



W.P.No.12352 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	17.10.2022
Pronounced on	02.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.12352 of 2012
and
M.P.No.2 of 2012

M.Panneerselvam

... Petitioner

Vs.

1.Nevveli Lignite Corporation Ltd.,
rep. by its Director (Personnel),
Nevveli Lignite Corporation Ltd.,
Neyveli.

2.The Disciplinary Authority/Chief Manager,
Lignite Bench/Mine-1,
Neyveli Lignite Corporation Ltd.,
Neyveli.

3.The Estate Officer,
Eviction Authority,
Asst. Township Administrator,
Neyveli Lignite Corporation Ltd.,
Neyveli.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the entire record pertaining to the impugned order dated 29.11.2011 passed by the second respondent through his proceedings in Proc. No.M1/HR/DAC/279-1/2010 and consequential punitive order of the third respondent issued through Form B in No.TA/ESI/E1/6774/2012, dated 06.03.2012 and quash the same and consequently direct the respondent to reinstate the petitioner in service and provide back wages, consequential benefits, award cost.

For Petitioner	: Mr.P.Paramsivadass
For Respondent	: Mr.N.A.K.Sarma
Nos.1 to 3	

ORDER

When the petitioner's father Mr. S.Maria Joseph, expired on 03.09.1981 while in the service of Neyveli Lignite Corporation Limited, Neyveli (NLC), the petitioner herein was appointed on 03.08.1990 on compassionate grounds under NLC's "Dependant Employment Scheme".

1.2. On 05.01.2010, a charge memo was issued by the second respondent herein with five charges, stating that since one of the conditions in the Scheme is that though, no other member of the family should be employed in NLC for availing the benefit, the petitioner's brothers namely, M.Francis Priyara and M.Edward Raj were already in employment in NLC on the date of the petitioner's appointment, which fact was suppressed by the petitioner at the time of his employment, he had committed misconducts of giving false information.



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1.3. Based on the levelled charges, an enquiry was conducted and in the report of the Enquiry Officer dated 16.06.2011, while the charges 1, 2, 3 & 5 were held to be "proved", the fourth charge was held as "not proved". The second respondent herein had thereafter imposed the punishment of removal from service of the NLC, without notice, from the date of last attended duty.

1.4. The appeal preferred by the petitioner was rejected by the Appellate Authority on 17.01.2012. A consequential order was also passed on 06.03.2012, directing the petitioner to vacate the NLC quarters occupied by him. The petitioner challenges the orders of punishment and the consequential order in the present Writ Petition.

2. Heard Mr.P.Paramasivadass, learned counsel for the petitioner and Mr.N.A.K. Sarma, learned counsel appearing on behalf of the respondents / NLC.

3. The learned counsel for the petitioner submitted that the fourth charge against the petitioner herein, is the basis for the other charges. Since the fourth charge was held as "not proved", the rest of the charges, requires to be abrogated. According to the learned counsel,



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the petitioner had not filled up any application at the time of his appointment and therefore, suppression of the employment of his two brothers, is baseless. He would further submit that since there was a rift among his family members, two brothers were living elsewhere and the fact of their employment was not known to him at the time of his employment.

4. Per contra, the learned counsel for the respondents / NLC submitted that under the "Dependant Employment Scheme", no other member of the family should be employed in NLC and since the petitioner herein had given false information by suppressing the employment of his siblings, the Enquiry Officer had rightly held the charges for these misconducts, as 'proved'. He would further submit that the enquiry was properly conducted after giving due opportunity to the petitioner and since the compassionate appointment extended to the petitioner had deprived the rightful opportunity of employment to otherwise eligible candidate, the punishment of removal from service, is proportionate to the charges.

5. I have given careful consideration to the submissions made by the respective counsels.



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6. As per the charge memo dated 05.01.2010, Charge No.1 relates to suppression of facts of the petitioner's siblings, who were already under employment in NLC; Charge No.2 speaks about the employment of the petitioner's two brothers, namely, M. Francis Priyara and M. Edward Raj; Charge No.3 refers to the general conditions of notification of employment dated 19.01.1990, which prescribes that "No other member in the family of the employee, who seeks for employment shall be employed in NLC"; and Charge No.5 speaks about the deprivation of the rightful opportunity of employment to an otherwise eligible candidate. All the aforesaid four charges have been held to be 'proved'. The charge memo also states that in case these acts under the charges are established, the same will constitute into a misconduct of giving false information and breach of the Standing Orders.

7. The consequential question that arises, is as to when and where such false information was given by the petitioner. In this context, Charge No.4 gains significance. Charge no.4 reads as follows:

"It is the prime duty of the applicant, who is the first information holder to be honest in the submission of facts relating to himself / herself



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while applying for job, sans scrutiny of the records by the authorities”.

Thus, the entire charge relates to the allegation that the petitioner herein had suppressed the fact of employment of his two brothers in the application submitted by him at the time of his appointment. The charge memo also states that if the acts alleged in the charges are established, it would constitute the misconduct of giving false information.

8. In this context, the Enquiry officer had dealt with Charge No.4 by stating that, since the petitioner herein had continuously stated that he has not filled any application at the time of his appointment, the Management had not disproved his statement by producing his application for the above employment, during the enquiry. After many opportunities, the Enquiry Officer also addressed a letter dated 30.05.2011 to the Disciplinary Authority to furnish the file, which the Management had failed to produce. Since, there was no material before the Enquiry Officer to prove that the petitioner herein had suppressed the fact of his two brothers' employment in NLC in his application, Charge No.4 was held to have “not been proved”.



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9. When the other charges relate and speak about employment of the petitioner's siblings in NLC, which amounts to suppression of facts, the Management seems to have miserably failed in substantiating that an application was made by the petitioner at the time of his appointment, in which he is alleged to have suppressed this fact. In the absence of the application of the petitioner with the alleged suppression of fact, the Enquiry Officer ought not to have held the other charges as "proved". As a matter of fact, the Enquiry Officer seems to have held the allegation of the petitioner's siblings' employment on preponderance of probability in view of the contradictory statements of the petitioner with regard to his ignorance of his brothers' employment and that he was aware of their employment only after five or six years.

10. The object of any Compassionate Employment Scheme, is to grant concession to the sufferings of the members of the family of the employee, who dies in harness. It is also for consideration of such employed member of the family to step into the shoes of the deceased employee and balance the loss of the breadwinner of the family. The object behind the Scheme imposing the condition that "no other member of the family should be employed under NLC" is that, it should not deprive the rightful opportunity of employment to an otherwise



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eligible candidate. The petitioner had taken a specific stand that, he was not in a cordial relationship with his brothers and they were living elsewhere, thereby indicating that they are not supporting the family. The petitioner had also stated that he was residing with his mother and sister alone in the quarters allotted to his father.

11. The Disciplinary Authority, in the impugned order of punishment dated 29.11.2011, had imposed a major punishment, after observing that, had the petitioner furnished the details of employment of his two brothers at the time of his appointment, he would not have been considered for employment under the Dependant Employment Scheme, which amounts to suppression of facts. As stated earlier, the alleged application made by the petitioner at the time of his employment, was not at all produced in the enquiry and there was no other materials furnished by the Management to substantiate that there was suppression of facts. Corollary to this, it requires to be held that there was no suppression of facts at all when the petitioner herein had joined the employment and therefore, he had not committed any misconduct stipulated in the service regulations of NLC.



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12. Though the petitioner herein had raised specific grounds with regard to the non furnishing of his application at the time of his appointment in his appeal petition, the Appellate Authority has not considered this in the impugned order dated 17.01.2012 passed by him.

13. This Court is of the view that in the absence of the prime document in the inquiry, namely, the application of the petitioner at the time of his appointment, the findings of the Enquiry Officer, holding the charges 1, 2, 3 & 5 as "proved", as well as the orders of punishment imposed by the second respondent and the Appellate Authority, would stand vitiated. The order of the third respondent dated 06.03.2012 is a consequential order, directing the petitioner to vacate the NLC quarters. In view of the fact that the punishment itself is now liable to be set aside, the consequential order to vacate the quarters also, cannot be sustained.

14. The learned counsel for the petitioner had submitted that in case, if the petitioner is ordered to be reinstated back into service, he would give up his right to claim his back wages from the date of punishment, till the date of his reinstatement. Such a statement, is hereby recorded.



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15. In the light of the above findings, the impugned orders dated 29.11.2011, 17.01.2012 and 06.03.2012, on the file of the Appellate Authority, second and third respondent respectively, are hereby quashed. Consequently, the second respondent herein, is directed to pass appropriate orders, reinstating the petitioner with effect from the date of his dismissal, together with continuity of services. However, the petitioner would not be entitled for the back wages from the date of dismissal, till the date of his reinstatement. Such orders shall be passed by the second respondent, atleast within a period of four weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

02.01.2023

Internet:Yes
Order :Speaking

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To

- 1.The Director (Personnel),
Neyveli Lignite Corporation Ltd.,
Neyveli.
- 2.The Disciplinary Authority/Chief Manager,
Lignite Bench/Mine-1,
Neyveli Lignite Corporation Ltd.,
Neyveli.
- 3.The Estate Officer,
Eviction Authority,
Asst. Township Administrator,
Neyveli Lignite Corporation Ltd.,
Neyveli.



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M.S.RAMESH,J.

DP

ORDER MADE IN

W.P.No.12352 of 2012
and
M.P.No.2 of 2012

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