SUPREME COURT OF INDIA

S.Mahesh

Vs.

The Chairman Cum Managing Director, Neyveli Lignite Corporation Ltd. Neyveli Tamil Nadu

C.A.No.10812 of 2018

(Abhay Manohar Sapre and Indu Malhotra,JJ.,)

29.10.2018

JUDGMENT

Abhay Manohar Sapre,J.,

SLP (C) No.8774 of 2018

1. Leave granted.

2. This appeal is filed against the final judgment signatu^No, verified and order dated 05.03.2018 passed by the High Court of Judicature at Madras in W.A. No. 273 of 2017 whereby the Division Bench of the High Court set aside the order dated 07.11.2016 passed by the learned Single Judge in W.P. No. 15312/2010 and allowed the writ appeal filed by the respondent herein.

3. The controversy involved in the appeal is short. However, few relevant facts herein below need mention to appreciate the controversy.

4. The appellant (employee) was the writ petitioner whereas the respondent herein (employer) was the respondent in the writ petition filed by the appellant in the High Court of Madras against the respondent out of which this appeal arises.

5. The respondent herein is the Government Company known as Neyveli Lignite Corporation Ltd. It is mainly engaged in the business of manufacture and sale of minerals (lignite). It has an office and business activity in South Arcot (Tamil Nadu).

6. The respondent (hereinafter referred to as "the Corporation") being a fully owned Government Company is a "State" within the meaning of Article 12 of the Constitution of India and is thus amenable to the writ jurisdiction under Article 226/227 of the Constitution of India.

7. Pursuant to advertisement issued by the Corporation for the appointment of “Diploma Engineer Trainee Grade II (Electrical)”, the appellant was one of the candidates who applied for the said post. The appellant was interviewed by the Corporation and selected for the said post. The Corporation on 28.01.1988 accordingly issued an appointment letter to the appellant. (Annexure-P-1).

8. In terms of the appointment letter, the appellant was initially appointed on probation for a period of two years as Trainee and on its successful completion, was to be appointed on regular basis as Engineering Supervisor (Electrical) on probation for a period of one year and then to be absorbed as a regular employee. The appellant was also required to execute Bond for a particular period.

9. At the time of the interview and the appointment, the appellant had produced photocopy of his Scheduled Caste Certificate to the Corporation and had sought time to produce its original. The Corporation granted the indulgence to the appellant for producing his original Scheduled Caste Certificate.

10. The appellant on 03.03.1988, however, sent a letter (Annexure R-3) to the Corporation informing them that he belongs a community known as "Konda Reddi' which is a backward (SC) community. He said that he had approached the concerned Revenue Authorities for obtaining caste certificate in the prescribed form so as to enable him to submit it to the Corporation but the Revenue Authorities informed him that the Department has stopped issuing any such certificate. The appellant, therefore, expressed his inability to produce the original Scheduled Caste Certificate and requested the Corporation to treat him as a candidate belonging to the "General Category" instead of "Reserved Category" in selection process.

11. The Corporation, on receipt of the aforesaid letter, issued a posting order no. 1416/P&A/VI- 2/88-3 dated 02.05.1988 to the appellant and asked him to report for duty. The appellant was also allotted quarter in general category as a part of his service condition. The appellant accordingly joined his duty on 02.05.1988.

12. It was almost after four years of his joining i.e on 24.05.1993, the Corporation served a memo to the appellant stating therein that appellant had submitted false community certificate at the time of joining and therefore why disciplinary action be not taken against him for filing such certificate.

13. It is not in dispute that the Corporation though issued this memo to the appellant but did not pursue the matter. On the other hand, the appellant was promoted to the rank of Junior Engineer Grade I with effect from 01.06.1993 vide order dated 16.12.1993. The appellant accordingly started working on the promotional post.

14. On 11.08.1995, the Corporation issued second memo to the appellant reiterating the same charge for which the first memo was issued. The appellant filed his reply and reiterated his stand which he had taken in his letter dated 03.03.1988.

15. The Corporation then conducted a Departmental Enquiry and recorded the statements of the Corporation's officials wherein the officials admitted that the appellant had sent a letter dated 03.03.1988 expressing therein his inability to produce the original caste certificate and further requesting the Corporation to treat him as general candidate instead of reserved candidate. They also admitted that the appellant's request was accepted by DGM/P&A.

16. Despite this, the Corporation concluded in the enquiry that the charge leveled against the appellant has been proved. The appellant was accordingly awarded a punishment of "reduction of rank to a lower stage by two stages in his time scale for a period of 2 years with cumulative effect". The Corporation also ordered that henceforth the appellant be considered as general category candidate and that he would not be allowed to avail any benefits which are extended to the reserved category candidates. The appellant felt aggrieved and filed Departmental Appeal. It was, however, dismissed.

17. After three years i.e. on 20.09.2000, the Corporation for the third time issued a memo again asking the appellant to produce his community certificate in original for its verification. The appellant replied to the said memo reiterating his earlier stand saying that he had already informed vide his letter dated 03.03.1988 and in the enquiry proceedings to the Corporation that it was not possible to produce the original certificate for the reasons mentioned therein. The appellant further said that he never took any benefit of reserved candidate in the service because his request to treat him as general candidate was accepted by the Corporation.

18. The Corporation did not stop here and lodged an FIR against the appellant on 30.07.2001 in PS Neyveli Town (Crime No.219) for filing false caste certificate. On 04.11.2003, the Police Authorities submitted a report that there was no case made out against the appellant in the FIR. On 15.07.2008, the Magistrate in RC No.56/2008, on perusal of the FIR and final report of the Police Authorities, closed the case against the appellant.

19. After two years, the Corporation again renewed their efforts and this time, its director invoked the powers under Rule 30 of the NLC Employees (Control and Appeal) Rules (hereinafter referred to as "the Rules") and by order dated 07.07.2010 substituted the punishment imposed on the appellant vide order dated 30.8.1997 to that of declaring appellant's appointment to be null and void.

20. The appellant, felt aggrieved, filed writ petition (W.P. No.1512/2010) in the Madras High Court questioning therein the legality and correctness of the order dated 07.07.2010. The Corporation contested the writ petition.

21. By order dated 07.11.2016, the learned Single Judge allowed the appellant's writ petition and quashed the order dated 07.07.2010. Feeling aggrieved of the order passed by the learned Single Judge, the Corporation filed intra court appeal before the Division Bench.

22. By impugned order, the Division Bench allowed the Corporation's appeal, and while setting aside the order passed by the learned Single Judge, dismissed the appellant's writ petition and upheld the order dated 07.07.2010 by which the appellant's appointment was held as null and void. It is against this order, the writ petitioner (appellant herein) felt aggrieved and filed the present special leave to appeal in this Court.

23. Heard Ms. V. Mohana, learned counsel for the appellant and Mr. Anil Nag, learned counsel for the respondent(s).

24. Having heard the learned counsel for the parties and on perusal of the written submissions filed by the parties, we are constrained to allow the appeal and while setting aside of the impugned order, allow the appellant's writ petition and restore the order of the Single Judge.

25. In our considered opinion, the entire action of the Corporation starting from issuance of second charge memo dated 11.08.1995 and ending by passing the order dated 07.07.2010 is arbitrary, unreasonable, and mala fide exercise of the powers by the Corporation against the appellant and hence the same is not sustainable in law.

26. In any event, the order dated 07.07.2010 which is subject matter of this appeal and with which we are really concerned in this appeal is wholly arbitrary, unreasonable and is not legally sustainable. This we say for following reasons.

27. First, the appellant at the first available opportunity and before joining the duties had sent a letter on 03.03.1988 of his own to the Corporation informing therein that it was not possible for him to produce the original caste certificate because the Revenue Authorities had declined to issue the original caste certificate to him.

28. Not only that, the appellant further on his own requested the Corporation not to treat him as "reserved candidate" but treat him as "general candidate". In this way, the appellant, in our opinion, did not suppress any information relating to his caste certificate from the Corporation.

29. Second, the Corporation, in these circumstances, had three options; first, not to appoint the appellant which the Corporation did not opt; Second, to grant some more time to produce the caste certificate or any other material to prove the appellant's caste which again the Corporation did not opt and the third, to condone the lapse in filing the caste certificate and proceed to consider the appellant's case treating him as a candidate belonging to the general category for selection purpose which the Corporation opted.

30. Third, the Corporation by their express conduct having followed the third option and condoned the lapse by asking the appellant to join the duties, which the appellant did, and later further promoting him to the next higher grade, the issue relating to caste certificate lost its significance.

31. Fourth, in the light of afore-mentioned reasons, the Corporation, in our opinion, had no right to hold any Departmental Enquiry in relation to the issue of appellant's caste certificate because they condoned the issue of caste certificate by allowing the appellant to join the duties and later by promoting him to the next higher grade.

32. Assuming, however, that the Corporation could still probe the issue in relation to the appellant's caste certificate after allowing him to join, the Corporation having held a Departmental Enquiry and imposing the punishment on the appellant of "reduction of his rank to a lower stage by two stages in his time scale for a period of 2 years with cumulative effect" by order dated 30.08.1997, the issue of caste certificate attained finality in all respect.

33. The Corporation had thereafter no power to raise the issue of caste certificate again in any form against the appellant. In other words, the issue of caste certificate did not survive for any more consideration between the parties inasmuch as it was not a live issue between the parties.

34. Fifth, assuming that the higher authority had the power to enhance the punishment imposed on the appellant by taking recourse to powers under Rule 30, such power, in our view, could be exercised by the authorities within 30 days from the date of the order of punishment.

35. In this case, the punishment order was passed on 30.08.1997 whereas the higher authority exercised his power under Rule 30 on 07.07.2010 by which the punishment order dated 30.08.1997 was cancelled and was substituted by an order declaring the appellant's appointment as null and void. This order was passed beyond a period of 30 days as provided in Rule 30 (3) which in clear terms provides that "no order enhancing the punishment under this rule shall be made after a period of 30 days from the date on which the original order of punishment was served on the employee charged ".

36. In other words, the higher authority could pass the order under Rule 30 for revoking the original order of punishment dated 30.08.1997 as being bad and substituting it with another order declaring the appellant's appointment as null and void within 30 days from the date of punishment order i.e, it could be passed on or before 30.09.1997 but not beyond this date.

37. Since in this case, the order was passed almost after 13 years from the date of passing of the original punishment order, and hence on the face, it was bad in law.

38. In the light of afore-mentioned reasons, we are of the opinion that in whatever way the question is examined, the entire action of the Corporation and in particular the order dated 07.07.2010 which is subject matter of this appeal is found to be wholly arbitrary, unreasonable and, therefore, it is held legally unsustainable.

39. The Single Judge, therefore, rightly set aside the order impugned in the writ petition whereas the Division Bench was not right in setting aside the order of the Single Judge.

40. We cannot, therefore, agree with the reasoning and the conclusion of the Division Bench but are inclined to concur with the reasoning and the conclusion arrived at by the learned Single Judge in addition to our own reasoning given above.

41. In view of the foregoing discussion, the appeal succeeds and is hereby allowed. The impugned order passed by the Division Bench is set aside and the order passed by the Single Judge (Writ Court) is restored.

42.As a consequence, order dated 07.07.2010 passed by the Director (Power) of the Corporation which set aside the order of punishment dated 30.08.1997 and in its place substituted the order by declaring the appellant's appointment void ab initio is hereby quashed.