

THE HON'BLE SRI JUSTICE SANJAY KUMAR

AND

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT APPEAL NO.539 OF 2018

JUDGMENT: {Per the Hon'ble Sri Justice Sanjay Kumar}

Heard Sri Krishna Prakash, learned counsel representing Smt.V.Himabindu, learned counsel for the appellant-University and Dr.P.B.Vijay Kumar, learned counsel representing Smt.A.V.S.Laxmi, learned counsel for the respondents.

By the order under appeal passed in I.A.No.1 of 2018 in W.P.No.8804 of 2018 on 16.03.2018, a learned Judge of this Court stayed the notifications dated 17.04.2017, 22.12.2017, 03.01.2018 and 06.01.2018 issued by the appellant-University until further orders, having regard to the proceedings dated 05.03.2018 issued by the University Grants Commission, New Delhi. By the said communication, the University Grants Commission directed all the Universities to take note of the amendments made to the UGC Guidelines, 2006 in relation to reservations and requested them to prepare fresh rosters within one month of receipt of the said letter, under intimation to it. As to whether this communication would have retrospective effect and impact the impugned notifications mentioned supra would have to be considered in the Writ Petition. However by virtue of the stay

granted, the entire process has now been brought to a grinding halt.

Sri Krishna Prakash, learned counsel, placed reliance on the judgment of a Division Bench of this Court in **Osmania University, Hyderabad v. A.Seenaiah**¹, wherein it was observed as under.

“10. The admission of the writ petitions or issue of notice to the non-petitioners (including the appellant herein) can, at best, be treated as indicative of the existence of *prima facie* case in favour of the respondents. However, this by itself is not sufficient for passing an order, which has the effect of stultifying the entire process of selection initiated by the appellant for recruitment of 90 Assistant Professors in Groups I and III because the other three factors i.e. irreparable injury, balance of convenience and public interest, which are required to be kept in mind for passing an interim order in such matters, are clearly against the grant of stay.

11....

12. We are further of the view that in matters relating to selection, appointment, confirmation, promotion, seniority and disciplinary action taken by the employer, the Court should be extremely loath to exercise its discretion under Article 226 of the Constitution to pass an interlocutory order, which has the effect of stultifying the process or action initiated by the competent authority/body. If the process of recruitment or promotion is stalled, unknown numbers of eligible candidates are deprived of their right to be considered, which is guaranteed under Articles 14 and 16 of the Constitution. If the exercise undertaken by the employer for confirmation of the employees or fixation of their seniority is enjoined by the Court, all the members of

¹ 2007 (5) ALD 761 (DB)

service are adversely affected. In such cases, the Court cannot, in the event of dismissal of the main petition, remedy the wrong done to such persons. While the Court can direct grant of effective relief to the petitioner and also compensate him/her for the loss suffered on account of illegal or erroneous action taken by the competent authority, no such relief can be granted to the respondents or other affected persons who may not even be parties to the Writ Petition.”

Learned counsel would also bring it to our notice that by judgment dated 10.11.2017 passed in W.A.No.1705 of 2017, another Division Bench of this Court interfered with a similar stay granted by a learned Single Judge and permitted the appellant-University therein to proceed with the selection process but restrained it from finalising the same.

Considering the circumstance in totality, this Court is of the opinion that it would not be in the interest of the institution to completely stall the selection process pursuant to the impugned notifications, one of which dates back to April, 2017. We are informed that the selection processes pursuant to these notifications are at various stages. As was pointed out in **Osmania University, Hyderabad¹**, it is also detrimental to the interests of the candidates who are not even parties to the Writ Petition but would be adversely affected by the stay granted therein. Further, in the event the selection process is permitted to continue but the appellant-University is restrained from finalising the same, the interests

of the respondents/writ petitioners would also be sufficiently protected.

The Writ Appeal is accordingly allowed to the extent of permitting the appellant-University to proceed further pursuant to the impugned notifications but it shall not finalise the selections made thereunder until further orders are passed in the Writ Petition. The University shall also put all the candidates on notice as to the pendency of the Writ Petition and the orders passed by this Court.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.



(SANJAY KUMAR, J)

(M.GANGA RAO, J)

29th March 2018
RRB