

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.5827 of 2007

ORDER :

The petitioner maintained the writ petition against respondent Nos.1 to 4 viz., Principal and Secretary of Kakatiya Institute of Technology and Science (KITS), Warangal, the Registrar of Kakatiya University and All India Counsel for Technical Education, represented by its Secretary, New Delhi, respectively, in the nature of certiorari to call for and set aside the impugned notice No. KITS/A-1.2/2007 dated 12.03.2007 and another notice in consequence of it dated 16.03.2007 by declaring the same as illegal and to direct the respondents to relieve the petitioner from duties without imposing condition of payment of 20 days salary by accepting his resignation and permitting him to encash earned leaves to his credit and further to return the original certificates of the petitioner.

2. The writ petition affidavit averments in support of the prayer supra are that originally the petitioner was working as lecturer in computer science with effect from 31.08.1996 in the college of the respondent Nos.1 and 2, under the control of respondent Nos.3 and 4, in the department of computer science and engineering and later on 27.05.2004 he was promoted as Assistant Professor. The petitioner obtained permission to prosecute Ph.D. as part-time candidate in the University of Hyderabad including on Saturdays for the academic year 2004-2005 and when respondent Nos.1 and 2 have directed the

petitioner to submit the original certificates of the academic studies, he submitted the same. Subsequently, the petitioner submitted his resignation on 05.03.2007 and when asked to return the originals, respondent Nos.1 and 2 are refusing to give and asked to reimburse 20 Saturday's salary drawn, which he has availed for pursuing Ph.D., and payment of three months salary for no issuance of three months notice in advance and such action of the respondents is unsustainable.

3. Respondent No.1 filed counter affidavit in opposing the writ petition justifying the reasons in asking for 20 Saturdays' salary drawn by the petitioner to pursue Ph.D. and for resignation before completing Ph.D. part time course and as per the regulations of the college, the mandate of giving three months notice in advance to resign and in the absence of which, to tender three months salary and thereby there is every justification for the conditions imposed for return of the certificates retained for lien apart from that the very writ petition is not maintainable as the respondents are not within the meaning of State.

4. Heard both sides at length and perused the material on record.

5. The fact that the respondents are discharging the public functions and the detention of original certificates which affect the right to pursue the avocation by getting employment as part of the fundamental right of source of living or prone to action under the writ petition from the stretched meaning of the State is the settled law, thereby there is nothing more to declare in that adopt maintainability

that too this Court at the initial stage while allowing W.P.M.P.No.7434 of 2007 on 27.04.2007 directed the respondents to relieve the petitioner from duties and to return the original certificates subject to his undertaking to deposit 20 days salary which is subject to final result of writ petition.

6. Now coming to the other merits, by virtue of the interim order undisputedly undertaking given, the original certificates were returned and resignation was accepted. No doubt, as per the rules and regulations which clearly bind the petitioner mandates the giving of three months notice in advance before resigning and in the absence of which, to tender three months salary, the respondents got the right to insist for the same. Concerning the Saturdays availment granted, which is not a condition precedent for reimburse, but for to pursue the Ph.D. part time course, there is nothing to insist for payment of salary drawn for 20 Saturdays, during which permission was accorded to pursue Ph.D. part time course while he was in service.

7. Having regard to the above, the writ petition is disposed of directing the petitioner to pay three months salary in lieu of three months notice in advance and with regard to the undertaking given in pursuance of W.P.M.P.No.7434 of 2007, the respondent shall not insist the petitioner to pay back the salary drawn by him for 20 Saturdays during which he pursued Ph.D. as observed above.

8. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

14th October 2016

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