

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31-8-2010

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.1465 of 2006 & W.P.M.P.No.1657 of 2006
W.P.No.27203 of 2007 & M.P.No.2 of 2007

W.P.No.1465 of 2006

R. Selvaraju ... Petitioner

Vs.

The Chief General Manager (P&A),
Neyveli Lignite Corporation Limited,
Corporate Office, P & A Department,
Neyveli - 607 801 ... Respondent

This writ petition is filed under Article 226 of Constitution of India, praying this Court to issue a writ of Certiorari calling for the records of the respondent dated 24.11.2005 in Memo No.CORP/P&A/NEE/0613/2005 and quash the same.

W.P.No.27203 of 2007

NLC Workers Progressive Union
rep.by its General Secretary,
R. Gopalan ... Petitioner

Vs.

1. The Central Government Industrial Tribunal,
cum-Labour Court,
1st Floor, 'B' Wing, 26, Haddows Road,
Shastri Bhawan,
Chennai - 6.
2. The Chief General Manager, Mines-I,
Neyveli Lignite Corporation Limited,
Neyveli.
3. The Deputy Superintendent/
Western Flank, Mines-I,
Neyveli Lignite Corporation Limited,
Neyveli.

4. The Deputy Superintendent/
GWC & Drills Mines -I,
Neyveli Lignite Corporation Limited,
Neyveli.
5. The Director Personnel,
Neyveli Lignite Corporation Limited,
Neyveli.

... Respondents

This writ petition is filed under Article 226 of Constitution of India, praying this Court to issue a writ of Certiorarified mandamus calling for the records of the award of the Central Government Industrial Tribunal-cum-Labour Court, dated 20.12.2006 in F.No.ID.425 of 2004 upholding the order of the third respondent dated 4.6.2001 in Proc.No.5433/A5/GM/MI/99, imposing the punishment of reduction of one increment with cumulative effect and quash the said award and order and direct restoration to the workman R.Selvaraju of his full salary with all increments.

For Petitioner in : Mr.M.Muthupandian
W.P.No.1465/2006

For Petitioner in : Mr.R.Sunil Kumar
W.P.No.27203/2007

For Respondent in : Mr.Nithiyanandam,
W.P.No.1465/2006 & for Mr.N.A.K.Sarma
RR-2 to 5 in
W.P.No.27203/2007

1st Respondent in : Labour Court
W.P.No.27203/2007

COMMON ORDER

W.P.No.1465 of 2006 is filed by one C. Selvaraj (hereinafter called 'Workman') challenging the cancellation of his regularisation as Junior Operator (SME) and modifying the regularisation date as 1.7.2002 instead of 1.10.2000.

2. W.P.No.27203 of 2007 is filed by the Workers Progressive Union of Neyveli Lignite Corporation challenging the award dated 20.12.2006 made in I.D.No.425 of 2004 passed by the Central Government Industrial Tribunal-cum-Labour Court, Chennai, confirming the order of the NLC dated 4.6.2001 imposing the punishment of reduction of one increment with cumulative effect to the petitioner in W.P.No.1465 of 2006 and direct the management of NLC to restore his full salary with all increments.

3. The petitioner in W.P.No.1465 of 2006 was appointed as Artisan Trainee in NLC Limited on 28.6.1984, which is a Government of India Undertaking. He was given promotion as Junior Operator Trainee (SME) and sent for training with effect from 16.3.1999. On completion of 1½ years of training, he was given regularisation as Junior Operator (SME) with effect from 1.10.2000 along with 36 others, by order dated 20.3.2001.

4. While the workman was functioning as SME Operator, by order dated 1.7.2002 the impugned order was passed stating that the said order given in favour of the petitioner regularising him as Junior Operator (SME) is modified with effect from 1.7.2002 instead of 1.10.2000 on the ground that a charge memo dated 10.5.1999 was issued to the workman on 4.6.1999 for demand and acceptance of illegal gratification from one Contractor and after enquiry, punishment of withholding of one increment with cumulative effect was imposed by order dated 4.6.2001 passed by the NLC and without noticing the said pendency of the charge, the regularisation order was issued earlier from 1.10.2000 and therefore the same is modified with effect from the date of completion of the punishment period, i.e, from 1.7.2002.

5. The order of the NLC imposing punishment was challenged by the Workman through NLC Workers Progressive Union by raising I.D.No.425 of 2004 and the said industrial dispute was dismissed by the Central Government Industrial Tribunal, Chennai, by award dated 20.12.2006, which is challenged in W.P.No.27203 of 2007 by the Union. The contentions raised are that there are procedural violations during the conduct of enquiry; that the Contractor, who allegedly gave bribe was not examined and therefore the principles of natural justice was violated, which caused serious prejudice to the workman; that the punishment imposed relying upon the illegal enquiry report is unsustainable; and that, the Labour Court without considering the said vital aspect upheld the punishment and the same is to be set aside.

6. While admitting the writ petition W.P.No.1465 of 2006 this Court granted interim stay regarding modification of promotion order.

7. The learned counsels for the petitioners viz., Workman as well as the Union contended that the Contractor viz., Lakshmipathy's statement dated 16.11.1998 was relied upon by the Enquiry Officer, which was marked through one Akbar Khan and the author of the statement was not cited as witness and therefore the said action of the Enquiry Officer in marking the statement and giving a report holding that the workman is guilty is unsustainable. The learned counsels also submitted that one Sankaran, who conducted vigilance enquiry was also not examined. The non-examination of the said witnesses vitiated the enquiry proceedings and the findings given and the punishment imposed, which are confirmed by the Labour Court, are

to be set aside. The learned counsels further submitted that even assuming that the punishment is to be upheld, the petitioner having been given promotion without any suppression of fact, the promotion order cannot be cancelled and in any event the salary paid for the promotion post cannot at all be recovered.

8. The learned Counsel for the NLC on the other hand submitted that the said statement given by the Contractor Lakshmipathy was marked through one Pichaimuthu and he was examined in the presence of the workman and therefore the Enquiry Officer was right in relying upon the said statement and held that the charge levelled against the workman was proved. The learned counsel also submitted that the workman cross-examined the said witness through his defender and therefore no prejudice was caused due to the non-examination of the person, who conducted vigilance enquiry. The learned counsel further submitted that the Labour Court gave a finding that the workman fully participated in the disciplinary enquiry and he never raised any objection and the objections raised before the Labour Court was found as an after-thought and the Labour Court also held that the enquiry held was fair and proper and there is no procedural violation and the findings given by the Labour Court cannot be treated as perverse, to set aside the same.

9. I have considered the rival submissions made by the learned counsels for the petitioner/workman, Union as well as the NLC management.

10. The charge levelled against the workman reads as follows:

"Sri.R.Selvaraj, PF.No.27907, Tech Gr-I, now working as Jr.SME Opr/Trainee has deliberately slowed down of work in an unjustified manner and demanded and accepted illegal gratification of Rs.1,500/- from a registered contractor (Registration No.221) by name Sri.Lakshmipathy on 30.9.98 in violation of Standing Order."

From the perusal of the above charge it is evident that the workman demanded and accepted illegal gratification of Rs.1,500/- from a registered Contractor viz., Lakshmipathy on 30.9.1998 in violation of the Standing Order and deliberately slowed down the work in an unjustified manner. The said charge is a serious one. The said Lakshmipathy, Contractor gave statement before the Vigilance Officer on 16.11.1998 implicating the workman. The said Contractor, who said to have given a statement, which was relied on in the enquiry proceeding, was not examined, however the said statement was marked through one Akbar Khan during the regular enquiry. The Contractor from whom the workman allegedly demanded and accepted bribe has not been examined during the departmental enquiry, who is a prime witness. The said Akbar Khan is not competent to speak about the contents in the alleged statement given by the said Lakshmipathy

before the Vigilance Officer, which is marked as Ex.M-3. However, the witnesses viz., Pichaimuthu and Ramachandran, who gave statements before the Vigilance Officer were examined. The said statements clearly implicate the workman and the workman also cross examined the said two witnesses during the regular enquiry and their statements given at the time of vigilance enquiry was also marked. The said Pichaimuthu deposed during enquiry as follows (translated version):

"The Contractor Lakshmipathy gave Rs.1,000/- each to myself and other co-workers, namely, Dinakaran, Rajendran, Selvaraj, Ramachandran and Mark, on Ayudha Pooja day, in order to complete the aforesaid bore work. Further at the finishing stage of the work, the Supervisor Anand gave Rs.500/- more to all co-workers, who participated in the work."

The statement of Ramachandran (translated version) reads as follows:

"The Contractor Lakshmipathy gave Rs.1,500/- each to myself and A.Pichaimuthu. A.Pichaimuthu got me Rs.1,000/- as first installment and Rs.500/- as second installment. I received the said amount. Further, it is learnt that the Contractor Lakshmipathy had given Rs.1,500/- each to other co-workers namely Mark, Selvaraj, Rajendran and Dinakaran, as given to both of us."

On the basis of the above statements given by the said Pichaimuthu and Ramachandran, who were also cross-examined by the workman, the Enquiry Officer gave a report adverse to the workman, based on which the punishment of reduction of one increment with cumulative effect was imposed.

11. Normally while proving the charges against the Delinquent Officer, the prime witness has to be examined, failing which the alleged statement given by the prime witness, cannot be used against the Delinquent Officer. In this case, even though the statement given by the Contractor Lakshmipathy on 16.11.1998 is marked, which is also relied on by the enquiry officer, is eschewed, there are other sufficient materials viz., the evidence of Pichaimuthu and Ramachandran to prove the guilt of the workman for the demand and acceptance of bribe. Thus, there is preponderance of evidence available in this case to prove the guilt of the workman and the charge of corruption is proved by the NLC. Therefore the punishment imposed on the workman based on the enquiry report dated 22.12.2000 is just and proper, which was rightly held so by the Labour Court. No case is made out to treat the said finding of fact as a perverse finding. Hence the award of the Labour Court upholding the punishment imposed against the petitioner is just and proper and the

writ petition challenging the said award is liable to be dismissed and accordingly dismissed.

12. Insofar as the order modifying the promotion given to the workman as Junior Operator as 1.7.2002 instead from 1.10.2000 is concerned, the said promotion was given without noticing the pendency of the charge which is a serious charge and therefore the modified order issued on 24.11.2005 cannot be held illegal. Promotion given by mistake can be corrected by the Department. The said issue is decided by the Supreme Court in the decision reported in (2008) 2 SCC 750 (Union of India v. Narendra Singh) wherein in paragraph 32 it is held thus,

"32. It is true that the mistake was of the Department and the respondent was promoted though he was not eligible and qualified. But, we cannot countenance the submission of the respondent that the mistake cannot be corrected. Mistakes are mistakes and they can always be corrected by following due process of law. In ICAR v. T.K.Suryanarayan ((1997) 6 SCC 766) it was held that if erroneous promotion is given by wrongly interpreting the rules, the employer cannot be prevented from applying the rules rightly and in correcting the mistake. It may cause hardship to the employees but a court of law cannot ignore statutory rules."

13. Insofar as recovery for the salary paid is concerned, the workman having been given promotion with effect from 1.10.2000 and worked in the promoted post and received salary, the said salary paid to the workman from 1.10.2000 to 30.6.2002 shall not be recovered in terms of the decision of the Supreme Court reported in 2009(1) Supreme 163 (Syed Abdul Qadir & Others vs. State of Bihar & Others), wherein in paragraph-28, the Supreme Court held as follows:-

"28. Undoubtedly, the excess amount that has been paid to the appellants-teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction,

negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made."

Thus, the recovery proposed is quashed. It is open to the management to re-fix the workman's salary from 1.7.2002 by issuing notice to the workman and after considering his objections.

In the result, W.P.No.1465 of 2006 is disposed of on the above terms and W.P.No.27203 of 2007 is dismissed. No costs. Connected miscellaneous petitions are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

vr

To

1. The Central Government Industrial Tribunal
-cum-Labour Court, 1st Floor, 'B' Wing, 26, Haddows Road,
Shastri Bhawan, Chennai - 6.
2. The Chief General Manager (P&A),
Neyveli Lignite Corporation Limited,
Corporate Office, P & A Department, Neyveli - 607 801
3. The Chief General Manager, Mines-I,
Neyveli Lignite Corporation Limited, Neyveli.
4. The Deputy Superintendent/Western Flank, Mines-I,
Neyveli Lignite Corporation Limited, Neyveli.

5. The Deputy Superintendent/GWC & Drills Mines -I,
Neyveli Lignite Corporation Limited, Neyveli.
6. The Director Personnel, Neyveli Lignite Corporation Limited,
Neyveli.

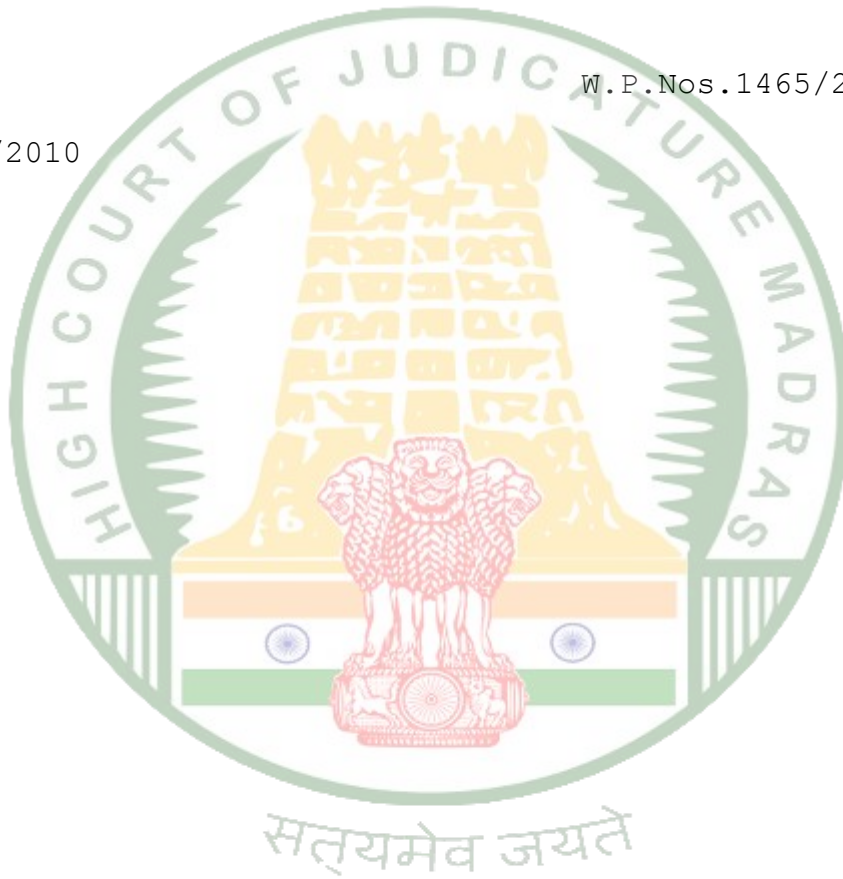
1 cc To Mr.N.A.K.Sarma, Advocate, SR.65161

1 cc To Mr.M.Muthupandian, Advocate, SR.64525

1 cc To Mr.R.Sunilkumar, Advocate, SR.64815

NSM(CO)
sra 14/09/2010

W.P.Nos.1465/2006 & 27203/2007



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