

*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**
***THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY**

+ WRIT PETITION NO: 4581/2018

% 23.10.2024

#1. G.Venkata Naga Maruthi

.....Petitioner

And:

\$1. State of Andhra Pradesh & 2
others

....Respondents.

!Counsel for the petitioners

: Sri Ch. Satyanarayana

^Counsel for the respondent

: Sri Nagaraju Naguru,
Government Pleader for
Services - I

<Gist:

>Head Note:

? Cases referred:

1. 2022 SCC OnLine SC 486
2. 2023 SCC OnLine SC 977
3. 2024 SCC OnLine AP 3561
4. 2019 SCC OnLine All 4254
5. 2004 (2) SCC 105

HIGH COURT OF ANDHRA PRADESH

* * * *

WRIT PETITION NO: 4581/2018

DATE OF JUDGMENT PRONOUNCED: 23.10.2024

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HON'BLE SRI JUSTICE NYAPATHY VIJAY

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

RAVI NATH TILHARI, J

NYAPATHY VIJAY, J

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

HONOURABLE SRI JUSTICE RAVI NATH TILHARI

HONOURABLE SRI JUSTICE NYAPATHY VIJAY

WRIT PETITION NO.4581 of 2018

ORDER: *(per Ravi Nath Tilhari, J)*

Heard Sri Ch. Satyanarayana, learned Counsel for the petitioner, who appeared through virtual mode and learned Government Pleader for Services- I for the respondents.

2. This Writ Petition was filed by the petitioner – G. Venkata Naga Maruthi, under Article 226 of Constitution of India challenging the order dated 27.10.2017 passed by the Andhra Pradesh Administrative Tribunal at Hyderabad (in short ‘the Tribunal’) in O.A.Nos. 6910 of 2014 and 1980 of 2015.

3. The petitioner applied for the post of School Assistant (English) on 12.03.2012 pursuant to the Teachers recruitment notification ‘DSC-2012’. She applied as a physically handicapped person, mentioning in the application form ‘Hearing Handicapped, Percentage:(>70%)’. She appeared at the written test. She was selected. She attended the office of the District Educational Officer on 03.12.2012, for verification of certificates. By the proceedings in Rc.No.9103/A1/2012, dated 28.12.2012, she was appointed as School Assistant (English) and was given posting in ZPHS, P.N.Varam, Veligandla, where she joined on 29.12.2012.

4. One D.Narayana who had also participated in the selection process, made a representation/complaint that the petitioner had produced bogus medical certificate of hearing impaired from Government ENT Hospital, Koti for obtaining appointment order. The District Educational Officer, Ongole vide letter dated 10.03.2014 requested the Superintendent, Government ENT Hospital, Koti, Hyderabad to issue genuineness on medical PHC(HI) certificate of the petitioner dated 06.12.2012. In turn, the Superintendent of Government ENT Hospital vide letter dated 26.03.2014 submitted that the original records pertaining to the year 2012 were with Police of Central Crime Station for investigation purpose and therefore, he was unable to give genuineness report on the said PHC(HI) certificate. It was further informed that if necessary, the petitioner be deputed for re-assessment, for issuing a re-assessment certificate. The District Educational Officer, vide proceedings dated 23.05.2014 directed the Deputy Educational Officer and the petitioner to report before the Superintendent, Government ENT Hospital, Koti, Hyderabad on 26.05.2014 for reassessment. The petitioner did not attend. She made representation dated 29.05.2014 citing ill-health and asking for copy of the complaint. Again vide proceedings dated 09.06.2014, the petitioner was finally directed to appear in Government ENT Hospital, Koti, Hyderabad on 16.06.2014 for re-assessment, failing which necessary

action shall be taken against her as per A.P.C.S.(CC & A) Rules, 1991. She submitted representation dated 14.06.2014 stating that she was not shown as having been appointed under Hearing Impaired (HI) category and she was not physically handicapped person with HI. She did not appear before the Government ENT Hospital.

5. The District Educational Officer, Prakasam vide proceedings in Rc.No.1107/A1/2014, dated 15.07.2014 initiated departmental proceedings against the petitioner. The following two Articles of charges were framed against her. She was served with charge memo.

"Article-I:- That, the said Smt. G.Venkata Naga Maruthi has applied for DSC, 2012 to the post of School Assistant (English) through online under PH HI quota. She has mentioned in the check list at the time of certificate verification after selection that she belong to PH HI category with more than 70% deformity and submitted fake PH HI certificate dated:06.02.2012 said to have been issued by Govt. ENT Hospital, Koti, Hyderabad under category III. The certificate is with her photograph and signature. She has violated rule 8(4) of the Andhra Pradesh Direct recruitment for the posts of teachers Rules, 2012 issued in G.O.Ms.No.4 Education dated:09.01.2012 and liable for criminal prosecution besides cancellation of selection.

Article-II:- That the said Smt.G.Venkata Naga Maruthi, School Assistant (English), Z.P.High School, P.Nagulavaram, Veligandla Mandal, Prakasam District has not attended Govt. ENT Hospital, Koti, Hyderabad for re-assessment of her hearing disability and disobeyed the orders of the District Educational officer, Prakasam District."

6. The petitioner submitted explanation. She denied the charges.

7. The Assistant Director, Office of District Education Officer was appointed as Enquiry Officer. He issued notice dated 12.08.2014 to the petitioner to attend the enquiry on 01.09.2014. She submitted representation that she was on medical leave from 16.06.2014 to 15.09.2014 and expressed her inability to attend the enquiry on 01.09.2014. By another letter she was asked to appear on the next

date for the enquiry fixed on 17.09.2014. Again 24.09.2014 was fixed. She did not appear.

8. In the enquiry, the Enquiry officer examined 5 witnesses viz., (1) D.Anji Reddy, (2) P.V.Prasad, (3) P.Hanumantha Rao, (4) L.Madhavi Latha and (5) Sri Ch.Vijaybhaskar and completed the enquiry. The enquiry report dated 08.10.2014 was submitted with the finding that the selection of the petitioner as School Assistant (English) in DSC – 12 under PHHI-W reservation was irregular. The show cause notice dated 28.10.2024 was given to the petitioner on the Enquiry Officer's report, to explain as to why the punishment of the removal from service be not imposed. She did not submit any response.

9. Challenging the proceedings dated 28.10.2014, the petitioner filed OA.No.6910 of 2014 before the Tribunal. Initially, the interim order was granted which was extended from time to time. The petitioner was permitted to join duty on 15.03.2015, subject to the outcome of the orders in OA.No.6910 of 2014. The interim order was not extended on some date. The District Educational Officer, passed the final order dated 26.03.2015 imposing the punishment of removal from service.

10. Challenging the order of removal, the petitioner filed OA.No.1980 of 2015 before the Tribunal.

11. The respondents in their counter affidavit before the Tribunal, on verification of records and files in the office of DEO, Ongole, framed the points as under for consideration of the Tribunal:

*"a) In DSC-2012 under SA (English), 6 vacancies were notified. Out of 06, back log vacancies are 04 i.e., ST (W) 02, HI W 01 and Ex-Service General 01, current 02, Out of current vacancies 02, OC W-1 and SC W-1. **The current OC W post was filled with a female with 58.13 marks (Rank 1) whereas the applicant secured only 51.33 marks (Rank 7) and did not come under selection zone in OC(W) category. HI W post is a backlog vacancy and the applicant was selected under roster point PH HI (W) and there is no post available under roster point OC (G).***

*b) In the checklist for verification of certificates for selected candidates (original) ink signed submitted by the applicant she mentioned that she belongs to HH with > 70% deformity and enclosed a copy of the Handicapped issued by Regional Medical Board: Tirupathi on 20.10.1999 which was **also attested by Forest Range Officer, Social Forestry, Markapur who attested all other copies of certificates submitted by her at the time of certificates verification on 03.12.2012.** in the online application DSC, 2012 Recruitment for the post of School Assistant (English) she mentioned that she is HH with >70% deformity.*

c) It was mentioned that she belongs to HH with > 70%, in her computer generated statement of marks.

d) The photo on online application and on medical certificate are identical. The signature on checklist and medical certificate are also identical.

e) Roster points are not mentioned in the appointment order issued to selected candidates in DSC-2012 for all categories."

12. The Tribunal recorded that the petitioner participated in the selection process in pursuance of DSC-2012 and secured 51.33% marks. At the time of verification of certificate she submitted that she was suffering from hearing impairment with >70% disability and she belonged to Physically Handicapped hearing impaired with percentage of deformity of >70%. Based on that certificate, she was given appointment order as School Assistant (English). The Tribunal further recorded that the petitioner obtained the appointment as a School Assistant (English) based on the false certificate. She avoided to

attend the Government ENT Hospital for reassessment and she also admitted that she was not suffering from any disability. Therefore, the petitioner produced the false certificate of hearing impaired with >70% disability. She was not entitled for appointment and her case had to be rejected.

13. Both the aforesaid OAs were disposed of by common order dated 27.10.2017 as under:

*“22. Having regard to the facts and circumstances obtaining in the case and for the fore-going reasons, as the applicant produced the false certificate of hearing impaired, she is not entitled for appointment and liable for discharge from service instead of removal from service. In view of the same, the impugned proceedings Rc.No.1107/A1/2014 dated 26.03.2015 removing the applicant from service is liable to be set aside and it is accordingly, set aside. The respondents are at liberty to discharge the applicant from service. The O.A.1980/2015 is, accordingly, disposed of.
23.In view of disposal of O.A.1980/2015, O.A.6910/2014 is also disposed of.”*

14. The writ petition has been filed challenging the order dated 27.10.2017.

15. Learned counsel for the petitioner vehemently submitted that the petitioner did not submit the certificate of Physically handicapped PHC(HI). There was no evidence that the petitioner submitted the false certificate. He further submitted that the appointment was not given to the petitioner under the quota of physically handicapped.

16. Learned Government Pleader submitted that the petitioner's appointment was under physically handicapped quota; there was one post under this quota vide notification dated 09.01.2012. The petitioner had applied for that post. In the application form she ticked yes (✓) at

serial 14, against the question “Are you a physically Handicapped person” and with respect to the deformity, she stated ‘>70%’. In her application form online (page 118 with the counter affidavit) at serial ‘15a’ she mentioned, against ‘type of Handicapped’ ‘Hearing Handicapped, Percentage:(>70%)’. He had also referred to page 120 of the counter affidavit. The said certificate in respect of physically handicapped candidate (Deaf), of the petitioner has been annexed, which shows at ‘serial Nos.6, 9 & 10’ as under:

“6. An estimate of the residual hearing if any, and the basis on which this estimate been arrived at :

- | | |
|-----------------------------------|--------------------------------|
| 1. Right ear : 75 dB Hearing loss | } 76% (seventy
six percent) |
| 2. Left ear : 85 dB Hearing loss | |

9. Please enclose audiogram chart:

10. Specify whether the candidate is totally deaf/partially deaf : deaf”

17. Learned counsel for the petitioner did not dispute that the petitioner applied for post, by mentioning aforesaid facts. He however submitted that under the column “Any other remarks” (at page 19 EX.P3), the petitioner mentioned that ‘medical certificate from Government ENT hospital, Koti, Hyderabad is due’. He also referred to para-2 of the writ affidavit to submit that the petitioner’s specific case was that the certificates produced by her, were certificates relating to her studies only. He emphasized that the petitioner did not submit any fake certificate of physically handicapped (deaf).

18. Learned for the petitioner referred to the memo dated 19.03.2024 to submit that the CC.No.169 of 2016 was registered in

Crime No. 156 of 2014 for the offence punishable under Section 420 and 468 of IPC, in which the petitioner/accused was acquitted by judgment dated 18.03.2024 passed by II Additional Judicial Magistrate of I Class, Ongole. He contended that in view of such acquittal the order of the Tribunal cannot be sustained.

19. We have considered the aforesaid submissions and perused the material on record.

20. Before proceeding further, it deserves to be mentioned that in this petition, a Co-ordinate bench passed the following orders dated 24.04.2018 & 30.04.2018:

“24.04.2018:

Learned Assistant Government Pleader seeks time.

Post on 30.04.2018.

Learned Assistant Government Pleader shall ascertain by verification of the enquiry report as to whether any finding is recorded therein as to the production of a fake PH HI Certificate by the petitioner. He shall also produce the proof of the petitioner having submitted the said certificate, in the light of the check list for verification of certificates, dated 03.12.2012, which indicates that the medical certificate was due.”

“30.04.2018:

Learned Government Pleader shall produce the original record as she stated that certificate dated 20.10.1999 was produced by the petitioner along with her application.

Post on 18.06.2018.”

21. When the matter came up for hearing, we passed the following order on 08.08.2024:

“Heard Sri M.Surendra Rao, learned senior counsel for the petitioner and learned Government Pleader for Services-I for the respondents.

2.This writ petition was filed by Sri G. Venkata Naga Maruthi - the petitioner challenging the order of Andhra Pradesh Administrative Tribunal at Hyderabad in O.A.Nos.6910 of 2014 and 1980 of 2015.

3.Those OAs were filed by the petitioner feeling aggrieved from the show cause notice and the order of removal from service respectively.

4. The petitioner applied for the post of the School Assistant (English) pursuant to the DSC, 2012. She was selected and appointed. Later on, it transpired that her physical handicapped certificate - Hearing Handicapped (HH) was fake. Disciplinary proceeding was initiated. Enquiry was held. The Enquiry Officer recorded the finding that the certificate was fake. The punishment of removal from service was imposed.

5. The OAs were disposed of, on 27.10.2017 as under:-

"22. Having regard to the facts and circumstances obtaining in the case and for the fore-going reasons, as the applicant produced the false certificate of hearing impaired, she is not entitled for appointment and liable for discharge from service instead of removal from service. In view of the same, the impugned proceedings Rc.No.1107/A1/2014 dated 26.03.2015 removing the applicant from service is liable to be set aside and it is accordingly, set aside. The respondents are at liberty to discharge the applicant from service. The O.A.1980/2015 is, accordingly, disposed of.

23. In view of disposal of O.A.1980/2015, O.A.6910/2014 is also disposed of."

6. Learned counsel for the petitioner appearing through virtual mode submits that the petitioner did not submit the fake certificate. The appointment was also not given under the quota of physically handicapped.

7. Learned Government Pleader for Services-I submits that the appointment was under physically handicapped quota. The post on which the petitioner was given appointment was under that quota and was the only post. The petitioner had applied for that post. In the application form she ticked yes (✓) at serial 14, against the question "Are you a physically Handicapped person". With respect to the deformity, she stated '>70%'. In her application form online (annexed at page 118 with the counter affidavit) at serial '15a' she mentioned against 'type of Handicapped' 'Hearing Handicapped, Percentage : (>70%)'. At page 120 of the counter affidavit, certificate has also been annexed, which shows at 'serial No.6' as under:

6. An estimate of the residual hearing if any, and the basis on which this estimate been arrived at :

1. Right ear : 75 dB Hearing loss	} 76% (seventy six percent)
2. Left ear : 85 dB Hearing loss	

8. Learned counsel for the petitioner does not dispute that she applied by mentioning aforesaid facts, but submits that under the column "Any other remarks" (at page 19 EX.P3), she mentioned that 'medical certificate from Government ENT hospital, Koti, Hyderabad is due'. He also refers to para-2 of the writ affidavit to submit that the petitioner's specific case is that the certificates produced by her were certificates relating to her studies only. So, she did not submit any fake certificate.

9. On our specific query as to what was the reply of the petitioner to the charge memo, learned counsel for the petitioner referred to page No. 52 of the petition affidavit (translation copy).

10. We have perused the same. In the first para of translation copy, of the reply, she has clearly stated that "I am not physically disabled person", which reads as under:

Respected D.E.O is requested to kindly look into the facts of my case the allegations made against me are not true to the prevailing facts of circumstances. Humbly submitted that I had appointed as School Assistant in O.C.quota and I am not physically disabled person. I have never submitted a certificate issued by Govt. ENT Hospital, Koti, the same was not filed by me at the time of verification of

certificates. I have affirmed and stated before whole hearted by that I am not disabled person but it is your strong desire to refer to me to a doctor for medical examination. I am stating that I am not disabled person. As per Act and rules "Admitted facts need not be proved."

11. The petitioner admitting that she was not physically disabled person refused to go for medical examination, though submitting that the certificate was not filed by her.

12. The petitioner is the beneficiary of the certificate, though she is not physically disabled, but she filled in her forms physically disabled as noted above. She got the appointment against the only post under quota of handicapped.

13. The certificate annexed with the counter was issued by the Regional Medical Board, Tirupathi.

14. We are of the view prima-facie at this stage that before proceeding further, we should call upon the Regional Medical Board, Tirupathi, to submit the affidavit of the competent person, with respect to the certificate annexed with counter affidavit:

- i) Whether the same was issued by it or not ? and
- ii) If it was issued, by whom and how?

15. Let the affidavit be filed before the next date of listing.

16. For further hearing, post on 16.08.2024 as part heard.

17. Any application for withdrawal of this petition or to that effect in any other form, shall not be entertained by the Registry.

18. Copy of this order shall be given to the learned Government Pleader for Services – I free of costs by tomorrow to ensure compliance."

22. The Superintendent of S.V.R.R. Government General Hospital, Tirupati and also the Chairman for the Regional Medical Board, Tirupati, Tirupati District filed his affidavit dated 23.08.2024.

23. The petitioner's reply to the charge memo (translation copy) shows that the petitioner's reply was that she was not physically disabled person. The relevant part, reads as under:

"Respected D.E.O is requested to kindly look into the facts of my case the allegations made against me are not true to the prevailing facts of circumstances. Humbly submitted that I had appointed as School Assistant in O.C.quota and I am not physically disabled person. I have never submitted a certificate issued by Govt. ENT Hospital, Koti, the same was not filed by me at the time of verification of certificates. I have affirmed and stated before whole hearted by that I am not disabled person but it is your strong desire to refer to me to a doctor for medical examination. I am stating that I am not disabled person. As per Act and rules "Admitted facts need not be proved."

24. The application form filed by the petitioner as Ex-3, shows that the column at Serial No.14 reads as under:

“14. Are you a Physically Handicapped Person: [✓] Yes/~~No~~
If Yes, Mention type & % of deformity : ~~VH/OH/HH~~ [✓] % of Deformity : >70%
(Enclose original deformity certificate from concerned Medical Authority)”

25. In the same application (Ex.3) the column of “Any other remarks” reads as under:

“ANY OTHER REMARKS:
i) Medical Certificate from Govt ENT Hospital, Koti, Hyderabad is due.”

26. The online application submitted by the petitioner, annexed to the counter affidavit, also shows in Serial Nos.15 and 15A as under:

“15. Are you a Physically Handicapped (PH) Person: Yes
15a. Type of Handicapped : Hearing Handicapped, Percentage: (>70)%”

27. The certificate (PH) issued by the Regional Medical Board, Tirupati of the petitioner’s examination dated 20.10.1999 annexed to the counter affidavit is as under:

CERTIFICATE IN RESPECT OF PHYSICALLY HANDICAPPED CANDIDATE
(deaf)

This is certified that the Regional Medical Board Tirupathi have this 20th day of October, 1999 examined the candidate who is particulars are given below:

1. Name of the candidate : G V N Maruthi
2. Father’s Name : G.V.Subba Rao
3. Sex : Female
4. Approximate age : 26 years
5. Identification marks : 1. A mole on the left cheek
2. A mole on the right ring finger

- 6. **An estimate of the residual hearing if any, and the basis on which this estimate been arrived at** :
 - 1.Right ear : 75 dB Hearing loss
 - 2. Left ear : 85 dB Hearing loss
 } 76% (seventy six percent)
- 7. On set of deafness (please state whether deafness is if it has been caused afterwards, the age and cause of (For all the purpose of assistance, the sense of hearing is non-functional for the ordinary purpose of life. General loss of hearing at 70 decimals or above as 500, 1000, 2000 frequencies will make residual hearing non-functional) : averred falling on the attack of “Enteric Fever”.
- 8. **Please state clearly whether the candidate is deaf for all the purposes of assistance** : Yes
- 9. Please enclose audiogram chart :
- 10. **Specify whether the candidate is totally deaf/partially deaf** : deaf

Signature of the candidate

Signature of E.N.T. Specialist

Signature of the Superintendent
Regional Medical Board

28. In para – 4 of the affidavit dated 23.08.2024 referred to above, it is deposited as under:

4.In this regard, it is submitted that the Medical certificate is purported to have been issued by Dr.V.Ramana Rao, Superintendent, SVRRGGH, Tirupati on 20.10.1999. As seen from the records of this office it is noticed that Dr.V.Ramana Rao, formerly Superintendent had been retired from service on 31.12.1997 on attaining the age of superannuation (proof of last pay certificate is herewith enclosed). Hence, it appears that the Physically Handicapped certificate is not

emanated from Regional Medical Board, Tirupati and the same was not issued by the Regional Medical Board, Tirupati.

29. From the affidavit it is evident that the date, the physically handicapped certificate was issued by Dr. V.Ramana Rao, Superintendent, SVRRGGH, Tirupati is 20.10.1999, whereas Dr.V.Ramana Rao had retired from service on 31.12.1997, on attaining the age of superannuation. The said certificate was not issued by the Regional Medical Board, Tirupati.

30. It is thus evident that the petitioner applied for the post as physically handicapped person, pursuant to the DSC-2012, under which category there was one post. In her application form the petitioner mentioned that she belonged to that category. The certificate of physically handicapped of the petitioner, submitted before the Authority has been annexed with the counter affidavit. It was submitted that, the same was not filed by the petitioner. But, in view of the facts and circumstances of the case that the petitioner herself filled in the application form that she belonged to physically handicapped quota, which is not disputed as also considering that the appointment was under the quota of physically handicapped for which there was one post (vide para 4 of counter affidavit supported with exhibit at page 114 of counter affidavit; SI.No.20 – HI(W) of post), the petitioner filling in the application form 'Medical certificate from Government ENT Hospital, Koti, Hyderabad is due' and later on such certificate coming

on record; and the petitioner being the beneficiary of such certificate, it can not be believed that the certificate was not filed by the petitioner. Even if it be taken that it was not filed by the petitioner, the petitioner cannot plead such innocence, in the background of the sequence of facts narrated above. The petitioner obtained the appointment knowing well that she did not fall in that category of physically handicapped, but inspite thereof filling in the application form physically handicapped and later on, the certificate of physically handicap in proof of the application, coming on record, all that was only to secure the appointment, and she successfully got the appointment. The petitioner's involvement is apparent. The certificate was issued by Dr.V.Ramana Rao, Superintendent, SVRRGGH, Tirupati, on 20.10.1999 whereas the said doctor had retired from service on 31.12.1997. It is a clear case where the petitioner playing fraud obtained an appointment on the post, reserved for handicapped person by filling application with false details, and based on fake certificate. The certificate was fake, is substantiated from the affidavit filed by the Superintendent, SVRRGGH, Tirupati, besides, it being the own case of the petitioner that she is not physically handicapped.

31. The Tribunal has disposed of the OAs by setting aside the impugned proceedings of removal from service and granting liberty to the respondents to discharge the applicant/petitioner. The Tribunal

observed that 'when once she was not entitled for appointment, the question of giving punishment does not arise. She was liable for discharge by cancellation of the appointment.

32. We are not convinced with such approach being adopted by the Tribunal nor with the reasoning assigned for discharge instead of removal. Once, the Tribunal found that it was a case of fraud and forgery for getting appointment to the post reserved for physically handicapped person and thus depriving the genuine candidate, of the benefit meant for such category of person, the Tribunal ought not to have interfered with the order of petitioner's removal from service.

33. In *Indian Oil Corporation Ltd. v. Rajendra D.Harmalkar*¹, the petitioner therein was dismissed from service by the Disciplinary Authority for producing the fabricated/fake/forged Secondary School Leaving Certificate (in short 'SSLC'). The Hon'ble Apex Court observed that producing the false/fake certificate is a grave misconduct. The question is one of a Trust. How can an employee who has produced a fake and forged marksheet/certificate, that too, at the initial stage of appointment be trusted by the employer? Whether such a certificate was material or not and/or had any bearing on the employment or not is immaterial. The question is not of having an intention. The question is producing the fake/forged certificate. Therefore, the Hon'ble Apex

¹ 2022 SCC OnLine SC 486

Court observed that the Disciplinary Authority was justified in imposing the punishment of dismissal from service.

34. Para No.29 of ***Indian Oil Corporation Ltd.*** (supra) reads as under:

29. In the present case, the original writ petitioner was dismissed from service by the Disciplinary Authority for producing the fabricated/fake/forged SSLC. Producing the false/fake certificate is a grave misconduct. The question is one of a TRUST. How can an employee who has produced a fake and forged marksheet/certificate, that too, at the initial stage of appointment be trusted by the employer? Whether such a certificate was material or not and/or had any bearing on the employment or not is immaterial. The question is not of having an intention or mens rea. The question is producing the fake/forged certificate. Therefore, in our view, the Disciplinary Authority was justified in imposing the punishment of dismissal from service.

35. In ***Bhubaneswar Development Authority v. Madhumita Das***², the respondent No.1 therein obtained employment against a post which was reserved for the Scheduled Caste to which she was not entitled. The Hon'ble Apex Court observed that the effect is to displace a genuine candidate, who would otherwise have been entitled to the post. The Hon'ble Apex Court did not find fault with the conduct of the department in convening a disciplinary enquiry and imposing punishment of dismissal from service and also observed that such punishment could not be regarded as disproportionate.

² 2023 SCC OnLine SC 977

36. Para Nos.22 & 23 of **Bhubaneswar Development Authority** (supra) are as under:

22. This Court further held that granting protection to individuals who are ineligible for the post has a deleterious effect on good governance as it: (i) allows an ineligible person to gain access to a scarce public resource (public employment); (ii) violates the rights of eligible persons; and iii) perpetuates illegality by unduly bestowing benefits on an ineligible person.

23. The first respondent obtained employment against a post reserved for Scheduled Castes to which she was not entitled. The effect is to displace a genuine candidate, who would otherwise have been entitled to the post. No fault can be found with the conduct of the appellant in convening a disciplinary enquiry. The findings of the enquiry are unexceptionable. The punishment which was imposed could not be regarded as disproportionate. Irrespective of whether or not the caste claim of the first respondent was fraudulent or otherwise, it is evident that the benefit which she obtained of securing employment against a reserved post would have to be recalled once the caste claim has been rejected.

37. Recently in **D.Ramanjaneyulu v. SCR Gm Secunderabad**³, this Court, taking into consideration **Bhubaneswar Development Authority (supra)** as also **Ramakant v. Union of India**⁴, the judgment of Allahabad High Court held in para Nos. 10 & 11 as under:

10. Para Nos.22 & 23 of **Bhubaneswar Development Authority** (supra) read as under:

“22. This Court further held that granting protection to individuals who are ineligible for the post has a deleterious effect on good governance as it: (i) allows an ineligible person to gain access to a scarce public resource (public employment); (ii) violates the rights of eligible persons; and iii) perpetuates illegality by unduly bestowing benefits on an ineligible person.

23. The first respondent obtained employment against a post reserved for Scheduled Castes to which she was not entitled. The effect is to displace a genuine candidate, who would otherwise have been entitled to the post. No fault can be found with the conduct of the appellant in convening a disciplinary enquiry. The findings of the enquiry are unexceptionable. The punishment which

³ 2024 SCC OnLine AP 3561

⁴ 2019 SCC OnLine All 4254

was imposed could not be regarded as disproportionate. Irrespective of whether or not the caste claim of the first respondent was fraudulent or otherwise, it is evident that the benefit which she obtained of securing employment against a reserved post would have to be recalled once the caste claim has been rejected.”

11. In ***Ramakant v. Union of India***⁵, the petitioner therein had obtained appointment against the Scheduled Caste category post on the strength of caste/social status certificate but later on in enquiry it was found that he was belonging to OBC and not Scheduled Caste. The Allahabad High Court held that by producing a forged and fabricated certificate on misrepresentation, not only did the petitioner secure a job but he was also responsible in depriving a genuine candidate to the post. The appointment of the petitioner was void and non est in the eyes of law. The punishment that had been awarded to the petitioner befitted the misconduct committed. **The Allahabad High Court further observed that any modification with respect to the quantum of punishment would only amount misplaced sympathy and perpetuate the fraud.**

12. In ***Ramakant*** (supra) a plea was also taken that the petitioner had rendered a long years of service and consequently the punishment of dismissal should not have been imposed. The said argument was turned down. **The judgment in the case of *R.Viswanath Pillai v. State of Kerala***⁶ was relied upon, in which it was held that a person who entered the service by producing a false caste certificate meant for a Scheduled Caste, depriving a genuine Scheduled Caste candidate of appointment to that post, did not deserve any sympathy or indulgence of the Court. A person who seeks equity must come with clean hands. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing fraud. No sympathy and equitable consideration can come to his rescue. The order of dismissal from service was maintained.

38. The contention of the learned counsel for the petitioner was that the petitioner was acquitted in the criminal case vide judgment dated

⁵ 2019 SCC OnLine All 4254

⁶ 2004 (2) SCC 105

18.03.2024, such acquittal in our view would not effect the order passed by the Disciplinary Authority. The reason is that in the criminal proceedings, the burden of proof is different. It is beyond reasonable doubt. There is no such burden of proof in departmental proceedings, which is preponderance of probabilities. It was proved in the departmental enquiry that the petitioner was not a physically handicapped person, but she obtained the post reserved for physically handicapped person, by mentioning herself belonging to that category and filing fake certificate.

39. We are of the considered view that the punishment of removal from service deserved to be maintained by the Tribunal and it legally erred in interfering with the same. The petitioner deserved no sympathy or indulgence as shown by the Tribunal.

40. We are conscious that this writ petition is by the applicant in O.A. But considering the settled legal position in view of the above discussion, and finding that the Tribunal exceeded its jurisdiction in issuing the directions as issued, we in addition to Article 226, invoke our jurisdiction under Article 227 of the Constitution of India, which is to keep the Tribunal/courts within the bounds of their jurisdiction.

41. In the result, we decide the writ petition by disposing of in the following terms:

i) The O.A.Nos. 6910 of 2014 and 1980 of 2015 on the file of Andhra Pradesh Administrative Tribunal at Hyderabad, are dismissed.

ii) The order of the Tribunal dated 27.10.2017 is modified to one of dismissal, maintaining the order of the petitioner's removal from service, though in our view dismissal from service would have been the appropriate punishment in such matter.

iii. We impose a costs of Rs.1,00,000/- (Rupees One Lakh only) on the petitioner. The cost shall be paid to Omkar & Lions Educational Society for the Deaf, Lawsons Bay colony, Visakhapatnam (in short 'the special school'), which is a special school run for hearing handicapped children.

iv) The cost shall be paid within a period of one month from today, vide a Demand Draft and a proof thereof shall be filed in this case within 6 weeks from today, through Registrar (Judicial), failing which the Registrar (Judicial) of this Court shall ensure, realisation of the cost amount with necessary incidental charges from the petitioner and to remit the cost amount to the special school, and shall place a report to that effect on record.

42. Post on 02.01.2025 for perusal of compliance.

43. Let a copy of this judgment be sent to Omkar & Lions Educational Society for the Deaf, Lawsons Bay colony, Visakhapatnam.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand dismissed.

RAVI NATH TILHARI, J

NYAPATHY VIJAY, J

Date: .10.2024
Note: L.R. copy be marked
B/o.
AG

HONOURABLE SRI JUSTICE RAVI NATH TILHARI

HONOURABLE SRI JUSTICE NYAPATHY VIJAY

WRIT PETITION NO.4581 of 2018

Date: .10.2024

Note: L.R. copy be marked

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