

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

WRIT APPEAL NO.1583 OF 2017

J U D G M E N T
(*Per Sri Justice Sanjay Kumar*)

The State of Andhra Pradesh, represented by its authorities in the Higher Education Department, and the Government Polytechnic College, Kuppam, Chittoor District, the respondents in W.P.No.5758 of 2015, are in appeal aggrieved by the order dated 07.07.2017 passed by a learned Judge of this Court allowing the said writ petition and directing the appellants herein to appoint the first respondent herein, the writ petitioner, as a Lecturer in the third appellant college in terms of the appointment order dated 19.12.2013 within a time frame.

Interim order dated 18.04.2018 was passed in this writ appeal and, to the extent relevant, it reads as under:

‘.... Perusal of the order under appeal reflects that the learned Judge called for a report from the learned Principal District Judge, Chittoor, with regard to the genuineness of the appointment order dated 19.12.2013 produced by the first respondent/writ petitioner, whereby he claimed appointment to the post of Lecturer in Dr.Y.C.James Yen Rural Polytechnic, Kuppam. The learned Principal District Judge, Chittoor, having enquired into the matter, submitted a report opining that the said appointment order was not genuine.

Perusal of the said enquiry report reflects that the so-called signatory of this appointment order was also produced as a witness before the learned Principal District Judge, Chittoor, and he was subjected to cross-examination by the first respondent/writ petitioner. The said witness categorically denied the suggestion put to him that the appointment order was issued by him and that the signature therein was his. Despite this clear finding by the learned Principal District Judge, Chittoor, upon enquiry ordered by the learned Judge himself, the learned Judge undertook comparison of signatures under Section 73 of the Indian Evidence Act, 1872 (for short, ‘the Act of 1872’), and opined that they belong to one and the same person only. It is also brought to our notice by the learned Government Pleader for Higher Education that there was no General Body Meeting held on 09.12.2013 as referred to in the alleged appointment order

dated 19.12.2013. Learned Government Pleader placed before us the original register of meetings held in the Dr.Y.C.James Yen Rural Polytechnic, Kuppam, which bears out this fact.

It is well settled that though power is available to the Court under Section 73 of the Act of 1872 to compare signatures, it is not a desirable exercise to be resorted to in the ordinary course. Further, in the light of the overwhelming evidence available on record weighing against the genuineness of the appointment order dated 19.12.2013, the order under appeal directing appointment of the first respondent/writ petitioner as a Lecturer straightaway requires further examination.

There shall accordingly be interim suspension as prayed for.'

I.A.No.9 of 2018 was filed by the first respondent-writ petitioner to vacate the aforestated order. Comprehensive arguments having been advanced by the learned Government Pleader for Higher Education, State of Andhra Pradesh, and Sri Sadu Rajeswar Reddy, learned counsel for the first respondent-writ petitioner, the appeal is amenable to final disposal at this stage.

The case of the first respondent-writ petitioner in W.P.No.5758 of 2015 was that he was selected as a Lecturer in Mechanical Engineering in Dr.Y.C.James Yen Rural Polytechnic, Kuppam, which was thereafter taken over by the Government and became the third appellant college. According to him, his appointment was pursuant to the Resolution passed by the General Body of the said college on 19.12.2013 resulting in the appointment order bearing the same date being issued by the Chairman of the college. He claimed that due to ill-health from 20.12.2013 to 19.03.2014 he could not report for duty, as directed in the appointment order dated 19.12.2013. He however admitted that the Government took over Dr.Y.C.James Yen Rural Polytechnic, Kuppam, *vide* G.O.Ms.No.83, Higher Education (TE.II) Department, dated 02.09.2013, from 01.04.2014. He further claimed that he made a representation on 16.09.2014 to the Commissioner of Technical Education, Andhra Pradesh, requesting that his name be included in the list of employees in the third appellant college and to issue orders permitting him to join as a Lecturer in the Department of Mechanical Engineering of the said college. Despite the Government also issuing Memo dated 28.10.2014 requesting the Commissioner to take necessary action as per rules, no steps were taken upon his representation.

Complaining of inaction on the part of the authorities, the first respondent-writ petitioner filed W.P.No.5758 of 2015 before this Court. Interim order dated 17.06.2015 was passed therein directing the authorities to permit the writ petitioner to join duty as a Lecturer in Mechanical Engineering in the college within a time frame. Alleging disobedience to this order, he filed C.C.No.1389 of 2015. Therein, the learned Judge passed an order on 27.04.2016 directing the learned Principal District and Sessions Judge, Chittoor, to enquire into the genuineness of the appointment order relied upon by the writ petitioner and submit a report. The learned Principal District and Sessions Judge, Chittoor, conducted an enquiry and submitted report dated 12.09.2016 stating to the effect that the appointment order was not a genuine one as the Chairman of the college, who was alleged to have signed it, denied his signature therein. The learned Judge thereupon took up the writ petition and the contempt case for hearing together and upon comparing the disputed signature of the Chairman in the appointment order with his signature in the deposition recorded by the learned Principal District and Sessions Judge, Chittoor, the learned Judge opined that the two signatures were one and the same. The learned Judge therefore concluded that it could not be said that the Chairman of the college did not issue the appointment order dated 19.12.2013 and allowed the writ petition, *vide* common order dated 07.07.2017, directing the authorities to appoint the writ petitioner as a Lecturer in the college and to permit him to join in the said college as a Lecturer in terms of the appointment order dated 19.12.2013.

Apart from the aspects raised at the time of grant of the interim order in this appeal on 18.04.2018, which were recorded therein, the learned Government Pleader raised a crucial issue which goes to the very jurisdiction of this Court to entertain the subject writ petition. He would point out that Dr.Y.C.James Yen Rural Polytechnic, Kuppam, Chittoor District, was established and managed by Kuppam Rural Electricity Co-operative Society Limited (RESCO). However, the Andhra Pradesh Electricity Regulatory Commission objected to the RESCO running a polytechnic college and the Chairman and the Managing Director of the Southern Power Distribution Company of Andhra Pradesh Limited affirmed the objection by

stating that a licence was given to the RESCO only for power related transactions. Thereupon, the employees of the college approached the Government and G.O.Ms.No.83 dated 02.09.2013 was issued by the Government, proposing to take over and transfer the said college to the Government under Sub-Section (1) of Section 60 of the Andhra Pradesh Education Act, 1982 (*for brevity*, 'the Act of 1982'), from the next financial year, i.e., from 01.04.2014, subject to certain conditions. One such condition was that only those members of the staff as were qualified would be absorbed into Government service and their status and pay would be protected as on the date of taking over. Be it noted that Section 60 of the Act of 1982 permits taking over of the management of educational institutions by the Government in public interest.

In the light of this critical aspect, which seems to have been missed by the learned Judge, the question that would invariably arise is whether the writ petition could have been filed in the year 2015 by the petitioner seeking to be inducted as a Lecturer in what was, by then, a Government college. In this regard, reference may be made to the observations of the Constitution Bench in *L.CHANDRA KUMAR V/ s. UNION OF INDIA*¹.

'93.We may add that the Tribunals will, however, continue to see as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.'

The aforestated binding observations of the Supreme Court put it beyond the pale of doubt that in relation to a service dispute falling under Section 15 of the Administrative Tribunals Act, 1985, the Court of the first instance would have to be the Andhra Pradesh Administrative Tribunal, Hyderabad, and such a matter could not be brought directly before this Court by way of a writ petition.

¹ (1997) 3 SCC 261

Sri Sadu Rajeswar Reddy, learned counsel, would however contend that the authorities never raised this aspect before the learned single Judge and therefore, it is too late in the day for them to do so. He would further argue that in any event, the taking over of the institution was only from 01.04.2014 whereas the first respondent-writ petitioner came to be appointed on 19.12.2013 itself and thus, his claim was earlier in point of time and could be looked into by this Court directly.

We are not persuaded to agree with either of these submissions. Irrespective of whether or not this issue was raised before the learned Judge, it is an issue relating to the very jurisdiction of this Court to entertain the writ petition and would therefore go to the root of the matter. Trite to state, jurisdiction cannot be conferred upon a wrong forum even with the consent of the parties. In consequence, even though this aspect of the matter may not have been pressed into service by the authorities before the learned Judge during the course of the hearing of the writ petition, the order under appeal itself demonstrates that the learned Judge was conscious of the fact that the third appellant college had been taken over by the Government even prior to institution of the writ petition. The inherent lack of jurisdiction of this Court to entertain a service dispute in relation to a Government college therefore ought to have weighed with the learned Judge.

As regards the second objection that the taking over of the management of the college was subsequent to the alleged date of appointment of the first respondent-writ petitioner, it may be noted that even going by the first respondent-writ petitioner's own reckoning, the said appointment never took effect and he claimed that he was suffering from ill-health thereafter and could not join. His prayer in the writ petition demonstrates that he wanted to be inducted as a Lecturer in the service of the college, long after it became a Government institution. He therefore could not have avoided the mandate of the Supreme Court in *L.CHANDRA KUMAR*¹ and ought not to have directly approached this

Court. The writ petition was therefore not maintainable before this Court, as the remedy of the first respondent-writ petitioner compulsorily lay elsewhere.

In that view of the matter, the writ appeal is allowed setting aside the order dated 07.07.2017 passed in W.P.No.5758 of 2015. All the observations and findings on merit therein shall also stand set aside. This order shall however not preclude the first respondent-writ petitioner from availing the appropriate remedy before the proper forum in accordance with law, if he so chooses.

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

20th NOVEMBER, 2018
PGS

