

**THE HON'BLE SRI JUSTICE K.C.BHANU
AND
THE HON'BLE SMT JUSTICE ANIS**

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WRIT PETITION NO.17377 OF 2014

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ORDER: (per the HON'BLE SRI JUSTICE K.C.BHANU)

This writ petition under Article 226 of the Constitution of India is filed against the order, dated 17-06-2014 in O.A.No.8160 of 2013 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal').

2. Petitioner herein (applicant) filed the above O.A. to declare the action of the respondents in not continuing her as Professor of Obstetrics and Gynaecology (for short OBG) with effect from the date of her promotion i.e., 24-01-2004 issued by way of G.O.Ms.No.22, HM & FW Department as illegal, arbitrary and contrary to the order of the Supreme Court in I.A.Nos. 5 and 6 in Civil Appeal No.6758 of 2000, dated 25-09-2006 and consequently to direct the respondents to restore her seniority in the category of Professor OBG at appropriate place by taking into account the date of her promotion as Professor OBG and promote her to the post of Additional Director, Principal or Superintendent and to set aside the impugned proceedings Rc.No.37960/E1A/2009, dated 22-12-2009 issued by the 1st respondent as illegal and arbitrary.

3. Brief facts are that the petitioner was recruited as Civil Assistant Surgeon with MBBS qualification on 24-10-1987 on non teaching side. Civil Assistant Surgeons after recruitment on non teaching side i.e., under the control of Director of Health, they have to work in PHC's CHCs and other institutions under Director of Health. After completion of certain years of service, they can be selected for PG under in-service quota. After acquiring PG degree in in-service quota, they can apply for Assistant Professor post on teaching side i.e., for surrender of their services to the control of Directorate of Medical Education under which all Government Medical Colleges and Teaching General Hospitals are working. The petitioner who was recruited as Civil Assistant Surgeon was appointed as Assistant Professor

OBG on lateral entry from non-teaching side i.e., from Director of Health on

01-07-1998 after acquiring PG degree MS (OBG). When she was appointed as Assistant Professor of OBG (i.e., on 01-07-1998), certain doctors of OBG who started their teaching as Assistant Professor (i.e., date of joining as Assistant Professor) in the years between 1980 to 1982 were being promoted as Associate Professor of OBG. In other words Civil Assistant Surgeons who were appointed as Assistant Professor of OBG nearly 18 years before the petitioner was giving promotion as Associate Professor of OBG as on

01-07-1998. During the panel year 2003-2004, on amendment to G.O.Ms.No.154, HM & FW (A1) Dept., dated 04-05-2002 Government have issued G.O.Ms.No.502, HM & FW (A1) Dept., dated 03-09-2003, which speaks about promotion of Assistant Professor to the post of Associate Professor basing on their seniority in the cadre of their first appointment i.e., Civil Assistant Surgeon. Basing on G.O.Ms.No.502, dated 13-09-2002 and also as per rule of reservation to SC & STs in promotions along with categorization of SCS into A,B,C & D promotions were effected to certain Assistant Professor of OBG as Associate Professor of OBG. As the petitioner belongs to SC (B) community, she could not get promotion as Associate Professor of OBG along with other Associate Professor of OBG who were appointed as Assistant Professor in 1983 (i.e., 15 years before the petitioner). Later the petitioner got promotion as professor on 19-05-2004 after completion of 7 months of service as Associate Professor of OBG.

4. The Tribunal after considering the material on record, held that the applicant was not entitled to be promoted to the post of Professor w.e.f. 24-01-2004 and that there is no violation of any rules and law as alleged by the applicant in issuing the impugned proceedings, dated 22-12-2009 and accordingly dismissed the O.A. as there are no merits. Aggrieved thereby, this writ petition is filed.

5. Learned counsel appearing for the petitioner contended that the date of appointment as Assistant Professor should be the criteria for making promotion to the post of Professor OBG, that the petitioner belongs to SC (B) category, that she was promoted as Professor OBG as per law of

categorization as existed and that she is entitled to be continued as Associate Professor, that the case of the petitioner was squarely covered by the judgment in E.V.Chennaiah's case, that the relevant facts were not being taken into consideration by the Tribunal and irrelevant facts were taken into consideration and hence, the order is bad in law and the case of Dr.Challa Jayabhaskar rendered by the Supreme Court has no application to the present facts of the case, but the Tribunal has wrongly placed reliance on the said judgment and came to a wrong conclusion and hence, he prays to set aside the impugned order or in the alternative, he prays that the petitioner is entitled to be continued as Associate Professor and reverting her from the post of Professor OBG to Assistant Professor is totally illegal and incorrect. He further contended that she was promoted as Associate Professor/Professor of OBG in terms of G.O.Ms.No.502, HM & FW Dept., 13-09-2003, that vide orders dated 21-06-2005 in Rc.No.34388/E1A/2004, she was reverted as Associate Professor and challenging the reversion order, she filed O.A.4295/2005 and the Tribunal by order, dated 25-04-2006 held that the applicant is entitled to hold the post of Associate Professor and set aside the proceedings, dated 21-06-2005 and the said order has become final and the Government has not challenged that order and therefore, by virtue of that order, the applicant is entitled to hold the post of Associate Professor when she was appointed as Associate Professor for the panel year 2003-2004.

6. On the other hand, learned Government Pleader for Services (A.P.) contended that promotion orders issued during 2003-2004 for the post of Associate Professor/Professor under various specialties in terms of G.O.Ms.No.502 were cancelled as it was quashed by the Tribunal by its order, dated 17-11-2004, that therefore, the petitioner who was promoted by virtue of G.O.Ms.No.502 was reverted as Associate Professor vide G.O.Ms.No.261, dated 10-06-2005, that the promotion which was given to the applicant in the year September, 2003 is subject to outcome of pending case in various courts and that she has not completed mandatory career in the cadre of Associate Professor and hence, not eligible for the cadre of Professor of OBG and that she is not entitled to be promoted for the panel year 2003, that the Tribunal after considering the material on record, rightly dismissed

the O.A. and the said order needs no interference by this Court.

7. No doubt, G.O.Ms.No.502 under which the petitioner got promotion was quashed by the Tribunal in O.A.No.6322 and 6309 of 2003, dated 17-11-2004, but she was promoted as Professor OBG, vide G.O.Ms.No.22, dated 24-01-2004 based on the recommendations of the Review Department Promotion Committee (for short 'DPC'). The Government approved the recommendations of review DPC and issued G.O.Ms.No.147, dated 19-05-2004. Therefore, the promotion order in G.O.Ms.No.22 and approval by way of G.O.Ms.No.147 were protected by the order of the Supreme Court rendered in I.A.Nos. 5 and 6 in Civil Appeal No.6758 of 2000, dated 25-09-2006, wherein it was held thus:

“Similarly all appointments made prior to the judgment of this court on the basis of reservation permitted by the Legislation which has been struck down by this Court, shall also not be affected. Promotions, if any, already granted before the judgment of the Court shall also remain unaffected, we direct accordingly.

We, therefore, clarify that no admission granted, appointment made or promotion granted subsequent to the judgment of this court shall be valid, if there are in breach of the law laid down by this Court in its aforesaid judgment.”

Therefore, the promotion given to her was not affected. Thereafter, in pursuance of the order of the Tribunal in O.A.No.4295 of 2004, dated 25-04-2008, she made a representation on 22-09-2009. Her representation was rejected stating that as per final seniority list prepared in terms of APMES rules issued in the G.O.Ms.No.154, HM & FW (A2) Dept., dated 04-05-2002, the name of Dr.J.Sowjanya Kumari is at 160 and there are 52 doctors who are seniors to Dr.Sowjanya Kumar are to be promoted before her and hence, she is not eligible for promotion to the post of Associate Professor at this juncture and the case of Dr.J.Sowjanya Kumar, will be considered for promotion as Associate Professor as and when her turn comes as per her seniority and eligibility in terms of G.O.Ms.No.154, HM & FW (A1) Dept., dated 04-05-2002. Accordingly, the Government has taken a view that the request of the petitioner for restoring her as Associate Professor of OBG is hereby rejected. This proceedings is also challenged before the Tribunal.

8. It is not in dispute before this Court that the applicant was promoted as Professor in terms of G.O.Ms.No.502, HM & FW Dept., dated 13-09-2003 whereunder the inter se seniority amongst the eligible candidates was prepared based on the year and ranking of selection. The said G.O. was quashed in O.A.No.6322 of 2003 and 6309 of 2003 by order, dated 17-11-2004. Accordingly, the Government issued G.O.Ms.No.261, HM & FW, Dept., dated 10-06-2005 in pursuance of the Tribunal Order, which reads thus:

“In the facts and circumstances of the case, it must be held that in G.O.Ms.No.503, dated 13-09-2003 has to be held to be bad, in so the minimum qualifications prescribed by the Medical Council of India for teachers in Medical Educational Institutions. The impugned G.O.Ms.No.502, dated 13-09-2003 is therefore struck down as ultravires the powers of the State Government. Any promotion made in terms of the said G.O. Ms.No.502 are also set aside as a result.”

9. Accordingly, she was reverted as Associate Professor of OBG. Though the petitioner is not a party to O.A., still when the G.O. was struck down, the Government has to implement the order of the Tribunal. She got promotion by virtue of rule of reservation under the categorization of S.Cs At that point of time as there were no eligible candidates in the SC (B) category, she was promoted, She was promoted under the Rule 10 of A.P. State and Subordinate Service Rules, 1996 temporarily as Associate Professor by proceedings No.23062/E1-A/2003, dated 28-10-2003. No doubt as per G.O.Ms.No.563, dated 17-09-2003, her name was included in the panel year 2003-04 for promotion to the post of Professor OBG. In view of the fact that she was promoted as Associate Professor by proceedings, dated 28-10-2003, her name ought not to have been shown in the panel for promotion to the post of Professor OBG because admittedly by that time, she was not even promoted as Associate Professor. Basing on this G.O.Ms.No.563, dated 17-09-2003, the petitioner cannot claim as a matter of right for promotion to the post of Professor OBG. Vide G.O.Ms.No.564, dated 17-09-2003 some Associate Professors have been temporarily appointed as Professors. The name of the petitioner was not found in that panel. Therefore, she ought not to have promoted as Professor of OBG. The proceedings No.23062/E1-A/2003, dated 28-10-2003 has become final and there is no illegality or irregularity in giving

promotion to the petitioner as Associate Professor. Recalling the above proceedings, the proceedings, dated 22-12-2009 in Rc.No.37960/E1A/2009 ought not to have been issued. By virtue of this proceedings, the petitioner was reverted as Assistant Professor. Since she was promoted as Associate Professor under the categorization of S.Cs as existed then, the question of seniority as observed in the proceedings impugned before the Tribunal does not arise. By virtue of the proceedings, dated 28-10-2003 the petitioner was promoted as Associate Professor. Again she was promoted as Professor OBG in Category-4 (a) of A.P. Medical Education Service Rules in G.O.Ms.No.22, dated 24-01-2004. By that time, she has not even completed the probation period. Without declaring her probation, she was again promoted. Therefore, the promotion in G.O.Ms.No.22, dated 24-01-2003 is not correct and not in accordance with the rules applicable to the case of the petitioner. Therefore, the Government issued G.O.Ms.No.261, dated 10-06-2005 rightly. There is no dispute that the petitioner has not put up 4 years of teaching experience in the cadre of Associate Professor in terms of regulations for entitlement for promotion to the post of Professor. That is the reason why the Tribunal in O.A.No.4295 of 2003 held that reversion from the cadre of Professor to Associate Professor does not call for interference. That order has become final. It is not in dispute that the rule of reservation for promotion system was introduced from the panel year 2003-04 onwards. The roster point starts from Sl.No.1 for the panel year 2003-04 and roster point No.2 is earmarked for SC-A women candidate. It is not in dispute that if eligible candidate is not available under SC-A women, then SC-B women candidate has to be considered for the roster point No.2. If SC-B women is not available, then SC-C women candidate has to be considered for roster point No.2. Accordingly, since no SC-A woman was available, as stated above, the petitioner being a SC-B candidate has to be placed at roster point No.2 which is earmarked for SC-A woman and promotion in the category of Associate Professor of OBG has to be given to her accordingly for the panel 2003-04. Therefore, the ground on which the order impugned in the O.A. was passed is that she was at Sl.No.160 in the panel seniority list prepared in terms of rules issued in G.O.Ms.No.154, HM & FW Dept., dated 04-05-2002 and that there are 52 doctors who are seniors to the petitioner are to be promoted is not correct. Therefore, rule of

reservation in promotion system has been followed and as such, the petitioner deserves to be continued as Associate Professor OBC in the panel year 2003-04 from the date of her original promotion as Associate Professor of OBG i.e., w.e.f. 28-10-2003. Thereafter, if she is eligible otherwise for Professor OBG, her case has to be considered in accordance with the rules. The Tribunal has not at all considered all the above aspects and came to a wrong conclusion, Therefore, the impugned order is liable to be set aside and accordingly set aside making it clear that the petitioner is entitled to continue as Associate Professor of OBG w.e.f. 28-10-2003 and her case for promotion to the category of Professor OBG has to be examined with reference to that date subject to her eligibility in terms of the Rules.

10. Accordingly, the writ petition is allowed. No order as to costs. Miscellaneous petitions, if any pending in this writ petition shall stand closed.

K.C.BHANU, J

ANIS, J

DATED: 22ND DAY OF JANUARY, 2015

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