

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

Writ Petition Nos.21534, 21751 and 22103 of 2012, 31993 of
2016 and 29771 of 2017

W.P. No.21534 of 2012

Between

Dr. M.V. Srinivasan and others

.... Petitioners

And

Sri Krishnadevaraya University, rep. by its
Registrar, Anantapur and another

... Respondents

JUDGMENT PRONOUNCED ON : 09.11.2017

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers : YES
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : NO
Marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to : NO
see the fair copy of the Judgment?

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition Nos.21534, 21751 and 22103 of 2012, 31993 of 2016 and 29771 of 2017

Common Order:

The above Writ Petitions arise out of the same cause of action and hence they are being disposed of by this common order.

W.P.Nos.21751 of 2012 and 22103 of 2012 were filed challenging Para 6 of G.O.Ms.No.203, Higher Education (UE.I) Department, dated 22.10.2010, whereas W.P.No.21534 of 2012 was filed challenging the issuance of show cause notice dated 02.07.2012 by the first respondent and the observations and findings made by the enquiry authority in his report dated 31.07.2010 in so far as the regularization of the Assistant Professors was concerned. The same petitioners filed W.P.No.31993 of 2016 challenging the Executive Council resolution No.15-2807 (A4), dated 03.08.2016 of the third respondent and sought for consequential implementation of G.O.Rt.No.136, Higher Education (UE) Department, dated 17.04.2015.

This Court, by order dated 21.09.2016 granted interim direction in W.P.M.P.No.39562 of 2016 in W.P.No.31993 of 2016 to implement the orders in G.O.Rt.No.136, Higher Education (UE) Department dated 17.04.2015 and when the same was not implemented on the ground that W.V.M.P.Nos.6 of 2013, 12 of 2013 and 4221 of 2016 were filed, the petitioners filed Contempt Case No.2349 of 2016.

When hearing in the above cases was undertaken, W.P.No.29771 of 2017 was filed by two unemployed persons challenging the resolution passed by the second respondent University therein on 17.12.2008 regularizing the services of the petitioners in the above Writ Petitions and

also challenging G.O.Rt.No.136, Higher Education (UE) Department, dated 17.04.2015, permitting UGC Pay Scales of 2006 with effect from 01.04.2007.

The facts of the case are that initially, the Registrar of Sri Krishnadevaraya University, Anantapur, sought permission of the Principal Secretary, Education Department, Government of Andhra Pradesh by his letter dated 23.12.2004 to make appointment of senior Lecturers in Physics, Computer Science, Biotechnology and Physical Education on contractual basis till the end of X plan period, as the UGC permitted the University to appoint persons to the said teaching positions following any one of the three options indicated by them till the end of Plan period to safeguard the interest of students. The three options given by the UGC are as follows.

“1. Assurance may be obtained from the State Government for taking over the liability of these posts after tenth plan period.

OR

2. Assurance may be given by the University through a resolution of the Executive Council to bear the burden of these posts after tenth plan.

OR

3. Appointment shall be made on contractual basis.”

Thereafter, the Executive Council met on 04.01.2005 and passed a resolution to fill up the eight (8) posts of Assistant Professors sanctioned by the UGC under X Plan on contract basis as per the provisions of the UGC's letter No.6261/UE.I/A2/2004-2 (Clause 3), dated 19.11.2004 on a consolidated pay consisting of minimum basic in the scale of Assistant Professor + HRA + DA. It was also resolved to advertise and fill up the said posts by subjecting the candidates to selection process by a duly constituted selection committee. A notification was issued on 06.04.2005 for filling up of the eight (8) posts as follows.

Sl.No.	Name of the Department	No. of Assistant Professors
I	<u>ARTS</u> 1. Telugu	1
II	<u>SCIENCES</u> 1. Biotechnology 2. Computer Science 3. Physical Education 4. Physics	2 2 1 2

Pursuant to the letter of the Registrar, the Government permitted the University, by its letter dated 20.04.2005 to fill up the posts on contractual basis till the end of X Plan period as per UGC approval up to 31.03.2007 without having any financial burden on the part of the Government or University for the present or in future. Thereafter, a selection committee was constituted and it selected the candidates. It sent recommendations to the University and the Executive Council of the University met again on 05.06.2005 and approved the recommendations of the selection committee for appointment of following Assistant Professors in the respective departments.

“BIOTECHNOLOGY:

1. Dr. D. Muralidara Rao : Asst. Profeslsor, SKU College, Anantapur
2. Dr. S. Anitha : Asst. Professor, SKU College, Anantapur

TELUGU:

1. Dr. N.R. Sadasiva Reddy : Asst. Professor, SKUPG Centre, Kurnool

PHYSICS:

1. Dr. K. Ramagopal - Asst. Professor, SKU College, Anantapur
2. Dr. N. Ramamanohar Reddy - Asst. Professor, SKU College, Anantapur

PHYSICAL EDUCATION:

1. Dr. M.V. Srinivasan : Asst. Professor, SKU College, Anantapur

COMPUTER SCIENCE:

1. Sri V. Raghunatha Reddy : Asst. Professor, SKU College, Anantapur
2. Kum. J. Keziya Rani : Asst. Professor, SKU PG Centre, Kurnool”

The University addressed a letter to the Director, SC Welfare Office, Hyderabad, seeking allocation of roster points to the candidates selected. The Government addressed a letter on 12.05.2006 regarding continuance of eight (8) Assistant Professors beyond 31.03.2007 and, on receipt of the same, the Executive Council held a meeting on 15.03.2008 and resolved to continue the services of eight (8) Assistant Professors beyond 31.03.2008 for a period of one more year in accordance with the instructions of the Government dated 12.05.2006 by meeting the expenditure out of the Block Grant of the University.

It appears that certain allegations were leveled against the then Vice-Chancellor of the University and the Governor in exercise of His powers under sub-section (2) of section 11 of the A.P. Universities Act, 1991 appointed Sri Justice A. Hanumanthu, Judge (Retired), High Court of AP as enquiry authority to conduct enquiry against the Vice-Chancellor for her willful omissions and refusal to implement the provisions of the A.P. Universities Act, 1991 and the terms of reference are as follows:

“1. “To cause an enquiry into the alleged irregularities committed by the Vice-Chancellor Kusuma Kumari in the appointment of Assistant Professors in Sri Krishnadevaraya University during the academic year 2009-10.”

2. “Willful omission and refusal by V.C. in carrying out the provisions of the Act while making appointments in the University.”

3. “To cause an enquiry into the other complaints received by the Government regarding the irregularities committed in the day to day functioning of the University.”

The enquiry authority submitted the report on 31.07.2010. The enquiry authority made the following recommendations in his report:

“(i) It is desirable to limit the term of the office of nominated members of the Executive Council to one term so as to avoid development of vested interests by such members.

(ii) It shall be made clear either by way of amendment to the Universities Act or otherwise that as soon as the term of the

office of members of the Executive Council expires they shall cease to hold the office of the members of the E.C. and Government should take steps to re-constitute the Executive Council without any delay.

(iii) It is desirable to appoint a relatively senior officer as a Finance Officer in the university to audit the accounts of the university and also to exercise budget control over the expenditure.

(iv) The university may be directed to mention the serial numbers of the roster points besides the reserved categories in the notifications of the vacancies of the posts.

(v) S.V. university may be strictly instructed to allot roster points to vacancies of Asst. Professors to be notified taking Sl.No.70 (BC-A) for Arts and 62 (SC) for Sciences as commencing points from 27th February 2008, the date of judgment of Hon'ble Justice Sri C.V. Ramulu in W.P.No.7471 of 2007 and affirmed by Justice G. Rohini in W.P.No.18681 of 2009, as the fixation of roster points have become a cause for frequent litigation."

The Government issued letter No.2561/UE.I/A2/2010-5, dated 19.05.2012, deciding to take the following course of action pursuant to the recommendations made by the enquiry authority:

"a. To initiate steps to cancel appointment orders of 21 Asst. Professors duly issuing show-cause notices, as per the existing Service Rules applicable to them.

b. To cancel illegal regularization of services of 8 Asst. Professors who were appointed temporarily on contract basis under X Plan with retrospective effect from date of their appointments with payment of arrears.

c. To cancel the 3 appointments more than notified under XI Plan schemes "Centre for Social Exclusion and Inclusive Policy Schemes."

d. To cancel the study leave sanctioned to Sri P. Nataraj Sekhar.

e. To initiate Criminal action against Sri Chenna Reddy for misappropriation of school funds and harassing a teacher.

f. To initiate action against Sri Chiranjeevi Reddy who was found guilty of offence of impersonation and for exercising power in imposing fine without authority."

The point (b) stated above relates to the case of the petitioners herein. The letter, ultimately, directed the Registrar of the University to issue show cause notices to each of the illegally appointed Assistant Professors separately for cancellation of the appointments, giving specific reasons in each case and send the replies to the show cause notices, if any, received from the Assistant Professors illegally appointed, to the Government with the comments of the E.C to enable the Government to communicate the decision under Section 19(5)(ii) of the A.P. Universities Act, 1991. Accordingly, the Registrar issued show cause notices on 02.07.2012 to the petitioners in the above Writ Petitions. The said show cause notices were challenged by the eight (8) Assistant Professors in W.P.Nos.21534 of 2012, 21751 of 2012 and 22103 of 2012 and this Court, by orders dated 18.07.2012 granted interim suspension of the letter of the Government dated 19.05.2012 and the consequential show cause notice dated 02.07.2012. When the Government of Andhra Pradesh revised the UGC Pay Scales 2006 of the permanent employees in G.O.Ms.No.14, Higher Education (UE) Department, dated 20.02.2010, the same was made applicable to the permanent employees including eight (8) Assistant Professors who were drawing UGC Pay Scales by virtue of resolution dated 07.08.2010. Then the District Audit Officer issued a letter on 11.02.2014 raising objection with regard to application of UGC Revised Pay Scales 2006 to the eight (8) Assistant Professors as the Government took a decision to cancel the illegal regularization of their services. The Government clarified in G.O.Rt.No.581, Higher Education (UE.I) Department, dated 13.08.2010 that the extension of UGC Revised Pay Scales 2006 and regularization of their services are two different subjects and with regard to regularization, the Executive Council was stated to be

competent as per Section 19(5)(iii) of the A.P. Universities Act, 1991. The Government also opined that the legal advice is against preferring an appeal against the extension of UGC Revised Pay Scales 2006 to the eight (8) Assistant Professors. Accordingly, the Registrar issued clarification to the District Audit Officer.

The above facts are not in dispute. The University now filed a counter affidavit pointing out that the selection committee constituted for selecting the petitioners did not comprise the Chancellor's nominee, UGC nominee and SC/ST nominee as stipulated in Section 43 and G.O.Ms.No.208. The notification at the initial stage clearly mentioned that the posts are purely temporary and contractual and tenable up to 31st March 2007. The Registrar on his own, without the approval or permission of the University or of the Vice-Chancellor, addressed a DO letter to the Government seeking concurrence and permission to continue the incumbents beyond 31.03.2007. He also wrongly stated that the posts were filled up by following the rule of reservation. The action of the University was contrary to Section 49 of the Universities Act. The appointment of Assistant Professors should have started from the roster point No.70 for Arts and roster point No.62 for science subjects, but a wrong letter was addressed by the Registrar stating that Group A points ended at 82 and Group B points at 75. The notification was not issued fixing the correct roster points. The services of the petitioners were regularized in the month of December 2008 and notification was issued in February 2009 for filling up of 29 posts permitted by the Government by fixing the roster points and approved by the concerned departments. After notification only, the eight (8) posts of the petitioners were put in roster. In view of the violations of the roster, the future appointment

would be affected. The services of eight (8) Assistant Professors were regularized with effect from the date of their joining on 06.06.2005 and the period from 06.06.2005 to 31.03.2007 was treated as notional and monetary benefits were extended with effect from 01.04.2007. This retrospective treatment given to the petitioners was not proper. Normally, the contract period will come to an end on the expiry of the period of contract, but in the instant case the University went ahead and regularized the contractual appointments clearly violating the Government Orders and the judgments of the Hon'ble Supreme Court. It is further stated that G.O.Rt.No.136, Higher Education (UE) Department, dated 17.04.2015, issued by the Government with regard to implementation of UGC Revised Pay Scales 2006 was contrary to G.O.Ms.No.203, dated 22.10.2010 which was adopted by the Executive Council.

Thus, a strange counter affidavit was filed by the University challenging its own actions taken earlier by the Executive Council. As stated above, when the Writ Petitions are being heard, two unemployed persons filed W.P.No.29771 of 2017 challenging the appointments of the petitioners and their regularization on identical points raised by the University in their counter affidavit.

Learned counsel for the petitioners of the Writ Petitions of 2012 and 2016 submitted that when the University, through its Executive Council took a decision initially to appoint the petitioners on contract basis, regularized their services and extended UGC Scales of Pay, it is estopped from challenging its own actions in a Writ Petition filed by the petitioners. They further submitted that the appointment of the enquiry authority has nothing to do with the actions of the Executive Council and it was directed against the action of the Vice-Chancellor only. In spite of

the same, on the directions of the Government, the Registrar issued show cause notices without the concurrence of the Executive Council which is illegal. They further submitted that the University cannot approbate and reprobate at the same time.

Learned Standing Counsel for the University as well as the learned counsel for the petitioners in W.P.No.29771 of 2017 submitted that the term of the petitioners came to an end after the expiry of their contractual period and their subsequent extension of two more years and their regularization of services is purely illegal and contrary to the judgments of the Hon'ble Supreme Court. They relied on a Full Bench decision of this Court in P.V.S.V. Prasada Rao v. Andhra University, Visakhapatnam¹ and the decisions in Dr. I. Devanand v. N.T.R University of Health Sciences, Vijayawada², and Secretary, State of Karnataka v. Umadevi³.

In the light of the above rival submissions, the following points are required to be decided.

1. Whether the appointment of the petitioners and their further regularization was valid.
2. Whether the Registrar of the University can issue a show cause notice on the direction of the Government pursuant to the report submitted by the one man commission of enquiry in respect of the allegations leveled against the then Vice-Chancellor.

The relevant provisions of the A.P. Universities Act, 1991 i.e., sub-section (29) of Section 19, Section 25 (2)(e) and Section 49 are as follows:

¹ 2006(2) ALD 1

² 2004 (6) ALD 474

³ (2006) 4 SCC 1

“ Sec.19 (29) To create posts of Professors, Readers, Lecturers and other teaching posts required by the University.”

“ Sec. 25(2)(e) To make recommendation to the Executive Council for the creation of posts of Professors, Readers, Lecturers and other teaching posts and in regard to the duties and emoluments thereof.”

“Sec. 49. The University shall not without the prior approval of the Government divert earmarked funds for other purposes or upgrade any post or revise the scales of pay of its staff or implements any scheme which involves any matching contribution from the Government or create a post or posts resulting in a recurring liability on the Government either immediately or in future Provided that for the existing teaching purposes the executive council may authorize the creation and filling up of post of teachers for a period not exceeding one year but any such post or posts shall not be continued or created afresh for any period beyond the said period of one year without the prior approval of the Government.”

A reading of the above provisions makes it clear that it is the University which is competent to appoint the teaching staff and the role of the Government is limited. This position was accepted by the University in its letter dated 20.03.2014 addressed to the Principal Secretary to Government, Hyderabad, while seeking permission to implement UGC Revised Pay Scales, 2006 to the petitioners. The Government did not take a contra stand either by filing a counter affidavit in the present batch of cases or while issuing G.O.Rt.No.136, Higher Education (UE) Department, dated 17.04.2015. In the light of the above legal position, the above facts make it clear that the petitioners underwent the required selection process, even though their appointments were on contract basis. Nobody raised any point with regard to the improper composition of the selection committee, as is raised now in the counter affidavit of the University itself. After expiry of the contract period of the petitioners, the term was extended by two more years and, ultimately, the Government wrote to the University that the Government is not going to bear the financial burden, but it is for the University to pay the salaries out of its general budget.

The Executive Council of the University took cognizance of such communication and decided to regularize their services. The Executive Council cannot be equated with the Vice-Chancellor and the Executive Council is a multi member body where the nominees of the Government also participate. The decision of the then Executive Council cannot be found fault with or called illegal by a Registrar of the University, as is sought to be done in the present batch of cases. The Executive Council should discuss the issue threadbare if it wants to, but the Registrar on the directions of the Government cannot take any action against the Assistant Professors whose services were regularized. No resolution of the Executive Council, authorizing the Registrar to issue show cause notices, is placed before this Court and the show cause notices were issued only on the directions of the Government. Though the initial appointment of the petitioners was contractual, keeping in view the needs of the University, the selection process and the qualification possessed by the petitioners, the Executive Council thought it fit to regularize their services and it cannot be held to be bad. The decisions relied on by the learned Counsel for the petitioners in W.P.No.29771 of 2017 and by the learned Standing Counsel for the University are of no avail, as they relate to regularization of contractual staff or daily wage people who entered the service through back door. The entry of the petitioners, who underwent the process of selection, cannot be held to be through back door method. Accordingly, point No.1 is decided in favour of the eight (8) Assistant Professors.

A perusal of the enquiry report and the terms of reference indicate that the enquiry was mainly concerned against the irregularities alleged to have been committed by the then Vice-Chancellor during her tenure. The

enquiry authority also pointed out that the Vice-Chancellor committed irregularity in regularizing the services of eight (8) Assistant Professors. The enquiry authority never took into consideration the binding decision of the Executive Council. The Government also does not appear to have considered the effect of the decision of the Executive Council and merely carried away by the report of the one man enquiry authority which was mainly directed against the activities of the Vice-Chancellor. Hence, the issuance of show cause notices by the Registrar is arbitrary and illegal. Accordingly, point No.2 is also held in favour of eight (8) Assistant Professors.

The eight (8) Assistant Professors have been working for the last twelve (12) years and there is no comment about their qualifications or functioning. There is no whisper about their non-utility or lack of work. They were unnecessarily harassed for the last seven (7) years and the stand taken by the University is quite strange and it cannot be allowed to canvass a deliberate decision taken by the earlier Executive Council as bad. It is also quite strange that the two unemployed persons filed a Writ Petition after seven (7) years of regularization of services of eight (8) Assistant Professors by filing the entire set of papers which are in the custody of the University. This is totally a *mala fide* action taken by the so called unemployed people at the instance of somebody in the University.

In view of the same, this Court is constrained to dismiss W.P.No.29771 of 2017 with costs of Rs.10,000/- (Rupees Ten Thousand only) payable by the petitioners therein to the A.P. Legal Services Authority within one month from date of receipt of a copy of this order.

In the result, W.P.Nos.21534, 21751 and 22103 of 2012 and 31993 of 2016 are allowed without costs and W.P.No.29771 of 2017 is dismissed with costs as stated above.

As a sequel thereto, the miscellaneous petitions, if any, pending in the Writ Petitions shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 09th November, 2017
Nsr

