

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO
WRIT PETITION Nos.13979, 12379, 16416, 17113 of 2014
2018 of 2015 AND 39496 of 2016

COMMON ORDER:

All these Writ Petitions are being disposed of by this common order as they arise out of the same cause of action.

2. W.P.No.12379 of 2014 was filed challenging the action of the respondents in not declaring the results for the post of Associate Professor in Maths in K.U.College of Engineering and Technology, Kakatiya University, pursuant to Notification No.04/2012, dated 21.12.2012.

3. W.P.Nos.13979, 16416 and 17113 of 2014 and W.P.No.2018 of 2015 are filed challenging inaction of the respondents in taking steps on the minutes of the Selection Committee constituted pursuant to Notification No.04/2012.

4. W.P.No.39496 of 2016 was filed to declare letter, dated 25.06.2016, of the second respondent as well as report of the second and third respondents, dated 03.11.2015, as arbitrary and illegal and consequential Resolution No.115.11 of the first respondent, dated 27.06.2016, as violative of Section 19 (5) of the Andhra Pradesh Universities Act, 1991 (for short, 'the Act').

5. The facts narrated in W.P.No.39496 of 2016 are taken for the purpose of disposal of all these cases, as the said Writ Petition is the latest writ petition.

6. The first respondent issued Notification No.04/2012 on 21.12.2012, inviting applications from qualified candidates on or before 06.02.2013, for various teaching posts in K.U.College of

Engineering and Technology, Kakatiya University Campus/University College of Engineering, Kothagudem. The petitioners in the above writ petitions applied to various posts. The first respondent constituted a Selection Committee as per Section 43 of the Act and interviews were conducted for the posts. When results were not declared, the above writ petitions were filed for declaring the results and this Court by way of common order directed the first respondent to declare the results. When the said order was not complied with, Contempt Cases were filed. In the meanwhile, ten (10) candidates were appointed by an order, dated 20.09.2013.

7. It appears that one candidate, who appeared for the post of Assistant Professor in the Department of Chemistry, filed W.P.No.19660 of 2013 challenging Notification No.04/2012 and this Court dismissed the said writ petition on 22.07.2013. It appears that the President of K.U., Contract Lecturers Employees Association also lodged a compliant before the Hon'ble Lokayuktha and the said complaint was also dismissed on 08.09.2014. But, on the basis of the same complaints, the Government appears to have addressed a letter on 04.11.2013 to the Secretary, State Council of Higher Education, Masab Tank, Hyderabad, for conducting a detailed enquiry into the allegations made in the complaints. Accordingly, the State Council of Higher Education constituted a Three Member Committee with former Vice Chancellor of Osmania University, former Vice Chancellor of Telangana University and Professor in Hindi (Retired) of Osmania University as Members of the Committee. The Committee submitted its report on 03.11.2015, recommending cancellation of selections. The report of the Committee, dated 03.11.2015, was forwarded to the Vice Chancellor with a request to

place the report in the Executive Council Meeting and to take appropriate decision with regard to cancellation of Notification No.04/2012. Pursuant to the letter of the Government, dated 25.06.2016, the Executive Council of the first respondent-University in its 115th Meeting held on 27.06.2016, took a decision in Item No.115.11 approving cancellation of the said notification. The said cancellation was challenged in W.P.No.39496 of 2015.

8. The report of Three Member Committee pointed out the following irregularities:

“3. The irrational distribution of 37 teaching posts which were sanctioned by the Government through G.O.Ms.No.265 do not have the approval of either the Government or the executive council of the university.

4. Instead of notifying all the 37 teaching posts sanctioned by the Government for the campus Engineering College, the Vice-Chancellor permitted the Registrar to notify some posts for Kothagudem Engineering College, thus by deviating from the permission accorded in G.O.Ms.No.265 which is a gross violation of the G.O.

5. As there is no approval of the Government/Academic senate/EC for the subject of Mining Engineering in KU College of Engineering, the University in its notification in 04/2012 has notified two posts of Professor for Mining Engineering which is again a gross violation of G.O.Ms.No.265.

6. The Registrar has not obtained any permission from the Government for allocating positions for the Departments of Commerce & Business Management and English. This has adversely affected the Roster points and facilitated the authorities in favoring their candidates. The Registrar has also mislead the Social Welfare Department by incorporating Commerce & Business Management subjects in Campus Engineering College while getting the approval of the Social Welfare Department.

7. The University has manipulated by violating the roster points by issuing notification for the post of Associate Professor of Chemistry in order to push the subject of Mathematics in Roster point from BC-A to OC (W). This has

been intentionally done to accommodate a particular candidate.

8. The posts advertised for the b ranch of Information Technology (IT) have not been approved by the Government which is yet another violation of the G.O.Ms.No.265.

9. The post of Associate Professor in the Department of Mathematics has been notified to accommodate a particular candidate which is intentional and malafide, therefore it is in gross violation of the norms/rules. The said candidate does not fulfil the required API score as per the UGC rules & regulations.

10. Details regarding the irregularities & violations in the application of Roster points is evident from the table as shown under:

S.No.	Group/Subject	No. of posts	Running Roster-point number	Reserved for (Category)
I	Group-I (Arts, Commerce, Business Management, Law, Social Sciences, Education, including all languages and area studies and performing arts)			
	Assistant Professor			
1.	Commerce & Business Management	02	21	OC
2.	English	01	23	SC-Women
II	Group-II (Science and Future studies)			
	Associate Professor:			
3	Chemistry	01	29	BC-A
4	Mathematics	01	30	OC-Women
	Assistant Professor			
5	Physics	01	03	OC
III	Group-III (Engineering & Technology)			
6	Computer Science Engineering	01	07	SC
7	Electrical & Electronics Engineering	01	08	ST-Women
8	Electronics & Communication Engg.	01	09	OC
9	Mechanical Engineering	01	10	BC-B
	Assistant Professor			
10	Computer Science Engg.	01	35 36 37 38	BC-D OC OC OC-Women
11	Electrical & Electronics Engg.	03	39 40 41	BC-D OC SC
12	Electronics & Communication Engg.	03	45 43 44	OC BC-D BC-E
13	Information Technology & Engineering	03	45 46 47	BC-A Women OC SC-Women
14	Mechanical Engineering	03	48 49 50	OC BC-B Women OC-Women

It is observed from the Roster Register that:

- (i) The backlog positions have been notified in the notification 03/2012.
- (ii) As per notification 04/2012, for the subject of Chemistry and Mathematics, one post each was notified for Associate Professor under BC-A and OC (W) against roster points 29 and 30 respectively. Whereas the Roster Register of Group-II, on page 16 & 17, roster points 27 & 28 have been allotted for the subject of Chemistry for SC & OC respectively. These roster points have been kept blank deliberately without any remarks. Consequently, the roster points 29 & 30 have gone to BC-A & OC (W) for Chemistry and Mathematics respectively. The roster point 30 shown for OC (W) lead to confirm the allegation regarding the manipulation for roster points for accommodating Ms.Sumati Uma Maheshwari against OC (W) under Roster point 30 in subject of mathematics by keeping the Roster points 27 & 28 blank in the subject of Chemistry. In fact, it is noted from the available papers that the roster points 27 & 28 were allotted to 5 year integrated M.Sc., Chemistry as notified in 01/2012 notification and the said selection process was stayed by the Hon'ble High Court on 02.07.2013.

11. Appointment orders were issued on 20.09.2013 to the Principal and four other candidates by the truncated 107th EC meeting held on 26.08.2013. It is important to note that the Hon'ble Justice Sri Sanjay Kumar in a W.P.No.12563, 1538 and 24732 of 2010 has set aside the selection and appointment of Dr. Ch.Sravanthi and Dr.Gowda Rajender as a Assistant Professor in Zoology in Kakatiya University, Warangal on the ground that the 87th meeting of the EC held on 30.04.2010 fell short of the required quorum as stipulated under section 18 (6) of the A.P.University Act of 1991. In view of this judgment the appointment of the Principal and four others which were approved by the truncated EC is again in violation of section 18 (6) of the A.P.University Act of 1991.

13. While the Government has sanctioned 37 posts for the Campus Engineering College of Kakatiya University only, the transfer of some of these posts to non-engineering subjects like Chemistry, Mathematics, Commerce & Business

Management, English & Physics without the approval of the Government /EC is in gross violation of G.O.Ms.No.265.

14. The Government vide G.O.Ms.No.265, Dt.17.12.2011 has sanctioned 37 posts with the following break up.

- i) Principal - 01
- ii) Professor – 10
- iii) Associate Professors – 06
- iv) Assistant Professors - 20

However the University notified eleven posts of the Professors (which included one for Principal); while the duties and qualifications of the Principal are different to that of the Professor. The University in violation of the UGC norms has notified eleven Professors instead of ten.

15. From the scrutiny of the assessment sheets of the selection Committee it is observed that 50% marks have been allotted for domain knowledge, teaching skills and interview which has enabled the members of the selection committee to favour choiced candidates.

16. In view of the above findings the Committee strongly opines:

- i. **The university has violated the roster points.**
- ii. **This manipulation has been done to favour certain candidates.**
- iii. **As a result of the violation of the roster points a number of candidates have been deprived of their rights & opportunities.**

Therefore, the Committee recommends that the selection shall be cancelled.”

9. Learned counsel for the petitioners submits that the first respondent-University acted on the dictates of the Government when it is supposed to act independently as per Section 19 of the Act. They further submitted that there is no allegation with regard to the selection process or disqualification of the petitioners for the posts to which they were selected. In any event, the truncated Executive Council indicated in para No.11 of the report as above, cannot hold

against the petitioners, who applied pursuant to the notification and got selected after undergoing the process of selection. They further submitted that the Government should not take up the burden of conducting an enquiry when Writ Petition No.19660 of 2013 filed by a candidate challenging Notification No.04/2012 was dismissed and the complaint of Association was also rejected by the Hon'ble Lokayuktha.

10. There is no dispute with regard to improper constitution of Executive Council. The issue with regard to the improper constitution of Executive Council as pointed out in para No.11 of the above report, dated 03.11.2015, came up for judicial consideration before this Court in W.P.Nos.12563, 1538 and 24732 of 2010 when the selection and appointment of two Assistant Professors was set aside by the learned Single Judge and the matter came up for consideration before the Division Bench of this Court, to which I am a party, in **Gowda Rajender v. Dr.M.Radha Krishna**¹ and the Division Bench set aside the orders of appointments, directed placing all the recommendations of the Selection Committee before the Executive Council afresh duly constituted as per the provisions of Section 18 of the Act, and seek approval and enforcement of their appointments with effect from the date of which they were appointed.

11. In the instant case also, there is no allegation of improper selection of candidates. If any allegations are there, those allegations relate to the conduct of the then Vice Chancellor. Hence, the selection of the candidates cannot be declared as illegal.

¹ 2016 (2) ALD 180 (DB)

12. The power of the University vis-à-vis the Government came up for consideration before me in W.P.No.21534 of 2012 and batch in respect of one Sri Dr.M.V.Srinivasan and after going through the provisions of the A.P. Universities Act, I held that it is for the University, which alone is competent to appoint teaching staff and the role of the Government is limited. The said view was taken by considering the provisions of Sub Section (29) of Section 19, Section 25 (2) (e) and Section 49 of the Act. In view of the same, the first respondent-University cannot act on the dictates of the Government and the resolution passed by the first respondent-University in Item No.115.11 in its 115th Meeting is not an independent decision of the University, but, pursuant to the letter of the Government, dated 25.06.2016 only. Hence, the resolution and the consequential orders are liable to be set aside.

13. Though learned Government Pleader relied on Section 8 of the Act and submitted that the Government shall have the right to cause an inspection to be made by such person or persons as it may direct of the University, its buildings, laboratories, libraries, museums, workshops and equipment and of any institutions maintained by or affiliated to the University and also to cause an inquiry to be made, into the teaching and other work conducted or done by the University in respect of any matter connected with the University, a combined reading of the said Section along with Section 19 of the Act does not empower the Government to interfere with appointment of teaching staff and their service conditions. The power given to the Government under Section 8 of the Act is only intended to maintain the quality and infrastructure facilities of the University. In any event, in the instant case, no notice of such inquiry was given to the

University. But, the Government on its own directed the State Council of Higher Education to conduct inquiry.

14. As rightly pointed by learned counsel for the petitioners when this Court dismissed W.P.No.19660 of 2013 on 22.07.2013 refusing to interfere with the selection process pursuant to Notification No.04/2012, and when the complaint made by the K.U. Contract Lecturers Employees Association was dismissed by the Hon'ble Lokayuktha on 08.09.2014, the second respondent should not have interfered with the selection process. It is for the first respondent to take steps for appointment of teaching staff.

15. But, now, learned counsel for the respondents submits that the Executive Council is in a truncated form as pointed out by the Three Member Committee in their report, dated 03.11.2015, and the Executive Council in its new form has to take a decision. If that is so, the second respondent shall constitute the Executive Council as per Section 18 of the Act and take a decision with regard to the selections made pursuant to Notification No.04/2012, dated 21.12.2012. The Executive Council cannot allow issuance of notification at one point of time and now on the basis of report of the Three Member Committee again hold that notification itself is bad as it is contrary to the stand taken by the University.

16. In view of the same, all these writ petitions are allowed and the second respondent is directed to constitute Executive Council, in accordance with Section 18 of the Act, within a period of three months from the date of receipt of a copy of the order and the said Executive Council shall take up matter relating to the selections

made pursuant to the recruitment Notification No.04/2012, dated 21.12.2012, and take a decision within one month thereafter.

Miscellaneous petitions, if any, pending in these writ petitions, shall stand closed. There shall be no order as to costs.

A.RAMALINGESWARA RAO, J

DECEMBER 19, 2017

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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO



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Date: 19.12.2017

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