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WP.No.7753 of 2017

In the High Court of Judicature at Madras

Dated : 29.8.2023

Coram :

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition No.7753 of 2017
& WMP.No.8482 of 2017

The Chairman & Managing
Director, M/s.NLC India Limited
(formerly M/s.Neyveli Lignite
Corporation Ltd.), Corporate
Office, Neyveli-607801.

...Petitioner

Vs

- 1.The General Secretary, CITU
NLC Labour Staff Union,
H.K.Gosh Street, Block 24,
Neyveli-607803.
- 2.The Presiding Officer, Central
Government Industrial Tribunal-
cum-Labour Court, Shastri
Bhavan, Chennai-6.

...Respondents

Prayer: This petition is filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the entire records of the second respondent relating to the award dated 06.9.2016 passed in I.D.No.75 of 2014 and quash the same in so far as the reliefs granted in para-34 of the award as illegal and unsustainable.



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For Petitioner : Mr.N.Nithianandam

For Respondent-1: Mr.V.Ajoy Khose
ORDER

This is a petition filed by the petitioner seeking to quash the award dated 06.9.2016 made in I.D.No.75 of 2014 on the file of the second respondent in so far as the directions (i) that the 78 workmen concerned in the dispute should be deemed to have been promoted to W4 Grade on their completion of three years of service in W3 Grade and to the next grades on completion of the specified period of service in the respective grades; (ii) that their pay and allowances should be fixed on the basis of the above retrospective promotion; (iii) that the concerned workmen should be entitled to pay all monetary and other benefits, to which, they would have been entitled, on such promotion; and (iv) that the arrears of wages should be paid to them within two months.

2. The facts leading to filing of this case are as follows :

(i) The workmen concerned in this writ petition were originally employed as contract labourers and later enrolled as members of



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M/s.INDCOSERVE, a cooperative society registered under the provisions of the Tamil Nadu Cooperative Society Act. Pursuant to a settlement arrived, their services were regularized and they were promoted to W2 Grade. While so, the petitioner called for applications for appointment to the post of Operator Grade III and after interview and selection, they were appointed to that post. They also underwent training for a period of one year and after training, by order dated 22.8.2009, they were appointed as Operators Grade III-C. Though they were appointed as Operator Grade III Trainees, the petitioner gave them the Conventional Mining Equipment (CME) Operators Training during the said one year period. However, even after appointment as regular Grade III-C operators, their services were engaged for operation of conventional mining equipment.

(ii) Thereafter, instead of giving them W5 Grade/Scale during their training and W6 Grade/Scale after regular appointment, they were paid only the scale applicable to W2 Grade during the training period and pay and allowances applicable to W3 Grade after their regular appointment as Operators Grade III-C. Hence, they gave a representation to the petitioner seeking to extend them the pay and allowances and other benefits applicable



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III-C.

to W6 Grade from the date of their appointment as regular Operators Grade III-C.

(iii) As there was no response from the petitioner, the first respondent initiated conciliation proceedings on behalf of the workmen concerned, which ended in failure. Thereafter, the first respondent filed the industrial dispute before the second respondent seeking to hold that the action of the petitioner in not extending W6 Grade/Scale to the workmen concerned was illegal and unjustified and consequently direct the petitioner to extend W6 Grade/Scale to the workmen concerned with effect from the date of their regular appointment as Operators Grade III-C with the designation as 'CME Operators' together with arrears and all other consequential benefits. In that, the petitioner filed a counter and the first respondent filed a rejoinder.

(iv) During the pendency of the industrial dispute, out of 86 workmen, three persons died, four of them joined their original post and one workman expressed that he was not interested in pursuing the dispute. Further, by the impugned award, the second respondent granted relief to the first respondent as stated above. Challenging the same, the petitioner is before this Court.



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3. On 03.4.2017, when the matter came up for admission, in WMP.No.8482 of 2017, this Court granted an order of interim stay.

4. The learned counsel for the petitioner submits that though the appointment of concerned workmen in Operator Grade – III (W-3) was strictly as per the notification dated 27.10.2007 and having accepted the conditions of the notification, it is not open for the workmen to claim that they should have been considered for a different grade of higher grade at the time of their appointment in 2007, which is per se unsustainable.

5. He further submits that the operators appointed in W-3 Grade pursuant to the above notification were required to work on all types of vehicles as well as the conventional mining equipments (CME), depending upon the day to day exigencies of work of the petitioner company. Hence, the claim made by the workmen seeking the pay and allowances and other benefits applicable to W6 Grade from the date of their appointment as regular Operators Grade III-C. Though all those facts were established before the Labour Court, the Labour Court passed the impugned award



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holding that the concerned workmen shall be deemed to have been promoted to W-4 grade on their completion of years in service in W-3 grade and to the next grades on completion of the specified period of service in the respective grades and their pay and allowances shall be fixed on the basis of their promotion which is wholly unsustainable. Accordingly, he prayed to allow this writ petition.

6. The learned counsel for the first respondent workmen submits that admittedly 86 workmen were originally appointed as contract labourers and subsequently enrolled as members of M/s.INDCOSERVE, a cooperative society registered under the provisions of the Tamil Nadu Cooperative Society Act, pursuant to a settlement arrived, their services were regularized and they were promoted to W2 Grade. Thereafter, the petitioner company called for applications to the post of Operator Grade III and after interview and selection, they were appointed to that post and were given training to operate Conventional Mining Equipments (CME) and Specialized Mining Equipments (SME). Though the said training is provided only for W-5 Grade employees, however, the petitioner management provided



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training to W-3 Grade employees to operate mining equipments equivalent to SME and CME operators which is per se unsustainable.

7. He further submits that the management witness MW.1 himself admitted during the cross examination that the workmen were given training for operating CME equipments during the training period. It is further submitted that when the workmen having been doing the work of CME operators, who are within the purview of W-6 Grade employees, should be given the pay allowances and grade applicable to W-6 Grade employees and the same was elaborately considered by the Labour Court which cannot be interfered with. Accordingly, he prayed to dismiss this writ petition.

8. Heard the learned counsel for the petitioner and the learned counsel appearing for the first respondent.

9. Admittedly, the first respondent union are members of INDCOSERVE, however, pursuant to a settlement arrived, their services were regularized and they were promoted to W2 Grade and based on the



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request made by the members of the petitioner company, applications were called for the post of Operator Grade – III (Trainee) and according to the notification dated 27.10.2007, it was notified that the selected candidates on completion of one year training would be regularized in the post of Operator Grade – III. In response to the said notification, a number of workmen in W-2 Grade, who possessed driving license for driving heavy vehicles applied for the post of Operator Grade III (Trainee) and after interview and selection, they were appointed to that post. Though they were appointed as Grade III employees, the petitioner management extracted the work which was done by the CME operators, which was only operated by the Grade IV employees. Hence, the workman has to be necessarily paid the differential pay during the period in which W-3 grade employees were operating the mining equipments as done by W-6 grade employees.

10. In view of the above, the Award passed by the Labour Court in I.D.No.75 of 2014 on the file of second respondent dated 06.09.2016 is modified with the following directions:

- (i) The petitioner management is directed to provide the differential



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pay to the respective workmen within a period of four (4) weeks from the date of receipt of a copy of this order.

(ii) The petitioner management is directed to calculate the amount during the period in which the workmen operated the mining equipments and pay the same to the respective workmen without disturbing the subsequent promotion acquired by the workmen within a period of eight (8) weeks thereafter.

11. This writ petition is disposed of with the above terms. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

29.8.2023

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Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No

M.DHANDAPANI,J

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To

The Presiding Officer, Central

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Government Industrial Tribunal-
cum-Labour Court, Shastri
Bhavan, Chennai-6.

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