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W.P.No.20786 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.20786 of 2013

and

M.P.No.2 of 2013

S.Sarangapani

... Petitioner

Vs.

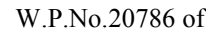
1. Union of India,
Represented by the Secretary,
Ministry of Coal,
New Delhi – 110 001.
2. Neyveli Lignite Corporation Limited,
Represented by its Chairman -cum- Managing Director,
Neyveli – 607 801.
3. C.Senthamilselvan
4. N.Muthu
5. R.Mohan
6. The Deputy Manager (HR)/ EB,
Corporate Office/ HR Department,
NLC Limited,
Neyveli – 607 801.
7. G.Thirunavukarasu (CPF No.25770)



8. Queen Anne (CPF No.30848)
9. S.Karunakara Rao (CPF No.29233)
10. P.Kannan (CPF No.26618)
11. A.Geetha (CPF No.32132)
12. M.Thirugnanam (CPF No.29221)
13. M.Arunthathi (CPF No.32654)
14. M.Sooriyakumar (CPF No.27823)
15. The Chief Vigilance Officer,
NLC Limited, Neyveli – 607 801.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent Corporation relating to the process of selection for Promotion of Assistant Personnel Officers into Entry Level Executive Grade and the Orders of Promotion (Asst. Manager (HR)-E1 Grade and Asst. Executive Manager (HR)- E2 Grade) issued by 6th respondent herein vide his Procs. No.CORP/ HR/ EB/0511/2013 dated 1.3.2013 and quash the same as illegal, arbitrary unreasonable, against the Rules and Regulations of the Company and violation of Article 14 and 16 of the Constitution of India and thereby direct the 2nd respondent to constitute a Selection Committee afresh to select the Assistant Personnel Officers listed in Annexure to the letter of the General Manager/ HR's Lr.No.CORP/HR/EB/NE/0623/2012 dated 01.01.2013 on the basis of merit for induction into entry level Executive Grade (E1/E2 Grade) in HR Discipline to the available vacancies and to award exemplary costs.



For Respondent :

This Writ Petition has been filed by the party-in-person seeking a writ of Certiorarified Mandamus, calling for the records of the Respondent No.2/ Corporation relating to the process of selection and promotion of Assistant Personnel Officers into Entry Level Executive Grade and the orders of promotion dated 01.03.2013 as illegal and arbitrary and sought for re-constitution of the Selection Committee afresh.

2. The brief facts that are relevant for disposal of this Writ Petition are as under:-

2.1 The respondent Corporation initiated steps for filling up the posts of non-executives of E2 Grade in Executive cadre (non-technical) through Departmental Promotion Committee (hereinafter referred to as 'the DPC' for short) in the month of January, 2013. Accordingly, a list of eligible employees from different disciplines were notified on 01.01.2013 and 02.01.2013, requiring them to appear for interview before the DPC to be held on different dates during the month of January, 2013. Accordingly, 172



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employees were called for the selection, including the petitioner along with 87 other employees from the HR discipline. Accordingly, the petitioner and others appeared for interview before the DPC constituted by the respondent Corporation and thereafter, the names of the persons, who were found fit by the DPC were displayed on the website of the respondent Corporation on 04.01.2013. The candidates found to be fit by the DPC were promoted to E-2 Grade through proceedings dated 01.01.2013. The petitioner herein, having been unsuccessful in the said selection process conducted by the DPC, approached this Court by filing the present Writ Petition with the relief as noted herein above.

2.2. The party-in-person contended that the DPC that was constituted for the purpose of conducting interviews and selecting the candidates for promotion to E-2 Grade posts was not properly constituted and the promotion policy of the merit-cum-seniority was given go-bye and the entire selection list was prepared only basing upon the seniority and also contended that the candidates were not selected by the DPC, but by some other persons and further contended that there are certain undetectable manipulations in the process of selection. He also further contended that the respondents have



filled up more number of vacancies than existing through the selection process in question. He also placed reliance on a decision of a learned Division Bench of this Court in the case of ***“Dr.R.Anandaraj -vs- the Director, Jawaharlal Institute of Post Graduate Medical Education and Reasearch, Pondicherry – 605 006”*** made in **W.P.No.35398 of 2012** dated 19.12.2013.

3. On the other hand, learned counsel appearing for the respondent Corporation contended that the DPC was constituted strictly in accordance with the Rules and the entire selection process and awarding of the marks have taken place strictly in accordance with the Rules and the policy of the merit-cum-seniority was followed. He also further submitted that, in the seniority list of eligible candidates for being considered by the DPC, the petitioner was at Sl.No.85 out of 87 employees, who were called for selection in HR discipline and that the petitioner has put-in only 4 years of service in SG-II Grade and the persons, who have put-in more length of services were placed above him in the said list of candidates, and were found eligible for appearing for the interview. He also further submitted that in terms of the promotion policy, it is merit-cum-seniority that is required to be followed for



selecting the candidates for promotion to E-2 Grade and in terms of Clause 1.7.0 of the appointment and the promotion rules for Executives and Supervisors, there are five criteria, basing upon which the merit list is required to be prepared and in terms of the same, the number of years of service in the existing cadre is the first criteria and depending upon the number of years of service they have put-in, appropriate marks would be awarded. Therefore, the seniority in the existing Grade or the number of years completed in the existing grade has a very pivotal role to play in the matter of preparation of merit list by the DPC and awarding of marks. According to learned counsel for the respondent, the candidates who have completed 4, 5, 6, 7 and 8 years of service in the existing grade would be entitled for awarding of weightage marks of 6, 8, 10, 12 and 15 respectively. The petitioner herein, who had put in only 4 years of service is entitled for 6 marks only. The other candidates who have put-in more number of years of service would automatically be entitled for higher marks as stipulated.

4. Further, it is also contended that the persons, who secured outstanding performance in the APA ratings are entitled for 5 marks and whereas, the persons who secured very good, good and satisfactory are



entitled for awarding of 3, 2 and 1 marks respectively. Thus, the DPC awarded the marks by duly taking into consideration several factors and the petitioner could not come up within the zone of consideration basing upon his merit. He also further contended that the petitioner, having participated in the selection process and also having appeared for interview before the DPC, is not entitled to question the very constitution of the DPC and the process of selection, after he emerged as an unsuccessful candidate. In support of this, he also placed reliance on a decision of the Hon'ble Apex Court in the case of ***“Ashok Kumar and another -vs- State of Bihar and others”*** reported in **(2017) 4 SCC 357**.

5. This Court has carefully considered the submissions made on either side and also perused the entire material on record.

6. From the perusal of the affidavit filed in support of the Writ Petition, it appears that the petitioner herein found himself to be more meritorious candidate, possessing all the qualifications and having good experience compared to other candidates who appeared for interview and he also appears to have felt that he has fared very well in the interview conducted by the



DPC. It is also the view of the petitioner that he would definitely be selected by the DPC by following the promotion policy of merit-cum-seniority. It also appears to be the view of the petitioner that in the case of merit-cum-seniority being the policy for promotion, the seniority should never be given any wightage and seniority is bound to be totally ignored. Clause 1.7.0 of the appointment and promotion Rules for Executives and Supervisors in the respondent organization reads as under:-

“ 1.7.0 CRITERIA FOR PROMOTION

1.7.1 Promotion of Executives shall be primarily on Merit and the following criteria will be given due regard.

- a) Number of years of service in the existing Grade.*
- b) Qualifications*
- c) Performance in the existing job as indicated in the Annual Appraisal Reports.*
- d) Performance in the assessment interview to find out the potential for further advancement, quality of leadership, job requirement to the particular Grade etc.*
- e) Attendance norms.*

1.7.2 All candidates who have completed the required number of years of service will be considered for promotion. After making a preliminary evaluation,



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keeping the Organisational requirement and availability of vacancies, suitable number of candidates will be called for interview by the Departmental Promotion Committee.

1.7.3 Management at its discretion shall modify the percentage of eligible employees to be called for selection to E-2/M-1 Grades and percentage of eligible employees to be promoted to E-2/M-1 Grade depending upon Organisational requirements and could also round off to cover particular batch if need be.”

7. From the perusal of the above, it is evident that the promotion of Executives shall be primarily on merit and the criteria that is required to be taken into consideration was also provided. First of the said criteria is the number of years of service rendered by the candidate in the existing Grade. If that be the case, the length of service rendered by the aspirant in the existing cadre would definitely play a pivotal role in the matter of selection and preparation of merit list. Therefore, the contention of the petitioner that the respondents have prepared the selection list only basing upon the seniority cannot be accepted. Obviously, the persons who have put-in more number of



years of service would get more merit as they would naturally secure more weightage marks corresponding to the length of service rendered by them in the existing Grade. Therefore, the apprehension of the petitioner that the selection list was prepared by following the seniority is only an unsubstantiated and unsustainable assumption.

8. The other contention that the selection list was not prepared by the DPC but prepared by somebody else is not substantiated by the petitioner and no material is placed before this Court to consider such submission made by the petitioner. As a matter of fact, as seen from the counter-affidavit filed by the respondent Organization, especially in Paragraph 13, it is evident that once the DPC proceedings are concluded, they were sent for approval to the competent authority and thereafter, the selection list was published on the website of the respondent Corporation and accordingly, promotions were effected.

9. Then, coming to the contention of the petitioner that there are undetectable manipulations, is as vague as it can be, and in the considered view of this Court, the same deserve no consideration, by this Court.



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10. No doubt, as contended by the petitioner, where a certain thing is to be performed in a certain way, the thing must be done in that way or not at all. But, though *prima facie* it appears that the DPC constituted in the instant case is not strictly in accordance with Rule 1.8.0 for want of including the Director Personnel, a perusal of the said Rule 1.8.0 shows that the said requirement of including the Director Personnel as one of member of committee is only a guideline, but not a mandatory requirement. Even otherwise, the petitioner who is an in-service candidate and having complete knowledge about the affairs of the respondent Organization, who is closely following up all the proceedings fully aware about the constitution of DPC in question and with open eyes, he has appeared for interview before the said committee and also made a specific averment in the affidavit filed in support of the Writ Petition that the petitioner has fared very well in the interview and answered all the questions put by the committee and also waited for announcement of the selection list and it is only thereafter, having found himself to be unsuccessful in the said selection process, has chosen to raise his little finger against the constitution of DPC.



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11. In this connection, the law is well settled. The Hon'ble Apex Court in the case of ***"Ashok Kumar and another -vs- State of Bihar and others"*** reported in (2017) 4 SCC 357 held as under:-

" 12. The appellants participated in the fresh process of selection. If the appellants were aggrieved by the decision to hold a fresh process, they did not espouse their remedy. Instead, they participated in the fresh process of selection and it was only upon being unsuccessful that they challenged the result in the writ petition. This was clearly not open to the appellants. The principle of estoppel would operate.

13. The law on the subject has been crystallised in several decisions of this Court. In Chandra Prakash Tiwari v. Shakuntala Shukla [Chandra Prakash Tiwari v. Shakuntala Shukla, (2002) 6 SCC 127 : 2002 SCC (L&S) 830] this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or



she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In Union of India v. S. Vinodh Kumar [Union of India v. S. Vinodh Kumar, (2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792] , this Court held that : (SCC p. 107, para 18)

“18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. (See Munindra Kumar v. Rajiv Govil [Munindra Kumar v. Rajiv Govil, (1991) 3 SCC 368 : 1991 SCC (L&S) 1052] and Rashmi Mishra v. M.P. Public Service Commission [Rashmi Mishra v. M.P. Public Service Commission, (2006) 12 SCC 724 : (2007) 2 SCC (L&S) 345] .)”

14. The same view was reiterated in Amlan Jyoti Borooah [Amlan Jyoti Borooah v. State of Assam, (2009) 3 SCC 227 : (2009) 1 SCC (L&S) 627] wherein it was held to be well settled that the candidates who have taken part in a selection process knowing fully well the procedure laid down therein are not entitled to question it upon being declared to be unsuccessful.”



In the light of the above decision of the Hon'ble Apex, the petitioner is estopped from raising any objection on the constitution of the DPC.

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12. Then, coming to the other contention of the petitioner that the respondents have filled-up more number of vacancies that were existing at the relevant point of time was sufficiently explained by the respondent Organization in its Counter-affidavit at Paragraph No.17. The relevant portion of the same reads as under:-

“The allegations are denied. The DPC was constituted properly and proceedings were held diligently. The allegation that though only 14 vacancies were available, 61 were promoted, overlooked the fact that the DPC held in January 2013 was intended to cover the years 2010, 2011 and 2012 during which years no DPC for promotion to the Executive cadre (non-Technical) had been held. The allegations that promotion rules had been violated or that the DPC had not been legally constituted are emphatically denied. There was no requirement or question of notifying the no. of vacancies to be filled up since direct movement from non-Executive cadre to induction level Executive cadre was not vacancy/post based. The allegation of



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unfair selection etc. are denied. Petitioner is in the habit of making representations. The representation dt. 22.09.2013 annexed to the typed set of documents, is not from the Petitioner. Averments to the contrary are denied. The selection was based on the service record of the individuals and on the performance of the individuals at the selection. It was not purely seniority based or purely merit based. Even some persons senior to the Petitioner have not been selected. The allegation that seniors were ignored and juniors were promoted is baseless. The only two persons junior to the Petitioner were not selected.”

Even otherwise, if more number of vacancies were filled up, the petitioner cannot have any grievance against the same. Further, this Court also does not find any merit in the said contention raised by the petitioner.

13. As seen from the material on record, in all 61 candidates were given the benefit of promotion to E2 Grade under the selection process in question. But for the reasons best known, the petitioner has not chosen to implead any of the persons who got the benefit of selection and promotion pursuant to the selection process in question. For this reason also, this Writ Petition is liable to be dismissed.



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14. In the light of the above, this Court does not find any merit in the Writ Petition and the same is accordingly dismissed. No costs. Connected Miscellaneous Petitions, if any shall stand closed.

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

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New Delhi – 110 001.
2. Neyveli Lignite Corporation Limited,
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MUMMINENI SUDHEER KUMAR, J.

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