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W.P. No.31965 of 2012



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-06-2024

CORAM

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

**W.P. No.31965 of 2012
and M.P. No.1 of 2012**

S. Sivaraj

... Petitioner

-VS-

1. The Chief Manager / Commandant,
Office of the Chief Manager/
Security & Fire Service (Disciplinary
Authority),
Neyveli Lignite Corporation Limited,
Neyveli.
2. The General Manager / TA,
(Appellate Authority),
Office of the General Manager/ TA,
Neyveli.
3. Estate Officer,
Eviction Authority,
Assistant Township Administrator,
Neyveli Lignite Corporation Limited,
Neyveli.

(R3 impleaded as per order dated
28.12.12 by KVJ in M.P.No.2/12
in W.P. No.31965/2012)

... Respondents



Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of CERTIORARIFIED MANDAMUS, to call for the records of the 1st Respondent made in Memo No.S&FS/Disc./A-VIII/F449-06(10)/2010 dated 18.07.2012, in imposing the punishment of "Removal of Service" and confirmed by the 2nd Respondent in Memo No.S&FS/Disc./A.VIII/F449-06 (12)/2010 dated 29.09.2012 and quash the same and direct the Respondents to order re-instatement of the petitioner into services with full back wages and all attendant benefits.

For Petitioner : Mr.N. Ramesh

For Respondents 1 to 3 : M/s. N.A.K. Sarma

ORDER

The impugned orders made in Memo No. No.S&FS/Disc./A-VIII/F449-06(10)/2010 dated 18.07.2012, and Memo No.S&FS/Disc./A.VIII/F449-06 (12)/2010 dated 20.09.2012 passed by the respondents are under challenge.

2. The petitioner submits that he was appointed as I.W., Grade II / Trainee. After completion of the training period, the Senior Manager (Pers)/S & FS), by his proceedings No.263/A-VII/DGM/S & FS/2007 dated 12.03.2007, he was appointed along with other persons as Industrial Worker Grade-II.



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3. While so, the 1st respondent issued a Charge Memo in Memo No.S&FS/Dis./A-VIII/F449-06/2010, dated 26.07.2010. He gave a reply to the Charge Memo, *inter-alia*, contended that S.Chellammal, whom he was alleged to have got married was already married to one Shahul Hameed and that she had filed a Maintenance Case in M.C.No.4 of 1998 on the file of the Judicial Magistrate, Neyveli against the said Shahul Hameed. He filed a divorce petition in H.M.O.P.No.7 of 2008 before the Principal Sub-Court, Cuddalore and an order of divorce was ordered on 18.09.2008. The said Chellammal having suppressed the fact that she married one Shahul Hameed and their marriage is a “void” marriage. The petitioner married one Kavithamani and her name was nominated in all the records. Not satisfied with his reply, a domestic enquiry was conducted into the charges levelled against him.

4. The petitioner further submits that the Enquiry Officer relying upon the documentary evidences produced by the management side, gave a finding that the petitioner suppressed the fact that his 1st wife was alive and he contracted 2nd marriage, which is a misconduct as per the Standing Order 46 (iii) xxv, xxxviii and xxxix and consequently, it was held that the charges



levelled against the petitioner stood proved as per enquiry report dated 31.03.2011. Upon his objection dated 18.04.2011, removal from the service was ordered by an Order dated 18.07.2012.

5. On his appeal, the order of the Disciplinary Authority was upheld and his appeal was dismissed by an Order dated 20.09.2012. Aggrieved over the same, the present writ petition is filed challenging the said Orders.

6. Heard Mr.N. Ramesh, learned counsel for the petitioner and Mr.N.A.K. Sarma, learned counsel for the respondents 1 to 3.

7. Mr. N.A.K. Sarma, learned counsel for the respondents would contend that as the misconduct levelled against the petitioner is serious and grave in nature, after a full fledged departmental enquiry, the charges were held to be proved and “Removal from service” was ordered by an Order dated 18.07.2012. He would further submit that the petitioner's appeal was rejected, confirming the Order of the Enquiry Officer by an Order dated 20.09.2012. The learned counsel for the respondents also submitted that the charges were not only grave but also constituted serious misconduct on the part of the



petitioner, in such cases, it warranted a deterrent punishment commensurate with gravity of proven charges. It was further contended that the penalty awarded is legal and justified.

8. It is relevant to note that the petitioner did not point out any extenuating circumstances in the matters of disciplinary enquiry. From a thorough perusal of the Order passed by the Enquiry Officer, the petitioner had participated in the enquiry and there is no violation of principles of natural justice.

9. In order to decide the issue, it is relevant to extract the details of charges framed against the petitioner, which are given hereunder (two in numbers).

1. Shri. S. Sivaraj, I.W. Gr.II, had married one Smt. S.Chellammal before he got appointed as I.W. Gr.II in N.L.C. While Smt. S. Chellammal is still alive, he had given the name of the wife in all records of NLC such as nomination for pF, Gratuity, Etc., and for medical purposes, one "Kavithamani" as his wife. A verification of his attestation Proforma given at the time of employment indicates that he has mentioned the name of his wife as "Kavithamani".

2. It has also been brought to the notice that he has availing medical benefits and LTC/LTA from 09.02.2008 to 11.02.2008 in



respect of "Kavithamani" and the children begotten through her.

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10. On perusal of the report of the Enquiry Officer, it appears that upon the complaint of Chellammal on 14.07.2008 to the Deputy General Manager/ S&FS stating that her husband has done second marriage and based on her complaint, the departmental enquiry was conducted. So, the Enquiry Officer gave a finding that the charges leveled against him were proved. The impugned orders were passed against him culminating into "Removal from service", which shall not ordinarily be a disqualification for future employment in the company with immediate effect. His appeal was rejected by the Appellate Authority by confirming the order of the Disciplinary Authority.

11. Mr. N. Ramesh, learned counsel appearing for the petitioner vehemently contend that the petitioner admittedly married one Chellammal and on coming to know about the fact that she is already married to one Shahul Hameed, she was away from matrimonial home. Subsequently, the petitioner married one Kavithamani and her name is mentioned in the nomination details. In 2008, an Order of divorce was granted by the Sub Court, Cuddalore in H.M.O.P. No.07/2008 by an Order dated 18.09.2008. Therefore, these actions



cannot be brought under Standing Order No.46 Sub Class (iii) xxxv, xxxviii and xxxix. During the pendency of the disciplinary proceedings, an Order of divorce was granted by the Sub Court, Cuddalore annulling the marriage between the Sivaraj and Chellammal. The complaint of the Chellammal is dated 14.07.2008. H.M.O.P. No.07 of 2008 was taken on file on 21.01.2008 and in the said H.M.O.P, on 03.04.2008, the said Chellammal had entered appearance through her counsel. An exparte Order of divorce was passed by the said Matrimonial Court on 18.09.2008.

12. It also appears that the petitioner has taken steps to examine the said Chellammal during the enquiry proceedings. In these circumstances, whether his actions would be brought under the said Standing Orders being violation of those Standing Orders. The petitioner at the time of joining the service has given his wife name as Kavithamani. The copy of the H.M.O.P. No.07 of 2008 filed by the petitioner. The omission is that, he failed to file H.M.O.P at the earliest point of time.

13. The second charge pertains to the availing of medical benefits and the LTC/ LTA from 09.02.2008 to 11.02.2008 in respect of "Kavithamani" and



the children begotten through her.

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14. As regards the '*Doctrine of proportionality*' the Hon'ble Supreme Court has observed in ***Chairman & Managing Director, V.S.P. And others vs. Goparaju Sri Prbakara Hari Babu [(2008) 5 SCC 569]***, it was held that the jurisdiction of the High Court on the proportionality of the Order of the Departmental Authority is limited, it is further observed and held that "...once it is found that all the procedural requirements have been complied with, the Courts would not ordinarily interfere with the quantum of punishment imposed upon the delinquent employee".

15. In ***B.C.Chaturvethi vs. Union of India and another [(1995) 6 SCC 749]***, the High Court interfered with the Order of punishment imposed by the Disciplinary Authority and substituted the punishment of "Dismissal from service" to one of compulsory retirement on the reasoning that the employee had put in 30 years of service and that he had brilliant academic record and that he had earned promotion after the disciplinary proceedings were initiated. Setting aside the judgment and Order passed by the High Court, the Hon'ble Supreme Court observed that the reasoning is wholly unsupportable. In such



case, reasons are not relevant or germine to modify the punishment. What is required to be considered is the gravity of the misconduct.

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16. The petitioner herein has nominated one Kavithamani as his wife and the children begotten through her. It is evident that he was not living with his first wife Chellammal soon after their marriage in the year 2003, and in the year 2008, he filed a divorce petition in H.M.O.P. No.07 of 2008 before the Sub Court, Cuddalore and an Order of divorce was passed, annulling the marriage of Sivaraj with Chellammal on 18.09.2008.

17. By applying the law laid down by the Hon'ble Supreme Court, the aforestated judgments to the facts of this case, the Order passed by the Disciplinary Authority and confirmed by the Appellate Authority is not proportionate to the charges leveled against the petitioner. Of course, there is no irregularity in conduction of departmental enquiry. Based on the aforesaid circumstances, I am of the considered view that the punishment of "Removal from service" awarded are not commensurate with the charges leveled against the petitioner.



18. The petitioner was appointed on 12.03.2007 as Industrial Worker Gr.II and now, the age of the petitioner would be roughly around 58 years, therefore in order to have effective justice, an Order of re-instatement with 25% back wages is ordered and the said exercise shall be completed within a period of eight weeks from the date of receipt of this Order.

19. In view of the above discussions, the writ petition is disposed of. Consequently, connected miscellaneous petitions, if any stands closed. No costs.

24-06-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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To

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R. KALAIMATHI, J.

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