

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.5758 and CC.1389 of 2015

ORDER:

This writ petition is filed under Article 226 of the Constitution of India for the following relief:

“To issue a writ, order or direction more particularly one in the nature of writ of Mandamus under Article 226 of the Constitution of India in declaring the in action on the part of the respondents in not allowing and in not permitting the Petitioner to join in duty as a Lecturer in Mechanical Engineering in 4th respondent college with pay scale of Rs. 15,600 - 39,100 in Dr. Y. C. James Yen Rural Polytechnic College Kuppam in Chittoor District and the same is illegal, arbitrary, and unconstitutional, violative of Article 21 of the Constitution of India i.e. right to life including livelihood and Consequently direct the respondents to permit the Petitioner to join in duty as a Lecturer in Mechanical Engineering in 4th respondent college as per Proceeding No.Chairman/ KRECS /Poly / D. No. P.3492/2013 dated 19-12-2013 and to treat the period w. e. f. 01-12-2013 to till the date of joining the petitioner into service as continuity of service for all other purposes and to pay the arrears of pay scale of Rs. 15,600 - 39,100 to the Petitioner w. e. f. 01-12-2013.”

2. Heard Sri Sadu Rajeshwar Reddy, learned counsel for the petitioner and the learned Government Pleader for respondents 1 to 3 and Sri K.V.L.Narasimha Rao, learned counsel for the 4th respondent apart from perusing the material available before the Court.

3. According to the petitioner, he belongs to Schedule Caste community and is a graduate, B.Tech in (Mechanical Engineering) from Jawaharlal Nehru Technological University, Kakinada. It is the further case of the petitioner herein that he got selection as a Lecturer in Mechanical Engineering in Dr.Y.C.James Yen Rural Polytechnic, Kuppam/4th respondent herein and accordingly pursuant to a resolution passed by the General Body, the

Chairman of the 4th respondent College issued an order vide Proceedings No.Chairman/LRECS/Poly/D.No.P.3492/2013, dated 19.12.2013, appointing the petitioner as a Lecturer in Mechanical Engineering, with the basic scale of Rs.15600-39100 AGP Rs.5400 w.e.f.01.12.2013. It is further averred in the writ affidavit that due to the ill health as he was suffering from viral fever coupled with Hepatitis during the period 20.12.2013 to 19.03.2014, petitioner could not report for duty as directed in the appointment order dated 19.12.2013.

4. By virtue of G.O.Ms.No.83, Higher Education (TE.II) Department, dated 02.09.2013, the State Government decided to take over the 4th respondent College under sub-section (1) of Section 60 of the A.P. Education Act, 1982 from the next financial year i.e., from 01.04.2014 subject to the following conditions:

- “1. All assets of movable and immovable should be handed over to the Government without payment of any compensation.
2. The name of the institution shall be Dr.Y.C.James Yen Government Polytechnic, Kuppam, Chittoor District.
3. The properties of the institution will continue to be utilized for the purpose of Technical Education only.
4. The properties are to be vested in the State Government without any encumbrance from the date of taking over of the institution.
5. Only those members of the staff as are qualified will be absorbed into Government service and their status and pay protected as on the date of taking over.
6. The management shall be requested to determine the appointments of the re-employed pensioners, who have crossed the age of superannuation of 58 years age on the date of taking over the institution.
7. The liabilities, if any, also be settled by the society, before the take-over of the college.
8. The Commissioner of Technical Education, A.P. Hyderabad is directed to take necessary action to take over the Dr.Y.C. James Yen Polytechnic, Kuppam, Chittoor District from the Kuppam Rural Electric Co-operative Society Limited (RESCO), Kuppam and all immovable properties and to issue a certificate confirming the posts and the names of the present incumbent including his/her date of birth, present pay and updating their service record before taking over the

Polytechnic College and submit the proposals for fixing the cadre strength and for absorption of the staff of the Polytechnic.

5. It is also the case of the petitioner herein that he previously rendered service in the respondent College since 20.10.2011 on temporary basis. It is further stated by the petitioner herein that he approached the 4th respondent along with medical certificates and fitness certificate, but the 4th respondent did not permit him and the principal dragged on the matter and the petitioner herein waited till 15.09.2014. As the same did not yield any result, he made a representation on 16.09.2014 to the third respondent/Commissioner of Technical Education, requesting for inclusion of his name in the employees list to issue orders to join as a Lecturer in the Department of Mechanical Engineering in the 4th respondent college. Responding to the said representation made by the petitioner herein, the third respondent Commissioner of Technical Education requested the Principal of the 4th respondent College to send the remarks on the request made by the petitioner herein for taking further necessary action. Subsequently, responding to a representation dated 14.10.2014 made by the petitioner herein, the State Government also issued Memo No.4046/TE.A2/2014-5 dated 28.10.2014 and also requested the third respondent Commissioner to take necessary action as per Rules. On being represented by the petitioner herein, the A.P. State Commission for Scheduled Castes and Schedule Tribes vide Rc.No.S2/5404/CTR-S/SC/2014, dated 07.11.2014, also requested the 3rd respondent to examine the plea of the petitioner and to consider and take necessary action as per Rules.

6. In the above background, alleging inaction on the part of the respondents, the present writ petition came to be filed.

7. This Court, on 17.06.2015 in WPMP.No.7663 of 2015, passed interim order, directing respondents to permit the petitioner to join in duty as Lecturer in Mechanical Engineering in the 4th respondent college within a period of two weeks from the date of receipt of a copy of the order.

8. Thereafter, counter affidavits have been filed on behalf of the respondents 1 to 3 and the 4th respondent. In the said counter affidavits, it is stated by the respondents herein that on the complaint of the petitioner herein a Committee was constituted which submitted a report. It is also the case of the respondents herein that no General Body Meeting was held on 09.10.2013, as such, the question of decision being taken by the General Body meeting on 09.10.2013 would not arise. The said counters also have disputed the appointment of the petitioner by the Chairman.

9. On 23.07.2015, petitioner herein filed CC.No.1389 of 2015 alleging wilful disobedience of the interim orders passed by this Court on 17.06.2015. In the said CC.No.1389 of 2015, this Court on 27.04.2016, passed the following order:

“According to the counter affidavit filed by the principal of the fourth respondent college, the Commissioner of Technical Education of State of Andhra Pradesh, Hyderabad constituted an enquiry committee to look into the complaint received on the absorption of staff and fixing the cadre strength of staff, including the complaint lodged by the petitioner, headed by the Secretary, SBTET and other two members and as per the directions of the Commissioner, the enquiry committee came to the College for enquiry on 17.03.2015. The said counter affidavit further states that the petitioner was informed through phone, SMS and registered post with acknowledgement requesting him to participate in the enquiry scheduled to be held on 17.03.2015 at 10.-30 AM on the allegations and representations made by the petitioner. Counter further states that surprisingly petitioner has

not chosen to appear before the enquiry committee to substantiate his allegations.

Refuting the said averments made in the counter affidavit of the fourth respondent, a reply affidavit is filed by the petitioner, denying the information through phone, SMS. The said reply affidavit further specifically states that the notice issued to the petitioner for the meeting scheduled to be held on 17.03.2015 was in fact received on 24.03.2015, but not before the scheduled meeting on 17.03.2015 as such the petitioner could not attend the enquiry. It is further stated by the learned Government Pleader that the Committee so appointed submitted its report stating that the documents produced by the petitioner are not genuine.

Admittedly, the receipt of notice by the petitioner on 24.03.2015 of the meeting scheduled to be held on 17.03.2015 is not denied. Therefore, obviously the report was submitted without hearing the petitioner.

In the facts and circumstances of the case and having regard to the nature of controversy, this Court is of the opinion that it is a fit case where the report of the Principal District Judge, Chittoor is required to be invited, for taking further action in the matter.

For the aforesaid reasons, the learned Principal District Judge, Chittoor is requested to enquire into the matter with regard to the genuineness of the certificates produced by the petitioner with regard to his appointment and the General Body Meetings of the college by examining the concerned. The Principal District Judge, Chittoor shall enquire into the matter by calling all the connected records from the concerned and calling all the stake holders including the petitioner by giving notice. It is open for the petitioner to produce the material before the learned Principal District Judge in support of his claim. The report be filed within a period of three months from the date of receipt of a copy of this order.

Post the matter after the report is filed.”

9. In pursuance of the above said order passed by this Court, the learned Principal District and Sessions Judge, Chittoor vide Dis.No.9598, dated 12.09.2016, submitted a report. The writ petitioner herein filed objections to

the said report. In the said report submitted by the Principal District Judge, Chittoor eventually it is stated that the order said to have been issued by the Chairman is not a genuine one. In the objections submitted to the said report, it is stated that the petitioner made a request in his sworn affidavit dated 21.07.2016 to send the appointment order issued by the Chairman on 19.12.2013 to the handwriting expert in order to confirm the said document whether the same being genuine or not and the said request was not considered by the Enquiry Officer. According to the said objections, the findings of the Enquiry Officer are not tenable. Eventually, in the said objections dated 20.10.2016, it is prayed by the petitioner to send the appointment order dated 19.12.2013 issued by the Chairman to the handwriting expert under Section 45 of the Evidence Act in the interest of justice.

10. The statement of the then Chairman recorded by the Principal District and Sessions Judge, Chittoor during the course of enquiry gains significance for a just decision in the present matter. The said deposition is placed on record along with the enquiry report of the learned Principal District and Sessions Judge. A perusal of the said statement recorded by the learned Principal District and Sessions Judge on 27.08.2016 shows that the deponent stated that he never had given any appointment order dated 19.12.2013 appointing the petitioner as Lecturer. He also denied his signature on the said proceedings dated 19.12.2013. In order to examine the veracity of the said statement of the then Chairman, this Court has compared the signatures on the said deposition dated 27.08.2016 recorded by the learned Principal District and Sessions Judge with the signature contained on the original appointment order dated 19.12.2013 produced by the learned counsel for the petitioner during the course of hearing. On comparison of the said signatures, this Court is of the considered opinion that two signatures belong

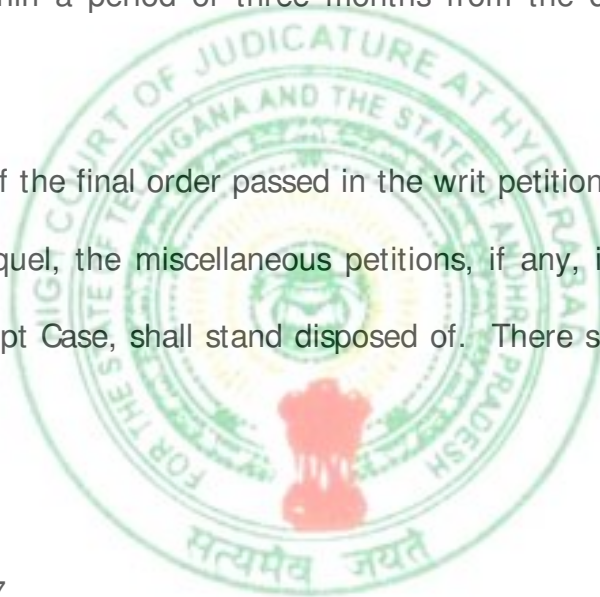
to one person only though the Chairman of the 4th respondent College denied the signature on the proceedings dated 19.12.2013. Therefore, it cannot be said that the then Chairman of the 4th respondent College did not issue such appointment order dated 19.12.2013 in favour of the petitioner herein.

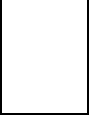
11. For the aforesaid reasons, the writ petition is allowed, directing the respondents herein to appoint the petitioner herein as Lecturer in the 4th respondent College and to permit the petitioner herein to join in the respondent College as a Lecturer in terms of the appointment order dated 19.12.2013, within a period of three months from the date of receipt this order.

12. In view of the final order passed in the writ petition, Contempt Case is closed. As a sequel, the miscellaneous petitions, if any, in the Writ Petition and the Contempt Case, shall stand disposed of. There shall be no order as to costs.

Date:07.07.2017
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A.V.SESHA SAI, J





THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.No.5758 and CC.1389 of 2015

Dated: .07.2017

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