

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI

THE HONOURABLE SRI JUSTICE G.NARENDAR
THE HONOURABLE SMT. JUSTICE KIRANMAYEE MANDAVA
WRIT APPEAL NO: 392 of 2024

JUDGMENT: (*per Hon'ble Smt. Justice Kiranmayee Mandava*)

The petitioner was appointed as a *helper* on consolidated pay of Rs.700/- per month. He was initially posted in a residential school vide proceedings dated 17.01.1991. Thereafter, he was transferred and posted as helper in the existing vacancy of the 3rd respondent office. His pay scale was fixed by the 2nd respondent vide proceedings dated 20.12.1994. Thereafter, revised pay scales were made applicable to the petitioner.

2. The 3rd respondent vide proceedings dated 27.03.2010 required the petitioner to submit his proof of age. In compliance, the petitioner has submitted a School Leaving Certificate, issued by the school Head Master, disclosing the date of birth as 10.03.1972. According to the respondents, on their internal enquiry, the certificate produced by the petitioner was found to be bogus and fictitious. Disciplinary action was initiated against the petitioner by framing the following charges:

“STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST

SRI L.GURU MURTHY, HELPER(NT)

ARTICLE OF CHARGE: *That Sri L.Guru Murthy Helper (NT) office of the District Manager APVCC Visakhapatnam has submitted false School Transfer Certificate and get employment In APVCC.*

BASIS OF CHARGE

Sri L.Guru Murthy Helper (NT) office of the District Manager APVCC Visakhapatnam has submitted false School Transfer certificate and get employment in APVCC.

Thus the behavior of Sri L.Guru Murthy Helper (NT) office of the District Manager APVCC Visakhapatnam is unbecoming on the part of a Corporation employee and warrants severe action. Hence the charge.”

3. Pursuant to the same, an enquiry officer was appointed and enquiry was conducted into the charges. The enquiry officer has submitted the report. As per the enquiry report, the School Leaving Certificate produced by the petitioner was found to be not genuine. Basing on the report of the enquiry officer, the petitioner was removed from service. Challenging the same, the subject writ petition was filed contending that, before the imposition of the punishment of removal from service, no show cause notice was issued, and no opportunity was given to the petitioner to rebut the allegations. His further contention was that no individual was examined before arriving at a finding that the certificate produced by the petitioner was bogus.

4. The respondents contended that due procedure was followed while passing the order of removal from service. The petitioner was removed

from service since he cheated the corporation in getting employed, on the basis of a false, fake School Leaving Certificate.

5. The learned single Judge set aside the order of removal from service observing that the disciplinary authority did not follow the procedure for removal of an employee from service. In as much as no enquiry report was furnished to the petitioner and no show cause notice was issued to the petitioner before passing the order of removal from service. The learned single Judge accordingly set aside the order of removal from service holding the same as illegal and the learned Judge further observed that the petitioner is entitled to be reinstated with all consequential benefits including back wages.

6. Assailing the same the writ appeal.

7. Heard the submissions of Sri Sudhir Mattegunta, learned counsel for the appellant and Sri V.Sudhakar Reddy, learned counsel for the respondents.

8. The learned counsel for the appellant contend that non supply of the enquiry report would not vitiate the proceedings unless the non supply, causes prejudice to the delinquent employee. The learned counsel in support of his contention relied on the following decisions:

- i) The decision of the Hon'ble Supreme Court in the case of **Sarva Uttar Pradesh Gramin Bank Vs. Manoj Kumar Sinha**¹

¹ (2010) 3 SCC 556

- ii) The decision of the Hon'ble Supreme Court in the case of ***Burdwan Central Cooperative Bank Limited and another Vs. Asim Chatterjee and others***²
- iii) The decision of the Hon'ble Supreme Court in the case of ***Union of India and others Vs. Bishamber Das Dogra***³

9. As noted from the impugned proceedings in the writ petition, the disciplinary proceedings were initiated against the writ petitioner basing on a letter stated to have been issued by the school that the petitioner had not studied in their school. The articles of charges framed against the petitioner are that the petitioner has cheated the department in getting employed, on the basis of a fake certificate.

10. A perusal of the impugned proceedings would reveal that the pursuant to the instructions of the Government, dated 08.12.2011, to verify the age of all the persons working in the 1st respondent Corporation, for the purposes of fixation of the cadre strength, the petitioner was asked to submit his proof of date of birth vide Memo dated 27.03.2010. Pursuant the same, the petitioner has submitted his date of birth as shown in the School Leaving Certificate. As the same was alleged to be bogus a show cause notice dated 25.05.2012 was issued to show cause as to why the disciplinary action should not be taken against the petitioner, including removal from service. The articles of charges famed depicts as if the petitioner on the basis of the fake

² (2012) 2 SCC 641

³ (2009) 13 SCC 102

School Leaving Certificate has got into employment. The articles of charges thus framed by the disciplinary authority suffers from non application of mind in as much as the petitioner has produced the certificate pursuant to the directions of the respondent authority after rendering service of 19 years. Therefore, it cannot be said that by virtue of the said certificate the petitioner got employed, in the absence of any finding to the said effect. Further, as noted from the annexure II of the charge memo dated 04.08.2012, it does not show any list of documents that would be relied upon, list of witnesses to be examined, during the enquiry into the charges framed against the petitioner.

11. This court is of the considered view that the explanation was called for vide show cause notice as to why an action should not be initiated against the petitioner for furnishing false School Leaving Certificate and for cheating the corporation. Whereas, the charges were framed, as if, on the basis of the said School Leaving Certificate the petitioner got into the service. The disciplinary authority, even before the charges were framed and the enquiry officer was appointed, as noted from the show cause notice dated 25.05.2012, had come to a conclusion of imposing the punishment of removal from service. We, therefore are of the considered view that the order of removal from service is vitiated for the following reasons:

- a) At the stage of show cause notice itself arriving at a satisfaction that the imposition of punishment of removal from service is the appropriate penalty.
- b) Inappropriate framing of charges.
- c) Non supply of the report of the enquiry officer. In the facts of the case, the non supply of enquiry officer's report would certainly cause hardship to the petitioner, since no witness was examined and the enquiry conducted that was conducted is unilateral. The

non furnishing the copy of the report of the enquiry officer prevented the petitioner from making effective representation against the proposed punishment.

12. The order under appeal deserves to be confirmed for the above and the following reasons, firstly, the person who was stated to have issued the letter dated 18.04.2012 was not examined by the enquiry officer. The same was obtained by the authorities behind the back of the petitioner. Secondly, the observation of the disciplinary authority that the petitioner has secured the job based on a fake certificate is unfounded because it was never the case of the respondents that the petitioner was employed in service based on the said School Leaving Certificate. The said certificate was admittedly produced by the petitioner as proof of his age, as required by the respondents vide their letter dated 27.03.2010, after 19 years of service of the petitioner in the respondent corporation. The punishment of removal from service is grossly disproportionate to the alleged misconduct. Thus, the order of the learned single Judge does not call for any interference.

13. Accordingly, the Writ Appeal is dismissed. No order as to costs.

As a sequel, pending interlocutory applications, if any, shall stand closed.

JUSTICE G.NARENDAR

JUSTICE KIRANMAYEE MANDAVA

Date: 06.08.2024
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THE HON'BLE SRI JUSTICE G.NARENDAR
AND
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