



W.P.No.22660 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:30.06.2023

Delivered on: 21.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.22660 of 2016

A.Thirumalai

... Petitioner

Vs.

1.The Chief General Manager
Mine-I, Neyveli Lignite Corporation Ltd
Neyveli

2. The Chief Manager
Con.(MRR)/Mine-I
Neyveli Lignite Corporation Limited
Neyveli-607 803

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the second respondent herein in Proc.No.M1/HR/DAC/278-214/2010 dated 03.08.2011 awarding the punishment removal from service and the consequential order passed in appeal by the first respondent herein in Proc.No.M1/HR/DAC/278-214/2010 dated 12.10.2011 and quash the same and consequently direct the respondents to re-instate the petitioner in service



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with all attendant benefits.

For Petitioner : Mr.D.Balachandran

For Respondents : Mr.F.B.Benjamin George

ORDER

The Writ Petitioner seeks issuance of a Writ of Certiorarified Mandamus to quash the proceedings dated 03.08.2011, removing the petitioner from service and the consequential order in appeal on the file of the 2nd respondent/1st respondent in proceedings dated 12.10.2011 and to consequently direct reinstatement of the petitioner in service, with all attendant benefits.

2. The case of the petitioner as projected in the affidavit in support of the Writ petition is that, he joined the respondent Corporation as IWD-Grade-II on 08.01.1997 on compassionate appointment basis. Subsequently, he was promoted to the post of IW D-Grade-I after satisfactory services rendered for six years. While he was in service, the 2nd respondent served a charge memo dated 20.11.2010 for unauthorised absence from duty for the period



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28.10.2010 to 09.11.2010. An enquiry officer was appointed, who held the charges proved vide his enquiry report dated 21.03.2011. In pursuance thereof, the 2nd respondent issued a show cause notice dated 06.05.2011 for which the petitioner gave his explanation on 31.05.2011 citing family circumstances, ill-health of the petitioner and his wife as legitimate reasons for not attending duty regularly. The petitioner also assured that he would not commit such mistake in future. Considering his explanation, the petitioner was permitted to attend duty and no further steps were taken in furtherance of the show cause notice. However again from 01.06.2011 to 31.07.2011 the petitioner did not attend duty owing to his ill-health. This conduct was viewed as misconduct and the 2nd respondent passed the impugned order, removing the petitioner from service. The appeal filed by the petitioner to the 1st respondent was dismissed on 12.10.2011. Challenging these proceedings, the petitioner has approached this court.

3. The respondents have filed a counter stating that the impugned order was passed on 12.10.2011 and the petitioner has chosen to file the present



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writ petition only in 2016. Therefore, the Writ petition is liable to be dismissed on the ground of laches. It is the further case of the respondent that the petitioner was irregular right from the beginning and for the very same act of misconduct, namely unauthorised absence from duty, the petitioner was issued charge memos and he was awarded punishment several times, despite which he did not correct himself. While so, when the petitioner was again unauthorisedly absent from duty from 28.10.2010 to 09.11.2010, viewing it as a serious misconduct, a charge memo was issued to him on 03.08.2011. The petitioner did not give any reply to the said charge memo. Thereafter an enquiry was duly held and the charges levelled against the petitioner were found to be true/proved. However, on humanitarian grounds, considering the undertaking of the petitioner that he would not commit such acts in future, the Disciplinary Authority did not pass any final orders immediately and it was decided to observe the conduct of the petitioner. However according to the respondents, even thereafter the petitioner was again intermittently absent from duty for 20 days between 01.06.2011 to 13.07.2011. Having no other option, the Disciplinary Authority proceeded to impose the punishment of



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removal from service on 03.08.2011. The various instances where the petitioner was censured or punished with stoppage of increment or reduction of pay on one stage or stoppage of one increment with cumulative effect or punishment by demotion to the post of Grade-II for one year, have all been elaborated in the counter affidavit. It is seen from the counter affidavit that from the beginning of 2006 up to 04.08.2011, the petitioner has unauthorisedly absented himself for several days in a year and that to in varying spells. It is also contended by the respondents that the punishment awarded to him was not on the ground of absence from duty subsequently for the period 01.06.2011 to 13.07.2011, but only on the basis of charge memo issued to the petitioner on 20.11.2010 and that one of the factors taken into consideration was his subsequent conduct from 01.06.2011 to 13.07.2011. The respondents therefore prayed for dismissal of Writ Petition.

4. Heard Mr.D.Balachandran, counsel for the petitioner and Mr.F.B Benjamin George, learned counsel for the respondents. The court has also perused the records.



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5. The petitioner has approached this court as if he was removed from service for his unauthorised absence between 01.06.2011 to 13.07.2011 and that the said punishment was awarded to him without any enquiry being conducted or witnesses being examined. The petitioner has therefore complained of violation of principles of natural justice and on that ground, he challenges the impugned proceedings.

6. However, it is seen from the records that the charge memo issued to the petitioner on 20.11.2010 based on which the enquiry was conducted and charges held to be proved were alone subject matter of the enquiry before the disciplinary authority. However, the respondent deemed it fit only to defer passing a final order, with a view to give one indulgence to the petitioner to reform himself. It is seen that even thereafter, the petitioner has not attended duty and has been unauthorisedly absent for a further period of 20 days, despite his solemn undertaking by way of explanation to the show cause notice that he would not commit such mistake in future. From the above it is clear that the petitioner was given a fair opportunity to show cause and he had



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also given his explanation in writing and in fact he admitted to the fact that he was unauthorisedly absent and he only chose to offer an explanation to say that the reasons of such unauthorised absence were genuine, being his ill-health and his wife's ill-health and family circumstances. When the petitioner himself had admitted to the charges levelled against him namely unauthorised absence and he had undertaken not to commit such a mistake in future, it is not open to the petitioner to complain that he was not given a fair opportunity to disprove the charges.

7. One another fact, as rightly pointed by the counsel for respondent is that despite the punishment of removal from service being awarded way back in the year 2011, the petitioner had chosen to sleep over the matter and approached the court only in the year 2016. When the petitioner has been handled a punishment of such a serious nature, namely removal from service, reasonable conduct of a prudent man who suffers such an order would normally be to seek redressal of his grievances by approaching the court without any delay whatsoever. Further, this is a case where the petitioner has



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been repeatedly punished for being unauthorisedly absent across five to six years and when he is awarded a punishment whereby, he is terminated from service, he does not choose to immediately approach this court and challenge the impugned proceeding, the conduct of the petitioner is therefore clearly one, disentitling him for any relief much less, the relief by way of issuance of a Writ invoking Article 226 of the Constitution of India. Even on the ground of delay and laches the petitioner is not entitled to succeed. Viewed from all angles, the petitioner has not made out any case for issuance of a writ as prayed. Consequently, the writ petition is dismissed. There shall be no order as to costs.

21.07.2023.

Internet:Yes
Index:Yes/No
Speaking order
Neutral Citation:Yes/No
kpr



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To

1.The Chief General Manager
Mine-I, Neyveli Lignite Corporation Ltd
Neyveli

2. The Chief Manager
Con.(MRR)/Mine-I
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P.B.BALAJI, J.,
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Pre-delivery order in
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