

**(2008) 08 AP CK 0012**

**Andhra Pradesh High Court**

**Case No:** Writ Petition No. 14229 of 2008

G. Venkoba

APPELLANT

Vs

APSRTC and Another

RESPONDENT

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**Date of Decision:** Aug. 25, 2008

**Citation:** (2008) 5 ALD 698

**Hon'ble Judges:** L. Narasimha Reddy, J

**Bench:** Single Bench

**Advocate:** Venkata Ramaiah Karumuri, for the Appellant; W.V.S. Rajeswari, SC, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

Petitioner was employed as driver in APSRTC in the year 1979. Through order, dated 12.5.1998, he was appointed as Assistant Depot Clerk (ADC), by transfer. He was due to attain the age of superannuation, on 31.3.2008.

2. The Depot Manager, Yemmiganur, 2nd respondent herein, issued a charge-sheet, dated 26.2.2008, to the petitioner alleging that the certificate of his educational qualifications were found to be not genuine. Petitioner submitted his explanation on 8.3.2008. The 2nd respondent appointed an enquiry officer, and a report was submitted on 18.3.2008, holding that the charge against the petitioner is proved. The 2nd respondent issued a show-cause notice dated 19.3.2008, proposing punishment of removal. Petitioner submitted explanation on 28.3.2008. On the same day, the 2nd respondent passed an order directing removal of the petitioner from service. The same is challenged in this writ petition.

3. Petitioner contends that it was only on the recommendation made by the Selection Committee, after examining the record and application of the petitioner that he was posted as ADC, and he was not promoted. He contends that there was

no raise in his emoluments, on such appointment by transfer, and the entire action of the respondents is mala fide, in nature.

Learned Counsel for the petitioner had submitted arguments on the same lines.

4. Learned Standing Counsel had obtained record and made extensive submissions. She contends that once the certificate, relied upon by the petitioner in proof of his educational qualifications, was found to be not genuine, misconduct of grave nature stands established, and that the impugned order cannot be found fault with. She raised an objection as to the maintainability of the writ petition also.

5. The appointment of petitioner, as driver is not shrouded with any doubt or mystery. After he rendered service for about two decades, his case was considered for appointment by transfer, to the post of ADC. It was not a case of promotion. Relevant Regulations and Circulars are clear to the effect that except change in nature of duties, appointment of driver as ADC does not bring about any enhancement in salary. The same is evident from the following conditions, which were incorporated in the order, dated 12.5.2008, through which the petitioner was appointed as ADC, by transfer.

(1) There shall not be any change to the existing pay or date of annual increment. allowed in the post of driver GR-I consequent to transfer of ADC.

(2) Once effect the transfer to the post of ADC he will not have the right to come back as driver GR-I and has to be continued as ADC only.

6. The 2nd respondent had virtually taken the petitioner by surprise. He knew very well that petitioner was to retire on 31.3.2008. Though he collected material against the petitioner, to the effect that the certificate relied upon by the petitioner is not genuine, in January 2008 itself, he issued show-cause notice, hardly one month before the petitioner was to retire from service. Petitioner was under the fear that the disciplinary proceedings would come in the way of his claiming retirement benefits. Petitioner submitted his explanation instantly, within three days. It is not clear as to the date, on which enquiry officer was appointed. The record, however, discloses that enquiry against the petitioner commenced with the recording of a statement from the petitioner. This was not preceded by presentation of case on behalf of the Corporation. Further, report of the enquiry officer itself is somewhat contradictory. On one hand it was observed that the explanation offered by the petitioner is true, as regards the point of time at which the certificate was produced, and in the next sentence it was observed that the same cannot be believed.

7. Be that as it may. The point of time, at which the proceedings were initiated, assumes significance. It is not as if the petitioner was instrumental in hiding anything. His case was considered for appointment by transfer as ADC two decades after his joining the service. The Corporation itself has introduced a scheme of stagnation of increments or automatic higher scales, as the case may be. It has

already been pointed out that posting as ADC do not bring about any advantage to the emoluments of the petitioner, but only nature of duties changes.

8. Petitioner made a specific reference to a circular issued by the Corporation providing relief to the drivers, whose driving licences were found to be not genuine. According to the circular, in case the drivers produce fresh licence, they may be continued in service. The present case, in fact, stands on a higher footing. When the circulars provide for relaxing basic requirements, such as driving licences, an inconsequential document, such as educational certificate in relation to appointment by transfer ought not to have led to such a serious action. In its circular dated 23.12.1999, the Corporation took note of this and directed that in case it is found that educational certificates submitted by the drivers are found to be not genuine, necessary entries can be made in the Service Register and it must not entail in serious action of removal or dismissal from service. Even this was totally ignored by the 2nd respondent.

9. Hence, the writ petition is allowed and the impugned order dated 28.3.2008 is set aside. To give a quietus to the matter, reduction of pay scale by one stage shall stand imposed against the petitioner. There shall be no order as to costs.