

ORDER

This writ petition is filed seeking to declare the impugned termination order dated 28.06.2016 issued by the first respondent, as arbitrary and illegal.

This writ petition is an offshoot of the Division Bench judgment of this Court in W.A.No.233 of 2011 and batch, dated 19.3.2015, whereunder while setting aside the selection of the present writ petitioner and another person - Gowda Rajender, the order of the learned Single Judge was upheld. The said Rajender filed W.P.No.21967 of 2016, when his services were terminated pursuant to the judgment of the Division Bench. This Court dismissed the writ petition by an order dated 8.7.2016, holding that the Supreme Court while disposing of the appeals filed against the judgment in WA No.233 of 2011 & batch, noted that the State Government constituted a committee to look into the irregularities committed by the University in G.O.Rt.No.82, dated 11.2.2011, and the committee submitted its report on 26.3.2011. Based on the said report, the Government issued orders setting aside the selections for taking up the process afresh. The Supreme Court held that the directions issued by the Division Bench do not call for interference, but directed the respondent to carry out the directions within two months in the interest of institution. In spite of the same, the University did not carry out the directions and the University is still having the improperly constituted Executive Council as on today.

Now, when a consequential order was passed on 28.6.2016 by the University on the threat of a contempt case in C.C.No.246 of 2016 filed by one Dr.N.Vinatha, the services of

the petitioner therein and the present petitioner were terminated. Since the Division Bench clearly noticed the findings of the learned Single Judge with regard to the illegality of selections, also observed that in view of the statement made by the learned Standing Counsel for the University that it would take four to six weeks time for implementing the judgment, and the request for suspension was not acceded to, the writ petition was dismissed on the ground that the order of termination was passed only in implementation of the order passed by the learned Single Judge and Division Bench.

The case of the present writ petitioner is also covered by the said order.

However, learned Senior Counsel appearing for the petitioner submits that the order passed in W.P.No.21967 of 2016 can be re-considered in the case of the petitioner by considering the point of effect of the order of the Supreme Court in SLP No.13869 of 2015 filed by the petitioner. Learned counsel further submits that when the respondent did not comply with the order of the Supreme Court and passed the present order of termination of the services of the petitioner, the termination is bad. He relied on the decision of the Supreme Court in KUNHAYAMMED AND OTHERS vs STATE OF KERALA AND ANOTHER^[1] and submits that though the order of the Division Bench did not merge with the order of the Supreme Court, there cannot be two orders as held by the Supreme Court in M/s.GOJER BROS (PVT) LTD vs SHRI RATAN LAL SINGH^[2].

In the instant case, the order of the Division Bench was upheld by the Supreme Court more particularly the observation made by this Court in paragraph No.43 of the Division Bench judgment. In the circumstances it cannot be held that there are two orders and the decision in GOJER BROS (PVT) LTD (2 supra) is

not applicable to the present facts of the case at all. Learned Senior Council placed reliance on the following conclusions in the decision of the Supreme Court in KUNHAYAMMED AND OTHERS (1 surpa).

“If the order refusing leave to appeal is a speaking order i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as *res judicata* in subsequent proceedings between the parties.”

A perusal of the said conclusions of the Supreme Court in the said decision makes it clear that only when there is declaration of law, it would be binding and the findings recorded would bind the parties. In the SLP preferred by the present petitioner, the Supreme Court clearly upheld the observations made by the Division Bench in paragraph No.43 thereof.

There is no dispute that these observations are binding between the parties. But the Division Bench did not dismiss the appeal preferred by the present petitioner only on that sole ground but it also held that the selection procedure was not properly followed and it upheld the findings recorded by the learned Single Judge on that ground. In fact, the Division Bench framed three points and held two points against the petitioner.

Keeping in view the order passed in W.P.No.21967 of 2016 and for the additional reasons given herein, this Writ

Petition deserves to be dismissed.

Accordingly, the Writ Petition is dismissed. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

21st July, 2016
rkk

[\[1\]](#) (2000) 6 SCC 359
[\[2\]](#) (1974) 2 SCC 453