

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.15729 OF 2003

ORDER:

1. This writ petition is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with the order passed by the 1st respondent dated 20.11.2000 whereby the petitioner was dismissed from service, and also the order of the 2nd respondent dated 28.5.2003 whereby the appeal of the petitioner was rejected, and to quash the same and to issue a consequential direction to the 1st respondent to pay all the terminal benefits like pension, gratuity, etc. to the petitioner as if he retired on superannuation on 30.11.2000.

2. Heard Sri Vedula Srinivas, learned Counsel for the petitioner and Sri P. Sri Raghuram, the learned Standing Counsel for the respondents.

3. It is the case of the petitioner that he was appointed as a peon with the respondents on 16.8.1967 and his name was sponsored for the reserved post by the local employment exchange, and after undergoing regular selection process, the petitioner was appointed as peon as he belongs to S.T. community. The then competent authority i.e., Tahsildar, Chodavaram issued caste certificate on 11.8.1967 to the petitioner to the effect that the petitioner belongs to scheduled

tribe community. On the strength of the certificate issued by the then Tahsildar, the case of the petitioner was considered under S.T. quota and he was appointed as peon. Thereafter, the petitioner was promoted to the post of record sorter and later, as junior clerk. While the petitioner was discharging his duties, the respondents received anonymous letter, in which it was stated that the petitioner does not belong to S.T. community. The CBCID initiated a case against the petitioner on the ground that he had produced a false caste certificate at the time of his initial appointment. F.I.R.No.13 of 1991 dated 24.1.1991 was registered against the petitioner. The petitioner was tried by the 2nd Metropolitan Magistrate, Visakhapatnam, in C.C.No.2 of 1993. After completion of the trial, the learned Magistrate vide judgment dated 30.12.1997 acquitted the petitioner. Meanwhile, the 1st respondent requested the District Collector to conduct an enquiry into the genuineness of the caste certificate of the petitioner. Though the enquiry was initiated by the District Collector, but the said enquiry was not finalized. The 1st respondent without waiting for the action to be taken by the District Collector on the caste certificate possessed by the petitioner initiated disciplinary proceedings against the petitioner and issued charge sheet on 10.1.1994 alleging that the petitioner failed to produce S.T. Caste certificate duly certified by the revenue authorities to prove that he belongs to the community of Kondakapu. The respondents have

conducted enquiry. Based on the enquiry report, the 1st respondent passed final orders on 20.11.2000 dismissing the petitioner from service, just 10 days before his superannuation, which was due on 30.11.2000 on completion of 58 years. Aggrieved by the same, the petitioner preferred appeal to the appellant authority. The appellant authority rejected his appeal vide order dated 13.5.2003. Challenging the same the present writ petition is filed.

4. Learned Counsel for the petitioner contended that until and unless caste certificate issued in favour of the petitioner is not cancelled by the competent authority, in accordance with the rules, the benefits to the petitioner cannot be denied. He further contended that the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 has been promulgated only to deal the cases in respect of caste certificate, and as per Section 5 of the said Act, the competent authority to cancel caste certificate is the District Collector, that too, after giving an opportunity to the petitioner. He further contended that admittedly, in the instant case, the caste certificate issued in favour of the petitioner on 11.8.1967 has not been cancelled in terms of Act 16 of 1993, and unless and until the said caste certificate is not cancelled, the disciplinary authority cannot take action against the petitioner. He further contended that

certificate issued even prior to Act 16 of 1993 is also held to be valid until it is cancelled in accordance with the provisions of the Act 16 of 1993, and that the caste certificate issued in favour of the petitioner has not been cancelled even as on today, and therefore, it is valid, and the action of the respondents in imposing punishment of dismissal is arbitrary, illegal and void, and the writ petition be allowed, and the order of dismissal passed by the disciplinary authority, which was confirmed by the appellate authority, is liable to be set aside.

5. The learned Counsel for the respondents contended that every opportunity was given to the petitioner before the enquiry officer and in the enquiry, the petitioner could not produce any caste certificate to demonstrate that he is a member belonging to S.T. community and there are no merits in this writ petition.

6. This Court has considered the submissions made by the parties and the material available on record. The respondents have no jurisdiction to interfere into the correctness of the certificate issued by competent authority as per Act 16 of 1993. The competent authority to cancel the community certificate is the District Collector under Section 5 of the Act. Admittedly, the caste certificate issued in favour of the petitioner was not cancelled in accordance with the provisions of Act 16 of 1993. So long as the caste certificate is not cancelled, the petitioner is entitled for all the benefits under the said certificate. The caste

certificate of the petitioner was issued way back in the year 1967. Therefore, the order passed by the 1st respondent imposing punishment of dismissal dated 20.11.2000 and also the order of the 2nd respondent-appellate authority dated 28.5.2003 are liable to be set aside. Accordingly, they are set aside.

7. With the above observations, the Writ Petition is allowed with all consequential benefits. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 13.11.2018.
Nn.



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