

Madras High Court

A. Gnanaprakasam vs The Director Personnel on 9 August, 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 9/8/2004

CORAM

THE HONOURABLE Mr.JUSTICE A.K.RAJAN

Writ Petition No. 1450 of 2000

A. Gnanaprakasam ... Petitioner

-VS-

1. The Director Personnel
Block I
Corporation Office
Neyveli Lignite Corpn Ltd.,
Neyveli 607 801.
2. The Chief Personnel Manager
Block I
Corporation Office
Neyveli Lignite Corpn Ltd.,
Neyveli 607 801.
3. The Personnel Manager (S & FS)
Block 18
Corporation Office
Neyveli Lignite Corpn Ltd.,
Neyveli 607 801.
4. Senior Personnel Manager/S & FS
Township Administrative Office
Block 10
Neyveli Lignite Corpn Ltd.,
Neyveli 607 801.
5. The Deputy Chief Security Officer
Appellate Authority
Neyveli.

Petition filed under Article 226 of the Constitution of India praying for issue of a writ of certiorari calling for the records relating to the proceedings of the fourth respondent issued in Memo No. 3495-2/SPM/S & FS/TA/98 dated 27/4/99 and that of the fifth respondent dated 18/12/1999 and to quash the same.

!For petitioner ... Mr.M.Jaichandran

^For respondents ... Mr.N.A.K.Sarma

:O R D E R

This petition has been filed by the petitioner to quash the order of dismissal. The writ petitioner herein was employed in Neyveli Lignite Corporation and for his misconduct charges were framed, which are as follows:-

- (i) He contracted the second marriage, when his first wife was alive.
- (ii) He referred his second wife as his first wife and availed family planning incentives and other medical benefits.
- (iii) He also availed special casual leave, for which he was not entitled to.
- (iv) He also availed leave travel concession/assistance for his second wife in the name of first wife.

Departmental enquiry was conducted and findings were given, and a second show-cause notice was issued against the petitioner. After getting the explanation, disciplinary authority imposed a punishment of dismissal from service. Against that, he filed an appeal and the appellate authority has confirmed the order of the disciplinary authority and hence he was dismissed from service. Challenging the above said order of dismissal, present writ petition has been filed.

2. The learned counsel appearing for the petitioner submits that with regard to bigamous marriage circumstances, Neyveli Lignite Corporation had issued a circular dated 21/7/1992, which reads as follows:-

"In order to follow the uniform procedure in awarding punishment by the disciplinary authorities for one and same misconduct, it has been decided to impose the punishment of reduction of pay by two stages for all the case of bigamous marriage."

3. In so far as the charges against the petitioner are concerned, he contracted the second marriage during the year 1992 and a charge memo was issued in the year 1998. According to Mr.Jaichandran, learned counsel appearing for the petitioner, Article 20 Clause 1 of the Constitution of India prohibits awarding of penalty more than that was provided for on the date of commission of offence. In this case, when the bigamous marriage was contracted by the petitioner, the punishment for that was reduction of pay by two stages. Only by the guidelines issued on 21/1/1999, the punishment was

increased to removal from service. Therefore, for the bigamous marriage the authority cannot impose the punishment of dismissal from service.

4. Mr.Sharma appearing for the respondents submits that the guidelines issued on 30/6/1998 and 21/1/1999 are not mandatory and the disciplinary authority is not taking note of those guidelines.

5. The learned counsel for the petitioner further points out that in the guidelines dated 21/1/1999 it was brought to the knowledge of the disciplinary authority for strict adherence to the guidelines without any deviation. Therefore, the punishment of dismissal from service could not have been imposed instead of stoppage of pay at two stages. The second part of Article 20 Clause (1) applies equally to the case on hand. Therefore for having committed misconduct of contracting the bigamous marriage, maximum punishment could have been awarded was stoppage of pay at two stages and not more than that.

6. On perusal of the finding of the disciplinary authority as well as the appellate authority, dismissal from service has been imposed after taking all the five charges cumulatively. In view of the fact that it is not possible for this Cou to the conclusion that for the charges of impersonation and other charges, whether the disciplinary authorities would have imposed a punishment of dismissal or removal from service. Under these circumstances, this Court cannot substitute its view to that of disciplinary authority or the appellate authority. Therefore, the only option for this Court is to remit the matter back to the appellate authority setting aside the order passed in appeal. The Disciplinary Authority shall consider the entire matter afresh and pass further orders as it may deem fit. While doing so, it may also hear the writ petitioner, if he wants to make any further representation, within a period of one month from today. Considering the facts of this case, the appellate authority may pass orders within a period of three months from the date of receipt of the order.

Index: Yes Internet: Yes mvs.

To

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2. The Chief Personnel Manager Block I Corporation Office Neyveli Lignite Corpn Ltd., Neyveli 607 801.
- A.K.RAJAN,J (mvs).
3. The Personnel Manager (S & FS) Block 18 Corporation Office Neyveli Lignite Corpn Ltd., Neyveli 607 801.
4. Senior Personnel Manager/S & FS Township Administrative Office Block 10 Neyveli Lignite Corpn Ltd., Neyveli 607 801.
5. The Deputy Chief Security Officer Appellate Authority Neyveli.

