

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT APPEAL Nos.985, 1048 & 1075 of 2017

Date: 08-08-2017

W.A.No.985 of 2017:

Between:

Kesha Megharaj, S/o. Kesha Kishan
Aged about 26 years, R/o.H.No.3-7-73, Narsi
Road, Bodhan, Nizamabad District and others

..... Appellants

AND

Dr. Deen Dayal Bung, S/o. Srinivas Bung,
Aged about 52 years, Working as Professor of
Surgery & Head of Department (HOD) General Surgery,
Osmania Medical College/Osmania General Hospital,
Hyderabad and others

..... Respondents

Counsel for Appellants : Sri K.Raghuveer Reddy

Counsel for Respondent No.1: Dr.K.Lakshmi Narasimha

Counsel for Respondent No.2: Sri Taddi Nageswara Rao

Counsel for Respondent No.3: G.P. for Medical & Heath (AP)

Counsel for Respondent No.4: None appeared

W.A.No.1048 of 2017:

Between:

The Principal, Osmania Medical College,
Hyderabad.

..... Appellant

AND

Dr. Deen Dayal Bung, S/o. Srinivas Bung,
Aged about 52 years, Working as Professor of
Surgery & Head of Department (HOD) General Surgery,
Osmania Medical College/Osmania General Hospital,
Hyderabad and others

..... Respondents

Counsel for Appellant : G.P. for Medical & Health (AP)

Counsel for Respondent No.1: Dr.K.Lakshmi Narasimha

Counsel for Respondent No.2: Sri Taddi Nageswara Rao

Counsel for Respondent No.3: None appeared

W.A.No.1075 of 2017:

Between:

Dr. NTR University of Health Sciences, Rep. by
Its Vice Chancellor, Vijayawada, Krishna District.

..... Appellant

AND

Dr. Deen Dayal Bung, S/o. Srinivas Bung,
Aged about 52 years, Working as Professor of
Surgery & Head of Department (HOD) General Surgery,
Osmania Medical College/Osmania General Hospital,
Hyderabad and others

..... Respondents

Counsel for Appellant : Sri Taddi Nageswara Rao

Counsel for Respondent No.1: Dr.K.Lakshmi Narasimha

Counsel for Respondent No.2: G.P. for Medical & Health (TG)

Counsel for Respondent No.3: None appeared

This Court made the following:

COMMON JUDGMENT: (Per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

These three Writ Appeals arise out of Order, dated 08-07-2017, in WP.No.17565 of 2017 whereby the learned Single Judge set aside Order, dated 25-05-2017, of the Dr.NTR University of Health Sciences, Andhra Pradesh, removing Dr.Deen Dayal Bung and replacing Dr.Srinivasa Chary in his place as the internal examiner for the MS (General Surgery) examinations of the Osmania Medical College, Hyderabad.

For convenience, the parties are referred to as they are arrayed in the Writ Petition with the only modification that the PG students, who filed Writ Appeal No.985 of 2017, are referred to as the third party students.

The brief facts leading to the filing of these Writ Appeals are stated hereunder:

The petitioner is the Professor and Head of the Department of General Surgery in Osmania Medical College/Osmania General Hospital. The students have been pursuing their final year of Master of Surgery (General Surgery) in the Osmania Medical College, Hyderabad. Respondent No.1- University has nominated the petitioner as the internal examiner for MS (General Surgery) examinations to be held from 29-05-2017 to 01-06-2017. Communication of this nomination was received by the petitioner on 18-05-2017.

The material on record shows that as far back as 08-05-2017, the PG students have represented to respondent No.2 that in view of certain problems faced by them from the petitioner and also keeping in view the ongoing investigation into those allegations, another Professor may be appointed as an internal examiner. This was followed by another letter,

dated 12-05-2015, addressed by the PG students to respondent No.2 whereby they named respondent No.3 as the first internal examiner and Dr.P.Venkateswarlu as the second internal examiner. On the same day on which the said second representation was made by the PG students, respondent No.2 has addressed a letter to respondent No.1 wherein she has stated that the PG students have complained against the petitioner and that therefore, respondent No.3 and Dr.P.Venkateswarlu may be appointed as the first and the second internal examiners respectively. Acting on this letter, respondent No.2 has issued proceedings *vide* letter No.4483 E1(b)/PG/Nov/Dec'2017, dated 25.05.2017, replacing the petitioner with respondent No.3 as the first internal examiner while retaining Dr..P.Venkateswarlu as the second internal examiner. This proceeding came to be challenged by the petitioner in WP.No.17565 of 2017. As the internal examinations were scheduled to commence from 29-05-2017 and this Court had summer vacation, the petitioner has unsuccessfully moved a house motion. Therefore, he had no option but to wait till the re-opening of the Court and accordingly, he filed the Writ Petition on 01-06-2017, by which time internal examinations were completed. It is in this situation that the Writ Petition was heard by the learned Single Judge.

The main case of the petitioner was that being a professor with clean record, and having been appointed as the internal examiner without any solicitation, he was unceremoniously replaced in a most arbitrary manner succumbing to the pressure of certain PG students. It was his further plea that all the allegations leveled against him by the PG students were enquired into by a three-member internal Enquiry Committee; that a report was submitted by the said Committee on 12-01-2017 finding all the

allegations as utterly false; and that in spite of the same, respondent No.2 has succumbed to the pressure brought to bear upon her by certain PG students and recommended for his replacement with an internal examiner of the latter's choice. Accordingly, he termed his replacement as not only illegal but also an act of extreme humiliation to his honour and dignity as the Professor and Head of Department of General Surgery.

Respondents 1 and 2 filed separate counter affidavits. In the counter filed by the Vice Chancellor of respondent No.1-University, reference to clause No.9 of Appendix-II viz., Post Graduate Examination Guidelines on Appointment of Post Graduate Examiners was made, as per which, the Head of the Department of the institution concerned shall ordinarily be one of the internal examiners and second internal examiner shall be rotated after every two years. It was further averred that the said clause was deleted in terms of Gazette Notification dated 20.10.2008 and, therefore, the petitioner as well as respondent No.3 were equally qualified to be appointed as internal examiners. It was further averred that in her letter dated 12.05.2017, respondent No.2 requested for change of the first internal examiner and appoint respondent No.3 in his place, while retaining Dr.P.Venkateswarlu as second internal examiner, and that as the appointment of examiners is made as per the request of the Principals from the list of Professors, and as respondent No.2 has requested for appointment of respondent No.3 as the first internal examiner in place of the petitioner while mentioning that there are internal problems in the department of Surgery and the Court case was pending, respondent No.2 has changed the first internal examiner and replaced the petitioner with respondent No.1 as the first internal examiner. Counter affidavit also refers to enquiry report

sent by respondent No.2 wherein it was opined that a neutral person has to be chosen as Head of the Department till Court gives the final judgment. It was further averred in the counter affidavit that respondent No.2 has sent another letter dated 29.05.2017 through e-mail at 7:08 pm., requesting respondent No.1 to reinstate the petitioner in place of respondent No.3 and that as the practical examinations were commenced on 29.05.2017, her request could not be considered.

In the counter affidavit filed by respondent No.2, she has referred to W.P.No.32432 of 2016 filed by the petitioner assailing the order of the Government of Telangana cancelling her posting orders as Head of the Department and posting one Dr.B.Nagendar as Head of the General Surgery Department and the interim order of suspension granted by this Court in favour of the petitioner. As regards the replacement of the petitioner, she has averred that though the petitioner was initially nominated as internal examiner, in view of the representations of the PG students, she has addressed letter dated 12.05.2017 to respondent No.1 to appoint respondent No.3. That she made the said recommendation on a holistic analysis of the entire record of the petitioner. She has also referred to another representation dated 19.05.2017 of the PG students expressing their apprehension that they do not feel that fair examination would be conducted if the petitioner is an internal examiner in view of the previous misunderstanding between him and the students and requested that if it is not possible to consider replacement of the petitioner with another Professor as internal examiner, they may be referred to a different centre for fair exams. She has further averred that again basing on the representation of Telangana Government Medical Professors Association dated

29.05.2017, she has addressed the Controller of Examination of respondent No.1-University to re-nominate the petitioner as the first internal examiner.

The learned Government Pleader for Medical and Health, Telangana State and the learned Government Pleader representing respondent No.2, who filed W.A.No.1048 of 2017 and the learned Special Government Pleader representing the Advocate General for the State of Andhra Pradesh appearing for Dr.NTR University of Health Sciences, *inter alia* sought to support the action of the University in replacing the petitioner with respondent No.3. However, they have finally requested for setting aside the order of the learned single Judge to the extent it pertains to imposition of costs.

Sri K.Raghuveer Reddy, learned counsel for PG students who filed W.A.No.985 of 2017, submitted that serious apprehensions of the students that they may not receive the fair treatment from the petitioner compelled them to address the two letters as referred above to the Principal for changing the petitioner as the first internal examiner. He further submitted that the internal examinations were held as scheduled on 29.05.2017 and were completed by the time the writ petition was filed on 01.06.2017 and that results have also been declared wherein all the 12 appellants were declared as having passed. The learned counsel further submitted that if fresh examinations are conducted, that would cause serious hardship to the interests of the 12 appellants; more so, as per the Medical Council of India Regulations, the PG students whose results are declared prior to 15.07.2017 alone are eligible for appearing in NEET examination being conducted for admissions into Super Speciality Courses. He has further submitted that

they were not given opportunity of being heard by the learned single Judge before the writ petition is allowed. Interestingly, 7 out of 39 PG students have filed WAMP.No.1977 of 2017 for their impleadment in W.A.No.985 of 2017. They have pleaded that only 12 out of 39 candidates were declared passed in the internal examination and that as the appellants along with other failed candidates have not supported the change of the petitioner as internal examiner, they were deliberately failed. Therefore, they sought to come on record in order to support the judgment of the learned single Judge under appeal.

We have given our earnest consideration to the respective submissions of learned counsel for the parties. As could be culled out from the counter affidavits of respondents 1 and 2, the main reason for replacing the petitioner by respondent No.3 was the purported request by the PG students. Incidentally, even respondent No.3 also addressed a letter on 04.05.2017 to appoint him as first internal examiner instead of appointing the petitioner. Till 18.05.2017, the decision of the University nominating the petitioner as the first internal examiner was not officially communicated to any one. Both the PG students and respondent No.3, in anticipation of appointment of the petitioner as first internal examiner, have addressed letters to respondent No.2 not to appoint the petitioner and instead to appoint respondent No.3. No justifiable grounds have been referred by respondents 2 and 3 in their respective counter affidavits for replacing the petitioner, except the stand of the students that in view of certain allegations being faced by the petitioner, it is necessary to replace him.

It is a matter of record that certain serious allegations made by the PG students were subject matter of an internal enquiry. A Committee comprising the Superintendent, MGM Hospital, Warangal, the Professor and Head of the Department of TB & CD and GGCH Hospital, Hyderabad and the Superintendent of Sarojini Devi Eye Hospital, Hyderabad has held an enquiry into the allegations made by the PG students against the petitioner and found every allegation as false and baseless. As the learned single Judge has extracted the said report in his order, we refrain from reproducing the same. Interestingly, the counter affidavit of respondent No.1 reveals that along with letter dated 12.05.2017 of respondent No.2, the said enquiry report was sent by her. It is a matter of grave concern that respondent No.1, being in possession of such a report, should yield to the recommendation of respondent No.2 to change the petitioner, who has come out clean in the enquiry. It is equally unfortunate that respondent No.1 succumbed to the pressure of the PG students in recommending for replacement of the petitioner.

It needs no emphasis at our hands that universities must be run with absolute discipline. If the persons at the helm of affairs in the colleges and Universities yield to the pressure of the students, discipline will be a casualty and lawlessness will rule the roost. This is precisely what happened in the instant case. Merely because a handful of students did not like the petitioner, they have taken out letters to respondents 1 and 2 and respondent No.3 has joined the bandwagon with the PG students. Respondent No.3 has obviously anticipated the appointment of the petitioner, who was the Head of the Department as the first internal examiner and addressed letter dt.04.5.2017 requesting respondent No.1 to

appoint him as second internal examiner as he was retiring in the month of April, 2018. One is at a loss to understand the mind set of respondent No.3. The position of an internal examiner cannot be equated to a post. It is not understood as to what interest does respondent No.3 have to function as internal examiner before his retirement.

Be that as it may, when the petitioner was duly appointed as having been fully qualified for being internal examiner even *de hors* his position as the Head of the Department, we do not find any justification whatever in his replacement just because some students did not want him to be an internal examiner. We, therefore, feel that the learned single Judge is more than justified in terming the whole action of respondents 1 and 2 as patently arbitrary and manifestly illegal. By replacing the petitioner, respondents 1 and 2 have shown their vulnerability to the pressure of a few students which does not augur well for the running of the University. If such weakness is shown, a handful of unscrupulous students may always try to gain upper hand and hold the university to ransom. Such a situation must not be allowed to emerge under any circumstances.

Coming to the submission of the learned counsel for PG students, no doubt they were not parties to the writ petition. However, it is not their case that they are not aware of the pendency of the writ petition. They did not take any steps to get themselves impleaded in the writ petition. Obviously they were sitting on the fence and watching the developments in the writ petition without participating in the proceedings. Having taken a chance by not getting themselves impleaded in the writ petition, they have filed a writ appeal. As regards their submission that if fresh examinations

are held, they may not be eligible for appearing in NEET examination for admission into Super Speciality Courses, this plea would not persuade us to interfere with the order of the learned single Judge, as they are the authors of the present situation. But for their pressure brought upon respondent No.2, the examinations would have been held without any hurdles.

For the aforementioned reasons, we do not find any reason to interfere with the order of the learned single Judge. However, in the facts and circumstances of this case, the order of the learned single Judge to the extent of imposition of costs on respondents 1 and 2 is set aside. It is made clear that re-examination to be conducted by respondent No.1 shall be treated as having been conducted and results were declared as per the original schedule for all practical purposes.

Subject to the above observations, the writ appeals are partly allowed only to the extent of imposition of costs, and in all other respects, the order of the learned single Judge is upheld.

As a sequel, miscellaneous petitions pending, if any, shall stand dismissed as infructuous.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

Date: 08-08-2017.

Note: L.R. Copies to be marked.

B/o

LUR/TJMR