



W.A.No. 2821 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 01.10.2024

DELIVERED ON: 29 .10.2024

CORAM:

THE HON'BLE MR. K.R. SHRIRAM, CHIEF JUSTICE

and

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.A.No. 2821 of 2024

1. The Chief Manager/Commandant,
Office of the Chief Manager/Security
& Fire Service (Disciplinary Authority)
Neyveli Lignite Corporation Limited,
(Presently known as M/s NLC India Limited)
Neyveli.

2.The General Manager/ TA
(Appellate Authority)
Office of the General Manager/TA, Neyveli.

3.Estate Officer,
Eviction Authority,
Assistant Township Administrator,



W.A.No. 2821 of 2024

Neyveli Lignite Corporation Limited,
(Presently known as M/s NLC India Limited)

Neyveli

..Appellants

Vs

S.Sivaraj

..Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 24.06.2024 in W.P.No. 31965 of 2012.

For Appellant : Mr. N.Nithianandam

For Respondent : Mr. Mohallaal

For Mr. N.Ramesh

JUDGMENT

(D. KRISHNAKUMAR, J.)

Aggrieved by the order passed by the writ court in W.P.No. 31965 of 2012, dated 24.06.2024, the present writ appeal has been filed by the appellant.

2. Before advertng to the submissions made by learned counsel for the parties, a brief reference to the relevant facts is necessary;

The respondent was appointed as IW, Grade II/Trainee and after completion of training period, he was appointed as Industrial Worker Grade-II by vide dated 12.03.2007. The 1st appellant issued a charge memo dated 26.07.2010 for the



W.A.No. 2821 of 2024

offences that the respondent had suppressed his first marriage with one S.Chellammal and given the name of one Kavithamani as wife in his service records and claimed medical benefits and LTC/LTA in respect of said Kavithamani and the children begotten through her. Based on the enquiry officer's report, a departmental enquiry was conducted and the punishment of removal from service was imposed on the respondent and the same was confirmed by the Appellate authority. Challenging the said dismissal order, the respondent had preferred a writ petition in W.P.No. 31965 of 2012 before this Court. The said writ petition came to be disposed of by the writ court, directing the appellant –authority to reinstate the respondent with 25% back wages. Aggrieved by the said order of the writ court, the present writ appeal is filed.

3. The learned counsel appearing for the appellant has submitted that the Respondent was married to Smt. S. Chellammal on 04.06.2003, registered as Marriage No. 250 of 2003 with the Registrar of Cuddalore. While this marriage was still valid, he married Smt. Kavithamani on 21.05.2004, committing the offence of bigamy. Upon entering the service of NLCIL, on 26.07.2006, the respondent submitted a Proforma falsely declaring Smt. Kavithamani as his wife,



W.A.No. 2821 of 2024

thereby obtaining a Medical Identity Book and other service benefits for ineligible persons. Subsequently, the Respondent filed H.M.O.P. No. 7 of 2008 before the Sub-Court, Cuddalore, on 07.01.2008, seeking to annul his marriage to Smt. Chellammal by claiming that he discovered her previous marriage to one Mr. Shakul Hameed only in 2008. An ex parte decree was passed in H.M.O.P. No. 7 of 2008 on 18.09.2008, declaring the marriage null and void. Therefore, at the time of joining NLCIL in 2006, the Respondent was guilty of bigamy and had misrepresented details regarding his dependents, leading to an illegal claim of service benefits. These actions constitute clear misconduct.

4. The learned counsel appearing for the appellant has further submitted that for the misconduct by the respondent, the appellant has issued a charge memo dated 26.07.2010 to the respondent and proceeded with enquiry. Following the completion of the enquiry, the Enquiry Officer submitted his report on 31.03.2011. The Disciplinary Authority forwarded this report to the Respondent on 06.04.2011, asking for objections within five days. The Respondent submitted objections on 18.04.2011, but they failed to address the proven charges of bigamy and misuse of NLCIL service benefits. After reviewing all materials, the



W.A.No. 2821 of 2024

Disciplinary Authority issued a provisional show cause notice on 20.02.2012, proposing the penalty of "Removal from service without disqualification for future employment in the Company." The Respondent submitted a representation on 15.03.2012, but it did not provide any mitigating evidence. As a result, the Disciplinary Authority imposed the penalty of removal from service through detailed proceedings on 18.07.2012, while informing the Respondent of his right to appeal within 14 days.

5. According to the appellant, the punishment of removal of service awarded to the respondent after detailed enquiry for the grave and serious misconducts committed by the respondent was unbecoming of an employee of NLCIL. Therefore, the order of the writ court, without considering the above facts, directing the appellant to reinstate the respondent with 25% backwages is unsustainable in law and liable to be set aside.

6. On the other hand, the learned counsel for the respondent has submitted that the order of punishment of "Removal from Service" imposed on the respondent is illegal, arbitrary, and without jurisdiction. The appellant failed to consider that the respondent's marriage to Smt. Chellammal was null and void as she was



W.A.No. 2821 of 2024

already married to one Shahul Hameed, a fact she suppressed. This was proven through Maintenance Case M.C.No.4 of 1998, filed by Chellammal herself in the Judicial Magistrate Court, Neyveli. Under Section 11 of the Hindu Marriage Act, a marriage is null and void if either party has a spouse living at the time of marriage, as specified in Section 5(i). Therefore, since Chellammal had a spouse, the respondent's marriage to her should have been declared void ab initio. The appellant's failure to recognize this legal position renders the punishment of removal from service unsustainable.

7. The learned counsel for the respondent has further submitted that the respondents erred by initiating disciplinary proceedings based on Chellammal's representation without allowing her to be cross-examined during the enquiry. This denial of the respondent's right to confront her testimony constitutes a material error. Moreover, even before the charge memo was served, the respondent had filed a petition for divorce in H.M.O.P.No.7 of 2008 under Section 13(1)(i) of the Hindu Marriage Act, Subordinate Court, Cuddalore, citing Chellammal's previous marriage to Shahul Hameed, which was uncontested by her, and decree order came to be passed, dissolving the marriage between the respondent and said



W.A.No. 2821 of 2024

Chellammal. The appellant without considering all the above facts, had imposed major punishment of order of removal of service. The writ court rightly considered the case and directed to reinstate the respondent with 25% back wages. Therefore, the order of the writ court is perfectly valid and does not require any interference by this Court.

8. Heard Mr.N.Nithianandam, learned counsel appearing for the appellant and Mr.Mohanlaal, learned counsel appearing for the respondent and perused the materials available on record.

9. The central issue in this writ appeal is whether the punishment of removal from service, imposed on the respondent by the appellant-Corporation following charges of misconduct, is justified or not?



10. Vague and unclear Charges:

Charges framed against the respondent vide charge memo dated 26.07.2010 are as follows;

- i. 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.*
- ii. 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.*

10.2 The aforesaid charges says that when the first wife was alive, the respondent had given the name of one Kavithamani in all his service records as his wife and availed benefits in her name. Based on the aforesaid charges, the disciplinary authority has concluded the proceedings as against the respondent on



W.A.No. 2821 of 2024

the ground that the respondent has contracted second marriage with Kavithamani when the first marriage with Chellammal was subsisting, therefore he committed criminal offence of bigamy which is punishable under IPC.

10.3 In order to prove the offence of bigamy under the Indian Penal Code, there must be specific mention that the respondent "contracted a second marriage with Kavithamani while the first marriage with Chellammal was subsisting." This crucial fact is missing in the above charges. Without explicitly mentioning the act of contracting a second marriage, the charges do not meet the legal requirements for punishing the respondent under bigamy allegation. The act of the respondent mentioning the name of Kavithamani as his wife in official records alone does not establish the offence of bigamy. Therefore, this Court has no hesitation to hold that the charges are unclear, vague and irrelevant to punish the respondent on the ground that he committed criminal offence of bigamy punishable under IPC.



11. Punishment -does not fall under the ambit of sub-clauses of standing orders:

11.1 The punishment of removal from service was issued on the ground that the respondent had committed certain acts of misconducts falling under sub-clauses (iii),(xxxv), (xxxviii) and (xxxix) of Standing Order 46 of NLC's . The relevant clauses are extracted below;

46. Acts and omissions constituting misconduct:

....

(iii) Theft, fraud or dishonesty in connection with the Company's business or property.

....

....

(xxxv). Any act or omission punishable under law

.....

(xxxviii). Breach of any of the Standing Orders or any rules framed

under these orders.

(xxxix). Abetment of, or attempt to commit, any of the above act of misconduct.



W.A.No. 2821 of 2024

As discussed above, the charges framed for the offence that the respondent has mentioned the name of Kavithamani as his wife in his service records while the first wife Chellammal is alive. Since as held above, the aforesaid charges are vague, unclear and ambiguous and irrelevant to the violations of the aforesaid clauses in the standing orders, the appellant cannot impose major punishment of removal from service which does not fall under the ambit of sub-clauses (iii),(xxxv), (xxxviii) and (xxxix) of Standing Order 46 of NLC's .

11.2 Further, the report of the Enquiry officer shows that totally 8 documents were marked on the side of management as Exhibits 1 to 8. No witness was examined on the management side. Cross examination was held on 17.02.2011 and 16.03.2011 and the same is extracted below;

On 17.02.2011 11.30 hrs	All were present Defendant had cross examined Presenting Officer with 21 questions. During cross examine defendant had question the P.O. that whether the personnel volumn-I, Sr.No.8 Page 8-1 and 1 No 55 page 8-23 of Standing order No.46 are reproduced on the notice board of Security and Fire Service? For which the P.O.informed that he would reply during next sitting Another question was put up by Defendant clarifying that whether Shri.Sivaraj knew that Contracting Second Marriage is against the rules of Corporation? P.O. had said that there is no possibility to know about the rule. However, the told
----------------------------	--



WEB COPY



W.A.No. 2821 of 2024

	that it should be checked with Society workers rules and regulations whether a society worker contact second marriage. The same would be informed during next sitting. The enquiry was adjourned.
16.03.2011 11.30 hrs	All were present, Defendant cross examined the P.O with 14 question. The defendant raised the question that if there is any society standing officer objecting a society worker for second marriage. P.O. replied that it is no where mentioned in he society standing order. Another question was asked by Defendant whether any opportunity had been given to Shri.Sivaraj to know about Standing Order in Training Complex the P.O. informed that no such opportunity was extended to him to know about the Standing Order. Since there was no more question to ask by defendant the enquiry was concluded with an instruction to submit their written brief on or before 23.03.2011.

11.3 It is seen from the enquiry report that the defendant in his written statement has submitted that the respondent employee had not claimed any type of benefit from the appellant-corporation against his first wife. Moreover he claims that neither any advertise board kept anywhere mentioning about standing order No.46 nor he was imparted any training in this regard. Thus, no opportunity had been extended by the management to him about the fact. The presenting officer had given a wrong information during enquiry process that such rules and regulation are displayed at Corporate Office. The said Chellammal was summoned



W.A.No. 2821 of 2024

to attend the enquiry, but she did not attend the enquiry. Further, the appellant-department failed to establish the earlier marriage of Chellammal with Shahul Hameed, through any oral or documentary documents.

11.4 Further, without any specific clause in the said Standing Orders or Rules to impose the major punishment for the said offence of misconduct, the enquiry officer concluded the proceedings as against the respondent on the ground he committed criminal offence of bigamy which is punishable under IPC.

12. The above act of misconduct that at the time of giving nomination application in the name of Kavithamani as his wife would not attract the charges against the respondent employee under above standing orders. Thus the appellant failed to establish the charges framed against the respondent to attract the allegations of misconduct. Therefore the arguments advanced by the appellant would not attract any provisions or regulations for imposing major punishment as against the respondent. Therefore we are of the view that the appellant has not made any substantial arguments to interfere with the order of the writ court.



W.A.No. 2821 of 2024

13. It is also an admitted fact that the respondent has submitted his explanation that he filed a divorce petition at the time of entry into service, but he did not obtained any decree as against his first wife. The only allegation against the respondent is non disclosure of his first marriage in his service records at the time of his entry into service. Moreover, as per the records, no criminal case was registered against the respondent for bigamy, and he has not been convicted by any competent criminal court. Without such a criminal conviction, the imposition of the major punishment of removal from service is unjustifiable. The principle of proportionality in disciplinary actions mandates that the punishment should correspond to the gravity of the misconduct. In this case, the respondent's actions, while constituting misconduct under the Standing Orders, do not warrant the major punishment of removal from service.

14. In view of the aforesaid discussion, we are of the view that the enquiry officer and the appellant authority has not appreciated the case of the respondent in proper perspective and without having any substantive materials and evidence as against the respondent, the major punishment of removal from service was imposed by the appellant herein. The charge memo dated 26.07.2010, based on



which the major punishment was awarded is vague, irrelevant and ambiguous.

Further, no criminal proceedings were initiated against the respondent, and he has not been convicted by a competent criminal court to substantiate the allegation that the respondent had violated laws pertaining to bigamy punishable under IPC. Therefore, the decision of the appellant to impose such severe punishment of removal from service lacks necessary legal foundation.

15. Considering the fact that the respondent has served the appellant-corporation for over 30 years and no adverse entries in his service records and got promoted by the appellant-authority after the disciplinary proceedings were initiated, and he is at the fag end of his retirement, the said charges framed against him have deprived his right to receive terminal benefits. The writ court has rightly held that the appellant is entitled for reinstatement with 25% back wages by considering the age of the writ petitioner/respondent would be roughly around 58 years at the time of disposal of the writ petition. Further, there are no charges framed for violation of any of the provisions of the standing orders to impose the major punishment of removal of service on the respondent.



W.A.No. 2821 of 2024

Therefore, without any hesitation, we have come to the conclusion that the order of the writ court does not warrant interference.

16. In fine, the writ appeal stands dismissed . No costs.

(K.R.SHRIRAM., C.J.) (D.KRISHNAKUMAR.J,)

29 .10.2024

Internet: Yes

Index : Yes

Speaking Order/Non Speaking order

ak



WEB COPY



W.A.No. 2821 of 2024

HON'BLE CHIEF JUSTICE

and

D. KRISHNAKUMAR, J.

W.A.No. 2821 of 2024

29 .10.2024