

THE HON'BLE SRI JUSTICE A.V. SETHA SAI

WRIT PETITION No.14149 of 2016

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

“to issue writ of Mandamus of Certiorari to call for all connected records including the impugned proceedings passed in RC.No.A1/1999/2015, dated 12.4.2016 by the 3rd Respondent herein and quash the same as illegal, improper, unjust, arbitrary, violation of principles of natural justice and contrary to law and further direct the respondent to reinstate the Petitioner as Principal of the 3rd Respondent College with all consequential benefits including monetary and seniority etc.,.”

Heard, Sri K.G. Krishna Murthy, learned senior counsel representing Sri K. Ramamohan Mahadeva, learned counsel for the petitioner on record, learned Government Pleader for Endowments for respondent Nos.1 and 2 and Sri A. Sreekanth Reddy, learned Standing Counsel for respondent No.3.

The 3rd respondent Executive Officer – cum – Correspondent vide proceedings Rc.No.A1/1999/2015, dated 04-11-2015 issued a charge notice, framing following charges:

“CHARGE No.1: *that he failed to conclude agreement with the Administrative Authority as per the directions issued in this office proceedings Rc.No.SKIT/287/2007, dated 25-12-2007, and thus he disobeyed the orders issued by the Correspondent and Executive Officer.*

CHARGE No.2: *that he failed to produce Relieving*

Order of L.B.R. College, Mylavaram at the time of his first joining as Principal, SKIT. It is therefore evident that he was holding two posts at a time which is highly illegal and irregular.

CHARGE No.3: *that he failed to take adequate interest and effective steps to maintain the student intake as per the sanctioned strength. There was therefore reduction year by year in the Admissions of the Students particularly during the year 2013 and 2014 as shown below.*

Year	Student admission	
	B.Tech. (Engineering)	Diploma/ Polytechnic
2013	200/540	163/240
2014	173/540	157/240

His performance on this aspect was very poor and not satisfactory. He utterly failed to improve and show tangible progress in this regard. Thus, he exhibited negligence and callousness in the discharge of his legitimate duties. Due to negligence and poor performance in the work relating to maintenance of Student-in-take, there were poor admissions and number of seats left unfilled and the Institution (SKIT) suffered huge financial loss approximately to a tune of Rs.3 to 4 Crores per year. It is therefore evident that he exhibited gross negligence in the discharge of his duties. His explanation that over the past few years, there has been a sharp decline in the student-in-take. This phenomena is not only confined to the SKIT institution, but also in the so called major institutions in this area and throughout the State. His explanation is not at all satisfactory and not acceptable.

CHARGE No.4: *that he was committed Certain irregularities in the recruitment of Teaching Staff (Associate Professors, Assistant Processors) and implementation of Pay Scales, 2006 to them in violation of the norms, laid down by the J.N.T.U./ A.I.C.T.E. These Irregularities were communicated to Sri A. Subbarami Reddy, by the then Executive Officer on 05-10-2011, for*

rectification of the defects and to submit note so as to submit the same to the Commissioner, Endowments Department for further action. Though more than 3 years and 9 months have lapsed, Sri A. Subbarami Reddy as Principal deliberately failed to take any action to rectify the defects pointed out and to submit report as instructed by the then Executive Officer. He has completely neglected this item of work and allowed financial loss to the institution.

He has also failed to submit Accreditation proposals, in respect of the SKIT.”

In response to the said charge notice and the charges contained therein the petitioner herein submitted an explanation on 30-11-2015. Thereafter the Special Deputy Collector, Land Protection Cell, Endowments Department, Tirupati was appointed as an Enquiry Officer who submitted his report on 17-02-2010. Subsequently, enclosing a copy of the enquiry report the 3rd respondent herein issued a show cause notice bearing Rc.No.A1/1999/2015, dated 30-03-2016 asking the petitioner to show cause as to why his services should not be dispensed with as Principal while granting ten (10) days time for offering explanation.

On 07-04-2016, after receipt of the said show cause notice the petitioner herein submitted a representation to the 3rd respondent, requesting to grant thirty (30) days time to submit his explanation. There upon the 3rd respondent – Executive Officer vide Rc.No.A1/1999/2015, dated ...-04-2016 (signed on 12-04-2016) terminated the petitioner from services.

Calling in question the validity and legal sustainability of the said order passed by the 3rd respondent – the Executive Officer, the present writ petition has been filed.

It is contended by Sri K.G. Krishna Murthy, learned Senior Counsel appearing for learned counsel for the petitioner on record that the impugned order of termination is highly illegal, arbitrary, unreasonable and violative of Article 14 of the Constitution of India and the principles of natural justice. It is further submitted by learned Senior Counsel that there is absolutely no justification on the part of the 3rd respondent in refusing to grant time sought by the petitioner herein. It is further argued that had proper opportunity been afforded to the petitioner herein, the questioned order would not have emanated.

On the contrary, it is vehemently contended by Sri A. Sreekanth Reddy, learned Standing Counsel for 3rd respondent that there is absolutely no illegality nor there exists any procedural infirmity in the impugned action and only after affording complete opportunity to the petitioner, the 3rd respondent passed the impugned order of termination. It is the further submission of learned Standing Counsel that having failed to avail the opportunity given by the respondents, it is not open for the petitioner herein to assail the order on the ground of violation of principles of natural justice. It is also argued by learned Standing Counsel that the impugned order is in accordance with law and in absence of any infirmity the same is not amenable for any judicial

review of this Court under Article 226 of the Constitution of India.

The information available before this Court manifestly discloses that in response to the show cause notice issued by the 3rd respondent on 30-03-2016, pursuant to the submission of the report of the Enquiry Officer, the petitioner herein submitted a representation, dated 07-04-2016 and the said representation, dated 07-04-2016, which is placed on record by the learned Senior Counsel, reads as under:

“With reference to the above I submit that, I received the above notice (Ref.1) on 30-03-2016. I also submit that, the orders were passed by the Hon’ble High Court (Ref.2) to my favour to accept my joining report and regularize my service and pay the salary w.e.f. 28-09-2015. But the orders of the Hon’ble High Court have been implemented partially by admitting me for duties but not given posting in the College. Despite of my several requests, my service regularization and payment of my arrears of salary have not been implemented so far.

Mean time the above notice (Ref.1) has been served to me. In this connection I submit that, this notice is very critical for my service continuation, I need some of the additional supporting documents I requested from my earlier organization L.B.R. College of Engineering, Mylavaram and other data from the concerned related to the other charges are yet to be received to defend my case. I also need legal advice and help from the concerned.

Hence I request the Executive officer cum correspondent to kindly give me 30 (Thirty) days more to submit My Explanation to the Notice (Ref.1) served to me and defend my case.”

There is absolutely no dispute with regard to the reality that the 3rd respondent received the said representation on 07-04-

2016. In the said representation the petitioner sought thirty (30) days time only obviously to secure additional supporting documents from the earlier organization and according to the petitioner, the same are yet to be received. It is not as if the petitioner herein sought unreasonable time for submission of the explanation and on the other hand the time sought by the petitioner herein was only thirty (30) days more.

In the considered opinion of this Court the request made by the petitioner to grant thirty (30) days time for securing supporting documents, by any stretch of imagination, cannot be said to be unreasonable and in fact the 3rd respondent ought to have considered the said request since the proposed action in the show cause notice is one of termination of service, which is a severe punishment which requires complete and full fledged opportunity to the petitioner.

In the definite opinion of this Court the said action on the part of the 3rd respondent in denying thirty (30) days time to file explanation is highly preposterous and iniquitous and can neither be approved nor countenanced.

For the aforesaid reasons, the writ petition is allowed, setting aside the order passed by the 3rd respondent vide Rc.No.A1/1999/2015, dated ...-04-2016 (signed on 12-04-2016) and the matter is remanded to the 3rd respondent for fresh consideration of the issue and the petitioner is given one month time from the date of receipt of a copy of this order to submit his

explanation to the show cause notice, dated 30-03-2016 to the 3rd respondent, raising all the grounds and on submission of the said explanation within the said period it is open for the 3rd respondent to pass appropriate orders, in accordance with law, after giving opportunity of being heard to the petitioner.

Miscellaneous Petitions pending, if any, shall stand closed.

There shall be no order as to costs.

A.V. SETHA SAI, J

April 28, 2016

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THE HON'BLE SRI JUSTICE A.V. SETHA SAI

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