THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.9408 of 2009

ORDER:

In the present writ petition, challenge is to the registration of F.I.R.No.133 of 2009 dated 22.4.2009 against the petitioner on the file of Station House Officer, Nizamabad Police Station, Nizamabad for the alleged offences under Sections 420, 468 and 471 IPC.

2. Petitioner's husband, while working as Medical Officer in Veterinary Department, died in harness on 10.4.1997. On an application made by the petitioner, the case of the petitioner was considered and the respondent authorities appointed the petitioner on compassionate grounds as ATtender on 10.9.1998. When the petitioner made a representation, requesting for consideration of her case for promotion as per her seniority, on the complaint made by the co-employees stating that she produced false educational certificates at the time of her initial appointment, the 2nd respondent-Deputy Commissioner of Commercial Taxes, Nizamabad Division, Nizamabad initiated departmental action against the petitioner by issuing a charge memo and after enquiry, the 2nd respondent vide Proceedings No.E3/1726/99 dated 21.1.2002 imposed punishment of stoppage of two increments with cumulative effect on the petitioner with a firm warning that she should forebear from such misconduct in future. After undergoing the said punishment, as she passed X Class in 2002 from the State of A.P., petitioner claimed for promotion as per rules. According to the petitioner, on the representation of her juniors, though the issue attained finality by inflicting punishment by the 2nd respondent, the 3rd respondent-Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad by way of proceedings No.CCTsREF.No.VI/422/2006 dated 7.3.2009 directed the 2nd respondent to file police complaint against the petitioner for producing fake SSC and HSC certificates issued by Maharashtra College of Arts, Science and Commerce and Maharashtra Board of Secondary Education at the time of initial appointment and report compliance. In pursuance of the same, the officer of the 2nd respondent

vide reference No.E3/1037/2003-I dated 18.4.2009 lodged complaint against the petitioner with the Station House Officer, I-Town Police Station, Nizamabad and basing on the same, the 1st respondent-Station House Officer, Nizamabad Police Station, Nizamabad registered F.I.R.No.133 of 2009 on 22.4.2009 against the petitioner for the alleged offences under Sections 420, 468 and 471 IPC. Challenging the said F.I.R.No.133 of 2009, the present writ petition came to be filed.

3. The respondents 1 and 2 filed counter affidavits, opposing the writ petition and the relief sought for therein.

4. Heard Sri Govardhan Venu, learned counsel for the petitioner and the learned Government Pleader for Home, appearing for 1st respondent, apart from perusing the material available on record.

5. <u>SUBMISSIONS/CONTENTIONS OF LEARNED COUNSEL FOR PETITIONER</u>

1. The direction given by the 3rd respondent-Commissioner of Commercial Taxes, Andhra Pradesh to the 2nd respondent to make a complaint against the petitioner is arbitrary, illegal, malafide and violative of Articles 14, 16 and 21 of the Constitution of India.

2. The authorities grossly erred in lodging complaint in the year 2009, having conducted enquiry and having imposed punishment as long back as in the year 2002 and there is no explanation forthcoming for the said delay in making the complaint to the police for the incidents which took place a decade back.

3. The competent authority-2nd respondent already exercised its power by initiating departmental enquiry against the petitioner and imposed major punishment and did not initiate any criminal proceedings by

exercising its discretion, as such, the higher authority i.e. 3rd respondent ought not to have directed the competent authority to exercise power in a particular manner after lapse of considerable length of time.

4. The qualification for appointment to the post of Attender at the time of appointment of the petitioner was VII Class, which the petitioner had at the relevant point of time. The authorities ought to have taken into consideration of the same.

5. The petitioner herein passed SSC in March 2002 and Intermediate in 2008 from the State of A.P. and the said fact ought to have taken into consideration by the authorities and ought not to have taken away on the complaint made by the juniors to the petitioner, whose intention is to overtake the petitioner's promotion by hook or crook.

6 . SUBMISSIONS/CONTENTIONS OF THE LEARNED GOVERNMENT PLEADER

1. The present writ petition filed by the petitioner herein under Article 226 of the Constitution of India is not maintainable in view of prima facie allegations against the petitioner in the F.I.R. Since the petitioner entered into Government Service with bogus educational certificates and she has played fraud on the Government, she is not entitled for any indulgence of this Court under Article 226 of the Constitution of India.

2. The punishment imposed pursuant to the departmental enquiry does not debar initiation of criminal prosecution against the petitioner for the offences alleged and the departmental proceedings and the

criminal prosecution are independent.

7. In the above background, now the issue which this Court is called upon to answer is "whether the prosecution initiated/launched against the petitioner vide F.I.R.No.133 of 2009 on the file of Station House Officer, Nizamabad Police Station, Nizamabad, in the facts and circumstances of the case, is sustainable and tenable".

8. The information available before this Court reveals that the petitioner herein, who lost her husband in the year 1997 while he was working as a Medical Officer in Veterinary Department, was appointed as Attender in the Commercial Taxes Department on compassionate grounds in the year 1998. After her appointment, the SSC and HSC certificates produced by her were sent for verification to Maharashtra State Board of Secondary and Higher Education, who intimated on 17.2.2000 that on verification, they found the same to be fake and forged and requested to lodge complaint to the police.

9 . Thereafter, the 2nd respondent-Deputy Commissioner of Commercial Taxes initiated departmental enquiry against the petitioner by issuing charge sheet and the Commercial Taxes Officer, Circle-III, Nizamabad was appointed as Enquiry Officer, who submitted a report on 20.12.2001. Subsequently, the disciplinary authority on 27.12.2001 issued a show cause notice to the petitioner asking her to explain as to why punishment as prescribed under AP CCA Rules should not be imposed on her for attempting to cheat the Government. On receipt of the said show cause notice, the petitioner herein submitted her explanation on 31.12.2001 and eventually, the 2nd respondent- Deputy Commissioner of Commercial Taxes, Nizamabad passed an order vide proceedings No.E3/1726/99 dated 21.1.2002, inflicting punishment of stoppage of two increments with cumulative effect on the petitioner with a firm warning that she should forebear from such misconduct in future. A reading of the said order of punishment discloses that the enquiry officer came to the conclusion that the petitioner sought appointment to the post of Attender on compassionate grounds by producing false and fake certificates though she had the requisite qualification of VII Class. The authorities also came to the conclusion that the

petitioner herein attempted to get promotion to the post of Record Assistant by producing the said false certificates. It is also evident from the order of punishment that the disciplinary authority also took into consideration the social situation of the petitioner and also the situation of the minor children, who are required to be taken care off. Having regard to all these aspects, the disciplinary authority obviously imposed the punishment of stoppage of two increments with cumulative effect, which is a major punishment.

10. It also required to be noted that there is no dispute with regard to the fact that the petitioner herein completed SSC and Intermediate from the State of A.P. in the year 2002 and 2008 respectively ad prosecuting Graduation. Now after a lapse of nearly (7) years after inflicting major punishment on the petitioner, the 3rd respondent in the year 2009 directed the 2nd respondent to lodge police complaint against the petitioner. A reading of the said proceedings dated 7.3.2009 shows that the 3rd respondent directed the 2nd respondent to lodge a complaint against the petitioner for producing fake SSC and HSC certificates at the time of initial appointment of the petitioner and also for claiming promotion as Record Assistant. As correctly pointed out by the learned counsel for the petitioner that absolutely there is no reason forthcoming from the respondents as to why the authorities kept quite for nearly one decade without initiating any criminal prosecution. It is also an admitted reality that the 2nd respondent while inflicting major punishment of stoppage of two increments with cumulative effect on the petitioner earlier has obviously taken into consideration the financial and social situation of the petitioner and her family members and the 2nd respondent did not intend to make any complaint to the police. The existence of element of role and interest of juniors of the petitioner, in the facts and circumstances of the case, also cannot be ruled out.

11. Having regard to the facts and circumstances of the case, this Court is of the considered opinion that there is absolutely no justification on the part of the respondent authorities in launching criminal prosecution against the petitioner for an incident, which took place a decade back and no plausible explanation is also forthcoming for such an abnormal delay in initiating prosecution, except the obvious reasons observed supra. It is also a significant aspect which needs to be noted that

the qualification required for the post of Attender at the time of initial appointment of the petitioner was only VII Class pass, which even according to the respondents the petitioner herein had at relevant point of time. Obviously taking into account the said aspect, earlier the disciplinary authority inflicted major punishment in 2002 without lodging any complaint to the police. It is also important to note that the qualifications of SSC and HSC had absolutely no relevance at the time of appointment of the petitioner as Attender and the lack of said qualifications was also not a disqualification for consideration of the case of the petitioner for initial appointment as Attender. The very direction issued by the 3rd respondent is an after thought obviously at the instance of vested interests who are juniors to the petitioner in service.

12. In view of these reasons and taking into consideration the nature of controversy, this Court is of the definite opinion that the prosecution launched against the petitioner herein cannot allowed to be continued.

13. For the aforesaid reasons, the writ petition is allowed, quashing the F.I.R.No.133 of 2009 dated 22.4.2009 on the file of Station House Officer, Nizamabad Police Station, Nizamabad. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 7.12.2015

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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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W.P.No.9408 of 2009

7.12.2015

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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.9408 of 2009

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Between:

B.Bharathi

… Petitioner

and

The Station House Officer,

Nizamabad Police Station, Nizambad

and others.

… Respondents

DATE OF JUDGMENT PRONOUNCED: 7.12.2015

<u>SUBMITTED FOR APPROVAL</u>:

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<u>THE HONOURABLE SRI JUSTICE A.V.SESHA SAI</u>

1. Whether Reporters of Local Newspapers

May be allowed to see the Judgment? Yes/No

2. Whether the copies of judgment may be

Marked to Law Reporters/Journals? Yes/No

3. Whether Their Lordship wish to see the

Fair copy of the judgment? Yes/No