry Report dated 17.05.2004 and the same was furnished. Thereafter, the petitioners submitted their objections/explanation to the Provisional Show Cause Notice. On consideration of the same, the disciplinary authority by a reasoned order dated 29.06.2004 and 10.08.2004 awarded the punishment of demotion to lower grade, indicating right of appeal. The petitioners preferred appeal dated 29.07.2004 and 28.08.2004 respectively. The appellate authority, by a reasoned order dated 12.05.2005 and 07.03.2007 rejected the appeal of the petitioners. Subsequently, during the pendency of the writ petition, taking into consideration the representation of the petitioners dated 03.06.2009 and 19.11.2007 respectively, without prejudice to the writ petitions, the competent authority of the Corporation had modified the punishment of "demotion into lower grade" by restricting the same as to "demotion to lower grade for period of two years" by order dated 19.09.2009 and 03.04.2008 respectively. The punishment of demotion to a lower grade for the proven charges had become final and the period of punishment is already over.

10. The case of the petitioners is that they were working as Senior Technician II and belongs to one of the major Central Trade Union by name U.T.U.C.(L.S). and the Treasurer of the N.L.C., unit by name N.L.C.Thozhilalar Ottrumai Maiyam. In respect of the Employees Family Pension Scheme option to be exercised by the employees, the petitioners sent a representation dated 19.06.2003 & 26.06.2004 to the Management. The Management found the activities of the petitioners as misleading the employees/workmen and they actively disrupting the process of options being exercised by the employees of the Corporation, by spreading false information regarding the pension schemes and preventing them from exercising options as between Employees' Family Pension Scheme, 1971 and Employees' Pension Scheme, 1995, charge sheeted the petitioners for their mis-conducts in employment. The petitioners submitted their explanations for the charges levelled against them. Not satisfied with the explanation, an Enquiry Officer was appointed. The enquiry officer after going through the charges and the submissions of the petitioners, held that the gravity of the misconduct committed by the petitioners are grave in nature warranting severe punishment. Holding so, the Disciplinary Authority imposed the punishment of demotion to lower grade. Against the said order, the petitioners preferred appeal. The appellate authority, by a reasoned order dated 12.05.2005 and 07.03.2007 rejected the appeal of the petitioners. On considering the representation of the petitioners dated 03.06.2009 and 19.11.2007, the competent authority of the Corporation had modified the punishment of "demotion into lower grade" by restricting the same as to "demotion to lower grade for period of two years" by order dated 19.09.2009.



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11. A reading of the impugned orders would go to show that the petitioners were found guilty of the charges levelled against them. The enquiry report was issued to the petitioners seeking objection to the enquiry report. The petitioners submitted their explanation to the enquiry report. On examining the enquiry proceedings, the respondents found that the petitioners were permitted a defense assistant under NLC's standing orders and that the petitioners deliberately sent a mahazar opposing the exercise of option in the matter by the employees and thereby spreading false information and rumour about the pension scheme. So, the Disciplinary Authority on a finding that the enquiry was conducted based on the principles of natural justice and on agreeing with the findings of the enquiry officer, for the proven misconduct, imposed the punishment of "demotion of the lower post of Tech.Gr. for a period of two years. It is to be emphasized that utmost discipline is to be maintained in the work place and therefore, it is the duty of the Management to ensure maintenance of such discipline at all times. When the workman has chosen to commit misconduct, though minor in nature, certainly warranting punishment since such misconduct in the work place, would certainly shake the morale of the other employees.

12. On a careful perusal of the entire records, it is seen that the petitioners are workman as defined under Section 2(s) of the Industrial Disputes Act, 1947. The workmen of the respondent corporation are governed by the Certified Standing Orders of the Corporation. The disciplinary proceedings were initiated against the petitioners under the Standing Orders of the Corporation. Therefore, the disputed questions of fact that as to whether the act committed by the petitioners are in violation of the Standing Orders of the respondent Management or not is to be decided only by the statutory authority as provided under the Industrial Disputes Act. Therefore, the petitioners are having an effective alternate remedy under the provisions of the Industrial Disputes Act, 1947 and they can approach the proper forum available to them. The said disputed questions of fact cannot be decided in these writ petitions. Article 226 is not the appropriate forum to adjudicate disputed questions of fact. Therefore, the writ petitions are dismissed with liberty to the petitioners to approach the appropriate forum. No costs.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar



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To

1. The Additional Chief Manager/WSD/TA
Neyveli Lignite Corporation Limited
Neyveli-607 803
2. The Chief Manager/Civil
Neyveli Lignite Corporation Limited
Neyveli-607 803
3. The Deputy General Manager C &I
Neyveli Lignite Corporation Limited
Neyveli 607 803

+lcc to Mr.G.Purushothaman, Advocate, S.R.No.52940

W.P.Nos.10603 and 10604 of 2005

GPL[col]
NSK 26/10/2021