

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NOS.25 AND 8882 OF 2012

DATED 30th JANUARY, 2015

W.P. No.25 of 2012

Between:

P. Prasad

... Petitioner

and

The Government of A.P. rep. by its
Commissioner of Collegiate
Education, Hyderabad and others

... Respondents

W.P. No.8882 of 2012

Between:

C.S.R. Sarma College, Ongole

... Petitioner

and

The Government of A.P. rep. by its
Principal Secretary, Higher Education,
Hyderabad and others

... Respondents

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NOS.25 AND 8882 OF 2012

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COMMON ORDER
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The petitioner in W.P. No.25 of 2012 (hereinafter referred as 'the employee') was a Junior Assistant in the service of the C.S.R. Sarma College, Ongole, Prakasam District, the petitioner in W.P. No.8882 of 2012 (hereinafter referred as 'the college').

The college surrendered the aided post occupied by the employee under proceedings dated 11.02.2008. The same was challenged by the employee before this Court in W.P. No.3061 of 2008. The said writ petition was allowed by order dated 10.06.2008 holding that the college could not surrender the employee against his wishes. Pursuant thereto, the employee was reinstated in service. However, he remained out of service from 12.02.2008 to 17.06.2008 but sought payment of salary for the said period. The college turned down his request, leading to the employee filing an appeal which was taken on file by the Regional Joint Director, Collegiate Education, Guntur. The said appeal was allowed by order dated 12.11.2009, whereby the college was directed to treat the period from 12.02.2008 to 17.06.2008 as on duty and to pay the salary for the said period from the college funds. Aggrieved thereby, the college preferred an appeal before the Government under Section 89(b) of the A.P. Education Act, 1982 (for brevity, 'the Act of 1982').

However, by memo dated 27.04.2010, the Government made over the appeal to the Commissioner of Collegiate Education, Andhra Pradesh, Hyderabad, treating it as an appeal under Section 89(a) of the Act of 1982. The Commissioner, by his order dated 12.07.2011,

dismissed the appeal of the college.

Challenging the said order, the college filed W.P. No.8882 of 2012, while seeking implementation of the order passed by the Regional Joint Director of Collegiate Education, Guntur, the employee filed W.P. No.25 of 2012.

Heard Sri Y.V. Ravi Prasad, learned senior counsel appearing for the college, Sri Madhava Rao Nalluri, learned counsel for the employee and the learned Government Pleader for Higher Education for the State of Andhra Pradesh.

The short issue that falls for consideration, upon analyzing the submissions made by the learned counsel, is as to whether the Commissioner of Collegiate Education, Andhra Pradesh, had jurisdiction to entertain the appeal filed by the college against the order of the Regional Joint Director of Collegiate Education, Guntur.

Section 89 of the Act of 1982 deals with appeals and reads as follows:

“89. Appeals:-- Save as otherwise provided in this Act,--

- (a) any person aggrieved by an order passed by an officer or authority other than the Director under this Act may, within thirty days from the date of communication of such order, appeal to the Director;
- (b) any person aggrieved by an order passed by the Director under this Act other than an order passed by him under Clause (a) may, within sixty days from the date of the communication of such order, appeal to the Government.

Explanation:-- For purposes of this section and Section 92, the expression “Director” includes the Additional Director or Joint Director when he exercises the powers of the Director under this Act.”

In the present case, it is the admitted position that the employee preferred an appeal before the Regional Joint Director of Collegiate Education, Guntur, aggrieved by the order passed by the Secretary and Correspondent of the college denying his request for payment of salary for the period he remained out of service. The said appeal was therefore relatable to Section 89(a) of the Act of 1982. This aspect is clear from

the Explanation thereto which clarifies that a Joint Director when he exercises the power of a Director under the Act would fall within the expression 'Director' for the purpose of Sections 89 and 92. As the Regional Joint Director of Collegiate Education, Guntur, was exercising appellate powers under Section 89(a) of the Act of 1982, he fully satisfies the Explanation and the definition of 'Director' as per Section 2(13) of the Act of 1982. The order passed by him was therefore amenable to further appeal under Section 89(b) and such an appeal would lie to the Government. That being so, the college rightly preferred an appeal to the Government, but being under a mistaken impression that such appeal had been preferred under Section 89(a) of the Act of 1982, the Government seems to have made over the said appeal to the Commissioner of Collegiate Education.

The learned Government Pleader for Higher Education does not dispute the fact that the Commissioner of Collegiate Education would be on par with a 'Director' and therefore, the appeal from the order of a 'Director' was sought to be subjected to the jurisdiction of another Director. This is not the intendment of Section 89 which postulates that an appeal would lie to the higher authority and not one on par with the authority passing the order. The order dated 12.07.2011 passed by the Commissioner of Collegiate Education, Andhra Pradesh, Hyderabad, exercising appellate power over the Regional Joint Director of Collegiate Education, Guntur, therefore falls foul of the statutory scheme and is accordingly set aside. The appeal filed by the college necessarily has to be examined by the Government in terms of its appellate power under Section 89(b) of the Act of 1982. The said appeal is therefore restored and the Government shall consider the same on its merits and pass reasoned orders thereon in accordance with law, after giving due opportunity of hearing to all the parties, within a period of eight weeks from the date of receipt of a copy of this order.

W.P. No.8882 of 2012 is accordingly allowed. In the light of the fact that the appeal filed by the college has been restored and has to be

adjudicated by the competent appellate authority, the prayer of the employee seeking implementation of the order under appeal cannot be entertained at this stage. W.P. No.25 of 2012 is therefore dismissed as premature. Interim orders in both the matters shall stand vacated. Pending miscellaneous petitions, if any, in both the cases shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

30th JANUARY, 2015

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