

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT APPEAL NO.1497 OF 2017

J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

Sri Venkateswara University, Tirupathi, and its Vice-Chancellor are in appeal under Clause 15 of the Letters Patent against the order dated 28.08.2017 passed by a learned Judge of this Court allowing W.P.No.31230 of 2016. The said writ petition was filed by the first respondent herein assailing the proceedings dated 31.08.2016 of the Vice-Chancellor of the University appointing the third respondent herein, the fourth respondent in the writ petition, as Director, SVU Engineering Department, and the consequential orders dated 01.09.2016 issued by the newly appointed Director, SVU Engineering Department, relieving the first respondent-writ petitioner of his duties as University Engineer (Incharge). The first respondent-writ petitioner also sought a consequential direction to the University and its Vice-Chancellor to continue him as the University Engineer (Incharge). By the order under appeal, the learned Judge opined that the Vice-Chancellor had no authority to divest the first respondent-writ petitioner of his appointment as University Engineer (Incharge) and therefore, ratification of such a decision by the Executive Council did not arise. The learned Judge further opined that the action of the University amounted to reducing the first respondent-writ petitioner in rank and accordingly allowed the writ petition setting aside the impugned proceedings dated 31.08.2016.

Heard Sri P.Veera Reddy, learned senior counsel representing Smt.V.Himabindu, learned counsel for the appellants, and Sri M.Surender Rao, learned senior counsel appearing for Sri Srinivasa Rao Madiraju, learned counsel for the first respondent.

Parties shall hereinafter be referred to as arrayed in the writ petition.

The writ petitioner was appointed as an Assistant Executive Engineer (Civil) in the service of the University on 08.11.1989. There was only one regular post of Assistant Executive Engineer (Civil) in the University. The probation of the writ petitioner was declared to have been satisfactorily completed with effect from 09.11.1991. He was temporarily promoted as a Deputy Executive Engineer on 12.04.2006 and was regularly promoted to the said post on 11.01.2007. There was only one regular post of Deputy Executive Engineer in the SVU Engineering Department. He was posted as the University Engineer (Incharge) in the place of the incumbent, who was suspended from service. Consequently, relieving orders were issued on 12.01.2007 and he took charge as the University Engineer (Incharge). These are the service particulars of the writ petitioner.

It may be noted that the University also had a work-charged establishment. One N.Vijay Kumar Raju was appointed as an Assistant Executive Engineer in the work-charged establishment of the University in January, 1984. His services were regularised by the University under proceedings dated 15.09.1994 with effect from 20.01.1984. However, when the University sought ratification of this action, the Government refused to ratify the same, *vide* letter 18.12.1999, on the ground that there was no vacancy in the regular cadre to accommodate the said N.Vijay Kumar Raju. Again, the University sent proposals in this regard in the years 2006 and 2007 but the same were rejected by the Government. Despite the same, N.Vijay Kumar Raju was promoted as a Deputy Executive Engineer by the University *vide* the very same proceedings dated 11.01.2007, whereby the writ petitioner was promoted. N.Vijay Kumar Raju was sought to be accommodated in the regular sanctioned post of the Deputy Executive

Engineer while the writ petitioner was given the University Engineer post which had fallen vacant on 'Incharge' basis. Thereafter, by proceedings dated 31.03.2008, the University attempted to make Vijay Kumar Raju the University Engineer (Incharge) by giving him administrative control over the writ petitioner, as if he was his superior. Aggrieved thereby, the writ petitioner filed W.P.No.7920 of 2008 before this Court. By interim order dated 23.04.2008, this Court suspended the impugned proceedings. Pursuant thereto, Vijay Kumar Raju continued as a Deputy Executive Engineer in the service of the University. At that point of time, the suspended University Engineer was reinstated in service upon revocation of his suspension. He continued to hold the post until his retirement on 30.06.2012. Again, the University issued proceedings dated 30.06.2012 appointing Vijay Kumar Raju as the University Engineer (Incharge) ignoring the writ petitioner. Aggrieved thereby, he approached this Court by way of W.P.No.21143 of 2012. Interim order dated 04.09.2012 was passed therein suspending the proceedings dated 30.06.2012. Despite the same, the writ petitioner was not appointed as the University Engineer (Incharge). He moved contempt proceedings in C.C.No.2055 of 2012 before this Court and pursuant thereto, the Vice-Chancellor of the University issued proceedings dated 02.03.2013 keeping the writ petitioner as the University Engineer (Incharge) with effect from the said date. N.Vijay Kumar Raju was directed to handover the charge to the writ petitioner. However, on 17.09.2013, the University placed the writ petitioner under suspension and, yet again, kept N.Vijay Kumar Raju as the University Engineer (Incharge). Owing to agitations by the University Non-teaching Employees Association, the suspension order was superseded by order dated 19.09.2013 and the writ petitioner was again given the University Engineer post on 'Incharge' basis.

The writ petitioner made several representations seeking regular appointment as University Engineer, as he was the only Engineer working on regular basis in the University, but to no avail. While so, the impugned proceedings dated 31.08.2016 were issued by the Vice- Chancellor of the University appointing the fourth respondent in the writ petition, a Teaching Professor in SVU College of Engineering, as Director, SVU Engineering Department, with immediate effect. In consequence, the services of the writ petitioner were dispensed with in the capacity as the University Engineer (Incharge) and he was relieved under consequential order dated 01.09.2016. He thereupon filed the subject writ petition raising various grounds.

Interim orders were passed in the writ petition on 17.09.2016 suspending the impugned proceedings dated 31.08.2016.

In his counter-affidavit dated 15.10.2016, the Registrar of the University stated as follows: The University was provided the rare opportunity of holding three mega events in the coming five months. The Indian Economic Association proposed to hold its 99th annual conference in the University campus from 27.12.2016 to 29.12.2016. About 5000 members and delegates from India and abroad would participate in this conference. A special session on the economy of the State of Andhra Pradesh was also planned as part of this conference, which included prominent speakers, such as, the Chief Minister, Union Ministers and Nobel Laureates apart from other prominent personalities. The 104th Indian Science Congress was to be held at the University stadium from 03.01.2017 to 07.01.2017. This Congress was to be inaugurated by the Prime Minister and involved participation of several Governors, Chief Ministers, International Delegates and others from India and abroad. Lastly, the Association of Indian Universities had decided to schedule its 91st Meeting at Sri Venkateswara University premises from

05.02.2017 to 07.02.2012. The membership of this Association comprised conventional/traditional Universities, Open Universities and Professional Universities, apart from Deemed Universities and Institutes of national importance. Vice-Chancellors of all the member Universities and the Directors of the Institutes were expected to participate in this meeting. In order to make these three mega events a grand success, the Executive Council of the University had decided to organise them in a befitting manner. The University had to renovate 1600 rooms in 23 blocks of the University hostels and also take up works, such as road-widening in relation to the 14 Kms stretch of road within the campus. Campus beautification and landscaping were also proposed on a big scale and renovation of buildings spread over the 950 acre campus was also proposed. Necessary repairs had to be carried out in electrical wiring, water pipes, drainage, sewage and for painting of all the buildings. Hostel rooms were to accommodate delegates and participants and required to be attended to. As the University had only two Deputy Executive Engineers in its Civil Engineering Department, namely, the writ petitioner and N.Vijay Kumar Raju, the University opined that, in order to take up execution of all the works in a quick and efficient manner, appointment of a Director on temporary basis was to be made to supervise and control execution of all the works. Therefore, by proceedings dated 31.08.2016, the Vice-Chancellor of the University created the post of Director for the SVU Engineering Department and made an appointment thereto with immediate effect. As regards the contention of the writ petitioner that a teaching professor could not be appointed to this post, the Registrar stated that as per Chapter XXII of the Laws of the University, a whole-time University Employee may be employed in any manner by the proper authority without claiming additional remuneration. Reference was also made

to Chapter IV in the Laws of the University and more particularly, Clause 19(d) thereof, which vested the Executive Council with the power of creation and abolishing temporary and permanent posts in the superior and last grade establishments of the University. The Registrar further stated that the appointment of the fourth respondent in the writ petition as a Director on temporary basis had become necessary in view of the acute urgency, in the context of the mega events. He further stated that the Executive Council ratified his appointment as a Director by way of a subsequent resolution. The said Director was to be paid an honorarium of Rs.500/- per month. The Registrar therefore justified the creation of the temporary post of Director, SVU Engineering Department, in order to meet the dire necessity and stated that the writ petitioner would have to work under the administrative control of the said Director for the time being. He concluded by stating that the impugned proceedings did not cause any prejudice to the writ petitioner and that he would not suffer by appointment of the fourth respondent as a Director on a temporary basis. He stated that the fourth respondent, having assumed charge of the post of Director of the Engineering Department on 01.09.2016, was continuing as such till date. He further stated that continuation of the interim orders of suspension of the impugned proceedings would seriously hamper the progress of ongoing works and prayed for vacating of the said order. Though this counter-affidavit was deposed to on 15.10.2016, it appears that the fourth respondent is still continuing to hold the post of the Director, SVU Engineering Department, even as on date.

There is no justification offered as to why this so-called temporary creation of a post and appointment thereto is being perpetuated even now,

despite the mega events cited as justification therefor, having concluded long, long ago.

It would be appropriate at this stage to examine the scheme and structure of the Andhra Pradesh Universities Act, 1991 (*for brevity*, 'the Act of 1991') which applies to Sri Venkateswara University, Tirupathi. Under Section 4 thereof, Sri Venkateswara University, established under the Sri Venkateswara University Act, 1954, is deemed to have been established and incorporated under the Act of 1991. Section 9 in Chapter III of the Act of 1991 deals with officers of the University and reads as under:

'9. Officers of the University :—The following shall be the Officers of the University :—

- (i) The Chancellor ;
- (ii) The Vice-Chancellor ;
- (iii) The Rector ;
- (iv) The Principals/Dean of the University Colleges ;
- (v) The Registrar ;
- (vi) The Finance Officers; and
- (vii) Such other persons as the Statutes may declare to be officers of the University.'

The Vice-Chancellor, as per Section 11(3) of the Act of 1991 is the Academic Head and the Principal Executive Officer of the University and is required to exercise general control over its affairs, being a whole-time Officer of the University.

Section 17, in Chapter IV of the Act of 1991, deals with authorities of the University and reads as under:

'17. Authorities :— The following shall be the authorities of the University, namely :—

- (i) The Executive Council ;
- (ii) The Academic Senate ;
- (iii) The Faculties ;
- (iv) The Boards of Studies ; and
- (v) Such other bodies, as the Statutes may declare to be Authorities of the University.'

Section 19 of the Act of 1991 deals with the powers and duties of the Executive Council and under Section 19(29), the Executive Council is

empowered to create posts of professors, readers, lecturers and other teaching posts required by the University. Significantly, no such unfettered power is conferred upon the Executive Council to create non-teaching posts. Section 49 of the Act of 1991 is significant in this regard as it specifically states that the University shall not, without the prior approval of the Government, create a post or posts resulting in a recurring liability on the Government either immediately or in future. The *proviso* thereto gives the Executive Council the power to authorise the creation and filling up of posts of teachers for existing teaching purposes for a period not exceeding one year but such post or posts should not be continued or created afresh for any period beyond the said period of one year without the prior approval of the Government.

Under Section 19(7) of the Act of 1991, the Vice-Chancellor is empowered to appoint, dismiss, remove or suspend any member of the non-teaching staff of the University. He, however, has no absolute power to create any non-teaching post inasmuch as such power is not given even to the highest authority of the University, its Executive Council. Though Section 19(40) empowers the Vice-Chancellor to exercise all the powers of the University not otherwise provided for, and all powers requisite to give effect to the provisions of the Act, it cannot be taken to mean to extend to creation of posts, as the statutory scheme of the Act of 1991 does not vest even the highest authority in the University, its Executive Council, with the power to do so without the prior approval of the Government.

It is therefore clear from this statutory scheme that the Executive Council of the University, being its highest authority, has limited power in so far as creation of posts is concerned. The Statutes and Laws of the University would invariably be subject to the Act of 1991 and cannot override

its provisions. The powers and duties of the Vice-Chancellor are set out in Section 13 of the Act of 1991. Section 13(8) is of relevance and is extracted hereunder:

- '(8)(a) When, with regard to any matter in which any officer or authority may take action, the Vice-Chancellor considers immediate action desirable, he may subject to the general control of the Chancellor take such action as may be necessary but shall, as soon as may be, report the action taken to the officer or authority concerned.
- (b) An appeal shall lie to the Executive Council against any action taken by the Vice-Chancellor under Clause (a) affecting any person in the service of the University, at the instance of such person. Such appeal shall be filed within thirty days from the day on which such person has notice of the action taken.'

It is the contention of Sri P.Veera Reddy, learned senior counsel, that creation of the post of Director, SVU Engineering Department, and appointment thereto by the Vice-Chancellor was in exercise of power under Section 13(8)(a) of the Act of 1991, extracted *supra*.

It may however be noticed that the power vesting in the Vice-Chancellor under the aforesaid provision extends only to any matter in which any authority or officer of the University may take action. Therefore, unless the power of creation of the post of Director, SVU Engineering Department, vested in any other authority to begin with, the question of the Vice-Chancellor assuming such power would not arise. As already pointed out *supra*, the Executive Council itself did not have the power to create the post of Director, SVU Engineering Department, without the prior approval of the Government. Be it noted, the proceedings dated 31.08.2016 demonstrates that the Vice-Chancellor deemed it appropriate to incur a recurring financial liability of Rs.500/- per month towards the honorarium payable to the newly appointed Director, SVU Engineering Department. Such a recurring financial liability could not have been incurred even by the Executive Council without the prior approval of the Government under

Section 49 of the Act of 1991. Therefore, the provisions of Section 13(8)(a) of the Act of 1991 have no role to play in the case on hand and the Vice-Chancellor cannot trace any power thereto to justify his action.

It is no doubt true that the proceedings dated 31.08.2016 of the Vice-Chancellor were placed before the Executive Council in its meeting held on 26.09.2016, under Item C-9 in Section-III, for ratification and the Executive Council passed a resolution approving the same. However, the agenda items, as set out before the Executive Council, demonstrate that in so far as the subject post and the appointment thereto were concerned, it was merely stated as follows:

‘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.’

It is therefore clear that the Executive Council was not even informed of the fact that the Vice-Chancellor had created a new post and then made an appointment thereto. The proceedings dated 31.08.2016 therefore find no validation or sanctity through the so-called ratification thereof by the Executive Council, *vide* its resolution dated 26.09.2016.

As already pointed out *supra*, though the only justification cited for creation of a new post and the appointment of a teaching professor thereto, was the holding of mega events in the University campus towards the end of 2016 and the beginning of 2017, the same arrangement is continuing till date. Sri P.Veera Reddy, learned senior counsel, did not offer any explanation for perpetuation of this so-called temporary arrangement.

Sri P.Veera Reddy, learned senior counsel, relied upon the observations made by the Supreme Court in THE MARATHWADA

UNIVERSITY V/ s. SESHRAO BALWANT RAO CHAVAN¹ as to the position and powers of the Vice-Chancellor. We are of the opinion that the said decision is of no assistance in the case on hand as the Vice-Chancellor, Sri Venkateswara University, clearly acted beyond the scope of his powers as laid down in the Act of 1991.

Though Sri P.Veera Reddy, learned senior counsel, raised the feeble contention that the resolution dated 26.09.2016 of the Executive Council of the University, ratifying the proceedings dated 31.08.2016, was not subjected to challenge and the same should be held against the writ petitioner, we find no merit in this argument. As rightly pointed out by Sri M.Surender Rao, learned senior counsel, the said resolution was passed only after this writ petition was instituted and an interim order was passed therein on 17.09.2016. That being so, the very ratification of the said proceedings, which had been suspended by this Court, can have no legal value.

Sri M.Surender Rao, learned senior counsel, also raised another valid point. Officers of the University, as defined in Section 9 of the Act of 1991, apart from the named officers under Section 9(i) to (vi) thereof, includes under Section 9(vii), such other officers as the Statutes may declare to be officers of the University. The post of Director, SVU Engineering Department, does not find mention in the statutes of the University and therefore, without amendment of the Statutes, the Vice-Chancellor could not have created such a post and made an appointment thereto.

On the above analysis, it is clear that the writ petitioner fell from grace because, at every stage, he obstructed the relentless efforts of the University to accommodate and promote N.Vijay Kumar Raju, the favoured Deputy Executive Engineer still waiting in the wings without regularisation of

¹ AIR 1989 SC 1582

his services. Though an attempt was made by the University at the initial stage to justify creation of the new post and appointment of a teaching professor thereto, so as to keep the writ petitioner out of the University Engineer post on 'Incharge' basis, the very fact that this so-called temporary arrangement continues even as on date clearly demonstrates the lack of *bonafides* on the part of the University.

Though divesting the writ petitioner of the 'Incharge' post may not have the effect of reduction in rank, as he was never appointed to the said post on a regular basis, the very creation of the new post and the appointment thereto falls foul of law as it has neither the sanction nor the protection of the Act of 1991. The order of the learned Judge holding to this effect and allowing the writ petition, setting aside the impugned proceedings dated 31.08.2016, therefore does not brook interference, be it on facts or in law.

The writ appeal is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

M. GANGA RAO, J

8th JUNE, 2018

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