

G. M. Mines I Neyveli Lignite Corporation Ltd. and Another

Vs

T. Elayaperumal

Civil Appeal No. 6683 of 1997

(S. C. Agarwal, G. B. Pattanaik JJ)

26.09.1997

ORDER

1. Special leave granted.
2. We have heard the learned counsel for the parties.
3. The respondent joined the Neyveli Lignite Corporation Ltd., hereinafter referred to as "the Corporation", on 28-11-1978 as an Industrial Worker/Trainee. The basic qualification prescribed for appointment on the said post was that the candidate should have passed the Industrial Training Institution (for short "ITI") Examination from an institution approved by the Government. The respondent secured appointment on the basis of National Trade Certificate granted by the ITI, Parmakukdi that he had passed the All-India Trade Test in July 1977. Subsequently, it came to the notice of the Corporation that the respondent had secured only 19 marks in English and 17 marks in Mathematics in the IXth standard examination and in the marks-sheet for the said examination the marks had been altered to show that he had secured 99 marks in English and 77 marks in Mathematics and on the basis of the said altered marks he obtained admission in the ITI. Disciplinary proceedings were initiated against him on the basis of the charge that he had fraudulently altered the marks obtained by him in IXth standard in the subjects of English and Mathematics and had gained admission into ITI on the basis of the total altered marks. After holding an inquiry into the charge, the Inquiry Officer found the charge established. Thereafter the disciplinary authority passed an order dated 23-10-1986 whereby the respondent was dismissed from service. In the said order of dismissal the disciplinary authority has also mentioned that the National Trade Certificate that was granted to the respondent had been cancelled by the Director of Employment and Training, Chepauk, Madras, vide PC No. 31362/81/83 dated 31-7-1985 as he had got admission in the ITI by unfair means. The respondent filed an appeal against the said order of dismissal passed by the disciplinary authority but the same was dismissed by the appellate authority by order dated 13-1-1987. The respondent filed a writ petition (CWP No. 10267 of 1987) before the High Court of Madras challenging the orders dated 23-10-1986 and 13-1-1987. The said writ petition was allowed by a learned Single Judge of the High Court by judgment dated 6-8-1996. The letters patent appeal (Writ Appeal No. 857 of 1996) filed against the said judgment of the learned Single Judge has been dismissed by the Division Bench of the High Court by the impugned judgment dated 26-9-1996.
4. Before the High Court, reliance was placed on behalf of the appellants on the order regarding cancellation of the National Trade Certificate that had been issued in favour of the respondent. The High Court has, however, held that since the cancellation of the National Trade Certificate was not part of the charge on the basis of which action was taken against the respondent, the said dismissal

could not be sustained on the basis of the cancellation of the National Trade Certificate and that it would be open to the Corporation to initiate proceedings afresh on the basis of the order of cancellation of the ITI certificate of the respondent.

5. We have heard Shri V. A. Bobde, the learned Senior Counsel appearing for the appellants, in support of the appeal and Shri K. Rajendra Choudhary, the learned Senior Counsel appearing for the respondent.

6. Shri Bobde has submitted that having regard to the fact that the basic qualification for appointment on the post of Industrial Worker/Trainee was an ITI certificate and since the National Trade Certificate on the basis of which the respondent was appointed has been cancelled, the High Court was in error in interfering with the order of dismissal in exercise of its jurisdiction under Article 226 of the Constitution. Shri Choudhary has, on the other hand, urged that the respondent came to know about the communication dated 31-7-1985 regarding cancellation of the National Trade Certificate of the respondent for the first time when the said communication was filed by the appellants in the High Court on 31-7-1996 because the said order of cancellation was never communicated to the respondent and, therefore, he could not challenge the validity of the same. In this regard Shri V. A. Bobde has pointed out that the order of dismissal dated 23-10-1986 expressly refers to the communication dated 31-7-1985 regarding the cancellation of the National Trade Certificate of the respondent and gives the particulars of the said communication also and that in view of the said reference to the fact of cancellation of the certificate in the order of dismissal it is not open to the respondent to say that he was not aware of the cancellation of his National Trade Certificate till 31-7-1996. In view of the fact that there was express reference to the order dated 31-7-1985 in the order of dismissal dated 23-10-1986, it is not possible to uphold the contention of Shri Choudhary that the petitioner was not aware of the order regarding cancellation of his National Trade Certificate till 31-7-1996 and for that reason he could not challenge the validity of the order of cancellation.

7. Shri Choudhary has also urged that since the order dated 31-7-1985 was passed without notice to the respondent and in violation of the principles of natural justice, the said order is a nullity and even if the respondent has not challenged the validity of the same, it cannot be taken up into account for upholding the order of dismissal. We find it difficult to accept the said contention of Shri Choudhary. The question whether the order of cancellation was passed in violation of the principles of natural justice is a question involving examination of relevant facts in a proper proceeding initiated for that purpose in which the authority passing the order is a party. In the absence of any such proceeding being initiated by the respondent, the order regarding cancellation of the National Trade Certificate cannot be ignored as nullity.

8. In view of the fact that the basic qualification for appointment on the post of Industrial Worker/Trainee is the holding of an ITI certificate and the appointment of the respondent was made only because he was holding such a certificate, the respondent could not claim to continue in employment with the Corporation after ITI certificate had been cancelled by the competent authority. If the respondent had any grievance against the cancellation of his National Trade Certificate, he should have taken necessary steps to have that order of cancellation set aside by a competent court. Till the said order is set aside, it has to be enforced and the appellants could proceed on the basis that the said certificate has been cancelled and that he is not entitled to continue in service. In view of the fact that the National Trade Certificate issued in favour of the respondent had been cancelled, the High Court, in our opinion, was in error in setting aside the order of dismissal in exercise of its jurisdiction under Article 226 of the Constitution. We are, therefore,

unable to uphold the impugned judgment of the High Court.

9. The appeal is accordingly allowed, the judgment of the Division Bench of the High Court dated 26-9-1996 as well as that of the learned Single Judge dated 6-8-1996 are set aside and the writ petition filed by the respondent is dismissed. No order as to costs.