

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.9217 of 2009

A.Subramanian

.. Petitioner

vs.

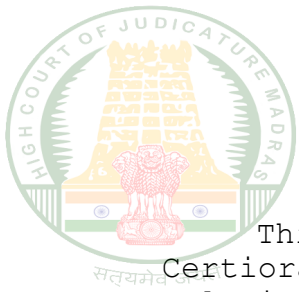
1. The Chief Manager/Personnel/Mine-1,
(Appellate Authority),
Neyveli Lignite Corporation Limited,
Neyveli 607 803.
2. The Senior Manager/Personnel/Mine-1,
(Disciplinary Authority),
Neyveli Lignite Corporation Limited,
Neyveli 607 803.
3. The Deputy Manager/Personnel/Mine-1,
Neyveli Lignite Corporation Limited,
Neyveli 607 803.
4. Rep. Neyveli Lignite Corporation.Ltd.,
rep by its Chairman Cum Managing Director,
Block 1, Neyveli 607 803.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari Mandamus to call for the records from the respondents relating to the order of the second respondent in Proc.No.7920/DA/CGM/M-II/2006 dated 22.01.2009 and the order of the first respondent in Lr.No.CM/P & A/App. Authority/2009 dated 24.04.2009 and quash the same and consequently, direct the respondents to reinstate the petitioner in service with service monetary and attendant benefits and pass orders.

For Petitioner : Mr.Kandhan Duraisami

For Respondents : Mr.N.Nithianandam
for R1 to R4



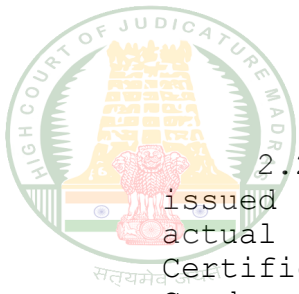
O R D E R

This writ petition has been filed seeking to issue a Writ of Certiorari Mandamus to call for the records from the respondents relating to the order of the second respondent in Proc.No.7920/DA/CGM/M-II/2006 dated 22.01.2009 and the order of the first respondent in Lr.No.CM/P &A/App. Authority/2009 dated 24.04.2009 and quash the same and consequently, direct the respondents to reinstate the petitioner in service with monetary and attendant benefits and pass orders.

2. The case of the petitioner in brief is as follows:

The petitioner was appointed as Assistant Manager in the Industrial Canteen, Neyveli Lignite Corporation on 09.11.1989 and then, he was given promotion up to the level of Assistant Manager (Special Grade-B). On 17.09.1993, a charge memo was issued to the petitioner alleging that the petitioner submitted false educational certificate to get employment. Thereafter, disciplinary proceedings was initiated and enquiry was conducted. Based on the report of the Enquiry Officer, the disciplinary authority had given show cause notice to the petitioner and he has given explanation. Considering the explanation, the petitioner was imposed a punishment of stoppage of next increment with cumulative effect vide order dated 21.06.1997. Thereafter, vide order dated 03.03.1999, he was promoted to the next level as Assistant Manager, Grade-I, with effect from 01.06.1998. However, while he was under suspension, the authorities have lodged a criminal complaint. Hence, he filed Crl.O.P.No.14187 of 1999 before this court and got anticipatory bail on 13.08.1999.

2.1. Again, the petitioner was placed under suspension vide order dated 17.08.1999 and then, the Executive Engineer vide order dated 07.09.1999, called upon the petitioner to show cause, as to why disciplinary action should be not be taken. The petitioner had given explanation and he had also filed W.P.No.17877 of 1999 to quash the suspension order dated 17.08.1999 and show cause notice dated 07.09.1999. Since the counsel for the respondent Corporation had stated before the court that departmental action initiated against the petitioner would be dropped; and the suspension would be revoked, without prejudice to the criminal proceedings; the above writ petition was dismissed on 02.12.1999. In the Criminal Complaint, the Sub Inspector of Police, Crime, Block-8 Police Station Neyveli had sent a communication, confirming that the criminal case was treated as UN (Undetected) on 01.07.2000 and also confirmed that no case was pending against the petitioner in the Neyveli Town Police Station. Thereafter, vide order dated 22.10.2003, the petitioner was given promotion to the post of Assistant Manager (Special Grade-B) with effect from 10.06.2003.



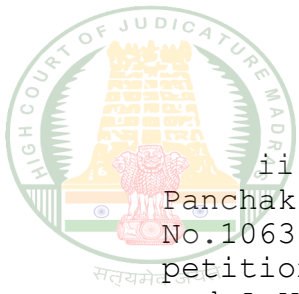
2.2. On 26.07.2005, the Additional Chief Manager(Personnel) issued an order directing the petitioner to produce the proof of actual date of birth. The petitioner had submitted his Transfer Certificate for M.A.(History) in Annamalai University and PAN Card. Since his Transfer Certificate for 10th standard, Mark List and Original Community Certificate were handed over to the officer of the Vigilance Department by name Mr.S.Pichai, who conducted enquiry and not returned to the petitioner, he informed the same to the Additional Chief Manager (Personnel). A detailed Questionnaire Form was furnished to the petitioner and it was filled up by him on 24.03.2005.

2.3. Again, the second respondent had issued a fresh charge memo dated 11.10.2006, alleging the same charges, which were already enquired and finally dropped. In this order, it has been unilaterally concluded that the petitioner's date of birth is 21.08.1954 and not as 04.01.1963. Hence, the petitioner filed W.P.No.41419 of 2006 and obtained interim stay. Further, the petitioner participated in the enquiry and produced documentary proof, enclosing the copy of the Medical Book of his mother A.Muniyammal to prove that his mother is different person from another 'Muniammal" who is said to be the mother of A.Venkatesan and A.Panchaksharam, relied upon by the respondent. Without appreciating the documentary evidence adduced by the petitioner, the Enquiry Officer has given finding, declaring that the Transfer Certificate produced by him is false. The petitioner gave his objection and requested the management to arrange for DNA test to prove himself (A.Subramanian) and other person with name A.Subramanian whose date of birth is stated to be 21.08.1954 are different persons. But, without giving opportunity of subjecting the petitioner to DNA test, the second respondent vide order dated 05.12.2008, had informed that they proposed to inflict a punishment of removing him from service.

2.4. According to the petitioner,

i) The name of Mr.A.Subramanian, referred in the order of the second respondent is, son of T.R.Annamalai, worked as Sanitary Overseer(Maistry), allottee of Quarters No.B6, Data Tree Lane, Block 18; whereas, the petitioner's father name is R.V.Annamalai, and he never worked in NLC and the petitioner never studied in NLC Boys High School.

ii) The employees namely V.Thiruvengadam and T.Mathew, who gave evidence that one A.Subramanian studied with them in NLC Boys High School, has no relevance to confirm the petitioner's date of birth, since they are not the classmates of the petitioner and they did not identify the petitioner as their classmates; and they may studied with one Subramanian.



ii) Further, in the order, it is stated that one A. Panchaksharam with CPF No.22625 and one A.Venkatesan with CPF No.10638 are brothers of the petitioner; but according to the petitioner, he do not have any brother by name A. Panchaksharam and A.Venkatesan, and the R.Annamalai, mentioned in the impugned order is not his father R.V.Annamalai.

iii) The Directorate of Government Examinations confirmed the certificate issued to A.Subramanian, who had sit over the SSLC examination in March 1975; whereas, the petitioner had appeared for SSLC Examination as a Private Candidate in March 1985.

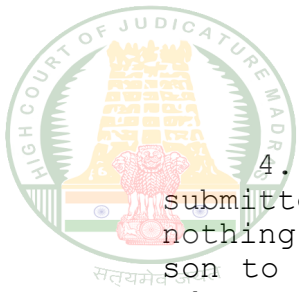
iv) Two separate medical books were issued to two A.Muniammals. The medical number assigned to the petitioner's mother A.Muniammal is M35742; whereas the medical number assigned to another A.Muniammal is M22625 and the photographs attached to the above medical books will clearly establish the fact that the mother of the petitioner A.Muniammal is different from other A.Muniammal.

v) Petitioner's mother A.Muniammal, w/o R.V.Annamalai expired on 28.02.2003; whereas, other, A.Muniammal, w/o R.Annamalai and mother of A. Panchaksharam and A.Venkatesan expired only on 28.03.2007.

2.5. Under these circumstances, the petitioner filed W.P.30630 of 2008 praying to quash the above said order of the second respondent dated 05.12.2008. The above writ petition was disposed of on 23.12.2008, directing the petitioner to submit his explanation to the show cause notice, giving liberty to challenge any order, which may be passed by the second respondent ultimately. Though the petitioner had given his explanation on 21.01.2009, along with all the above documentary evidence, the second respondent in a hurried manner, without notice or pay/wages, passed an order on the next day i.e. on 22.01.2009, removing the petitioner from service.

2.6. The petitioner preferred an appeal before the first respondent on 03.02.2008, pointing out that, the allegation of producing false certificate against the petitioner was already ended with punishment of stoppage of increment with cumulative effect and therefore, the present disciplinary proceedings is nothing but double jeopardy. But the first respondent vide order dated 24.04.2009, had dismissed the appeal. Hence this writ petition.

3. The respondents Corporation filed counter affidavit, denying all the allegations raised by the petitioner.

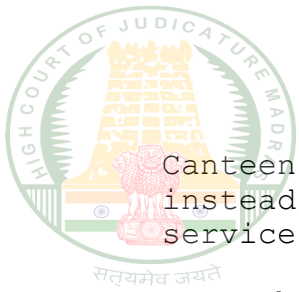


4. The learned counsel appearing for the petitioner submitted that the documents relied upon by the respondents are nothing to do with the petitioner and the petitioner is the only son to his parents namely R.V.Annamalai and A.Muniammal. Taking advantage of the fact that a similar person, whose name is A.Subramanian, studied in NLC Boys High School, and his parents names are also one and the same as that of the petitioner's parents viz. Annamalai and Muniammal, the respondents have proceeded disciplinary proceedings against the petitioner. He further submitted that, the petitioner submitted a detailed explanation before the Enquiry Officer, however, without appreciating the documentary evidence properly, adduced by the petitioner, the Enquiry Officer has given an erroneous finding, holding that the Transfer Certificate produced by the petitioner is false and he gave false information regarding his date of birth at the time of joining service and hence, he is guilty of all the charges outlined in the charge memo. It is contended by him that, in the enquiry report, there is no discussion about the birth certificate of the petitioner issued by the Chennai Corporation and other documents produced by him. Further, without relying upon the documentary evidence produced by the petitioner, the Enquiry Officer has come to a wrong conclusion that the date of birth given by the petitioner is wrong, which is unsustainable in law. The entire case of the respondent Corporation is based on presumption and assumption relying upon one record and without giving any opportunity to the petitioner, the first respondent had passed an order removing the petitioner from service and hence the orders passed by the respondent Corporation are liable to be quashed.

5. The learned counsel appearing for the respondent Corporation submitted that the petitioner was given opportunity of hearing before the Enquiry Officer. According to them, the Forensic Science Department has confirmed that the signatures found in the Transfer Certificate issued by NLC High School and SSLC Mark Sheet are tallied with the signatures found in the Service Book and Nomination given by the petitioner. But the petitioner, now taking a different stand that the certificates are not pertaining to him. Therefore, the contentions of the petitioner is liable to be rejected and prays for dismissal of the writ petition.

6. Heard the rival submissions made by the learned counsels appearing for the petitioner and the respondent Corporation. I have perused the materials on record.

7. The learned counsel appearing for the petitioner drew the attention of this court to the findings of the Enquiry Officer. The charges before the Enquiry Officer is that Sri. A.Subramanian, CPF No.35472, Assistant Manager, Industrial



Canteen/mines-II has furnished his Date of Birth as 04.01.1963 instead of 21.08.1954, thereby gaining an undue extension of service for more than eight years.

Therefore, the management presented two documents namely

i) Ex.M1, Extract of the Register of Admission and withdrawals, indicating that Sri A.Subramanian studied between 1963-1971 and

ii) Ex.M2, letter from NLC Boys Higher Secondary School, Neyveli.

During enquiry proceedings, some of the documents were also produced by the respondent Corporation, namely

i) Bio data form given by the petitioner at the time of joining in NLC, marked as Ex.M4;

ii) copy of Old Service Book, marked as Ex.M5;

iii) the Gratuity nomination Form, marked as Ex.M6;

iv) Proforma, filled up by the petitioner at the time of joining, marked as Ex.M7;

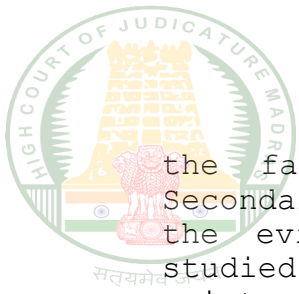
v) copy of Transfer certificate, marked as Ex.M8; and vi) Copy of SSLC certificate, marked as Ex.M9.

Based on the above documents, the Enquiry Officer has found that all the signatures of A.Subramanian, especially the signature in the counterfoil of Transfer Certificate proved that he studied in NLC Boys High School during the year 1974-1975 and this fact has been corroborated by the evidence of G.Ganesan, who stated that, he knows A.Subramanian and he studied with him in the NLC Boys High School.

8. Considering the above said records and evidence, the Enquiry Officer had come to the conclusion that the petitioner's date of birth is 21.08.1954 and not 04.01.1963, as stated by the petitioner. Based on the above report, the second respondent had passed an order, removing the petitioner from service.

9. According to the petitioner, he has produced his Birth Certificate issued by the Corporation of Chennai, which is the vital document, to prove that he born in Chennai and not at Neyveli. However, the above document was not considered by the respondent in proper perspective and also there is no discussion in the enquiry report about the Birth Certificate. Therefore, the orders passed by the respondent Corporation is liable to be quashed.

10. The learned counsel appearing for the respondent Corporation submitted that the SSLC Certificate itself proved

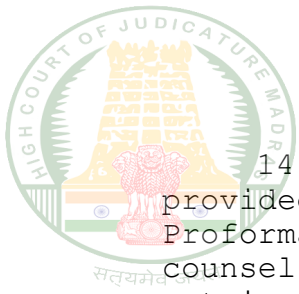


the fact that the petitioner studied in NLC Boys Higher Secondary School. He further submitted that taking into account the evidence of brothers of the petitioner, who were also studied in NLC Boys Higher Secondary School, during the relevant point of time, the Enquiry Officer has rightly come to the conclusion that the charge against petitioner that he had given wrong date of birth, is proved. Therefore, there is no error in the findings of the Enquiry Officer.

11. A perusal of the documents shows that, in an earlier occasion, the respondent Corporation had initiated disciplinary proceedings against the petitioner by framing charges that the petitioner produced false Educational Certificate before the authority. After enquiry, it was found that the said Certificate produced by the petitioner was false. However, the respondent had accepted the explanation given by the petitioner and considering the same, had granted relaxation order and imposed punishment, stopping next increment. The above said order passed by the respondent Corporation clearly shows that the Educational Certificate produced by the petitioner is false and accepting the explanation given by the petitioner, lesser punishment was imposed on him.

12. Now, the present charges levelled against the petitioner are that, the petitioner has given wrong information to the respondent Corporation and the Date of Birth mentioned in the Service Register is false, as per the SSLC certificate, issued by the NLC Boys Higher Secondary School, Neyveli.

13. The learned counsel for the petitioner stoutly denied the above Certificate, relied upon by the respondent Corporation, as it does not pertain to the petitioner. He further submitted that though the parents name mentioned in the above Certificate issued by the NLC Boys Higher Secondary School, Neyveli are one and the same, as that of the names of the parents of the petitioner, they are not the parents of the petitioner. He also brought the notice of this court to the Proforma, which was filed during Enquiry Proceedings, and submitted that, the details of the petitioner have been filled up in the first and second page of the Proforma, but, the handwriting found in the first page are differed from the second page; and also the signatures found at the bottom of the second page of Proforma are totally differed from each other, which proved that the above said signatures are not belonging to the petitioner. Therefore, he submitted that, the burden is on the respondents Corporation to prove the fact that the handwriting found in the first page and second page of the Proforma and the signatures found at the second page of the Proforma are pertains to the petitioner.



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14. It is to be noted that, sufficient opportunities were provided to the respondent Corporation to produce the Original Proforma before this court. However, it is stated by the counsel for the respondents that the respondent Corporation is not in a position to trace out the original Proforma.

15. The afore said signatures of the petitioner found in the Proforma as well as other School Certificates, were forwarded to the Forensic Science Department for comparison of the alleged signatures of the petitioner. Therefore, the above said Proforma is a vital document, as far as the present case is concerned, to decide the correct date of birth of the petitioner. The said Proforma has been relied upon by the respondent Corporation before the Enquiry Officer and based on the report of the Enquiry Officer, punishment was imposed.

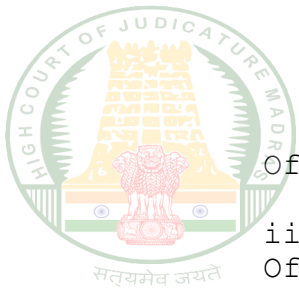
16. The learned counsel for the petitioner disputed the above said Proforma stoutly and requested for detailed enquiry by producing relevant document by both the parties. Further, it is the contention of the petitioner that he had produced the copy of the Birth Certificate issued by the Corporation of Chennai before the Enquiry Officer, but it was not considered by him. According to the petitioner, only by considering the documents relied upon by the respondent Corporation, the Enquiry Officer has come to the conclusion that the charges levelled against the petitioner are proved and he neither relied upon the documents filed by the petitioner nor considered the explanation submitted by him and hence, it requires, detailed examination. Therefore, he requested to conduct a detailed enquiry by going through the Birth Certificate of the petitioner and the disputed signatures of the petitioner found in the Proforma and other documents produced by the respondents Corporation.

17. In view of the above discussion, this court is of the opinion that a Judicial Officer to be appointed to conduct Enquiry and to submit a detailed report before the respondent Corporation. Hence, the impugned orders passed by the respondent Corporation are liable to be set aside.

18. Accordingly, it is ordered as follows.

i) The impugned order passed by the second respondent in Proc.No.7920/DA/CGM/M-II/2006 dated 22.01.2009 and the order passed by the first respondent in Lr.No.CM/P &A/App. Authority/2009 dated 24.04.2009 are aside.

ii) Mr. P.Ganesan(Retired District Judge), No.778, 4th Cross Street, Kahithapuram, Chennai 600 117, Cell No.9600045571 is hereby appointed as Enquiry



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Officer to conduct a detailed enquiry, afresh.

iii) The matter is remitted back to the Enquiry Officer appointed herein, to conduct detailed enquiry afresh, by giving opportunities to both the parties to produce the documents.

iv) The respondents Corporation is at liberty to object the documents produced by the petitioner, if it is not relevant to the present enquiry.

v) The learned Enquiry Officer appointed herein, shall after issuing notice to the parties and upon hearing them, file a report as expeditiously as possible, preferably within a period of 12 weeks from the date of receipt of the order.

vi) The Remuneration of the Enquiry Officer is fixed at Rs.1,00,000/- (Rupees one Lakh) and the same shall be borne by both the parties equally and shall be paid immediately after receipt of summons.

vii) the learned Enquiry Officer is directed to complete the enquiry, as early as possible, within a period of 12 weeks from the date of receipt of this order.

viii) Both the parties shall cooperate before the Enquiry Officer, without getting unnecessary adjournments.

It is needless to say that the respondents Corporation shall pass final order, as early as possible, within a period of three months from the date of receipt of the report from the Enquiry Officer and the petitioner is not entitled for reinstatement of service, till the final order passed by the respondent Corporation.

19. With the above directions, this writ petition is allowed. No costs.

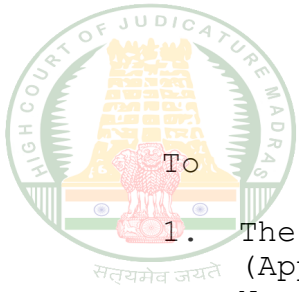
Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

mst



To

1. The Chief Manager/Personnel/Mine-1,
(Appellate Authority),
Neyveli Lignite Corporation Limited,
Neyveli 607 803.
2. The Senior Manager/Personnel/Mine-1,
(Disciplinary Authority),
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4. Rep. Neyveli Lignite Corporation.Ltd.,
rep by its Chairman Cum Managing Director,
Block 1, Neyveli 607 803.

Copy to:

Mr. P.Ganesan (Retired District Judge),
No.778, 4th Cross Street,
Kahithapuram, Chennai 600 117.
Cell No.9600045571

+1cc to Mr.Muthumani Duraisami, Advocate, S.R.No.2566
+1cc to Mr.N.Nithianandam, Advocate, S.R.No.2535

W.P.No.9217 of 2009

PM(CO)
CT 11/03/2022