

(2014) 07 AP CK 0141
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 218 of 2014

The Registrar, General Manager

APPELLANT

Vs

Boddu Rattaiah

RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Citation : (2014) 6 ALD 539 : (2014) 6 ALD(Cri) 539 : (2014) 6 ALT 121 : (2014) LabIC 3678

Hon'ble Judges : L.N. Reddy, J; Challa Kodanda Ram, J

Bench : Division Bench

Advocate : Vedula Srinivas, Advocate for the Appellant; Siva, Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.—This writ appeal arises out of the order dated 19-11-2013 passed by the learned single Judge in Writ Petition No. 2653 of 2004.

2. The respondents in the writ petition are the appellants. The respondent herein i.e., the writ petitioner joined the service of Oriental Insurance Company Limited as Development Officer on 01-05-1987, on being selected. His services were confirmed in 1988. Thereafter, he made representations for promotion to the post of Assistant Administrative Officer (D).

3. A charge-sheet dated 07-03-2001 was issued to the respondent alleging that (a) he got employment as Development Officer in the year 1987, against a vacancy reserved for Scheduled Caste candidates by submitting a fabricated caste certificate and (b) that he submitted applications on 15-12-1993, 02-05-1997 and 22-06-1998, for promotion to the post of Assistant Administrative Officer, by claiming the same social status.

4. The respondent submitted a reply stating that he did not claim the social status of schedule caste in the year 1987, when he was appointed and the charges framed against him are false. A domestic enquiry was conducted and both the charges were held proved. The disciplinary authority i.e., the 3rd

appellant passed an order dated 12-07-2002, removing the respondent from service. The writ petition was filed against the said order.

5. The learned single Judge took the view that there was not even a prima facie evidence to show that the respondent produced any false caste certificate and got selected against the post reserved for Scheduled Caste candidates. On the second charge, however, it was found that there is some substance in the allegation. Ultimately, the writ petition was disposed of setting aside the order of dismissal holding that the punishment of dismissal from service is shockingly disproportionate and excessive. However, it was left open to the disciplinary authority to impose any punishment other than that of dismissal, removal or compulsory retirement. The said order is challenged in this writ appeal, by the employer.

6. Sri Vedula Srinivas, learned counsel for the appellants submits that the view taken by the learned single Judge cannot be sustained in law. He submits that, in case, the learned single Judge found that there was any defect in the domestic enquiry, the only course open to him was to remit the matter for fresh consideration and disposal. He contends that once the findings recorded in the domestic enquiry are permitted to remain intact, there was no occasion for the learned single Judge to set aside the order of dismissal, much less to indicate the nature of punishment to be imposed by the disciplinary authority. Other grounds are also urged.

7. Sri Siva, learned counsel for the respondent, on the other hand, submits that the Enquiry Officer was not clear in his mind, while recording findings on the charges. He submits that it was not even alleged that the respondent submitted any false caste certificate, nor was it held that the respondent made any specific representation that he belongs to Scheduled Caste. He contends that on the second charge also, the finding was vague and that the learned single Judge took the same, into account, while granting the relief, indicated in the order under appeal.

8. In a way, the charge itself was vague and not clear and definite. It reads as under:

He got appointed to the cadre of Development Officer against a vacancy reserved for Scheduled Caste and Scheduled Tribe candidates, in accordance with the rules and regulations of the company and had committed misconduct by producing a false community certificate claiming to belong to Hindu Mala community under S.C. Category, whereas he was not. By making applications dt.15.12.93, 02.05.97 and 22.06.98 on the same false community certificate that he belonged to Scheduled Caste category applied for promotion to the cadre of Asst. Admn. Officer (D).

9. The two paragraphs were treated as two separate charges. The Enquiry Officer submitted a detailed report dated 09-05-2002. As regards the first charge, which is in relation to the appointment of the respondent as Development Officer, the

Enquiry Officer made the following observation:

The Charged employee says that he has not written the hand written matter appeared on the top of the application. And on the other hand PW-I confirms that the handwriting appeared on 1-5 application and top of the application of PE- II are of same person. If the charged employee has not filed statement, then who else has done this. Let us assume the following:

A. CE himself would have written the same. And got selected as Trainee Inspector as SC candidate by producing false caste certificate.

B. The CE would have sought help of some one in the Interview committee or a person, who can influence the selection to get the appointment under SC category.

C. Some one at RO, to help other OC candidate altered his caste as SC, without Mr.B.RATTIAHs knowledge.

10. If we closely analyse the above, the assumption C is ruled out as no body takes that risk of obtaining a false certificate that too for some one without knowledge of that person and it is beyond imagination. Further CE is also refuting the allegation of being mentioned as SC in the case column by himself and says that date form is nothing to do with the appointment/or first application. If we presume that assumption A is also not correct then left with only option i.e. assumption B.

11. As can be seen from the sequence of events of recruitment process, CE first applied as OC candidate (application dt. 16- 06-86), submitted another application (dt.02-09-86) with fake caste certificate at the time of final interview (of course CE denied it) and followed by appointment orders dt.16-04- 1987.

12. The CE contends that he was offered appointment as a general candidate but not under SC category, because the said appointment order was cited with reference to the application dt.16-06-86.

13. Though, PW-II in his deposition says that the information furnished in the second application (at the time of final interview) will be considered as addendum to the application dt.16-06-86, the unanswered questions are:

(1) Why did they collect another application at the time of final interview?

(2) Was he called for final interview as OC candidate as per application dt.16-06-86?

(3) Did any time, during or after interview, communicated the major discrepancies i.e., about caste to the candidate?

14. The Enquiry Officer gave some presumptive answers and held that the first charge is proved.

15. We are conscious of the fact that the writ petition is not the forum to re-

appreciate the evidence recorded in a domestic enquiry, or to find fault with the record of the domestic enquiry on minute aspects. At the same time, if the findings are so perverse, that no reasonable person can arrive at them, the Court cannot remain oblivious.

16. The only way to prove the first charge against the respondent was by placing on record the so-called, false caste certificate said to have been filed by him, at the time of recruitment and establishing that, but for the said caste certificate he would not have been employed, against a vacancy reserved for Scheduled Caste candidates. Another subsidiary aspect is, to show that he mentioned in the application form that he belongs to Scheduled Caste. The record discloses that the caste certificate was not placed before the Enquiry Officer, at all. On the second aspect, even according to the Enquiry Officer, the respondent did not mention his caste as Scheduled Caste in the application form. However, the Enquiry Officer entered the realm of conjunctures and recorded a finding against the respondent, though answers to the various points framed by him in relation to the first charge, were not based upon any definite material. At any rate, the appellants cannot reopen the issue pertaining to the appointment of the respondent which took place, way back in the year 1987.

17. So far as the second charge is concerned, a different approach is warranted. The respondent pleaded that he did not claim the social status of Schedule Caste at the time of appointment. However, if he claimed that status at the stage of promotion, he is under obligation to sustain it. If he does not belong to Scheduled Caste, he was not supposed to claim promotion against a reserved vacancy. This aspect needs to be addressed by the appellants.

18. Since the order of dismissal was passed by taking the view that both the charges are proved, it needs to be set aside. The disciplinary authority shall have to independently examine the second charge both as regards the correctness of the finding on it as well as the punishment, if any, to be imposed on proving of that charge.

19. We, therefore, partly allow the writ appeal directing that,

(a) the order of dismissal dated 12-07-2002 passed against the respondent is set aside and the respondent shall be reinstated into service but without any back wages or continuity of service;

(b) it shall be open to the appellants to resume the disciplinary proceedings only confining to the second charge, at the stage of disciplinary authority and conclude the same in accordance with law; and

(c) in case any punishment other than compulsory retirement, dismissal or the one of removal from service is imposed in such resumed proceedings, the punishment shall commence at once, subject to the right of the respondent to question the same. However, if the punishment of removal, dismissal or compulsory retirement is imposed, the concerned order shall remain in abeyance

for two weeks from the date of service thereon on the respondent.

20. The miscellaneous petitions pending in this appeal shall also stand disposed of. There shall be no order as to costs.