

**THE HON'BLE SRI JUSTICE RAMESH
RANGANATHAN**

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTI

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WRIT PETITION No.1382 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This writ petition is filed questioning the order passed by the Andhra Pradesh Administrative Tribunal, Hyderabad in O.A.No.115 of 2015 dated 22.01.2015 refusing to suspend the order dated 31.12.2014 of the Regional Director of Medical and Health Services (1st respondent), pending disposal of O.A., as the order dated 31.12.2014 was passed pursuant to the order of the Division Bench in Review W.P.M.P.No.19594 of 2014 in W.P.No.30083 of 2013 and W.P.No.30103 of 2013 dated 01.09.2014.

By the order impugned before the Andhra Pradesh Administrative Tribunal i.e., the order dated 31.12.2014, the 1st respondent reverted the petitioner as M.P.H.A.(Female), and directed her to report before the District Health and Medical Officer, Chittoor for further posting orders. Rule 22(h) of the A.P. State and Subordinate Service Rules (for short 'the Rules') stipulates that, if in any recruitment, qualified candidates belonging to the Scheduled Castes or the Scheduled Tribes are not available for appointment to all or any of the vacancies reserved for them, even after conducting a limited recruitment as specified in sub-rule (g), such vacancy or vacancies may be allotted to the Open Competition, after obtaining permission of the Government and may, thereafter, be filled by a candidate or candidates selected on the basis of open competition.

The petitioner herein, admittedly, does not belong to the Scheduled Castes or the Scheduled Tribes. The Division Bench in its order in Review W.P.M.P.No.19594 of 2014, noted that roster point 47, which arose during the Departmental Promotion Committee meeting held on 17.12.2009, was reserved in favour of the Scheduled Castes;

as no suitable candidates were available during 2009-10, the same was carried forward; and in the 5th Departmental Promotion Committee held on 02.04.2012, the said post was converted as general quota, and promotions were effected on the basis of seniority. The Division Bench held that, unless the Government gives permission to convert the roster point into the general quota, promotions cannot be effected to the persons eligible as per their seniority or as per the Rules. The Division Bench modified the order of the Tribunal and directed the respondents to consider the case of the applicant for promotion to the post of Health Educator as per seniority, eligibility and as per the Rules especially as per the Rule 22(h) of the Rules.

As promotion is required to be made in accordance with Rule 22(h) of the Rules, and as the available vacancy is reserved in favour of Scheduled Castes, it is only if, and after, the Government accords permission to convert the said post to open competition, can it be filled up by a candidate belonging to the open category, and the petitioner and others similarly situated (who do not belong to the Scheduled Castes) can be considered for promotion. As the petitioner's appointment as a Health Educator is contrary to Rule 22(h) of the Rules, the impugned order directing her reversion to her original substantive post, consequent on the order of the Division Bench, cannot be said to be illegal. The order of the Tribunal, refusing to suspend the order dated 31.12.2014, cannot be faulted as it is in accordance with the directions of the Division Bench.

Sri G.Vidya Sagar, learned senior counsel appearing on behalf of the petitioner, would submit that the respondents, having issued a show cause notice dated 23.12.2014 a copy of which was received by the petitioner only on 12.01.2015, could not have passed the impugned order without awaiting the petitioner's reply to the show case notice.

While the submission of the learned senior counsel is no doubt attractive, the fact remains that, as the order of the Division Bench necessitated compliance and in

the absence of any requirement under the Rules, no show cause notice was required to be issued in the first place. The petitioner has now been reverted to her substantive post, as she could not have been appointed as Health Educator in a post reserved for the Scheduled Castes. The reversion, in the present case, is not as a measure of punishment, but is only because her earlier promotion was illegal.

Sri G.Vidya Sagar, learned senior counsel, would submit that there are no eligible Schedule Caste candidates available from the year 2009 onwards for being appointed, as Health Educators, by way of promotion. If that be so, a decision would have to be taken by the Government as to whether or not the roster point 47 should be continued to be treated as reserved for the Scheduled Castes. While this Court would not issue a Mandamus to the Government to forthwith fill the post of Health Educator, no vacancy can also be kept vacant for an inordinate length of time.

Ends of justice would be met if the 3rd respondent is directed to examine the matter, and take a decision whether or not roster point 47 should still be continued to be reserved in favour of the Schedule Castes, even though no eligible Scheduled Caste candidate is available for being appointed to the said post by way of promotion from 2009 onwards. The entire exercise, culminating in a decision being taken by the 3rd respondent, shall be completed with utmost expedition preferably within a period of two months from the date of receipt of a copy of this order.

Sri G.Vidya Sagar, learned senior counsel appearing on behalf of the petitioner would fairly state that, in the light of the directions now issued by this Court, the O.A. filed before the Tribunal does not survive, necessitating its adjudication. As such, both W.P.No.1382 of 2015 and O.A.No.115 of 2015 are disposed of accordingly.

Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

29th January 2015.
JSU

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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Date: 29.01.2015

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