

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

* * * *

Writ Petition No. 31230 of 2016

Between

K. Ajoy Babu

..Petitioner

And

State of Andhra Pradesh, rep. by its
Principal Secretary, Higher Education Department,
Secretariat Buildings, Hyderabad and others

.. Respondents.

JUDGMENT PRONOUNCED ON

: 28.08.2017



THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

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

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 31230 of 2016

Order:

Heard learned Senior Counsel, Sri M. Surender Rao appearing for the petitioner and Sri P. Veera Reddy for the respondents 2 and 3.

Second respondent University issued a notification calling for applications for appointment of Assistant Executive Engineer and the petitioner applied for the same. He was selected after attending an interview. The Executive Council of the University passed a resolution on 08.11.1989 approving the selections and directing the appointment of the petitioner as Assistant Executive Engineer (Civil). Accordingly, the University appointed him on 08.11.1989 in the time scale of Rs.1380-60-1880-70-2750/-.

There is only one regular post of Deputy Executive Engineer (DyEE) and Assistant Executive Engineer (AEE) in the second respondent University Engineering Department. The University also got a work charged establishment. The probation of the petitioner was commenced with effect from 09.11.1989 and he was declared to have been completed successfully with effect from 09.11.1991. The petitioner sought for promotion to the post of Deputy Executive Engineer in accordance with A.P. Engineering Service Rules, since he was the only regularly appointed Asst. Executive Engineer (Civil) and eligible to be considered for the post of Deputy Executive Engineer. The petitioner was promoted temporarily on 12.04.2006 as Deputy Executive Engineer and it was followed by a regular promotion on 11.01.2007. There is a post of University Engineer which is equivalent to the post of Executive Engineer in the University. The petitioner was asked to discharge the duties of Deputy Executive

Engineer against the vacancy of University Engineer who was kept under suspension. One Vijay Kumar Raju was taken as Assistant Executive Engineer by order dated 20.01.1984 in the work charged establishment. His services were regularized by proceeding dated 15.09.1994 with effect from 20.01.1984. But the Government, by its letter dated 18.12.1999, rejected the proposal to ratify the action of the University in regularizing his services. The attempt of the University to seek ratification in the years 2006 and 2007 also did not fructify. However, he was promoted as Deputy Executive Engineer by proceedings dated 11.01.2007. One E. Madhusudhan, Deputy Executive Engineer working in Irrigation and CAD, Chittoor was taken on deputation as Deputy Executive Engineer in the University with effect from 27.09.2005. Since S. Ravi Shankar, the University Engineer was kept under suspension on 22.03.2006, the said E. Madhusudhan was kept in-charge of post of University Engineer and thereafter he was repatriated to his parent department. The petitioner states that Vijay Kumar Raju should not have been promoted as Deputy Executive Engineer, but since there was no prejudice caused to the petitioner he did not challenge the same. However, when Vijay Kumar Raju was kept as in-charge University Engineer by proceedings dated 31.03.2008, the petitioner filed W.P.No.7920 of 2008 and sought suspension of the said orders. This Court granted interim suspension, by order dated 23.04.2008 in WPMP No.10418 of 2008. By virtue of the said suspension order, the said Vijay Kumar Raju continued to work as Deputy Executive Engineer along with the petitioner. The said Ravi Shanker who was working as University Engineer joined the post consequent to revocation of suspension and ultimately retired from service on 30.06.2012. After his retirement, again the second respondent by

proceedings dated 30.06.2012 appointed the said Vijay Kumar Raju as in-charge University Engineer ignoring the case of the petitioner and, in those circumstances, the petitioner filed W.P.No.21143 of 2012. This Court again suspended the said proceedings by order dated 04.09.2012 in WPMP No.27112 of 2012. When the second respondent did not implement the orders, the petitioner filed C.C.No.2055 of 2012 and in view of the same, the third respondent issued proceedings on 02.03.2013 appointing the petitioner as in-charge University Engineer with effect from 02.03.2013 until further orders. The petitioner was placed under suspension on 17.09.2013 and kept the said Vijay Kumar Raju as in-charge University Engineer. The orders of suspension, however was revoked on 19.09.2013 and the petitioner was kept as in-charge of the post of University Engineer. Though the petitioner was making representations for appointing him as a regular University Engineer, no orders were issued, but proceedings were issued by the third respondent on 31.08.2016 appointing the fourth respondent, who was a Teaching Professor in Sri Venkateswara University College of Engineering (Civil) as Director of Sri Venkateswara University Engineering Department dispensing the duties of the petitioner as University Engineer (in-charge) and relieving him on 01.09.2016. Challenging the same, the present Writ Petition was filed.

This Court, by order dated 17.09.2016 while admitting the Writ Petition, granted interim suspension of the proceedings dated 31.08.2016 until further orders.

Seeking vacation of the said order, the respondents 2 and 3 filed a vacate petition along with counter affidavit stating that the University was selected and provided with a rare opportunity of holding three mega

events in the coming five months time. The 99th Annual Conference of the Indian Economic Association would be held in the University Campus from 27.12.2016 to 29.12.2016 and 5,000 delegates were expected from India and abroad. The 104th conference of Indian Science Congress was to be held from 03.01.2017 to 07.01.2017 and nearly 10,000 delegates were expected to attend the said conference. Apart from the above, the Association of Indian Universities decided to hold its 91st Annual meeting in the University premises from 05.02.2017 to 07.02.2017 and the Vice Chancellors of all member Universities were expected to participate in the said meeting. The Executive Council of the University took a decision to organize these three mega events and further proposed to renovate 1600 rooms in 23 blocks of University Hostel and also take up several works such as road widening of 14 Kms. in the campus. The renovation of buildings such as University library, Srinivasa auditorium, Neelam Sanjeevareddy bhavan, Senate hall was also proposed. The University is having only two Deputy Executive Engineers in the Civil Engineering Department and they are the petitioner and one N. Vijay Kumar Raju. In order to take up the execution of all the above works in a quick and perfect manner, it was felt necessary to appoint a Director on temporary basis. Therefore, the Vice-Chancellor of the University appointed the fourth respondent as a Director by proceedings dated 31.08.2016 with immediate effect. As per Chapter XXII of the Laws of the University under Conduct and Dismissal rules, a whole time University employee may be employed in any manner required by proper authority without claim for additional remuneration. Hence, the services of the fourth respondent were utilized as Director in addition to his duties as Professor in the Department. The Executive Council is vested with the power of creating

and abolishing appointment, temporary and permanent, in the superior and last grade establishment of the University under Chapter IV - 19. The Andhra Pradesh Universities Act, 1991 vests the Academic Senate and Executive Council with various powers. The petitioner was issued several memos for explanation for not attending to his official works since 2006. He is very irregular, negligent and was not available at work spot nor at the office whenever the in-charge university Engineer wanted to contact him for giving instructions about construction works allotted to him. The departmental enquiry against the petitioner is not yet finalized. The revocation of suspension is not yet ratified by the Executive Council, hence his request for appointment as regular University Engineer was not considered. His services in the category of Deputy Executive Engineer are also not regularized. Hence, he is not eligible for promotion as University Engineer on regular basis. In those circumstances only, the appointment of the fourth respondent as Director has become necessary. The Executive Council ratified the appointment of the fourth respondent. He was being paid only the honorarium of Rs.500/- per month by meeting the expenditure from the development fund account. It is a common practice in all the Universities to make additional use of services of Professors in the teaching faculty and non-teaching purposes. The Executive Council has the power to create a temporary post of Director in order to meet dire necessity. The petitioner has to work under the administrative control of the Director for the time being. The petitioner is not divested of all the other duties except the financial powers. Hence, the petitioner cannot be said to be prejudiced. The petitioner was relieved of his duties and handed over charge to the fourth respondent on

01.09.2016. The fourth respondent has been functioning as Director of the Engineering Department from 01.09.2016 onwards.

The averments relating to the pending litigation between the petitioner and the respondent University are not dealt with, as they are unnecessary for disposal of the present Writ Petition.

In the light of the above averments, it has to be seen whether the impugned order of appointment of the fourth respondent and divesting duties of the petitioner is valid or not.

There is no dispute that there is one post of University Engineer and one post of Deputy Executive Engineer in the Engineering department of the University. The Civil branch and Electrical branch are having separate posts and we are not concerned with the same.

The duties of the University Engineers are enumerated in Chapter 8 of Common Finance and Accounting Rules for Universities in the State of Andhra Pradesh. As per para 8.2, the duty of the University Engineers is to prepare an action plan for ongoing works/new works/repairs and maintenance to be carried out during the next financial year and recommend to the Finance Officer to make necessary budget provision in the Annual financial estimates. As per para 8.5, the estimates shall be prepared by a Committee of Works and Buildings constituted by the University, where the University Engineer is a Convenor. The functions of the committee are enumerated. The guidelines for preparation of estimates were also indicated. The responsibilities of the University Engineer or his subordinate for execution of engineering works are also enumerated. The University Engineer has to initiate tendering process for the works and finalize the same. As per para 8.13 (4), the University Engineer is responsible for the safe custody of accepted tenders and

contract agreements. He is empowered to issue work orders as per para 8.16. He can grant extension of time and order that the works are completed within time. The Purchase committee for procurement of stores/materials related to the execution of maintenance works shall comprise the Registrar, Finance Officer, Consulting Engineer/Technical Advisor and University Engineer is its Convenor. The University Engineer shall undertake coding of works of the University. Thus, various functions and responsibilities are entrusted to the University Engineer. The impugned order appoints the fourth respondent as Director entrusting the following duties and dispensing with the duties of the in-charge University Engineer by the petitioner by discarding the entire financial liability assigned to him. He was asked to perform the regular duties prior to placing him as in-charge University Engineer:

“He is entrusted with the following duties:

- (i) He shall discharge the duties attached to the post of University Engineer as per rules of the University.
- (ii) He shall hold overall control on the S.V.U. Engineering Department.
- (iii) He shall oversee the complete administrative and technical matters of the S.V.U. Engineering Department.
- (iv) He shall hold overall responsibility and accountability for the activities of S.V.U. Engineering Department.
- (v) The Deputy Executive Engineers and Assistant Executive Engineer, Assistant Engineers, Ministerial staff and Non-ministerial staff shall be under the administrative control of the Director.
- (vi) He shall also oversee complete activities of Drawing, Civil, Electrical, Water works, Gardening, Audio Visual sections etc.
- (vii) He is entitled with complete financial drawing and disbursing powers that are being assigned to a University Engineer as per norms of the University.
- (viii) Any other duties relating to the S.V.U. Engineering Department assigned by the Hon'ble Vice-Chancellor from time to time.”

There is no dispute that the petitioner who was initially appointed as Assistant Executive Engineer (Civil) was placed on probation for a period of two years with effect from 09.11.1989 by proceedings dated 16.08.1997. He was declared to have completed the period of probation

and confirmed in that post with effect from 09.11.1991 subject to the pending Writ Petitions. He was temporarily promoted as Deputy Executive Engineer by proceedings dated 11.01.2007 and he reported for duty as such on 12.01.2007. He was kept as in-charge University Engineer by proceedings dated 02.03.2013 and his representation to confirm in the said post by ratifying his services rendered as Deputy Executive Engineer from 11.01.2007 is pending consideration before the University.

A perusal of the entrustment of duties to the fourth respondent and directing the petitioner to discharge the duties of the Deputy Executive Engineer by proceedings dated 31.08.2016 is a clear case of relieving the petitioner from the in-charge position of University Engineer without there being any justification or filling up of the said post by a regular candidate. In view of various duties entrusted to the University Engineer as stated above, no other person can exercise those duties unless he is designated as University Engineer. Thus, the proceedings dated 31.08.2016 not only affect the present position of the petitioner, but also contrary to the Common Finance and Accounting Rules applicable to the University.

Learned Senior Counsel appearing for the petitioner relied on the observations of the Constitution Bench of the Hon'ble Supreme Court in State of Punjab v. Jagdeep Singh¹, to the following effect and submitted that the impugned order amounts to demoting the petitioner from the present position.

“In the present case, if the order of the Government stands, the respondents were certainly reduced in rank, for before the order they were permanent Tahsildars, but after the order they become officiating Tahsildars with liens on their substantive posts of naib-tahsildars. Their future prospects for promotion were affected, for other officers in the State Punjab, who would have been juniors to them, must now, after the said order, have taken precedence over

¹ AIR 1964 SC 521

them. A plain reading of the Article certainly entitles the respondents to have a reasonable opportunity of showing cause before being reduced in rank. But the learned Advocate-General contends that for the application of the said clause of the Article the punishment of reduction in rank should be in the context of the Government servant's conduct and where, as in the present case, an order is made dehors his conduct and only for correcting an alleged error committed by the previous Government, the said clause has no application. I find it difficult to accept this argument. If these arguments were correct, it would lead to an extraordinary result, namely, that a Government servant who had been guilty of misconduct would be entitled to reasonable opportunity whereas an honest Government servant could be reduced in rank contrary to the provisions of the statutory service rules without giving him such an opportunity. This anomaly is not created by Art. 311(2), for the words used therein are wide enough to take in both categories, but by introducing words of qualification in the Article which are not there."

But, those observations were made in the minority judgment of Subba Rao, J.

The University produced the record relating to the resolution passed by the University Executive Council and it is in three separate bound books. One bound book contained the agenda for the meeting of the Executive Council, the second book contained the signatures of the members of the Executive Council and the third book contained the certified copy of the resolutions. The agenda book produced before this Court is not in chronological order. The attendance register shows that a typed meeting notice was pasted on the left side of the register stating that the agenda would follow and on the right hand side the signatures of the members who were present were obtained. As stated above, the third book contained the copy of resolutions. This type of maintenance of registers is unknown to any Body which conducts meetings. The agenda, the members present in the meeting and the resolutions passed by them should find place at one place in one book as it would be difficult for the reviewing authority to verify whether any deliberation took place among the members of the Executive Council with regard to any particular subject. The book containing the copy of the resolutions strangely

contains a separate resolution at the end of the book regarding the efforts of the Vice-Chancellor and Registrar in bringing good name to the University and it contains the signatures of all the Executive Council members who were present on that day. But, such practice is not found in respect of other subjects taken up in the meeting. Since the copy of the resolutions contained the signatures of the Vice-Chancellor and the Registrar, it is not known whether they were unanimous resolutions or any one expressed any reservation.

The orders dated 31.08.2016 were passed by the Vice-Chancellor of the University and they were placed before the Executive Council in the meeting held on 26.09.2016. The item C-9, under Section – III : Items for Ratification (ii) – Service Matters, contains the following item:

“C – 9 The Registrar under the orders of the Vice-Chancellor reports that:

PARTICULARS	REMARKS
For effective implementation and regulation of principles and objectives of the University, the Hon'ble Vice-Chancellor has appointed the Deans, Directors and Co-Ordinators to some already existed posts and to some newly created posts. (No.E.II(7)/2016)	Prof. K.V. Subbaraya Sarma, Dept. of Statistics has been appointed as the Dean, university Academic Audit. He is entrusted with the following duties: (i) Academic matters related to Affiliated Colleges of S.V. university a. Issue of Notification for affiliation during every academic year, b. Constitution of Inspection Committees, c. Conducting of Standing Committee Affiliation meetings, d. Processing the affiliation procedure as per the norms, e. Communicating all the affiliation related matters from time to time. (ii) Any other assignments entrusted by the Vice-Chancellor relating to the University Academic Audit

	(Constituent Colleges of S.V. university and the Affiliated Colleges of S.V. University) from time to time. Dr. D. Usha Rani, Director, Centre for Extension Studies has been appointed as Dean, University Empowerment of Women and Grievances. She is entrusted with the following duties: (i) Empowerment of Women. (ii) Grievances related to Women staff (Teaching & Non-Teaching) (iii) Grievances related to Students. (iv) Any other assignments entrusted by the Vice-Chancellor from time to time. Dr. A. Sudhakaraiiah, Assistant Professor, Dept. of Future Studies has been appointed as Co-Ordinator, Campus Development. He is entrusted with the following duties: (i) to carry out Clean and Green programme (ii) to execute Swatch Bharath programme (iii) to encourage rain harvesting (iv) to undertake landscaping (v) measures for beautification of the campus (vi) any other assignments entrusted by the Vice-Chancellor relating to the beautification of the campus. Dr. D. Usha Rani, Director, Centre for Extension
--	--

	Studies has been appointed as Coordinator, NAAC Steering Committee to gear up the University for the National Assessment and Accreditation Council (NAAC) for its re-accreditation. Prof. T. Ramasree, Dept. of ECE., SVU College of Engg., Tirupati has been appointed as Dean, Industry Institute Interaction, Innovations, Placements and Training w.e.f.31.08.2016. Prof. G.N. Pradeep Kumar, Dept. of Civil Engg., has been appointed as Director, SVU Engineering Department w.e.f. 31.08.2016 until further orders. He has been assigned the entire duties attached to the post of University Engineer. The entire Engineering Department has been kept under his administrative control. Prof. G. Padmanabham, Dept. of Sanskrit, SVU College of Arts, has been appointed as Programme Co-Ordinator In-charge for National Service Scheme Bureau (NSS), SVU Tirupati w.e.f. 31.08.2016 until further orders. All the above appointments made by the Hon'ble Vice-Chancellor are being reported to the Executive Council for its ratification.
--	--

In the appendix to the said resolution, it was stated that he was appointed until further orders and his honorarium is Rs.500/-. The above resolution with regard to item C-9 states that the action of the Vice-Chancellor was ratified. Even assuming that the action of the Vice-Chancellor was ratified, such an action cannot be ratified as it is contrary to the rules of the University. The Hon'ble Supreme Court in

Marathwada University v. Seshrao Balwant Rao Chavan², considered the similar issue.

The Vice-Chancellor is appointed under Section 11 of the Andhra Pradesh Universities Act, 1991 and his powers and duties are enumerated in Section 13 thereof. In M/ s. Kum Kum Lahiri Rao v. Principal, Dr. B.R. Ambedkar College of Law, Visakhapatnam³, this Court held that the powers conferred on the Vice-Chancellor are comparable to those under Article 162 of the Constitution of India and that power is restricted to unoccupied fields. Wherever a situation is provided by legislation it is impermissible to deal with other situations in exercise of executive powers.

The Executive Council is constituted under Section 18 and the powers and duties of the Executive Council are enumerated in Section 19. The said powers and duties include to appoint, dismiss, remove or suspend any member of the non-teaching staff of the University, to fix their emoluments, define their duties and the conditions of their service.

Thus, there is no dispute that in the instant case with regard to divesting of the powers of the in-charge University Engineer the action has to be taken by the Executive Council and the Vice-Chancellor has no role. In respect of a matter where the Vice-Chancellor has no jurisdiction, if the Vice-Chancellor takes a decision, the ratification of such a decision does not arise at all.

The Hon'ble Supreme Court in Marathwada University's case (supra) held that in a case of dismissal of a Registrar of University by the Vice-Chancellor and ratification of the same by the Executive Council, the Executive Council cannot ratify such an action. When a contention was

² AIR 1989 SC 1582

³ 2002(5) ALT 320

raised that the express power of the Vice-Chancellor to regulate the work and conduct of officers of the University implies as well the power to take disciplinary action against officers, the same was not accepted. The Supreme Court held that the principles of ratification do not have any application with regard to exercise of powers conferred under statutory provisions. The statutory authority cannot travel beyond the power conferred and any action without power has no legal validity. It was held to be void *ab initio* and cannot be ratified.

In view of the said decision, the impugned order passed by the Vice-Chancellor cannot be sustained even after ratification by the Executive Council as stated above.

Yet one another point which is involved in the present dispute is with regard to the effect of the order on the position and functions of the petitioner. The petitioner was kept as in-charge University Engineer and the duties of the University Engineer are enumerated in the Common Finance and Accounting Rules of the University. When the duties are enumerated in the Rules for the post of University Engineer, no other person much less a person, who is temporarily brought as a Director can discharge those functions. The impugned order clearly states that certain duties of the University Engineer were taken away from the petitioner's duties and the petitioner was directed to work as Deputy Executive Engineer. This is a clear case of reduction in rank.

This Court had an occasion to consider such a situation in *Vidyadhar R. v. National Textile Corporation*⁴, wherein a Chief Labour Welfare Officer was transferred and asked to work as Labour Welfare Officer. This Court in the said decision held as follows:

⁴ 1996 (4) ALT 962

“24.....The petitioner, at present, is compelled to work as Welfare Officer at Adoni Cotton Mills and he is paid at the old rate (not even revised scale of pay) of scale of pay admissible to Welfare Officers. The effect of the transfer order is quite apparent and it speaks for itself. The effect is that the petitioner is reverted from the rank of Chief Welfare Officer to that of Welfare Officer. The action of the management clearly tantamounts to reduction in rank. 'Reduction in rank' means reversion of an employee from a higher class or grade of post to a lower class or grade of post. The post of Chief Welfare Officer is higher post to that of Welfare Officer in terms of office as well as in terms of the scale of pay stipulated under Rule 76-B(4). If an employee has a right to hold a particular class or grade of post, reversion to a lower grade or class of post per se is violative of principles of natural justice and tantamounts to punishment. An employee cannot be reverted to a lower post except as a disciplinary measure after holding a regular departmental/domestic enquiry in conformity with the relevant regulations or rules. Added to this the occupier of the factory cannot straight-away revert a Chief Welfare Officer to the post of Welfare Officer even as a disciplinary measure without the written concurrence of the Director of Factories as mandated in Rule 76-B(4) (iii). Admittedly the management did not obtain concurrence of the Director of Factories before the impugned action was taken. The impugned action suffers from errors of law apparent on its face and it cannot be sustained in law.”

In the instant case also the petitioner who is working as in-charge University Engineer is asked to function as Deputy Executive Engineer by virtue of appointment of the fourth respondent, though for a temporary period. This is clearly a case of reduction in rank.

In view of the same, the Writ Petition is allowed setting aside the impugned proceedings dated 31.08.2016. There shall be no order as to costs.

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

A. RAMALINGESWARA RAO, J

Date: 28th August 2017
Nsr