

THE HON'BLE SRI JUSTICE G.CHANDRAIAH
AND
THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

-
W.A.NO.453 OF 2015

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JUDGMENT (Per the Hon'ble Sri Justice G.Chandraiah)

The 1st appellant – society is running the 2nd appellant college - Bankatlal Badruka College of Information Technology, which is affiliated to Osmania University, Hyderabad, and is offering post graduate course in Master of Computer Applications (MCA) and the 1st respondent has been working as a Lecturer in the said college. On the ground that there is decline in take of students in MCA course, the management of college issued the communication dated 30.3.2015 intimating the 1st respondent that her services would be discontinued with effect from 1.5.2015 and to treat the said communication, as one month notice. The impugned communication issued by the college is as under:

"BBCIT/AO/MCA(Admn)/2015

30th March, 2015

Dear Sir,

Sub:- Closure of MCA programme – Discontinuation of Services of faculty –
Reg.

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Since the admission in MCA course are slowed down year after year, it is not feasible to continue the course in this college. Hence the management of BBCIT proposed to close the programme progressively from academic year 2015-16 onwards. The said proposal was approved and resolved by the Governing Body of the college in its meeting held on 29th October, 2014.

In view of the financial constraints of the institution, the management of BBNCIT has decided to reduce the MCA Faculty proportionately, year after year till complete closure of the Course. Accordingly the services of the following faculty members are no longer required to this institution. Since some of the faculty members have already resigned as per the list given below, the remaining faculty members may have to note that their services will be discontinued w.e.f. 01.05.2015. This may be treated as one month notice.

Sl.No.	Name of the faculty	Designation	Status
1.	Dr.K.Suvarchala	Professor	Presently in service.
2.	Ms. R.Maheswari	Lecturer	Presently in service.
3.	Ms.K.Swathi	Lecturer	Resigned and relived w.e.f. 16.3.2015
4.	Mr.P.V.N. Balarama Murty	Lecturer	Resigned and relived w.e.f. 25.12.2014

Thanking you,

Yours sincerely,
Sd/-
Hony. Secretary”

2. The 1st respondent is at serial No.2 of the above communication and challenging the above communication dated 30.3.2015, she filed writ petition in W.P.No.10828/2015 and a learned single Judge of this court by interim order dated 22.4.2015 in WPMP.No.14311/2015 in W.P.No.10828/2015, suspended the impugned communication. The relevant portion of the impugned order reads as under:

“While one can see the contingent circumstances narrated by the 5th respondent requiring the M.C.A. course to be closed and discontinued, but that is a process which at least would take two more years. Therefore, the teaching faculty to teach the M.C.A. students will have to be continued on the rolls of the college and as to how many teachers are required for that purpose is also regulated by the regulations framed by the AICTE as well as Osmania University. The student-teacher ratio cannot be unilaterally reduced by the college management.

This apart Section 83 of Educational Act, 1982, by which provision the 5th respondent is bound, made it very clear that where retrenchment of any employee is rendered necessary by the management or the competent authority consequent upon any change relating to education or course of instruction or due to any other matter, such retrenchment may be, effected with the prior approval of the competent authority or the next higher authority as the case may be.

When queried, learned counsel for the 5th respondent is not in a position to demonstrate before me when such prior permission for effecting retrenchment of the teachers has been obtained by the 5th respondent. Therefore, I have no hesitation to suspend the operation of the communication dated 30.03.2015 proposing to discontinue from service the services of the writ petitioner as well as Professor Dr.K.Suvarchala. The petition is ordered accordingly.

It is needless for me to observe that these two teachers shall continue to be entertained to the duty and they shall be paid the necessary salary and allowances attached to the post held by them.

I am conscious that Dr.K.Suvarchala has not approached this Court and hence it is open to her to offer her resignation or enter into an appropriate settlement with the Management.”

3. Challenging the above order of the learned single Judge, the present writ appeal has been filed by the management of the college. This court on 1.7.2015 while ordering notice before admission, granted interim suspension of the order of learned single Judge. Seeking for vacating of the interim order, the 1st respondent filed vacate petition in WAMP.No.1858/2015 in W.A.No.453 of 2015. As the learned counsel appearing for both the parties made submissions touching the merits of the case, with their consent, the appeal itself is taken up for disposal.

4. By referring to the contents in the communication dated 30.3.2015 and submissions made before the learned single Judge, the learned counsel for the appellants further submitted that the appellant – College is a self finance college and it is within its competence to retrench the teaching and non-teaching staff and no prior approval of the authority is required. He stated the decision to discontinue the course due to poor intake of students and financial constraints, has been intimated to Osmania University and All India Council for Technical Education (AICTE) and therefore, the decision of the management of the college, to discontinue the services of the 1st respondent, cannot be found fault with. With these submissions, *inter alia*, he sought to set aside the interim order of the learned single Judge and to allow the writ appeal.

5. On the other hand, the learned counsel appearing for the 1st respondent – writ petitioner supporting the impugned order, sought to dismiss the writ appeal.

6. The facts referred to above need no reiteration. There is no dispute that the appellant – college is a private self finance institution, offering MCA course and is bound by the statutory procedure under Chapter XIV of the A. P. Education Act, 1982 (for short 'the Act'), which deals with payment of salaries and allowances to, and disciplinary action against employees of private institution. Under this chapter, Section 83 of the Act provides the procedure for retrenchment of employees. The Government in exercise of the powers conferred by Sections 79, 80 and 83 read with Section 99 of the Act, issued G.O.Ms.No.467, Education @ dated 03.11.1983 framing the Andhra Pradesh Private Institutions Employees (Disciplinary Control) Rules, 1983. As per clause (iii) of Rule 2 (c) of the Rules, the Director of the Technical Education is the competent authority for the institutions imparting technical education in respect of teaching and non teaching staff employed therein and sub rule (d) of Rule 2 provides the definition of 'employees'. The said provisions under the Act and the Rules made thereunder, are extracted as under for ready reference:

83, Retrenchment of employees:-- Where retrenchment of any employee is rendered necessary by the management or competent authority consequent on any change relating to education or course of instruction or to any other matter, such retrenchment may be, effected with the prior approval of the competent authority or the next higher authority, as the case may be.

Rule 2 Definitions: In these rules, unless the context otherwise requires:--

- (a) ..
- (b) ...
- (c) ..

- (iii) In relation to the institutions imparting technical education, the Director of the Technical Education;
- (d) "employees' means, a teacher or a member of the non-teaching staff employed in a service educational institution, whether receiving aid or not;
- (e) ..

7. In the present case, there is also no dispute that the 1st respondent was appointed by the appellant – college on 23.7.2012, by duly following the statutory procedure and subsequently her appointment was confirmed on 23.8.2013. The appellant – college is a private unaided institution imparting M.C.A. course, which is a technical education and now it intends to discontinue the 1st respondent - Lecturer, due to declining intake of students in the said course. For this purpose, as per the procedure contemplated under Section 83, the management has to take prior approval of the competent authority, who is Director of the Technical Education.

8. There is no material on record to show that the appellants have taken any prior approval of the competent authority before issuing the communication of discontinuance dated 30.3.2015. In these circumstances, we of the view that the interim order of the learned single Judge suspending the impugned communication dated 30.3.2015 and directing the appellants to continue the 1st respondent and to pay salary and other allowances attached to the post, warrants no interference.

9. Having regard to the facts and circumstances of the case, liberty is given to the appellants to approach the competent authority under Section 83 of the Act seeking approval of the impugned action sought to be taken, within a period of two weeks from the date of receipt of a copy of this order and within one month thereafter, the competent authority, after due notice and opportunity of being heard to the 1st respondent, shall pass appropriate orders in accordance with law. Till then the interim order of the learned single Judge dated 22.4.2015 in WPMP. No.14311 of 2015 in W.P.No.10828 of 2015, shall continue.

10. The writ appeal is disposed of accordingly. No costs.

11. Miscellaneous petitions pending if any, shall stand closed.

G.CHANDRAIAH,J

CHALLA KODANDA RAM, J

DATE:05.10.2015

AVS