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W.P.No.940 of 2022 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.940, 1379, 1382, 1384, 1387, 1556,
5017, 5022 & 5026 of 2022

and

W.M.P.Nos.1007, 1008, 1499, 1503, 1506, 1509, 1511, 1513, 1516,
1518, 1672, 5127, 5129, 5134, 5136, 5139 & 5143 of 2022

W.P.No.940 of 2022 :-

J.Sivamani

... Petitioner

Vs

1. Neyveli Lignite Corporation India Ltd.,
Rep. by its Director (HR)
Corporate Office, Block-I,
Neyveli Township – 607 801

2. The General Manager (Operations),
Mine-IA/Appellate Authority,
Neyveli Lignite Corporation India Ltd.,
Corporate Office, Block-I,
Neyveli Township – 607 801.

3. The Chief Manager, Shift Office,
Mine-I/Disciplinary Authority,
Neyveli Lignite Corporation India Ltd.,
Corporate Office, Block-I,
Neyveli Township – 607 801.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, after calling for the records pertaining to the order dated 03.12.2014, passed by the third



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respondent/Disciplinary Authority in Procs.No.MI/HR/DAC/279-07/2013 and the order Proc.No.279-07/NLCIL/MI/AA/2021 dated 30.12.2021 passed by the second respondent confirming the order of the third respondent and modifying the period and duration of the punishment, quash the same and consequently direct the respondents to restore the petitioner grade and pay with all consequential benefits and to promote him to SG-I to SG-IV Grades with effect from 01.11.2008, 01.11.2011, 01.11.2014 and 01.11.2017, with arrears and other consequential benefits, award costs.

For Petitioner : Mr.V.Ajoy Khose

For Respondents : Mr.N.Nithyanandam
Standing Counsel

COMMON ORDER

These writ petitions have been filed challenging the order passed by the second and third respondents thereby imposed punishment of demotion of lower cadre in the post of Technician Gr.III/C9W3 Grade) and placing the petitioners at the mid-point of scale of pay.

2. The petitioners had joined in the service of the respondents' corporation as contract labourer in the year 1979 and their service was utilized for wireless communication work. The petitioners are qualified with SSLC and they were appointed as Security Guard - Trainee. While



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being so, the first respondent issued notification thereby calling upon the applications for appointment to various posts, including the post of Wireless cum Communication operators (hereinafter referred to as "WCC operators") on regular basis. The petitioners had applied for the said post.

3. The eligibility criteria for the said post is that pass in SSLC, possession of certificate for the operation of wireless communication equipment and three years experience as wireless operator or five years experience as telephone operator. Since the petitioners were working as contract labourers and carrying out the work of WCC operator, they had joined in the wireless operator course in one of the approved centres of Commercial University Ltd., New Delhi. After completion of the said course, the petitioners were issued with wireless operator certificate. On the basis of the said certificate, the petitioners applied for the said post. Accordingly, the respondents corporation called the petitioners to attend the interview before the Selection Committee and they were selected and appointed in the post of WCC Operator (Trainees).

4. They were put as WCC Operator (Tainees) for one year in W5 Grade. On completion of one year traning successfully, they were



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appointed as regular WCC Operators in W6 Grade. On completion of five years service as WCC Operator in W6 Grade, they were promoted as Senior WCC Operator and thereafter they were granted W7 Grade scale of pay. After the period of four years of service as Senior WCC Operator in W7 Grade, they were promoted as Chief WCC Operator and thereafter they were put in W8 Grade scale of pay as per the Time Bound Promotion Scheme.

5. After completion of four years of service in W8 grade and after completion of technical test, once again the petitioner was promoted a Chief Wireless Operator Special Grade in E0 scale. Though the petitioner was eligible to be promoted as Chief Wireless Operator Special Grade-II, they were not promoted to the said post. In the meantime, a new settlement under Section 12(3) of the Industrial Dispute Act, was signed on 04.09.2010 with effect from 01.01.2007, regarding revision of wages and conditions of service. As per the settlement, the post of E0, E1 and E2S grades and scales were changed as SG-1, SG-2 and SG-3 grades. Apart from that, new special grade scale viz., SG4 Grade was also added as per the settlement. As per the revision of pay scale, the petitioners were granted revised scale of pay as applicable to SG1 grade/scale.



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6. While being so, the petitioners were served with charge memo on various dates under Rule 9 of the NLC Employees (Control and Appeal) Rules and proposed to hold an enquiry into the charges leveled against him. The charges are as follows :-

“That Shri G.Ganesan, CPF No.33098, while joining in NLCIL as Wireless-cum-Communication Operator/Trainee, has produced the Educational Certificate issued by the Commercial University Limited (CUL), Daryaganj, New Delhi, and secured appointment in NLCIL as WCC Operator/Trainee. Subsequently, on verification it came to know that the said University is a fake University as notified by the University Grants Commission, through UGC notification. Thus, Shri G.Ganesan had produced a certificate with regard to his educational qualification issued by a fake University with an ulterior motive to get selected for the said post in NLC India Ltd.,”

7. On receipt of the charge memo, the petitioners submitted their explanation. However, without satisfying the explanation submitted by the petitioner, enquiry officer was appointed to hold an enquiry. The enquiry officer submitted enquiry report and hold that the petitioner found guilty of the charges. Therefore, the petitioners were issued with



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showcause notice and the petitioners submitted explanation. Once again the petitioners were served with another showcause notice cum provisional order of punishment, thereby proposed to impose him the punishment of demotion to lower category as Technician Grade III(c) in (W3 Grade) placing him at midpoint of the scale of pay. Once again the petitioner submitted explanation.

8. The third respondent without considering the explanation submitted by the petitioners imposed punishment on the petitioners thereby demotion to lower cadre. Aggrieved by the same the petitioners preferred appeal before the second respondent and the same was also dismissed and confirmed by the order passed by the second respondent. Hence, the petitioners approached this Court by way of these writ petitions.

9. The learned Standing Counsel appearing for the respondents relied upon the judgment reported in **2022 LiveLaw (SC) 304** in the case of **State of Karnataka & anr Vs. Umesh** which held as follows :-

“17. In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not re-appreciate the



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evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether: (i) the rules of natural justice have been complied with; (ii) the finding of misconduct is based on some evidence; (iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and (iv) whether the findings of the disciplinary authority suffer from perversity; and (vi) the penalty is disproportionate to the proven misconduct. However, none of the above tests for attracting the interference of the High Court were attracted in the present case. The Karnataka Administrative Tribunal having exercised the power of judicial review found no reason to interfere with the award of punishment of compulsory retirement. The Division Bench of the High Court exceeded its jurisdiction under Article 226 and trenched upon a domain which falls within the disciplinary jurisdiction of the employer. The enquiry was conducted in accordance with the principles of natural justice. The findings of the inquiry officer and the disciplinary authority are sustainable with reference to the evidence which was adduced during the enquiry. The acquittal of the respondent in the course of the criminal trial did not impinge upon the authority of the disciplinary authority or the finding of misconduct in the disciplinary proceeding.”



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10. He also relied upon the judgment reported in **2023 LiveLaw (SC) 478** in the case of *the Indian Oil Corporation & ors vs. Ajit Kumar Singh & anr* which held that the judicial review cannot be exercised to re-appreciate evidence in departmental enquiry proceedings. A constitutional Court, while exercising its power of judicial review, cannot decide the case as if it is the first stage of the case, as if inquiry is still being conducted and inquiry report being prepared. Evidence cannot be re-appreciated at the stage of judicial review in a disciplinary proceeding as if conviction in a criminal trial is being re-examined by the next higher Court.



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11. Heard the learned counsel appearing on either side and perused the material placed before this Court.

12. On perusal of records revealed that the respondents had accepted the certificate issued by the Commercial University Ltd., Delhi as a valid certificate at the time of selection and appointment of the petitioners. After the period of 24 years, the respondents questioned the validity of the certificate, based on the notification issued by the University Grants Commission dated 08.12.2009, that too after the period of 20 years from the date of the petitioners' appointment.

13. Admittedly, the respondents did not even whisper about the certificate should be only from the recognized institution during the selection process, with regard to possession of certificate for operating the wireless and communication equipment. The respondents also failed to put the petitioners on notice about this condition at the time of selection and appointment. After having been accepted the certificate without any condition or reservation, the respondents cannot contend that the certificate issued by the said university as not a valid one.



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14. On perusal of enquiry report, the enquiry officer concluded that the petitioners while joining NLCIL, has produced certificate with regard to education certificate from Commercial University Limited, Daryaganij, New Delhi, which was a fake university as notified by the University Grants Commission through notification, with ulterior motive to get selected for the post of Wireless Communication Operator-Trainee.

15. As rightly pointed out by the learned counsel appearing for the petitioners that the petitioners were not put on notice as conditions that the certificate issued from the institution recognized by the University Grants Commission and no one including the petitioners and corporation were aware that the Commercial University whether recognized university or not. When it was notified to be fake university only in the year 2009, there is no ulterior motive can be attributed by the petitioners. In fact the conditions for appointment for the post of WCC operator is only mere possession of certificate in operation of wireless communication equipment, it was not qualified on the conditions that as such certificate should be issued by the educational institution which are recognized by the University Grants Commission or by the State



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Government and Central Government or any other statutory body.

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16. It is also evident that the respondents accepted and acted upon the certificate produced by the petitioners at the time of their appointment. After the period of 25 years, they cannot now say that such certificate should have been issued by the university which is recognized by the University Grants Commission. Therefore, the question of cheating or misappropriation of the petitioners for getting appointment does not arise. In fact, the petitioners were already appointed and working as regular Security Guard. Thereafter, the petitioners were appointed as Wireless Operator-Trainee.

17. Even if the petitioners were not appointed as Wireless Operator, they would continue their service as regular Security Guard and they would reach the position of Assistant Officer which belongs to SGI grade, which is equivalent to the Chief Wireless Operator Special Grade SGI scale, in which now the petitioners were placed by the respondents. At the time of the petitioners' appointment as a Wireless Operator viz., at the induction level, they were placed in W6 Grade/Scale. Therefore, the petitioners cannot be demoted to a position which is lower to their



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induction level Grade and Scale. As per the punishment, now the petitioners were demoted to W3 Grade/Scale which is three levels lower than their induction level.

18. That apart, the possession of certificate for operating the wireless and communication equipments was not an essential qualification to the post of Wireless Operator. Therefore, the ex-servicemen, Police personnel, telephone exchange operators were appointed as wireless operator on regular basis without reference to and also without insisting for any certificate for operation of wireless communication equipments. In fact, they were appointed only based on their experience. Further the certificate produced by the petitioners is only certified course. It cannot be termed as a degree or diploma to be recognized by the University Grants Commission.

19. In fact, even according to the University Grants Commission report that the commercial institution is not recognized by the University Grants Commission. Therefore, the certificate course conducted by the said Commercial University cannot be said that it was not recognized by



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the University Grants Commission. Further, the certificate course conducted by the said university in the respondents' premises. The respondents permitted and licensed the said university to conduct the said course within the premises of the respondents. Therefore, the petitioners and others had joined in the certified course and they had successfully completed their Course and they were issued with Wireless Operator certificate. Hence, the judgments relied upon by the learned Standing Counsel appearing for the respondents are not helpful to the case on hand.

20. In view of the above discussions, the orders passed by the second and third respondents cannot be sustained and liable to be quashed. Accordingly, all the orders impugned in the present writ petitions are hereby quashed. The petitioners are entitled for all notional promotion and subsequent monitory benefits, corresponding pay revision with all monetary and other consequential benefits. The respondents are directed to restore the petitioners' pay with all consequential benefits and promote them within a period of twelve weeks from the date of receipt of a copy of this Order.

21. With the above directions, all the Writ Petitions stand



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allowed. Consequently, connected miscellaneous petitions are closed.

There shall be no orders as to costs.

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Index : Yes/No

Speaking/Non Speaking order

Neutral Citation : Yes/No

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Neyveli Lignite Corporation India Ltd.,
Corporate Office, Block-I,
Neyveli Township – 607 801
2. The General Manager (Operations),
Mine-IA/Appellate Authority,
Neyveli Lignite Corporation India Ltd.,
Corporate Office, Block-I,
Neyveli Township – 607 801.
3. The Chief Manager, Shift Office,
Mine-I/Disciplinary Authority,
Neyveli Lignite Corporation India Ltd.,
Corporate Office, Block-I,
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