

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 13589 of 2004

ORDER:

This writ petition is filed seeking to issue a writ of certiorari calling for the records relating to and connected with I.D.No.298 of 2000 on the file of the 1st respondent-Labour Court and quash the award dated 22.12.2002 passed therein, holding it as illegal and arbitrary. A consequential direction is also sought to the 2nd respondent to reinstate the petitioner into service with continuity of service, back wages and attendant benefits.

Heard Sri G. Ravi Mohan, learned counsel for the petitioner, and Sri A. Ramarao, learned standing counsel for APSRTC appearing on behalf of the respondent.

It has been contended by the petitioner that he was appointed as Driver in the 2nd respondent corporation in the year 1989. While so, on the allegation that he produced a bogus caste certificate and secured employment, the respondent corporation issued a charge sheet against him on 05.12.1998, for which he submitted an explanation on 24.12.1998. Dissatisfied with his explanation, the disciplinary authority appointed an Enquiry Officer. After conducting an enquiry, the Enquiry Officer submitted his report to the effect that the caste certificate produced by him is not a genuine one. Basing on that, the disciplinary authority imposed a punishment of removal from service on him vide orders dated 09.08.2000. Aggrieved thereby, he unsuccessfully preferred an appeal, and thereafter, raised an Industrial Dispute before the 1st respondent-Labour Court under

Section 2-A (2) of the Industrial Disputes Act, 1947. But the Labour Court without properly appreciating his case, dismissed the I.D. vide order dated 22.12.2003 while confirming the order of removal. Challenging the same, he filed the present writ petition.

Learned counsel for the petitioner has contended that the competent authority to issue a caste certificate is the District Collector as per Act 16/1993, but not the disciplinary authority, and if the employer doubts the caste certificate produced by the employee as a fake one, he should refer the same to the competent authority i.e., the District Collector to find out its genuineness, and as long as the caste certificate is not cancelled by the competent Authority, it is deemed to have been valid. Therefore, the impugned orders are illegal.

Per contra, learned standing counsel for the respondent corporation has contended that based upon the proceedings issued by the Director of Tribal Welfare, the caste certificate was held to be fake and the respondent corporation has just followed the instructions of the Director of Tribal Welfare, that no illegality has been committed by the respondent corporation in removing the petitioner from service and the Labour Court has also rightly dismissed the I.D. preferred by the petitioner, and that therefore, there are no merits in the writ petition and the same is liable to be dismissed.

Having considered the submissions made by the learned counsel on either side and perused the record, it is relevant to extract Section 5 of the

A.P. (SC, ST & BCs) Regulation of Issue of Community Certificates Act, 1993 (for short “the Act”), as under:

“Cancellation of the false Community Certificate:- (1) Where, before or after the commencement of this Act a person not belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes has obtained a false Community Certificate to the effect that either himself or his children belongs to such Castes, Tribes or Classes, the District Collector may either *suo motu* or on a written complaint by any person, call for the record and enquire into the correctness of such certificate and if he is of the opinion that the certificate was obtained fraudulently, he shall, by notification, cancel the certificate after giving the person concerned an opportunity of making a representation:

Provided that where an enquiry into the genuineness of a community certificate issued prior to the commencement of this Act has commenced and is pending at such commencement, the record thereof shall be transferred by the concerned authority to the District Collector and he shall continue the enquiry and conclude the same under this sub-section.

(2) The powers of the nature referred to in sub-section (1) may also be exercised by the Government.”

A perusal of Section 5 of the Act would indicate that the District Collector is the competent authority to cancel the caste certificate.

Section 21 of the said Act also envisages that a community certificate issued by any authority competent to issue the same under the relevant rules or orders before the commencement of this Act shall, unless it is cancelled under the provisions of this Act, be valid and shall be deemed to have been issued under the provisions of this Act.

Admittedly, in the instant case, the caste certificate issued in favour of the petitioner was not cancelled by the competent authority, District Collector, as per the Act and as long as it is cancelled by the competent authority the same is deemed to have been valid. Conducting enquiry by the respondent corporation to ascertain as to whether the caste certificate produced by the petitioner is genuine or fake one, is beyond the scope of disciplinary authority. At best, the respondent corporation ought to have referred the case to the competent authority seeking a thorough enquiry and to find out the genuineness of the caste certificate produced by the petitioner. Therefore, the punishment of removal based upon the so called enquiry is liable to be set aside.

In view of the forgoing discussion, the writ petition is allowed and the order of removal dated 09.08.2000 issued by the disciplinary authority is set aside. The respondent corporation is directed to reinstate the petitioner into service with all consequential benefits, within a period of four weeks from the date of receipt of a copy of this order.

Consequently, miscellaneous applications, if any, pending in the writ petition shall stand closed. No order as to costs.

ABHINAND KUMAR SHAVILI, J

5th October, 2018
cbs

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI



Writ Petition No. 13589 of 2004
(allowed)

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