

HON'BLE SRI JUSTICE S.V. BHATT

W.P.Nos.17611 AND 17615 OF 2017

COMMON ORDER:

Heard Mr.V.Raghu for petitioners, the Assistant Government Pleader for Higher Education and Mr.B.S.Shivaji for respondents 4 and 5.

The petitioners in these two writ petitions challenge the proceeding of respondent No.4 dated 05.05.2017 terminating the services of petitioners with immediate effect, however, the 4th respondent directed payment of three months salary towards notice period. The counsel for petitioners though has not raised a legal ground, but having regard to the binding precedent of this Court in Vasavi College of Engineering, Hyderabad v. A.Suryanarayana¹ submits that the termination proceeding impugned in the writ petitions is violative of Sections 79 and 83 of the A.P. Education Act and prays for setting aside the same. The operative portion relied upon by the counsel for petitioners reads thus:

“23. Like-wise, Sub-section (3) imposes a similar obligation in respect of suspensions with an added obligation to obtain orders from the competent authority to extend the period of suspension beyond two months. The wording of Section 83 seems to us to indicate that it is in the nature of a residuary provision which comprehends termination of service of any employee consequent on any change relating to education or course of instruction or any other matter. In cases of such residuary instances of termination of service otherwise

¹ 1991 (3) ALT335

than as disciplinary measure, the employer is required to obtain prior approval of the competent authority or the next higher authority as the case may be. If the provisions of Chapter XIV of the Education Act are meant to provide relief to the teachers in the matter of retention in service, it cannot be as if a grey area between penal termination of service and reduction in rank on the one hand and retrenchment pure and simple relatable only to other incidental contingencies on the other would have been left out. It is far more reasonable to hold that termination of service of employees of private educational institutions are exhausted by the provisions contained in Sections 79 and 83 of the Act rather than to hold that the management may terminate the service of the teachers except by dismissal or removal or retrenchment and that such termination of service will not be within the comprehension of the regulatory provisions of the Act. We hold that if the service of a teacher or other employee of a private educational institution is sought to be terminated by dismissal or removal, it shall be preceded by any inquiry as provided in Section 79 and such removal shall be effected only with the prior approval of the competent authority. Like-wise, in the case of any termination of service other than those covered by Section 79 of the Act, prior approval of such competent authority or the next higher authority is made a condition precedent for any other termination of service under Section 83 of the Act.

24. We are not persuaded to go into polemics relating to the meaning of the word 'retrenchment', as understood by the Supreme Court in relation to Industrial Law. We need only notice that 'retrenchment' has been separately defined in the [Industrial Disputes Act](#) and has acquired a connotation totally different from dismissal, removal and discharge for the purpose of Industrial Law. 'Retrenchment' in such a context as defined under [Section 2](#) (oo) of the [Industrial Disputes Act](#) as it stands at present, cannot be of any assistance in understanding the scope of 'retrenchment' occurring in

Section 83 of the A.P. Education Act. We therefore refrain from referring to the number of decisions on this aspect which counsel on either side have referred to us.

25. In the view which we take that [Sections 79](#) and [83](#) complement each other and exhaust the entire area of termination of service, punitive or otherwise, it is not necessary for us to consider further refinements sought to be discovered by counsel for the employer that only such retrenchment of employees consequent on 'any change relating to education or course of instruction or to any other matter' fall within [Section 83](#) of the Act . We are not persuaded to accept the specious argument that any other matter' must be relatable to change relating to education or course of instruction and can not take in termination of service or any other reason. The natural meaning to be given to the phrase 'any other matter' seems to us to be exclusive of change relating to education or course of instruction. We are also of the opinion that the two preceding phrases are exhaustive and nothing is left out to be covered by the phrase 'to any other matter' in relation to those two exhaustive categories."

Mr. Shivaji fairly submits that the termination proceedings impugned in the writ petitions are not with the approval of competent authority. He does not prefer to keeping the writ petitions pending and therefore, he submits that the termination proceedings impugned in the writ petitions can be set aside, however, liberty may be given to respondents 4 and 5 to proceed in accordance with law. Having regard to the law laid down by this Court in Vasavi College of Engineering, Hyderabad v. A. Suryanarayana and admitted circumstance that approval of competent authority is not taken before issuing the termination

proceedings impugned in the writ petitions, the writ petitions are ordered by setting aside the termination proceedings impugned in the writ petitions. It is needless to observe that if the circumstances compel the management to take a decision on the services of petitioners, the same can be taken in accordance with law. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

Date: 30.08.2017
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S.V.BHATT, J

