<u>HON'BLE SRI JUSTICE A. RAJASHEKER REDDY</u>

<u>WP No.26435 of 2017</u>

ORDER:

This writ petition is filed assailing the action of the respondents 1 and 2 in withholding the salary of the petitioner for the months of February, March and April 2017 as also the terminal benefits at the behest of third-party-State Bank of Hyderabad, P & SB, Banjara Hills Branch, Hyderabad, (for short, "the Bank") not made a party to the writ petition.

2. The case of the petitioner is that he joined the 2nd respondent-Muffakham Jah College of Engineering and Technology, Hyderabad, (for short, "the 2nd respondent-College") which is administered and managed by the 1st respondent-Sultan-Ul-Uloom Educational Society, Hyderabad, (for short, "the 1st respondent-Society") as a Lecturer in the year 1981 and worked as such till 1990 and was promoted as a Reader in the year 1990 and worked as such till 1998. He was further promoted as Professor in the year 1998 and while he was continuing as such, the petitioner made an application dated 01-11-2010 seeking to grant extraordinary leave (EOL) on loss of pay for a period of two years, with effect from 20-11-2010 with permission to secure employment in Saudi Arabia as

Professor. His request was considered and the 1st respondent-Society vide letter dated 06-11-2010 granted extraordinary leave on loss of pay as prayed for by the petitioner. On his voyage to Saudi Arabia, the petitioner made an application dated 13-08-2012 seeking extension of his extraordinary leave on loss of pay for a further period of three years with effect from 20-11-2012 to 20-11-2015 to enable him to continue as Professor in employment at Saudi Arabia. Such request of the petitioner was also considered by the 1st respondent-Society vide letter dated 18-08-2012. But before the completion of the extended period of three more years, the petitioner returned back to home town and sought to re-join his service in the 2nd respondent-College and for that purpose made a representation to the 1st respondent-Society. The petitioner was not allowed to join duty immediately and no orders could be passed on the application of the petitioner for a period of 14 months and ultimately vide proceedings dated 30-09-2015, the 1st respondent-Society informed the petitioner that they cannot allow him to join until expiry of extraordinary leave period, meaning thereby that he has to wait till 20-11-2015, till which date the EOL was granted. The 1st respondent-Society also informed the petitioner by referring to letters dated 14-07-2014 and 18-07-2014 received by it from the

Bank that the petitioner has availed credit facilities and loans from the Bank and had committed defaults in re-payment of the credit facility and loans. It was also informed that the Bank requested it not to allow him to join in the service of the 2nd respondent-College until and unless the amounts due and payable to the Bank are paid and a 'no due certificate' is obtained from the Bank. The 1st respondent-Society also required the petitioner to submit the copies of the resignation letter, relieving order and proof of termination of his contract in Saudi Arabia to allow him to join duty in the 2nd respondent-College.

3. The petitioner aggrieved by the action of the 1st respondent-Society, more particularly in insisting him to clear the debts he allegedly owed to the Bank and to get a 'no dues certificate' from the Bank and also aggrieved by the action of the 1st respondent-Society in insisting him to join duty after expiry of (EOL), though he has returned to home town much before the leave period granted by the 1st respondent-Society, filed writ petition being WP No.35212 of 2015 wherein this Court, *prima facie,* having found that insisting the petitioner to settle and resolve the issues between himself and the Bank, and respondents 1 and 2, Society and College, respectively have nothing to do with the personal issues of the

petitioner, issued directions to allow the petitioner to render his services, if the petitioner is otherwise eligible to do so until further orders. It appears against this order, respondents 1 and 2 have filed vacate petition and the same is pending. It is stated that pursuant to the interim order granted by this Court in WPMP No.45243 of 2015 in WP No.35212 of 2015, the petitioner was allowed to work in the 2nd respondent-College and now retired from service in April 2017 on attaining the age of superannuation. That though the petitioner represented to the 1st respondent-Society vide letter dated 14-03-2017 that his account in the Bank (State Bank of Hyderabad, P&SB, Banjara Hills Branch, Hyderabad) where he has availed credit facility has become inoperative and also gave alternate account number to credit the salary into that alternate account, it was informed to the petitioner vide letter dated 12-05-2017 that the salaries of all the employees are being deposited in the Bank (State Bank of Hyderabad P & SB, Banjara Hills Branch, Hyderabad) including the salary of petitioner was being credited to the accounts in the Bank as was done earlier and the petitioner cannot individually be treated as an exception.

4. The grievance of the petitioner is that the 1st respondent-Society cannot act as an agent of the Bank and succumb to the

dictates of the Bank and credit his salary and other terminal benefits to that Bank though he petitioner has given alternate bank account number being maintained with other bank (Andhra Bank, Banjara Hills Branch) and such a course adopted by the 1st respondent-Society is illegal, arbitrary and seeks appropriate directions to the 1st respondent-Society not to withhold his salary due and payable to him as also the terminal benefits at the behest of the Bank and any disputes *inter-se* is between the Bank and petitioner and the 1st respondent-Society has got nothing to do in the matter. Hence, this writ petition.

5. Counter affidavit is filed by the Honorary Secretary of the 1st respondent-Society on behalf of himself as also on behalf of the 2nd respondent-College. It is stated that the 1st respondent-Society is registered under the Societies Registration Act. The decisions taken by the Society against its employees are mere administrative orders and the Society is not a “State” or an instrumentality of the State within the meaning of Article 12 of the Constitution. The 1st respondent-Society is a private minority un-aided educational institution and it is running the 2nd respondent-College and it is an un-aided Society not receiving any aid from the 3rd respondent. That the 1st respondent-Society is administering the 2nd respondent-

College with its own funds and assets and therefore a writ of mandamus, in exercise of extraordinary jurisdiction under article 226 of the Constitution cannot be issued to a Society in the absence of any violation of any statutory provision or violation of fundamental rights. That writ petition is not maintainable against the 1st respondent-Society and therefore liable to be dismissed. The Society is ready to transfer the salary and other terminal benefits of the petitioner to his account (SBH Bank) and furnish particulars of such transfer to the petitioner. It is denied that the Bank and the 1st respondent-Society are hand in glove. It is stated that neither the Bank nor the petitioner can dictate terms to the 1st respondent-Society and a reference of the letter addressed by the Bank to the 1st respondent-Society cannot be construed that the Society is influenced by the Bank and, therefore, seek to dismiss the writ petition.

6. Sri J. Sudheer, learned counsel for the petitioner contended that since the aims and objectives of the 1st respondent-Society is imparting education and imparting education is a public duty, even if the 1st respondent-Society is not created by or under a statute, writ petition is maintainable since respondents 1 and 2 are discharging functions of public duty. It is also contended that

though 1st respondent-Society is a private institution, its functions are statutory in nature and since the decisions taken by it are subject to judicial scrutiny, writ petition filed is maintainable. It is also contended that the 1st respondent-Society cannot act as agent of the Bank and compel the petitioner to clear the loans availed by him from the Bank and the 1st respondent-Society is obligated to credit the salary and other terminal benefits in the bank account suggested by the petitioner. Decisions in ***AJAY HASIA vs. KHALID MUJIB SEHRAVARDI***,[1] ***ANDI MUKTA S.S.M.V.S.S.J.M.S TRUST vs. V.R. RUDANI***,[2] ***UNNI KRISHNAN vs. STATE OF ANDHRA PRADESH***,[3] ***ZEE TELEFILMS LTD vs. UNION OF INDIA***[4], & ***BCCI vs. NETAJI CRICKET CLUB***,[5] relied on.

7. Sri CVR Rudra Prasad, on the other hand, submitted that the 1st respondent-Society is an un-aided Society and 2nd respondent-College is non-governmental institution and its administrative control including the staff vests with the 1st respondent-Society. It is also stated that the 2nd respondent-College is affiliated to

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[1] 1981 (1) SCC 722

[2] 1989 (2) SCC 691,

[3] 1993 (1) SCC 645,

[4] 2005 (4) SCC 649

[5] 2005 (4) SCC 741

Osmania University and there is no direct or indirect control over the respondents either of the Osmania University or of the State or Central government except the 1st respondent-Society is bound to comply with the guidelines that are being issued from time to time in so far as it relates to academics of the 2nd respondent-College. It is also stated that the 1st respondent-Society is not receiving any financial aid from the State or the Central governments and 1st respondent-Society is ready and willing to deposit the salary and other terminal benefits of the petitioner in the account maintained by the Bank (SBH, Banjara Hills Branch) as the account is still operative. Unreported decisions of this Court passed in WP 8156 and 11599 of 2010 and also WP 23589 of 2017.

8. The matter rests on a narrow compass. Petitioner is a Professor (since retired) of Mathematics department is seeking his last three months salary and also other terminal benefits of service be credited to the account suggested by him other than the account which was maintained by him in the Bank (SBH), to which bank the 2nd respondent-College is bent upon to credit, in the light of the letters dated 14-07-2014 and 18-07-2014 addressed by the Bank, (SBH), requesting to insist the petitioner to clear all the dues and to obtain no dues certificate from the Bank.

9. Whether the 1st respondent-Society can act upon a letters dated 14-07-2014 and 18-07-2014 addressed by the Bank (SBH) and insist the petitioner to clear the loans availed by him, whether the 1st respondent-Society can contend that it will credit the salary due and payable and the terminal benefits of the petitioner to the account of the Bank (SBH), though the petitioner has requested to credit the amounts to alternate account maintained by him with Andhra Bank are the two issues involved this case. But before going into those issues, the preliminary objection raised by learned counsel for the respondents 1 and 2 as to the maintainability of the writ petition is to be answered .

10. It is stated that the 2nd respondent-College is a private minority unaided educational institution and it is not receiving any aid from the 3rd respondent and the salaries and other expenditure is being met by the 1st respondent-Society itself. In the light of the plea of the 1st respondent-Society that its activities are not public duties and in the back ground of the allegation that the legal right of the petitioner is being breached, the writ petition filed complaining thereof is maintainable is the question that arise for consideration.

11. Though the language in Article 12 of the Constitution is plain, the term '***other authority'*** is put to test quite a number of times. One of the important criterions is 'public function test,' other tests being deep and pervasive State control, Government monopoly etc. The cumulative effect of all the tests is necessary to hold an authority as 'other authority' and thereby 'State' under Article 12. In ***Ajay Hasia's*** case (1 supra), the Constitutional Bench of the Supreme Court outlined certain parameter in paras 9 to 11, which are thus:-

"9. The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the ***International Airport Authority's*** *case. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation . We may summarise the relevant tests gathered from the decision in the* ***International Airport Authority's*** *case as follows:-*

(1) One thing is clear that if the entire share capital of the corporation is held by Government it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.

(3) It may also be a relevant factor......... whether the corporation enjoys monopoly status which is the State conferred or State protected.

(4) Existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality.

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

(6) "Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or agency of Government".

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of government, it would, as pointed out in the ***International Airport Authority's*** *case, be an 'authority' and, therefore, 'State' within the meaning of the expression in Article 12..."*

12. ***Ajay Hasia's*** case (1 supra), the Supreme Court in writ petitions filed under Article 32, challenging the validity of the admissions made to the Regional Engineering College, Srinagar, which being one of the 15 engineering colleges in the country sponsored by the Government of India and the colleges established and management by a Society registered under the Societies Registration Act, whether such a Society is an "agency" or "instrumentality of the State" and hence a "State" within the ambit of Article 12 was considered. The Supreme Court having noted that the composition of the Society is dominated by the

representatives appointed by the Central Government and with the approval Central Government the representatives from few other States, and the expenses of Society entirely provided by the Central Government, and the Central Government has full control of the working of the Society observed that the Society is an instrumentality of the State and it is therefore an "authority" within the meaning of Article 12.

13. In the ruling relied on by the learned counsel for the petitioner in ***Andi Mukta's*** case (2 supra) it was held that Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights and the words ***"any person or authority"*** used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State, and concluded that 'providing education' is a 'public function'. In that case writ petition was filed by retrenched teachers of a private aided college (a public trust) affiliated to University, seeking writ of mandamus for compelling the college management to pay them terminal benefits and arrears of salary due, the question arose was whether the trust can be compelled to pay by way of a writ of mandamus ? It was held that if the rights are purely of a private character no mandamus can be

issued. In ***Zee Telefilms's*** (4 surpa) case the Supreme Court though observed that the Board of Control for Cricket in India (BCCI) is not a "State" within the meaning of Article 12, since its various activities right from selection of cricket players etc. are akin to public duties, writ petition under Article 226 was maintainable, if not under Article 32 of the Constitution.

14. Coming to the facts of the instant case, no material is brought on record to demonstrate that the 1st respondent-Society is receiving aid from the 3rd respondent or from affiliated University. The averment in the counter filed by the Honorary Secretary of the 1st respondent-Society that the 2nd respondent-College is funded by the 1st respondent-Society is not controverted by the petitioner. The 2nd respondent-College being affiliated to Osmania University is bound by the guidelines on the academics. The question of payment of arrears of salary and terminal benefits on attaining superannuation of the petitioner and the claim thereof is purely private in nature. Disputes as to deposit of arrears of the salary for he petitioner into the account maintained by the 1st respondent-Society or to the account suggested by the petitioner is not a public function and has no ramifications on the fundamental rights of the petitioner, to invoke the jurisdiction of this Court under Article 226

of the Constitution and seek for a mandamus. The un-reported decisions of this Court passed in WP 8156 and 11599 of 2010 and WP 23589 of 2017 also expressed the same view in similar fact situations. The 1st respondent-Society, by any stretch of imagination fall within the parameters set out in ***Aajy Hasia's*** case (1 supra) for maintaining the writ petition and the decision in ***Andi Mukta's*** case (2 supra) is also not applicable as the respondent therein is an aided college.

15. On an analyses of the decisions cited above, it is to be concluded that it is only when there is violation of public duty, a mandamus would lie under Articles 226 of the Constitution.

16. For the reasons stated above, the writ petition is not maintainable against respondents 1 and 2, it is accordingly dismissed. Miscellaneous petitions, if any pending, shall stand closed.

A. RAJASHEKER REDDY, J

Dated: 20-12-2017
NRG

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP No.26435 of 2017

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Dated: 20-12-2017

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