

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

W.P. No.33092 of 2014

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

The first respondent herein was promoted as Professor of Paediatrics, for the panel year 2011-2012, by G.O.Ms.No.128 dated 29.06.2012. Consequent on the entire promotions being reviewed, including the promotion to the posts of Professor of Paediatrics for the panel year 2011-2012, the first respondent herein was directed, by proceedings dated 07.04.2014, to join as an Associate Professor at S.V.Medical College, Tirupathi.

The first respondent invoked the jurisdiction of the Andhra Pradesh Administrative Tribunal (for short 'Tribunal'), Hyderabad, contending that she ought to have been promoted as Professor of Paediatrics in the panel year 2011-2012 as she stood at Sl.No.17 in the seniority list of Associate Professors; there were 24 vacancies available for the panel year 2011-2012; and, if all the 24 posts had been filled up, she would have been promoted as Professor of Paediatrics in the year 2011-2012 itself.

By its order, in O.A.No.3258 of 2014 dated 14.05.2014, the Tribunal suspended the proceedings dated 07.04.2014, and also the consequential proceedings dated 07.04.2014 in so far as it related to the first respondent herein. Thereafter, on a vacate stay petition being filed by the Government, the Tribunal, by its order in V.M.A.No.819 of 2014 in O.A.No.3258 of 2014 dated 12.09.2014, made the interim order, granted earlier on 14.05.2014, absolute and directed the petitioners herein to continue the first respondent as Professor of Paediatrics till completion of exercise of promotions for the panel year 2012-13.

As Dr.K.Lakshmi Narasimha, Learned Counsel for the first

respondent, contended before us that the petitioners herein did not even disclose the number of vacancies available in the post of Professor of Paediatrics, for the panel year 2011-12, the first respondent was called upon to file an affidavit. An affidavit is now filed before this Court submitting that there were 24 vacancies in the post of Professor of Paediatrics for the panel year 2011-2012; the exercise of review, in terms of G.O.Ms.No.62 dated 08.02.1989, was required to be restricted only to the number of posts for which promotion was effected earlier; and, as promotion to 16 posts of Professor of Paediatrics was effected by G.O.Ms.No.128 dated 29.06.2012, the exercise of review undertaken on 02.04.2014 required the government to restrict filling up the vacancies, in the post of Professor of Paediatrics, only to the very same 16 posts.

Dr.K.Lakshmi Narasimha, Learned Counsel for the first respondent, would contend that G.O.Ms.No.62 dated 08.02.1989 are merely executive instructions issued when the A.P.State and Subordinate Service Rules, 1966 (for short '1966 Rules') were in force; the A.P.State and Subordinate Service Rules, 1966 was repealed thereafter, and the 1996 Rules have been made; and, consequent upon the 1996 Rules coming into force, the earlier executive instructions, in G.O.Ms.No.62 dated 08.02.1989, are no longer valid.

It is wholly unnecessary for us to examine these contentions as we are satisfied that the petitioners herein ought to have filled up all the 24 posts, of Professor of Paediatrics, for the panel year 2011-12. The Supreme Court, in **Challa Jaya Bhaskar v. Thungathurthi Surender** (judgment in Civil Appeal Nos.5579-5586 of 2001 dated 19.10.2010), set aside the order of the Tribunal in O.A.No.3599 of 1995 dated 10.03.1998, along with G.O.Ms.No.502 dated 13.09.2003; and restored G.O.Ms.No.325 dated 15.06.1999 together with all consequential benefits arising therefrom.

G.O.Ms.No.325 dated 15.06.1999 required the government to prepare the seniority list of Assistant Professors of all specialties, including clinical and non-clinical subjects other than psychiatry specialty, taking into consideration the date of appointment as Assistant Professor; to finalise the seniority list in the said category; and, thereafter, send necessary proposals for review of promotions to the post of Professors of the concerned specialty made on or after 29.03.1988.

The government order, in G.O.Ms.No.325 dated 15.06.1999, required promotions, made to the posts of Professors in different specialties after 29.03.1988 till 15.06.1999 (i.e. the date of issuance of G.O.Ms.N.325) to be reviewed. The first respondent herein was not promoted to the post of Professor of Paediatrics prior to issuance of G.O.Ms.No.325 dated 15.06.1999. She was, in fact, promoted as Professor of Paediatrics by G.O.Ms.No.128 dated 29.06.2012, more than a year and half after the order of the Supreme Court dated 19.10.2010.

We find considerable force in the submission of the Learned Government Pleader for Services that the first respondent should not have been promoted as Professor of Paediatrics on 29.06.2012, as the entire exercise of reviewing promotions to different categories had not been completed by then. As a consequence of the order of the Supreme Court dated 19.10.2010, and in terms of G.O.Ms.No.325 dated 15.06.1999, all promotions made after 1998 were required to be reviewed; and till the entire exercise of review was completed, the petitioners herein ought not to have effected promotions to the posts of Professor of Paediatrics independent of the exercise of review. In the light of the order of the Supreme Court, and as part of the exercise of review, all the 24 vacancies, in the posts of Professor of Paediatrics for the panel year 2011-2012, ought to have been filled up. If the contention of the first

respondent were to be accepted, she would have been promoted as Professor of Paediatrics in the panel year 2011-12 itself as she stood at Sl.No.17 in the seniority list of Associate Professors of Paediatrics. The petitioners herein were not justified in restricting promotions to the posts of Professor of Paediatrics, for the panel year 2011-2012, only to 16 posts, and in not filling up all the available 24 vacancies.

The question whether the first respondent would have been promoted as Professor of Paediatrics in the panel year 2011-2012, if all the 24 vacancies had been filled up, is, however, for the Departmental Promotion Committee to consider, and the persuasive submission of Dr.K.Lakshmi Narasimha, Learned Counsel for the first respondent, notwithstanding, this Court would not undertake any such exercise in proceedings under Article 226 of the Constitution of India.

We consider it appropriate, in such circumstances, to modify the order of the Tribunal and direct the petitioners herein to continue the first respondent as Professor of Paediatrics till the exercise of filling up all the 24 posts of Professor of Paediatrics, for the panel year 2011-2012, is completed.

The Writ Petition stands disposed of accordingly. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY,J

Date:16.02.2015
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