

THE HON'BLE SRI JUSTICE G. CHANDRAIAH

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AND

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THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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WRIT PETITION No. 39470 of 2015

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ORDER: (per Hon'ble Sri Justice G. Chandraiah)

This writ petition is filed against the orders dated 09.04.2015 in O.A.No.1873 of 2015 on the file of the Andhra Pradesh Administrative Tribunal. The petitioner herein is the applicant and the respondents herein are the respondents before the Tribunal.

2. In nutshell, the facts of the case are that the petitioner/applicant was appointed as PG Cum Tutor on 17.08.2001, which was later re-designated as Assistant Professor of Anatomy on 06.10.2002, while she was working in Andhra Medical College, Visakhapatnam. She worked in Andhra Medical College, Visakhapatnam till 31.09.2010. Subsequently, she was transferred to Osmania Medical College, Hyderabad, on 01.10.2010. A charge memo came to be issued to her on 09.10.2008 on the ground of unauthorized absence from duty from 02.11.2006 to 08.10.2008. She submitted her reply to the charge memo on 23.10.2008. Subsequently, an enquiry officer was appointed who enquired into the matter and submitted his report on 29.01.2009. Pursuant to the report of the enquiry officer, the authorities imposed a punishment of stoppage of two annual grade

increments with cumulative effect. Aggrieved by the punishment, the applicant filed an appeal before the 3rd respondent on 16.01.2013, and the appeal came to be allowed by directing the authorities to treat the period of her absence as leave. Pursuant to the orders passed in the appeal, her leave period was also regularized. It is the case of the applicant that she is eligible for promotion as Associate Professor notionally and as Professor on regular basis, and that she made a representation to the Director of Medical Education, Andhra Pradesh, on 04.02.2014 to consider her case for promotion, but no action is taken by the authorities till now. It is also her grievance that in the seniority list drawn up by the respondent authorities, the candidates placed at Serial Nos.39, 40, 41, 42 and 43 were promoted in the Departmental Promotion Committee (DPC) of 2011, and in the DPC of 2012, promotions were given to candidates at Serial Nos.47, 49, and 53 of the seniority list; likewise in the DPC of 2013, persons at Serial Nos.52, 54 and 59 of the seniority list were considered for promotion, but the candidature of the petitioner was not considered for promotion though the candidates who were junior to her were given promotions in the said DPCs. Assailing the inaction of the respondent authorities in promoting her and contending that since she succeeded in the appeal and the punishment that was imposed on her was set aside, there should be no impediment for the authorities to consider her case for promotion and that she is fully eligible and entitled for promotion, she approached the Tribunal by way of filing the aforesaid O.A. The Tribunal, vide the

impugned orders, dismissed the O.A., holding that the post of Assistant Professor which the applicant is now holding and the post of Associate Professor/Professor to which she seeks promotion, being State Level Posts, and though the State of Andhra Pradesh as well as the State of Telangana were made parties to the O.A., it would be premature to direct either of the States to consider the case of the petitioner for promotion, until the persons holding State Level Posts are allocated to a particular State. Questioning the dismissal of the O.A., the applicant is before this Court with this writ petition.

3. Heard learned counsel for the petitioner/applicant as well as the learned Government Pleader for Medical & Health representing the 1st respondent and also the learned Government Pleader for Services representing respondents 2 to 4.

4. Learned counsel for the petitioner submits that the Tribunal has dismissed the O.A., not on merits but on the ground of non-allocation of candidates holding State Level Posts to a particular State and that it is nobodies' case that the bifurcation of State would come in the way of considering the case of the petitioner and effecting promotion, and further no counter affidavit was filed by the respondent authorities and the O.A. was dismissed by the Tribunal at the stage of admission. Learned counsel further submits that the petitioner has made a representation to the respondent authorities by bringing out all the details as to how she is eligible and entitled

for promotion.

5. Having heard the learned counsel representing both the parties and on perusal of the impugned order, it is clear that that the petitioner made a representation to the authorities seeking to consider her case for promotion but the authorities have not passed orders on her representation. As on today, whether the authority before which the representation is made, has jurisdiction to consider the petitioner's case or not is a matter of fact. If, for any reason, the authority before which the petitioner's representation is now lying cannot consider the case of the petitioner on the ground of bifurcation of the State, it is the duty of such authority to transfer the entire file along with the representation of the petitioner to the appropriate authority for consideration of her case. Further, it is not the case of the respondent authorities that the case of the petitioner for promotion could not be considered on account of bifurcation of the State and that due to bifurcation only, no decision could be taken in the petitioner's case by the authorities.

6. In the circumstances, we set aside the orders dated 09.04.2015 in O.A.No.1873 of 2015 passed by the Tribunal, and consequently direct the appropriate respondent authorities to consider the representation submitted by the petitioner for promotion and pass orders, in accordance with law, within a period of two months from the date of receipt of a copy of this order.

7. The writ petition stands disposed of, accordingly. No costs. Miscellaneous petitions, if any pending, shall stand closed.

G. CHANDRAIAH, J

U. DURGA PRASAD RAO, J

07th December, 2015

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