HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

MONDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SMT JUSTICE T.MADHAVI DEVI

WRIT PETITION NO: 15065 OF 2021

Between:

1. Mohd Mustafa **(Died per LR's),** S/o Nas:eeruddin. Aged 70 years, Occ. Retd Senior Assistant, University College of Law, Subedari, Warangal, Warangal District, T.S.
2. Sahera Banu, W/o: Mohd Mustafa, Aged 50 years, Occ: Housewife Subedari, Warangal District.

(As per court order dt: 04.03.2024 vide I.A. 1/24 in WP 15065/2021)

...PETITIONER

AND

Kakatiya University, Reptd by its Registrar, Vidyaranyapuri, Warangal, Warangal District, T.S.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue any writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondent in rejecting the petitioner's representation date 29/06/2020 submitted as per the directions of this Hon'ble Court in W.P. No. 12996 of 2009 dated 22/06/2020 by way of proceedings No. 02/A3/KU/2021 dated 07.01.2021 though the petitioner is not found guilty in C.C.No.35 of 2012 for the offences u/ss 409,420,468,471 of IPC and accordingly acquitted u/s 248 of Cr.P.C as illegal , arbitrary , discriminative and violative of Articles 14 and 21 of the Constitution of India and consequently direct the respondents to set aide the proceedings No. 02/A3/KU/2021 dated 7.01.2021, which passed in response to the order in WP No. 12996 of 2009 by this Hon'ble court and direct the respondents to regularise his services with all service and monitory benefits and other applicable benefits.

Prayer is amended as per C.O dt. 18/08/2023 in IA 01/2023

IA NO: 1 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondent to suspend the proceedings No. 02/A3/KU/2021 dated 07/01/2021 and direct the respondents to regularise his service with all service and monitory benefits such as Revised Pay Scales with increments, Pension, gratuity, Commutation, earned Leaves, GPF. and other applicable benefits on par with other employees, pending disposal of the main writ petition in the interest of justice and to pass Prayer is amended as per C.O dt. 18/08/2023 in IA 01/2023

Counsel for the Petitioners: SRI RAMESH CHILLA

Counsel for the Respondents: SRI P. BHANU PRAKASH
(SC FOR KAKATIYA UNIVERSITY, WARANGAL)

The Court made the following: ORDER

THE HONOURABLE SMT. JUSTICE T. MADHAVI DEVI

WRIT PETITION NO.15065 OF 2021

O R D E R

In this Writ Petition, the petitioner is seeking a Writ of Mandamus declaring the action of the respondent University in rejecting his representation dt.29.06.2020 submitted as per the directions of this Court in W.P.No.12996 of 2009 dt.22.06.2020, by way of proceedings No.02/A3/KU/2021 dt.07.01.2021, though the petitioner is acquitted in the criminal case in C.C.No.35 of 2012, as illegal and arbitrary and consequently to set aside the proceedings of the respondent dt.07.01.2021 and to direct the respondent to regularize the services of the petitioner with all service and monetary benefits and other applicable benefits and to pass such other order or orders.

2. After filing of this Writ Petition, the petitioner died and his wife was impleaded as his legal representative as petitioner No.2 as per the orders of this Court dt.04.03.2024 in I.A.No.1 of 2024.

3. Brief facts leading to the filing of the present Writ Petition are that petitioner No.1 was appointed and was working as a Telephone

Operator under the control of the Registrar of Kakatiya University. Subsequently, he was promoted as Senior Assistant in the year 1999, but he continued to work as Telephone Operator till February, 2004. On 25.11.2004, the respondent University issued a show-cause notice alleging that petitioner No.1 herein embezzled funds of the University. Petitioner No.1 therefore requested the respondent to issue him the documents for making such allegation. However, the same were not furnished to him and therefore, petitioner No.1 filed W.P.No.14410 of 2007 before this Court and the same was disposed of *vide* orders dt.06.07.2007 directing the respondent to furnish all relevant documents to the petitioner within a period of two weeks from the date of the order and further directed the disciplinary authority to look into those documents for the purpose of conducting enquiry into the matter. However, the respondent, without conducting any enquiry, issued final show-cause notice and aggrieved by the same, petitioner No.1 filed a Writ Petition in W.P.No.16174 of 2008 to direct the respondent to give him proper opportunity of hearing. The said Writ Petition was disposed of on 10.11.2008 directing petitioner No.1 herein to submit his explanation within 30 days before the respondent. The petitioner No.1 submitted his explanation, but not satisfied with the same, the

respondent has passed the order dt.26.12.2008 removing petitioner No.1 herein from service. Simultaneously, the respondent had also filed a criminal case against petitioner No.1 before VII Additional Judicial First Class Magistrate, Warangal under Sections 420, 409, 468 and 471 of IPC and a charge sheet was filed and the case was registered as C.C.No.419 of 2012. Ultimately, the trial Court has acquitted petitioner No.1 by judgment dt.26.11.2013 holding that petitioner No.1 herein is not guilty. Thereafter, petitioner No.1 has filed W.P.No.12996 of 2009 questioning the action of the respondent for issuing the proceedings dt.26.12.2008 dismissing petitioner No.1 from service and also for recovery of Rs.4,25,188/- from him without conducting any enquiry and without giving opportunity to him. This Court has disposed of the said Writ Petition by directing the authorities to review the order of dismissal by duly taking note of the acquittal of petitioner No.1 from the criminal case. Thereafter, petitioner No.1 claims to have submitted his explanation dt.22.06.2020 and when no orders have been passed thereon, petitioner No.1 filed a Contempt Case in C.C.No.986 of 20920 for non-compliance of the directions of this Court and the same was pending disposal. Thereafter, the Registrar of the respondent University retired from service and the Executive Council has passed a resolution

dt.07.01.2021 rejecting the application of petitioner No.1. Aggrieved by the same, petitioner No.1 has filed the present Writ Petition. The petitioners submit that the Executive Council has passed the impugned order deciding the issue against the petitioner thus violating the Court orders and only to deny the petitioner No.1 his pensionary and retirement benefits and other benefits to which petitioner No.1 is entitled to and therefore, he sought setting aside of the impugned order dt.07.01.2021 and a direction to the respondent to pay him the pensionary benefits.

4. Learned counsel for the petitioners, while reiterating the above submissions made in the writ affidavit, submitted that the charges in the departmental proceedings as well as in the police complaint are one and the same and he has filed a synopsis to substantiate the said submissions and submitted that when both the proceedings are based on identical set of facts and evidence, this is a fit case to set aside the penalty imposed by the departmental enquiry as per the judgments of the Hon'ble Supreme Court in the case of **G.M.Tank Vs. State of Gujarat and others**[1] which has reaffirmed the principles laid down by the Hon'ble Supreme Court in the case of **R.P.Kapur Vs. Union of India and**

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[1] (2006) 5 SCC 446

another[2]**.** He also placed reliance upon the recent judgment of the Hon'ble Supreme Court in the case of **Ram Lal Vs. State of Rajasthan and others**[3] in support of the said contentions.

5. Learned counsel for the respondent, on the other hand, relied upon the averments made in the counter affidavit and submitted that petitioner No.1 had worked as a Telephone Operator till February, 2004 and in the year 2004, the Local Fund Audit, Kakatiya University had pointed out certain anomalies regarding the payment of University telephone bills and requested to constitute a Committee for verification of telephone bills and the enquiry officer appointed to enquire into the same has submitted his report pointing out that there is *prima facie* act of embezzlement of University funds by way of fabricating, duplicating and inflating bills by petitioner No.1 during the period between 2000 and 2004 and therefore, a show-cause notice was issued and the embezzled funds to the tune of Rs.4,26,188/- were also sought to be recovered. It is submitted that when petitioner No.1 sought for supply of documents on the basis of which the allegations were made, the University had informed him that the original documents can be perused on any working day, but petitioner No.1 did not respond and verify the

[2] AIR 1964 SC 787
[3] 2023 SCC OnLine SC 1618

original documents. It is submitted that the enquiry initiated pursuant to the directions of this Court in W.P.No.14410 of 2007 could not be completed within the directed period of six months due to non-cooperation from the 1st petitioner's end and after the time was extended by this Court, the enquiry was conducted as per the existing rules and therefore, the required procedure was followed by the respondent. It is submitted that as per the decision of the Executive Council taken at its 78th meeting held on 30.06.2008, final show-cause notice dt.05.07.2008 was issued to petitioner No.1 to submit his explanation as to why he should not be removed from service of the University besides recovery of misappropriated funds and instead of submitting his explanation, petitioner No.1 has filed W.P.No.16174 of 2008. It is submitted that the Hon'ble High Court has therefore directed petitioner No.1 herein to submit his explanation and it is only after considering his explanation that that petitioner No.1 was dismissed from service *vide* proceedings dt.22.12.2008. It is submitted that there was nothing illegal and irregular about the order. As regards the acquittal of petitioner No.1 in criminal case and whether it should be considered for reconsideration of his case for reinstatement, it is submitted that the acquittal in criminal case is independent of the disciplinary action which is civil in nature and is

based on principles of substantive evidence. Further, it is submitted that as per the directions of this Court in W.P.No.12996 of 2009 dt.22.06.2020, petitioner No.1 has submitted his representation on 29.06.2020 for awarding of revised pay scales, five increments including *ad hoc* 8 years service completed, pensionary benefits and other benefits and that the same was placed before the Executive Council and in its 133rd meeting held on 05.01.2021, it was considered but rejected. Therefore, according to him, there is no reason for any interference by this Court.

6. At the time of hearing, the learned counsel for the petitioners has taken an additional ground that petitioner No.1 was appointed by the orders of the Registrar of Kakatiya University and therefore, the Executive Council could not have passed the order of dismissal from service and as per the Service Regulations of the University, it is the Registrar who can pass the order of dismissal and not the Executive Council. He placed reliance upon the powers of the Registrar under Chapter III of the Act - Officers of the University for this purpose.

7. Learned Standing Counsel for the respondent University, on the other hand, has filed a copy of the resolution of the Executive Council, wherein the Council had put up the resolution before the Registrar who

has agreed with the proposal for the order of removal from service and therefore, according to the learned Standing Counsel, it was the Registrar who has passed the order and not the Executive Council and the Executive Council has only proposed the punishment.

8. On merits, the learned counsel for petitioner No.1 has further submitted that as part of the enquiry into the embezzlement of funds by claiming false telephone bills, the Registrar has addressed a letter to BSNL to furnish the details of the phone numbers covered under each payment and authenticity of duplicate bills issued by their office and has also enclosed the reply from BSNL dt.23.08.2004 stating that they are furnishing the details of the phone numbers and bills against which payment was made in the enclosed statement and that the information is taken from their computer system and there are differences between the cheque amounts mentioned in the letter and this could be for the reason that the cheque numbers would have been wrongly fed in some cases and that no record of the lists received from the University end is readily available and it is difficult to reconcile the differences at the relevant point of time. It is submitted that even without seeking and waiting for the appropriate reply from the BSNL, the respondent has taken action to remove petitioner No.1 from service on 26.12.2008. He further relied

upon the powers and duties of the Vice Chancellor of Kakatiya University to submit that it is the Vice Chancellor who shall have power to appoint, punish, suspend or dismiss employees of the University holding posts below the rank of an Administrative and Accounts Officer and when he exercises such powers, the person punished or dismissed shall be entitled to prefer an appeal to the Syndicate within 90 days from the date of serving the orders.

9. Having regard to the rival contentions and the material on record, this Court finds that the initial objection of petitioner No.1 is about the jurisdiction of the Executive Council to pass the impugned order of removal from service, this Court finds that under Kakatiya University Act, 1976, the Vice Chancellor of Kakatiya University has been conferred with the power of appointment, punishment, suspension or dismissal of the employees of the University holding posts below the rank of Administrative and Accounts Officer. Petitioner No.1 is a Telephone Operator, who was subsequently promoted as Senior Assistant, but continued to work as Telephone Operator till 2004. As per Chapter III of the Kakatiya University Act, 1976 and Section 12 thereof, the Registrar of the University shall be a whole-time paid officer of the University appointed by the Executive Council on such terms as may be

prescribed by the Statutes and shall have the power to exercise such other powers and discharge such other duties as may be prescribed by the statutes. Under Section 15(2) thereof, the Registrar shall act as the Secretary of the Executive Council and Academic Senate and he shall exercise such powers and perform such duties as may be prescribed. From the proceedings dt.28.01.1988 and 15.03.1988 and the resolutions passed in the meeting held on 01.02.1988, the decisions taken by the Executive Council are to be communicated by the Registrar on behalf of the University. Therefore, this Court does not find any illegality or irregularity in passing of the orders by the Executive Council of appointment or removal which are communicated by the Registrar/Vice Chancellor. The said objection of petitioner No.1 is therefore rejected.

10. However, as regards the merits of this case, this Court finds that the fact-finding authority has found certain discrepancies in the bills generated and paid by Kakatiya University and since petitioner No.1 was working as Telephone Operator during the years 2002 to 2004, they had sought information from BSNL. However, as rightly pointed out by the learned counsel for the petitioners, they did not wait for the appropriate response from BSNL, but have come to the conclusion that petitioner No.1 is responsible for the said discrepancies and passed the

order of dismissal from service and also sought to recover the amount from him. This Court also finds that for the very same set of facts, the criminal case has been filed and after contested trial, the trial Court held that the charges against petitioner No.1 have not been proved and petitioner No.1 has been honorably acquitted.

11. As held by the Hon'ble Supreme Court in the case of **G.M.Tank Vs. State of Gujarat and others** (1 supra) which has been reiterated by the Hon'ble Supreme Court in the case of **Ram Lal Vs. State of Rajasthan and others** (3 supra), when on the very same or identical set of facts, criminal proceedings and disciplinary proceedings are initiated, the acquittal in the criminal case would have to be considered in the disciplinary proceedings as well. For the purpose of ready reference, the relevant paragraphs are reproduced as under:

> *"23. With this above background, if we examine the criminal proceedings the following factual position emerges. The very same witnesses, who were examined in the departmental enquiry were examined in the criminal trial. Jagdish Chandra, Bhawani Singh, Shravan Lal, Raj Singh and Karan Sharma were examined as PW2, PW3, PW6, PW9 and PW13 respectively at the criminal trial. Apart from them, eight other witnesses were also examined. The gravamen of the charge in the criminal case was that the appellant had submitted an application for recruitment along with his marksheet and he, by making alteration in his date of birth to reflect the same as*

24.04.1972 in place of 21.04.1974, and obtained recruitment to the post of Constable. Though the Trial Court convicted the appellant under Section 420 of IPC, the Appellate Court recorded the following crucial findings while acquitting the appellant:

> *"Mainly the present case was based on the documents to this effect whether the date of birth of accused is 21.04.1972 or 21.04.1974.* ***Exh. P-3*** *is original Marksheet, in which, the date of birth of accused has been shown as 21.04.1972 and same has also been proved by the witnesses examined on behalf of the prosecution. Whatever the documents have been produced before the Court regarding the date of birth of 21.04.1974 are either the letters of Principal or are Duplicate T.C. or Marksheets. Neither the prosecution has produced any such original documents in the Subordinate Court to this effect that when the admission form of accused was filled, what date of birth was mentioned by the accused in it, what was the date of birth in Roll Register of School, what date of birth was mentioned by accused in the Examination Form of Secondary, and nor after bringing the original records from the concerned witnesses, same were got proved in the evidence. In these circumstances, this fact becomes doubtful that date of birth of accused was 21.04.1974, and accused is entitled to receive it's benefit. In the considered opinion of this Court, the conviction made by the Ld. Subordinate Court merely on the basis of oral evidences and letters or duplicate documents, is not just and proper. It is justifiable to acquit the accused.*

Resultantly, on the basis of aforesaid consideration, the present appeal filed by the Appellant/Accused is liable to be allowed."

[Emphasis supplied]

24. What is important to notice is that the Appellate Judge has clearly recorded that in the document Exh. P-3 - original marksheet of the 8th standard, the date of birth was clearly shown as 21.04.1972 and the other documents produced by the prosecution were either letters or a duplicate marksheet. No doubt, the Appellate Judge says that it becomes doubtful whether the date of birth was 21.04.1974 and that the accused was entitled to receive its benefit. However, what we are supposed to see is the substance of the judgment. A reading of the entire judgment clearly indicates that the appellant was acquitted after full consideration of the prosecution evidence and after noticing that the prosecution has miserably failed to prove the charge [See S. Samuthiram (Supra).]

25. Expressions like "benefit of doubt" and "honorably acquitted", used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Exh. P-3, the original marksheet carries the date of birth as 21.04.1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.

26. We are satisfied that the findings of the appellate judge in the criminal case clearly indicate that the charge against the appellant was not just, "not proved" - in fact the charge even stood "disproved" by the very prosecution evidence. As held by this Court, a fact is said to be "disproved" when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said to be "not proved" when it is neither "proved" nor "disproved" ***[See Vijayee Singh and Others v. State of U.P. (1990) 3 SCC 190]***.

27. We are additionally satisfied that in the teeth of the finding of the appellate Judge, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand. The charges were not just similar but identical and the evidence, witnesses and circumstances were all the same. This is a case where in exercise of our discretion, we quash the orders of the disciplinary authority and the appellate authority as allowing them to stand will be unjust, unfair and oppressive. This case is very similar to the situation that arose in ***G.M. Tank (supra)***."

12. In view thereof and in view of the acquittal of the petitioner from the criminal case, the order of dismissal from service dt.07.01.2021 against petitioner No.1 is set aside and petitioners are entitled for consequential benefits

13. The Writ Petition is accordingly allowed. No order as to costs.

14. Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed.

Witness THE HON'BLE CHIEF JUSTICE ALOK ARADHE, Monday, the Thirtieth Day of December two Thousand and Twenty Four

SD/-T.JAYASREE
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

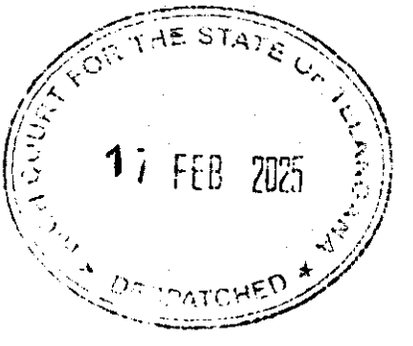
1. The Registrar, Kakatiya University, Vidyaranyapuri, Warangal, Warangal District, T.S.
2. One CC to Sri Ramesh Chilla, Advocate [OPUC]
3. One CC to Sri P. Bhanu Prakash (SC for Kakatiya University, Warangal) [OPUC]
4. Two CD Copies

T J
BSK

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HIGH COURT

DATED:30/12/2024



ORDER

WP.No.15065 of 2021

ALLOWING THE WRIT PETITION

WITHOUT COSTS

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6 copies