
(2010) 12 AP CK 0071
In the Andhra Pradesh High Court
Case No : Writ Petition No. 13583 of 2010

B. Sreekanth

APPELLANT

Vs

Sri Krishnadevaraya University

RESPONDENT

Date of Decision : 21-12-2010

Acts Referred:

Andhra Pradesh University Act, 1991 — Section 13, 13(8), 18(4), 19(5), 3(8)

Citation : (2010) 12 AP CK 0071

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : P. Govind Reddy, for the Appellant; A.A.G., for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—It cannot be gain said that the Universities would emerge as or continue to be centers of excellence and learning, if only they have, on their rolls, competent teachers. It was possible to select and appoint teachers with high academic accomplishments as long as the Universities were permitted to function with autonomy. Over the period, the Governments of the day have caused serious dent, into the autonomy of Universities and they were slowly reduced to the level of the units of Higher Education Department. Added to that, the Government practiced all its austerity only when it came to the question of allocation of funds to the Universities and appointment of teachers in them. The result is that mediocracy has gradually gained control over excellence.

2. It was after a long gap of about a decade, that the Government accorded permission to Sri Krishnadevaraya University (for short "the University") to appoint 29 posts of Assistant Professors in various faculties. A notification was issued inviting applications on 26.02.2007. W.P. No. 7471 of 2007 etc., were filed, challenging the notification pointing out certain defects in the pattern of reservation. The writ petitions were allowed on 27.02.2008, setting aside the notification and leaving it open to the University to issue fresh notification, properly fixing the roster points.

3. The University issued fresh notifications on 04.02.2009 and 05.02.2009 in accordance with the directions issued by this Court. W.P. No. 18681 of 2009 was filed challenging the notifications. This Court declined to grant any order of stay of further proceedings. Accordingly, the selection process was undertaken. The Petitioners in these two writ petitions were selected. The recommendations of the Selection Committee (for short "the Committee") were sought to be placed before the Executive Council of the University, the appointing authority (for short "the Council"). The hidden politics in the University administration manifested, leading to almost an open battle among the functionaries.

4. A meeting of the Council was scheduled to take place on 16.12.2009 and one of the items for its consideration was the approval of the recommendation of the Committee. A substantial section of the Council abstained, leading to a situation of there not being any quorum. The Vice Chancellor virtually became helpless. Feeling the necessity of having the Teachers in the respective Departments, the Vice Chancellor on 27.01.2010 issued orders of appointment in favour of the selected candidates, i.e. Petitioners herein, after obtaining the opinion of the Advocate General. It was mentioned that the order of appointment shall be subject to the approval of the Council of the University. As a supplement to this, The Vice Chancellor issued proceedings, dated 30.01.2010, stating that the order, dated 27.01.2010, was issued in exercise of powers u/s 3(8)(a) of the A.P. Universities Act, 1991 (for short "the Act").

5. Some Members of the Council, who are mostly officials from the Higher Education Department, issued a requisition, dated 30.01.2010, to the Vice Chancellor u/s 18(4) of the Act with a request to convene the meeting of the Council. Acting on that, the Vice Chancellor convened a meeting on 06.02.2010. The Council passed a resolution rejecting the recommendation of the Selection Committee and to refer the matter to the Government u/s 19(5) of the Act.

6. The Petitioners feel aggrieved by the resolution of the Council. They contend that it was competent for the Vice Chancellor to exercise powers u/s 13(8) of the Act and with the issuance of the orders of appointment, nothing remains to be done by any Authority or Officer of the University. According to them, the matter was placed before the Council almost as a matter of information and that the relevant provision does not insist on the approval being accorded for the action taken by the Vice Chancellor.

7. On behalf of the Respondents, a detailed counter-affidavit is filed along with supporting material. It is stated that after the notifications, dated 04.02.2009 and 05.02.2009, were issued, complaints were received as to the legality thereof, and to examine that, the Principal Secretary constituted a Committee headed by the then Chairman of the A.P. State Council of Higher Education (A.P.S.C.H.E.) and that the said Committee in its report found fault with the entire exercise. It is also stated that a One-Man Committee headed by a retired Judge of this Court has also expressed its dissatisfaction on the affairs in the University. The Respondents plead that the action taken by the Vice Chancellor does not accord

with the letter and spirit of the provisions of law and the appointing authority i.e. Executive Council has passed resolution rejecting the recommendation of the Committee as well as to refer the matter to the Government. It is stated that the Petitioners do not have any fundamental right to be appointed on the basis of the selection.

8. Sri P. Govind Reddy, learned Counsel for the Petitioners, submits that on account of the confrontation of one authority with the other, in the University, the career of the Petitioners was adversely affected. He contends that the very appointment of a Two-Man Committee to examine the correctness of the notifications was impermissible, when the notifications were strictly in accordance with the judgment rendered by this Court in W.P. No. 7471 of 2007 and batch and when independent writ petition was pending before this Court challenging the notifications. He submits that the Members of the Council acted in a partisan manner and jettisoned the interests of the University. The learned Counsel further submits that no reason whatever was mentioned by the Council while rejecting the recommendation of the Selection Committees for appointment of as many as 29 posts and that the Member of the Council were not clear as to whether they were dealing with the orders passed by the Vice Chancellor in exercise of the power u/s 13(8) of the Act or whether they were considering the recommendations of the Committee, independently. He also submits that the Petitioners are already working as Lecturers and the impugned resolution cannot be sustained in law.

9. Sri A. Sudershan Reddy, learned Additional Advocate General, appeared for the Respondents. He submits that certain complaints were received about the correctness of the notifications, dated 04.02.2009 and 05.02.2009 and to examine that, a Committee headed by the Chairman of A.P.S.C.H.E. was appointed. He contends that even while the matter relating to selection and appointment of faculty members was under consideration by the Government and various authorities, the Vice Chancellor has proceeded to issue orders of appointment hastily and brought about a fluid situation. He submits that the appointing authority i.e. the Council has examined the matter and decided not to accept the recommendation of the Committee. The learned Additional Advocate General further submits that the Petitioners do not have any vested right, till they are issued orders of appointment in accordance with law and that the orders issued by the Vice Chancellor cannot be sustained.

10. The process for selection and appointment of as many as 29 Lecturers in various departments commenced with the issuance of notification, dated 26.02.2007. An exercise, which was purely academic in nature, was subjected to one controversy or the other for a period of three years. It hardly needs any emphasis that for the said period, the students of the University stood deprived of their right to be imparted teaching by competent hands. The notification was challenged before this Court in W.P. No. 7471 of 2007. Without much delay, the writ petition was decided on 27.02.2008 setting aside the notification on the

ground that the pattern of reservation did not accord with the relevant rules. Specific directions were issued to the effect that separate notifications shall be issued for 15 and 14 posts respectively.

11. The University took one year to issue notifications for the two categories of posts and they were published on 04.02.2009 and 05.02.2009. Respective Selection Committees were constituted in accordance with the relevant provisions of law. The Committees, in turn, selected the candidates. The recommendations of the Committees were placed before the Council, for its decision, on 16.12.2009. The level of the political overtones is evident from the fact that two categories of the Executive Council Members have abstained from the meeting and the attempt to seek approval of the recommendation of the Committee was frustrated. It appears that almost a feud existed between the Vice Chancellor on the one hand and the Ex-Officio Members in the Council on the other.

12. Feeling that his powers were unbridled, the Secretary to Government in Higher Education Department appointed a Committee headed by the Chairman of the A.P.S.C.H.E. to examine the entire process of selection commencing from the issuance of notification. The Committee felt that it is the repository of the higher education in the State on every aspect and has gone to the extent of making certain observations which on the one hand are contrary to the judgment rendered by this Court and on the other, not at all in the interest of the University. Their effort appears to be more to establish their supremacy than to ensure that the University functions with teachers of competence. It was not even mindful to the fact that the subsequent notifications were the subject matter of another writ petition, which in turn came to be dismissed at a later stage.

13. Section 13(8) of the Act confers upon the Vice Chancellor to take certain decisions on the matters, which are within the purview of the other Authorities or Officers. The provisions reads as under:

13(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 Board of Management 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.

14. It is almost in the form of a provision, conferring emergency powers. The exercise of power under it is subject to general control by the Chancellor and it must be reported to the Authority or Officer concerned.

15. In Ms. Kum Kum Lahiri Rao Vs. The President, Dr. B.R. Ambedkar College of Law and Others, this Court indicated the parameters of exercise of such power. After referring to the judgment of the Hon'ble Supreme Court in State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others, this Court held as under:

When the Academic Senate is specifically conferred with the power to prescribe conditions as to admission, and when they are so prescribed, the Vice-Chancellor has absolutely no role to play in that field. The powers conferred on him under Sub-Section 8(a) of Section 13 of the Act by themselves are executive in nature and are restricted to unoccupied fields. Once any aspect of the matter is dealt with specifically under the Rules or other provisions, the Vice-Chancellor, in exercise of the powers conferred in him under the provisions referred to above, cannot undo or alter the same. It is only to meet the situations where certain areas remained uncovered, that such powers are conferred. By no stretch of imagination, the Vice-Chancellor can be said to have been created as an authority parallel to those created under the Act.

16. On the facts of that case, it was held that the exercise of powers by the Vice Chancellor was untenable. In the instant case, the Vice Chancellor did make an effort to place the matter of appointment of Assistant Professors before the Council. The step, however, did not fructify on account of deliberate acts and omissions on the part of some of the Members of the Council. Feeling the urgency of appointing Assistant Professors, the Vice Chancellor issued orders, dated 27.01.2010. The individual orders read as under:

Dr. B. Sreekanth is appointed as Assistant Professor in Zoology, Sri Krishnadevaraya University, Anantapur on Rs. 8,000/-per month in the pay scale of Rs. 8000-275-13500 besides the usual allowances at the University rates. He/ She is placed on probation for a period of two years with effect from the date of his/her reporting for duty.

This order is subject to the approval of the Executive Council of S.K. University.

He/She should at the time of joining duty, produce a certificate of physical fitness from the University Medical Officer, Sri Krishnadevaraya University, Anantapur besides original certificates showing his/her educational qualifications, proof of age, community (in case the appointee belongs to SC/ST/BC) earlier service etc.

He/She is required to enter into an Agreement of Service in the prescribed form on non-judicial stamp paper of the value of Rs. 100/- within a month from the date of his/her joining the duty.

The appointment is subject to Statutes, Ordinances, Rules and Regulations of the University that are in force and that may come into force from time to time.

The appointee should report himself/herself for duty to the Principal, Sri Krishnadevaraya University College, Anantapur on or before 11.02.2010 failing which the offer of appointment stands cancelled.

He/She is required to acknowledge the receipt of the proceedings.

17. Though no mention is made to Section 13(8) of the Act, obviously the order can be traced to that power alone. To be specific, the Vice Chancellor issued proceedings, dated 30.01.2010, which reads as under:

The orders in the proceedings of the Vice-Chancellor dated 27.01.2010 appointing Dr. Kuruva Maddileti as Assistant Professor in Commerce Sri Krishnadevaraya University, Anantapur on Rs. 8,000/- per month in the pay scale of Rs. 8000-275/13500 besides the usual allowances at the University rates are approved by the Vice-Chancellor in exercise of the power u/s 13(8)(a) of A.P. Universities Act, 1991, vide orders dated 30.01.2010, with effect from 27.01.2010.

You are requested to enter into an Agreement of Service with the University in the prescribed form on a non-judicial stamp paper of the value of Rs. 20/- within a month from the date of his/her joining.

He/She is required to acknowledge the receipt of these proceedings.

18. This does nothing more than making manifest what is latent in the proceedings, dated 27.01.2010.

19. Having desisted from attending the meeting when it was convened, some of the Members of the council swung into action and gave requisition on 30.01.2010 for convening the meeting of the Council. Promptly, the Vice Chancellor convened a meeting on 06.02.2010. The matter pertaining to appointment of Assistant Professors figured as one of the items in the Agenda. It must be noted that what was before the Council was the action taken by the Vice Chancellor u/s 13(8) and not the recommendations of the respective Selection Committees in their nascent form. Unmindful of this subtle distinction, the Council has chosen to reject the recommendations of the Committee. There is some dispute as to the exact text of the resolution. The Vice Chancellor, who happens to be the authority to prepare the resolution has appended the gist of discussion on the subject. The Members of the Council, however, have independently drafted the resolution and signed upon it. That resolution reads as under:

Executive Council Meeting No. 121

Agenda Item No.B1:

The Executive Council has not approved the proposal. Out of ten members in the E.C., nine members have voted against the proposal.

The Government in its Lr. No. 10125/UE.I/A.2/2009-4 dated 10.12.2009 while enclosing the report of two-member committee headed by Prof. K.C. Reddy, Chairman, APSCE and Sri Suresh Chandra, I.A.S., Principal Secretary I/c, Higher Education Department, Government of A.P. advised the University to issue fresh notification separately for 15 posts and 14 posts after getting approval of the draft notification from the Executive Council and respective Welfare Department

and send action taken report to Government immediately.

On the contrary it is observed that no action taken report nor detail agenda explaining the subject has been placed before the E.C. Members. It is also observed that 23 Assistant Professors have been appointed vide proceedings of the Vice Chancellor No. SKU/Estt/EEII/2010 dated 21.01.2010 without following procedure and without approval of E.C.

In the above circumstances the E.C. has resolved not to accord approval to the appointment order of 23 Assistant Professors issued by Vice Chancellor and refer the matter to the Government u/s 19(5)(ii) proviso of A.P. Universities Act 1991.

20. The Vice Chancellor on the other hand, added the following note.

The Vice Chancellor has expressed that this is a case of legal complications which goes back to the year 2007. The High Court in its common order accorded permission to the University to issue two separate notifications mentioning the Roaster Points to be started. In the light of the above, the University issued two separate notifications following the directions of the High Court exercising the 13(8)(a) and 13(5) orders were issued to avoid further legal complications.

The Vice Chancellor sought time till next E.C. Meeting to submit all records and details.

21. From what is stated above, it becomes clear that the internal squabbles in the University costed it heavily in terms of academics. The Vice Chancellor on the one hand and the Members of the Council, who issued requisition, on the other were trying to exhibit their control over the University. The whole episode is in a very bad taste. If there existed any defects in the process of selection, the same could have been pointed out by the Members of the Council individually or collectively. For them, the report submitted by the Committed headed by Dr. K.C. Reddy became the final word and they were not open to any discussion as to the merits of selection undertaken by the expert bodies. In a way, the exercise undertaken by the Council amounts to intervention with the proceedings of the Court, which were pending, if not contempt of the judgment which was rendered in W.P. No. 7471 of 2007. It is on account of the persons with such overreaching tendency, that the institutions of higher learning are not able to turn out product of expected quality. The Council was carried away more by emotion, than by reason and it simply brushed aside the marathon exercise undertaken by quite large number of selection committees, which in turn comprise of subject experts, professors, heads of departments, etc. It was not even mindful of that fact that the Vice Chancellor has already exercised the powers u/s 13(8) of the Act. In case the Council did not want to ratify the action taken by the Vice Chancellor, it ought to have passed a resolution to that effect, in which event, there would have been an occasion to examine the recommendations of the selection committee independently.

22. The Petitioners have already joined the service and are discharging the

duties. It is stated that in pursuance of the interim directions issued by this Court, the University is paying salaries to them. The term of the nominated Members of the Executive Council is said to have lapsed. As of now, the Council is not with its full complement. Various steps that are required to be taken under law can be considered after the Council is fully constituted.

Hence, the writ petitions are allowed, with the following directions :

(a) the resolution, dated 06.02.2010, passed by the Executive Council is set aside;

(b) after the Executive Council is fully constituted, the orders, dated 27.01.2010, passed by the Vice Chancellor read with orders, dated 30.01.2010, in respect of individual candidates shall be placed before it; and

(c) in case the Executive Council ratifies the action taken by the Vice Chancellor through the said orders, no further steps need to be taken. If on the other hand, the Executive Council refuses to ratify the action, it shall independently consider the recommendations of the Committee for 29 posts of Associate Professors in various subjects notified on 04.02.2009 and 05.02.2009 at a separate meeting.

23. This judgment shall not be treated as expressing any opinion as to the legality or otherwise of the action taken by the Vice Chancellor u/s 13(8) of the Act.

24. There shall be no order as to costs.