



Writ Appeal No.1326 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 15.11.2022

Judgment Delivered on : **18.11.2022**

CORAM :

**THE HON'BLE MR. JUSTICE PARESH UPADHYAY
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.A.No.1326 of 2022
&
C.M.P.Nos.8388 & 10600 of 2022

- 1.The Chief Manager/Personnel/Mine-I,
(Appellate Authority),
Neyveli Lignite Corporation Limited,
(Presently known as M/s. NLC India Ltd.,)
Neyveli – 607 803.
- 2.The Senior Manager/Personnel/Mine-I,
(Disciplinary Authority),
Neyveli Lignite Corporation Limited,
(Presently known as M/s. NLC India Ltd.,)
Neyveli – 607 803.
- 3.The Deputy Manager/Personnel/Mine-I,
Neyveli Lignite Corporation Limited,
(Presently known as M/s. NLC India Ltd.,)
Neyveli – 607 803.
- 4.Neyveli Lignite Corporation Limited,
(Presently known as M/s. NLC India Ltd.,)
Rep.by its Chairman Cum Managing Director,
Block-1, Neyveli - 607 803.

... Appellants



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Versus

A.Subramanian (CPF No.35472),
Asst. Manager (removed from service),
Industrial Canteen, Mine-I,
Neyveli Lignite Corporation Limited,
Neyveli – 607 803.

... Respondent

Prayer : Writ Appeal filed under Clause 15 of Letters Patent, to set aside the impugned order dated 11.01.2022 passed in W.P.No.9217 of 2009 and the consequent findings in the impugned order being contrary to law, facts and materials on record and to pass such further or other order(s) as this Court may deem fit and proper in the circumstances of the case.

For Appellants : Mr.N.Nithianandam

For Respondent : Mr.Kandhan Duraisami,
for M/s.Muthumani Duraisami

JUDGMENT

Per : D.Bharatha Chakravarthy, J.,

The Neyveli Lignite Corporation Limited and its authorities are on an appeal, aggrieved by the Judgment of the learned Single Judge, dated 11.01.2022 in W.P.No.9217 of 2009, whereby the Writ Petition filed by the respondent/employee, challenging the order of punishment of removal from service, was allowed on the following terms :-



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18. Accordingly, it is ordered as follows.

i) The impugned order passed by the second respondent in Proc.No.7920/DA/CGM/ M-II/2006, dated 22.01.2009 and the order passed by the first respondent in Lr.No.CM/P & A/App. Authority/2009 dated 24.04.2009 are (set) aside.

ii) Mr. P.Ganesan(Retired District Judge), No.778, 4th Cross Street, Kahithapuram, Chennai 600 117, Cell No.9600045571 is hereby appointed as Enquiry Officer to conduct a detailed enquiry, afresh.

iii) The matter is remitted back to the Enquiry Officer appointed herein, to conduct detailed enquiry afresh, by giving opportunities to both the parties to produce the documents.

iv) The respondents Corporation is at liberty to object the documents produced by the petitioner, if it is not relevant to the present enquiry.

v) The learned Enquiry Officer appointed herein, shall after issuing notice to the parties and upon hearing them, file a report as expeditiously as possible, preferably within a period of 12 weeks from the date of receipt of the order.

vi) The Remuneration of the Enquiry Officer is fixed at Rs.1,00,000/- (Rupees one Lakh) and the same shall be borne by both the parties equally and shall be paid immediately after receipt of summons.

vii) the learned Enquiry Officer is directed to complete the enquiry, as early as possible, within a period of 12 weeks from the date of receipt of this order.



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viii) *Both the parties shall cooperate before the Enquiry Officer, without getting unnecessary adjournments.*

It is needless to say that the respondents Corporation shall pass final order, as early as possible, within a period of three months from the date of receipt of the report from the Enquiry Officer and the petitioner is not entitled for reinstatement of service, till the final order passed by the respondent Corporation.”

2.The brief facts leading to the filing of the Writ Appeal is that the respondent/Writ petitioner was initially appointed on a temporary basis as Assistant Manager/Trainee-Industrial Canteen, and thereafter, was regularly appointed in the said post of Assistant Manager/Trainee - Industrial Canteen, w.e.f 01.06.1990. In the year 1993, it was found that the respondent had produced bogus educational certificates regarding his educational qualification. After initiation of disciplinary proceedings, the Appellant Authorities imposed a punishment of stoppage of the next increment with cumulative effect vide order dated 21.06.1997. Thus, after punishment become final, in the year 1999, without re-opening the said proceedings, fresh proceedings were sought to be initiated by suspending the Writ Petitioner and also issuing a Charge Memorandum for the very



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same delinquency. The petitioner, therefore, filed a Writ Petition in W.P.No.17877 of 1999, challenging the said orders dated 17.08.1999, 07.09.1999, and 29.09.1999 and to reinstate the petitioner into services with all monetary benefits and attendant benefits. When the Writ Petition came up for hearing on 12.12.1999, a letter of undertaking was produced by the learned Appellant /Corporation that the Management has decided to drop the proceedings and suspension will be revoked without prejudice to the criminal proceedings already initiated against him. Recording the said fact, the Writ Petition was dismissed.

3.It is pertinent to state here that the criminal proceedings also were continued, however, the concerned Police ultimately dropped the case as “undetected”. It can be noted that the petitioner was also granted time-bound promotion and as of the year 2003, he was holding the post of Assistant Manager (Special Grade – B) (Industrial Canteen). Again in the year 2004, the Appellants Authority seems to have taken up the issue for the third time and a letter was addressed to the Sub-Inspector of Police, Neyveli Police Station, enquiring as to what happened in the criminal investigation of the case. To the said letter dated 23.04.2004, a reply was



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submitted by the concerned Police that the case was treated as “undetected” as early as 01.07.2000, and the criminal case was not pending. Thereafter, again in the year 2005, an Additional Chief Manager (personnel)/Mine-II, directed the respondent/Writ Petitioner to produce a proof in original in support of his actual date of birth issued by the Competent Authority on or before 05.08.2005, stating that the educational qualification, which is entered in his services book is based on the bogus educational certificates.

4.By his reply dated 04.08.2005, the Writ Petitioner submitted his M.A. Degree certificate, Transfer certificate from Annamalai University, Driving License, and Pan Card, as proof of his Date of Birth. By communication dated 17.08.2005, the Additional Chief Manager, informed the Writ Petitioner that only Matriculation or SSLC and birth certificate can be accepted as proof and other certificates cannot be accepted. A detailed Questionnaire Form was also addressed on 24.03.2005, suggesting that the Writ petitioner's father, namely, *Annamalai*, was a Mason in NLC Health Division, etc., was administrated to the Writ Petitioner and the petitioner denied the suggestions in the said Questionnaire.



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5.It is thereafter, on 11.10.2006, a Charge Memorandum containing one charge that while the correct date of birth of the Writ Petitioner was 21.08.1954, he had furnished his date of birth as 04.01.1963. In support of the charge, an imputation was made that the entries in Neyveli Elementary School show that his date of birth is 21.08.1954. Certain particulars as to his parents, and his siblings are also given in the Charge Memorandum and the Writ Petitioner was directed to show-cause. The petitioner submitted his explanation, denying the charge. The petitioner also subsequently obtained a birth certificate from the Corporation of Chennai in the year 2007 and produced the same. Thereafter, the Domestic Inquiry was conducted and the Inquiry Officer held that the charge was proved and submitted his report dated 12.10.2006.

6.A second show-cause notice was issued on 03.10.2008, forwarding the Inquiry Report. The respondent/Writ petitioner submitted his further explanation on 18.10.2008, stating that the findings of the Inquiry Officer that one *A.Panchaksharam* and one *A.Venkatesan* are brothers of the Writ Petitioner and the Writ petitioner is willing to undergo



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a DNA test, which was not considered by the Inquiry Officer. On 20.11.2008, the Writ Petition in W.P.No.41419 of 2006 was filed by the Writ petitioner, challenging the Charge Memorandum which was also dismissed by this Court holding that it is for the Disciplinary Authority to consider his explanation and pass orders in accordance with the law. The Disciplinary Authority considered the findings of the Inquiry Officer and explanation, issued yet another show-cause notice on 05.12.2008, proposing to inflict the punishment of removal from services. After unsuccessfully challenging the same, the respondent/Writ petitioner submitted his further explanation on 23.12.2008 and 21.01.2009. Thereafter, by the order impugned in the Writ Petition, dated 22.01.2009, the Disciplinary Authority considered his further explanation and imposed the punishment of removal of service of the Corporation. Aggrieved by the same, the respondent/Writ petitioner filed an Appeal dated 03.02.2009 before the Appellate Authority, and by an order dated 24.04.2009, the Appeal was dismissed.

7.Challenging the same the present Writ Petition in W.P.No.9217 of 2019 was filed. By the Order under Appeal dated



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11.01.2022, the learned Single Judge found in Paragraph No.9 of the Judgment that when the charge is related to furnishing of date of birth, the birth certificate which is produced by the Writ petitioner is the relevant document and absolutely there is no discussion whatsoever relating to the birth certificate either in the report of the Inquiry Officer or in the orders of the Disciplinary/Appellate Authority. The learned Single Judge also further found that when the proceedings relating to the furnishing of the bogus certificate has already ended in a penalty, now, if the respondents/Corporation is contending that the petitioner has filed a Proforma containing false particulars, it was for the respondents/Corporation to prove the same. It is the case of the petitioner that the said photocopy of the Proforma, which was produced by the Corporation, in proof of their allegation is a forged one even though the respondent had obtained a Forensic Report stating that handwritings contained on the first page and second page in the Proforma are one and the same, they neither examined the expert nor produced the original.

8. When this Court during the pendency of the Writ petition had repeatedly insisted for the production of the original Proforma and inspite



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of the repeated opportunities and directions, the Appellants/Corporation having failed to produce the Proforma with an excuse that they are not in a position to trace out the original, was also taken note of, by the learned Single Judge and therefore, considering the nature of allegations that the Management is alleging about the identity by the Writ Petitioner's parents, his school study etc., and determining the date of birth based on their allegations and the explanation of the petitioner including the medical record book of his mother, which contains photograph of different person with different medical number and his claim that the other persons mentioned by the Management, are not family and for that he is ready and willing to undergo DNA test, the learned Single Judge, came to the conclusion that the charges are held to be proved without considering the relevant documents, without proper opportunities to the Writ petitioner in the inquiry. In view thereof, after setting aside the orders of punishment as well as the Appellate Authority order, the learned Judge allowed the Writ Petitions on the terms as extracted supra, *inter alia*, appointing a learned District Judge to be an Inquiry Officer to conduct inquiry afresh. Aggrieved by the same, the present Writ Appeal is filed before this Court by the Appellants/Management.



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9. *Mr.N.Nithianadam*, learned Counsel for the Appellants, would submit that within the scope of powers of this Court under Article 226 of the Constitution of India in respect of the matters arising out of the Domestic Inquiry, beyond the limited judicial review the learned Judge has appraised the evidence in detail and has considered the adequacy of evidence and has set aside the punishment order. The learned Counsel would submit that when a due procedure has been followed in the inquiry and when the Writ Petitioner himself has answered in the inquiry that the proceedings were to his satisfaction, there was no any complaint about the procedural fairness, the learned Judge ought not to have entered into the arena of appreciation of evidence, therefore, the impugned order is liable to be set aside.

10.The learned Counsel would submit that the charge is serious in nature and when earlier the educational certificates were found to be bogus, the learned Single Judge ought not to have interfered with the punishment. The learned Counsel would further contend that the order of the learned Single Judge remanding the matter back for *de nova*, an inquiry



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by a retired Judge and this point of time 2022, for the Charge Memorandum issued in the year 2006 would be a futile exercise and already the records like the original Proforma etc., are not available with the Appellants/Corporation and therefore, the learned Judge ought not to have remitted the matter back.

11.Per contra, the learned Counsel *Mr.Kandhan Duraisami*, appearing on behalf of the respondent/Writ Petitioner drawing our attention to Paragraph No.48 and 49 of the paper book, containing the pictures of the plaintiff's mother, namely, *Muniyammal* in Page No.49 and other *Muniyammal* in Page No.48, who the Corporation is alleging to be his mother would submit that just because there is co-incidence in the name of parents, the Appellants/Corporation is persecuting the petitioner. The Appellants/Corporation is alleging that one *A.Panchaksharam* and one *A.Venkatesan*, are his brothers and the respondent/Writ petitioner undertook to undergo a DNA test and the same is refused by the Inquiry Officer. He would submit that as a matter of fact, other witnesses were examined in the inquiry, though they said that one *Subramanian* studied in the Neyveli Elementary School, they did not know whether the same is the



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respondent/Writ Petitioner or not.

12.The learned Counsel would submit that it is not the request of the petitioner to alter the date of birth. It is the respondent who after holding that the Educational Certificates were bogus, left the matter as such by imposing minor punishment in the year 1993. Again when the respondent sought to reopen the issue in the year 1999, the respondent/Writ petitioner approached this Court and the proceedings were dropped. Again in the year 2004, when the Appellants/Management learnt that the Police authorities have dropped the criminal case, they issued this Charge Memorandum. This is nothing but repeatedly taking up of the same issue again and again by the Appellant Corporation in a vindictive manner. The Appellant has given a date of birth at the time of joining. But, however, the Proforma, which is produced by the Corporation is a forged one as it contains the petitioner's handwriting only in Page No.1 and Page No.2 is a concocted document. Similarly, even in the entire Service Records produced by the Appellants/Corporation before the learned Judge, several pages were missing and there was evidence of interpolation and tampering with the Service Records.



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13.The learned Counsel would submit that when the birth certificate produced by him is not at all considered and his applications for undergoing a DNA test being the proper opportunity to disprove the charge, was refused, there was not only a violation of principles of natural Justice, also the findings of the Inquiry Officer were perverse. The Disciplinary and the Appellate Authorities also did not apply their might in respect of the birth certificate and also did not provide any opportunity for the Writ petitioner, therefore, the learned Judge has passed the order, and taking into account the serious nature of the allegations and the serious dispute of forgery done by the Management itself and the allegations regarding the factual disputes, the learned Judge thought it to be fit that the inquiry can be conducted by a learned retired District Judge, and therefore, the order does not require any interference, especially, when the petitioner nearing the age of Superannuation in the year 2023.

14.In reply thereto, the learned Counsel for the Appellants would submit that when the Inquiry has been duly conducted it was not open for the respondent/Writ petitioner to agitate about the original Proforma before



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this Court, and therefore, there was no necessity to call for the original Proforma in the first place. Therefore, the non-production thereof cannot be held against the Appellant/Corporation.

15.We have considered the rival submissions made on either side and perused the materials records of this case.

16.At the outset, the entire allegations regarding the Charge, are not on account of any demand by the petitioner to alter his date of birth which is originally entered at the time of entry into the services, but upon the request of the Appellant Management, vide their communication dated 26.07.2005. The manner in which the proceedings have been conducted against the Writ petitioner requires to be taken note of. When it is alleged that the respondent has produced the bogus educational qualification, strangely, for the reasons best known of the Appellants/Corporation in the year 1993, when it was immediately three years after appointment, the Appellants/Corporation chose to show extreme leniency in respect of such a serious charge and decided to retain the Writ petitioner in service by imposing a punishment of stoppage of one increment. Thereafter, in the



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year 1999, they took up the matter once again for a second time, both by way of lodging a criminal complaint as well as by initiating fresh disciplinary proceedings. Even if the Appellants/Management felt that the concerned Disciplinary Authority has grossly erred in imposing a lesser punishment, it could have been done only by way of further inquiry or Suo Moto review if permissible under the rules, and the second inquiry was impossible. Therefore, they had rightly undertaken to drop the proceedings before this Court in W.P.No.17877 of 1999.

17. Again the respondent chose to keep quiet for a while, and after promotion was granted in the year 2003, and after coming to know that the criminal proceedings are dropped in the year 2004, once again, we find that the very same matter is taken up in a different context by the respondent in the form of date of birth. The Educational Certificate containing the date of birth was entered into the Service Register and the Certificate was bogus. Having imposed the minor punishment, now the date of birth contained in the said certificate is again taken up by way of the present charge. This apart, it is also alleged that the appellant studied in the Neyveli Elementary School and particulars about the family members



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are given and it is alleged that the appellant has concealed all the above said facts.

18.As a matter of fact, on a perusal of the Charge Memorandum, one can understand that the definite charge alleged against the petitioner is regarding furnishing of an erroneous date of birth and other particulars at best be treated as the statements of imputation of misconduct. When the said factual matrices are contested by the Writ petitioner, firstly, it was for the Management to prove the Charge. In this regard, when the basis for the charge namely service Proforma itself is questioned, inspite of the fact that the FSL report contains the name of the person to be examined as a witness, the Management did not choose to examine the said person. The original Proforma was never produced and inspite of the directions of this Court in Writ Petition and in spite of grant of repeated opportunity the Proforma was not produced and it is reported to be missing which is very intriguing in this case.

19.Therefore, the Management failed to produce the relevant witness and documents which form the basis of the charge. Secondly, even



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though registered belatedly, the birth certificate issued on 06.07.2007 by the Corporation of Chennai, is a relevant document. However the same was not even referred to or adverted to in the inquiry report or the punishment order. The same amounts to non-consideration of relevant materials, and therefore, would render the inquiry report as well as the orders of the Disciplinary Authority as perverse. When the petitioner had opted to voluntarily undergo DNA test and the same is rejected on the ground that it is only a service matter and no rowing inquiry is necessary. But, when the petitioner has pleaded by showing different photographs with different medical record numbers in MED No.35472/21, which document is dated 27.01.2000, much prior to the present third attempt by the Appellants/Management, the same appears to be a serious dispute on facts. In that view of the matter, the petitioner is also denied all reasonable opportunities to prove his innocence.

20.Further, when the date of birth was entered in the Proforma, when this Court, ordered the production of the original Proforma, and if the same is not produced, adverse inference has to be necessarily drawn as the same forms part of the service record which is normally maintained. No



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proof whatsoever as to how the Proforma went missing and there is no pleading as to how it went missing. This Apart, when in the year 1993, the Appellants/Corporation initiated disciplinary proceedings that the educational certificate is bogus, at that point of time itself, they had knowledge that the date of birth which is entered as 04.01.1963 is based only on such certificate. But, however, having issued a lesser punishment in the year 1993, having attempted for second disciplinary proceedings in the year 1999, and having come to know that the criminal case was dropped in the year 2004, belatedly, the issue was taken up in the year 2005. As a matter of fact, the Charge Memorandum states as follows:-

“Whereas, it has been reported that Shri A.Subramanian, Asst. Manager / Industrial Canteen, Mine-II, has committed the following acts which are misconducts falling under Standing Order-46 of the Corporation. Therefore, the following charges are framed against him.”

But, however, no reference to any report is mentioned in the reference column and no such document is produced. The learned Counsel for the Appellants would submit that it was in the nature of the 'some complaint'.



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The said material is not on the part of the record. Therefore, the delay of 16 years in initiating the disciplinary proceedings which is unexplained is also fatal to the proceedings.

21.We would reiterate the very Charge Memorandum is not an independent proceeding of the earliest charge which was leveled in the year 1993 and is an offshoot or a concomitant charge. Therefore, the respondent cannot prosecute the disciplinary proceedings throughout the service and carrier of the respondent/Writ petitioner on a piece-meal basis having failed in the second and third times. In view thereof, we find that the orders of the punishment and the orders of the Appellate Authority are required to be interfered.

22.Having found that the orders of punishment by the Appellate Authority are unsustainable, what reliefs are to be granted is to be considered. As rightly pointed out by the learned Counsel for the Appellants Authority, no useful purpose will be served by remanding the matter back for inquiry, at this stage as the original furnishing of Proforma was in the year 1990, at the time of entry into the service and now we are



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in the year 2022 and even as per the existing date of birth, the respondent will also retire from service on Superannuation in January 2023. Apart from perversity and violation of principles of natural justice, we have held that the charge itself was a repeat attempt in a different context and it suffers from an unexplained delay. In that view thereof, we are inclined to modify the order of the learned Single Judge while upholding the learned Judge, in Paragraph No.18(i) with whatever consequences to follow and the directions in Paragraphs No.18(ii) to 18(viii) shall stand deleted. The observations in the last part of the said para 18, after (viii) would not survive.

23.For the reasons recorded above, the following order is passed:-

23.1 This Writ Appeal is partly allowed.

23.2 The impugned order passed by learned Single Judge dated 11.01.2022 recorded on W.P.No.9217 of 2009 is quashed and set aside (except para 18(i) thereof). In other words, para 18(ii) to 18(viii) and subsequent part of the said para of the order under challenge is quashed and set aside.



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23.3 Para 18(i) of the judgment and order passed by learned Single Judge is confirmed, with consequences flowing there from.

23.4 There will be no order as to costs. C.M.Ps would not survive.

(P.U., J.) (D.B.C., J.)
18.11.2022

Index : Yes
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To

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Neyveli Lignite Corporation Limited,



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(Presently known as M/s. NLC India Ltd.,)
Block-1, Neyveli - 607 803.



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**PARESH UPADHYAY, J.,
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Judgment in

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