

THE HON'BLE SRI JUSTICE K.C. BHANU
AND
THE HON'BLE MRS JUSTICE ANIS

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WRIT PETITION No.18847 OF 2015

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ORDER: (per Hon'ble Sri Justice K.C.Bhanu)

This Writ Petition, under Article 226 of the Constitution of India, is filed to call for the records relating to the order, dated 01.06.2015, in Original Application No.9587 of 2011 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad (for short, 'the Tribunal') and quash the same and consequently, to direct the respondents to continue the petitioner as Junior Assistant with all consequential benefits.

2. Heard both sides.

3. Petitioner was appointed as Junior Assistant vide proceedings No.E227/E2/617, dated 26.02.2009, of the 4th respondent from out of the list of displaced persons quota in terms of G.O.Ms.No.98, Irrigation (PW) Department, dated 15.04.1986 and G.O.Ms.No.266, Irrigation and CAD (PW) Department, dated 19.09.1994, sent by the District Collector vide letter No.A2/4367/2008 addressed to respondent No.3, dated 19.02.2009. Respondent No.2 vide letter, dated 04.07.2009 addressed to respondent No.3 brought to his notice that the District Collector letter, dated 19.02.2009 along with the alleged list of displaced persons for appointment is fabricated one and instructed to cancel the appointments made pursuant to the said letter and initiate criminal prosecution. Respondent No.3 vide Memo, dated 24.08.2009, directed respondent No.4 to terminate the services of the petitioner apart from instructing to launch prosecution by lodging criminal complaint. In obedience to the above Memo, dated 24.08.2009 of respondent No.3, vide proceedings, dated 28.08.2009,

respondent No.4 terminated the services of the petitioner and lodged a complaint before the Station House Officer, Balkonda Police Station. The Station House Officer on the strength of the above complaint, registered a case in Crime No.180 of 2009 against the petitioner and others and after completion of investigation filed charge sheet for the offences punishable under Sections 420, 468 and 471 of the Indian Penal Code, 1860.

4. Respondent No.4 herein initiated departmental proceedings against the petitioner as contemplated under Rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 and issued charge Memo, dated 29.12.2010. The Enquiry Officer on completion of enquiry, submitted a report with a finding that the charge against the petitioner is proved. While communicating the copy of the inquiry report, he called for explanation of the petitioner. After considering the explanation, the impugned show cause Memo, dated 28.11.2011, was issued indicating the proposed punishment of "removal of service". Aggrieved by the said removal order, the petitioner filed the aforesaid Original Application. The Tribunal, upon considering the material on record, dismissed the Original Application. However, liberty is given to the petitioner to submit explanation to the said show cause Memo. Challenging the same, the present Writ Petition is filed by the petitioner/applicant.

5. Learned counsel for the petitioner contended that by conducting defective enquiry, the disciplinary authority has come to a pre-conclusion to propose punishment on the petitioner; that police after conducting due enquiry, deleted the name of the petitioner from the array of the accused in the charge sheet; that the original recommendations made by the competent authorities have not been denied or disputed; that by virtue of suspension of impugned termination order, the petitioner is continuing in service and if this Court is not granting any stay, the petitioner will be removed from

service basing on the impugned show cause Memo and hence, he prays to admit the Writ Petition.

6. Whether the enquiry conducted by the disciplinary authority is defective or not; whether the original recommendations made by the authorities are true and correct or not; and whether police deleted name of the petitioner from the array of accused in the charge sheet or not, cannot be decided in the Original Application filed before the Tribunal. This aspect of the case has to be considered by the disciplinary authority after calling for explanation from the petitioner to the impugned show cause Memo. Simply because the name of the petitioner was deleted from the array of accused in the charge sheet, it does not mean that the departmental proceedings have to be stopped. Nature of evidence, both oral and documentary, to be adduced in the departmental proceedings as well as in the criminal prosecution is entirely different. In departmental proceedings, the department has to prove the case beyond preponderance of probability, whereas in a criminal prosecution, the prosecution has to prove its case beyond all reasonable doubt. If the evidence, both oral and documentary, to be adduced in the departmental proceedings as well as in the criminal proceedings is one and the same, then only the departmental proceedings has to be stayed till the conclusion of the criminal prosecution. Therefore, the contention of the learned counsel for the petitioner that name of the petitioner was deleted from the array of the accused by itself is not a ground to stop the departmental proceedings. Petitioner is at liberty to give explanation to the said show cause Memo.

7. The contention of the learned counsel for the petitioner is that the original recommendations made by the District Collector and the competent authority to the higher official with regard to eligibility for appointment are not denied or disputed, but those proceedings are long prior to framing of Articles of charge to the effect that the petitioner

fabricated the appointment order issued by the District Collector. When the petitioner played fraud on the Government, everything vitiates. With regard to pre-conclusion, necessarily the proposed punishment has to be indicated in the show cause Memo, but that does not mean the disciplinary authority has come to a pre-conclusion in the matter. Therefore, the Tribunal after considering the material on record rightly dismissed the Original Application and that order needs no interference by this Court.

8. Accordingly, the Writ Petition dismissed. Uninfluenced by any of the observations made by this Court in this Writ Petition, the disciplinary authority shall take appropriate decision in accordance with law. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE K.C. BHANU

JUSTICE ANIS

JUNE 30, 2015
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THE HON'BLE SRI JUSTICE K.C.BHANU
AND
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DATE: 30.06.2015

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