

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.16783 OF 2006

ORDER:

1. This writ petition is filed seeking to issue a writ of Mandamus declaring the action of the respondents in dismissing the petitioner from service vide proceedings dated 11.10.2001, which were confirmed in appeal by respondents Nos.1 and 2 vide proceedings dated 16.10.2002, as illegal, arbitrary, and violative of Articles 14, 21 and 311 of the Constitution of India; to declare that the punishment imposed against the petitioner is shockingly disproportionate, and to set aside the same by directing the respondents to reinstate the petitioner into service with all attendant benefits.

2. Heard Sri G. Shivaji, learned Counsel for the petitioner and Smt. A. Deepthi, learned Standing Counsel for the respondents.

3. It is the case of the petitioner that he was appointed as an attender on compassionate grounds on 29.9.1997 and he produced transfer certificate obtained from the school at the time of his joining. Thereafter, on 9.5.2000, the respondents issued a memo suspending the petitioner from service on the ground that he produced false transfer certificate and thereby, he entered into the employment based on such false transfer certificate. Thereafter, the 3rd respondent without considering the explanation and

representation of the petitioner, issued the proceedings dated 11.10.2001 dismissing the petitioner from service and the said proceedings were confirmed by respondents Nos.1 and 2 vide proceedings dated 16.10.2002 on the appeal filed by the petitioner. Aggrieved by the same, the present writ petition has been filed.

4. The learned Counsel for the petitioner contended that the petitioner was appointed on compassionate grounds to the post of attender, to which educational qualification is only to read and write, and admittedly, the petitioner is having the minimum qualification of reading and writing, which is sufficient to the said post.

5. The learned Counsel for the petitioner further contended that the petitioner produced the transfer certificate only as extra information, but actually for compassionate appointment, the qualification as set out in the transfer certificate was not necessary, and to the misfortune of the petitioner, there are certain over writings in the transfer certificate and the said over writings were construed as misconduct, and after conducting an enquiry without giving any opportunity to the petitioner, the respondents dismissed the petitioner from service. Further, it has been contended that the action of the respondents in initiating enquiry based upon the transfer certificate, which was alleged to have been submitted by the

petitioner, is arbitrary and illegal, in view of the fact that the transfer certificate has no relevance to the employment, and that the respondents without considering the said fact imposed major punishment of dismissal.

6. The learned Standing Counsel appearing for the respondents contended that though the said transfer certificate has no relevance for giving employment to the petitioner on compassionate ground, but the conduct of the petitioner in producing false transfer certificate, wherein his surname 'Kalu' is changed to 'Bhavani' and the caste 'Mala' is changed to that of 'Madiga, proves that he wanted to gain appointment fraudulently.

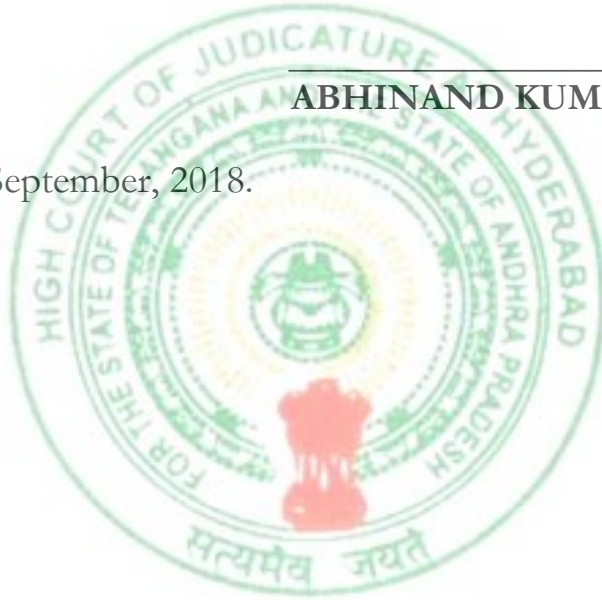
7. This Court having considered the rival submissions made by the parties is of the view that the transfer certificate has no relevance for appointment as attender on compassionate ground in the respondent-organization and therefore, imposition of punishment of dismissal of the petitioner from service is shockingly disproportionate. More so, the qualification set out in the transfer certificate was not a pre-requisite condition for securing employment on compassionate ground. Therefore, the impugned orders are not sustainable and the same are liable to be set aside. As it is a case of initiation of disciplinary proceedings against the petitioner on the basis of transfer certificate, which was not

required for giving employment on compassionate grounds, the petitioner is entitled to be reinstated into service.

8. Accordingly, the Writ Petition is allowed setting aside the orders impugned. The respondents are directed to reinstate the petitioner into service with continuity of service and without backwages. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Dated: 10th September, 2018.
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10/09/2018

Nn.