

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.38684 of 2015

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Date: 18.01.2016

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Between:

Sri Paturi Rajesh S/o Satyanarayana,
Aged 31 years, Occu: Student,
r/o. Veleru Village, Bapulapadu Mandal,
Krishna District.

.....Petitioner

And

The State of Andhra Pradesh, rep. by its
Secretary, Medical, Health and Family
Welfare, 3rd Floor, R.No.304, L-Block,
Secretariat Buildings, Saifabad,
Hyderabad and others.

....Respondents

The Court made the following:

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ORDER:

Heard learned counsel for petitioner Sri V.Kishore, learned counsel for 5th respondent Sri Prabhakar Rao and learned Government Pleader for Medical and Health, State of Andhra Pradesh.

2. The District Medical and Health Officer, Krishna District at Machilipatnam, issued recruitment notification No.212/RBSK – DEIC/2014, dated 22.10.2014 calling for applications to fill up various positions including the post of Physiotherapist. Petitioner and the 5th respondent have responded to the said recruitment notification to the post of Physiotherapist. On verification of the eligibility and the marks that can be awarded, general merit list was published. In the said merit list, name of the petitioner was shown at Sl.No.1 and name of the 5th respondent was shown at Sl.No.23. In the tabulated statement, column no.16 deals with Council Registration Certificate. Insofar as the petitioner as well as 5th respondent are concerned, it was written as “No” indicating that both of them did not submit the said registration certificates. Against 5th respondent in addition to above objection, it was also recorded that he did not enclose the marks list. Subsequently, the general merit list was revised and final merit list was published. In the final merit list, 5th respondent was shown at Sl.No.1 and petitioner was pushed to Sl.No.10, though petitioner was awarded marks as 69.27, whereas 5th respondent was awarded marks as 65.33. In the final merit list, the statement against column no.16 discloses that 5th respondent has submitted the certificate of registration, whereas petitioner has not submitted the said certificate.

Based on the said selection, the 5th respondent was appointed by proceedings dated 31.07.2015.

3. After coming to know that the 5th respondent was selected ignoring petitioner, petitioner ascertained information from the various authorities regarding desirability of obtaining registration from the Para Medical Board. The NTR University of Health Sciences and Directorate of Medical Education informed petitioner that for a Physiotherapist there is no requirement of registration with Para Medical Board. Aggrieved by non-selection of the petitioner and selection of 5th respondent, this writ petition is filed.

4. Learned counsel for petitioner contends that when the petitioner is more meritorious, petitioner could not have been ignored and the less meritorious candidate could not have been appointed and the said selection is *ex facie* illegal. According to the learned counsel for petitioner, the Andhra Pradesh Para Medical Board Act, 2006 (for short, 'Act, 2006') has no application to the Physiotherapists. Therefore, the insistence of registration with Para Medical Board and rejecting the candidature of the petitioner on that ground even though he is more meritorious, is illegal.

5. According to the learned counsel for petitioner, in terms of Section 30 of the Act, 2006, the Para Medical discipline mentioned therein or included in a notification issued there under require registration with the Para Medical Board as mandatory before commencement of practice. In terms of power vested in Section 30, the State Government issued notification vide G.O.Ms.No.127, Health Medical and Family Welfare (K2) Department, dated 25.04.2007 listing out 19 Para Medical Technical/Professional disciplines coming within the purview of the Act. Neither original provision of Section 30 nor the notification issued on 25.04.2007 covered the post of Physiotherapist. Therefore, there is no requirement of registration with the Para Medical

Board.

6. Learned counsel for 5th respondent submits that the 5th respondent has not committed any illegality. Since several Physiotherapists registered with the Para Medical Board, 5th respondent has also registered and the same was furnished to the respondent authorities. Having considered the merit of the 5th respondent, he was selected. There is no illegality in the selection conducted by the respondent authorities.

7. In the counter affidavit, it is now fairly admitted by the respondent authorities that as per the provisions of the Act, 2006, there is no requirement of registration with Para Medical Board for Physiotherapy profession and, therefore, the insistence of registration with the Para Medical Board is erroneous. It is now admitted that as the petitioner secured more marks than the 5th respondent, petitioner would be considered for appointment by the District Selection Committee in due course.

8. Act, 2006 requires a Para Medico to register with the Para Medical Board before he seeks to practice his profession. Section 30 of the Act, 2006 covers some of the para medical disciplines. It also authorizes State to specify by way of notification extending the coverage to other para medical disciplines. In the instant case, Physiotherapist profession is not included in the notification issued by the Government in exercise of power under Section 30 of the Act, 2006, nor main provision incorporated this profession and, therefore, there is no requirement of registration with Para Medical Board. Thus, the insistence of registration from Para Medical Board and not considering the claim of the petitioner for appointment even though petitioner was the first meritorious candidate is illegal, amounts to arbitrary exercise of power and without application of mind. Rejecting the candidature of the meritorious candidate on erroneous grounds

speaking volumes of the manner in which the selections are made.

9. Having regard to the clear admission by the respondent authorities, the selection of 5th respondent is liable to be set aside and is accordingly set aside.

10. Before parting with the case, it is necessary to note the following aspects. Having regard to the statutory mandate, this Court by order dated 27.11.2015 directed the Government to file counter affidavit and to produce the records concerning the recruitment to the post of Physiotherapist. Since information as sought by the Court was not made available, by order dated 14.12.2015, the Court directed the appearance of District Medical and Health Officer, Parasupet, Machilipatnam, Krishna District on 28.12.2015 along with the records and to explain the reasons for not furnishing the information and not producing the records as directed by this Court. Records were produced on 29.12.2015 and having found that selections were made illegally, direction was issued to file counter by the official respondents. On behalf of 5th respondent, learned counsel appeared and requested time to file counter. The further appearance of the District Medical and Health Officer was dispensed with, provided counter affidavit was filed before the next date of hearing. No counter affidavit was filed by the next date of hearing. When the matter was taken up for consideration, learned counsel for petitioner brought to the notice of the Court that person, who appeared before the Court on 29.12.2015 and on 05.01.2016, was not the District Medical and Health Officer and no leave was obtained from the Court to dispense with her appearance and to permit another person to represent the District Medical and Health Officer. This fact was not brought to the Court even by the learned Government Pleader or the Officer who appeared. Having taken serious note of this matter, direction was issued to the Principal Secretary to enquire into the matter and file a report before this Court.

11. Though direction was issued to the Principal Secretary, Medical and Health, the enquiry was not conducted by him personally. He delegated conducting of enquiry to the Regional Director. It is not stated how such delegation was made when no such authorization was given by the Court. Court wanted him to look into the matter so that such erring officers can be corrected. The report of the Regional Director shows that the District Medical and Health Officer was unwell and, therefore, deputed another officer. He simply states what Regional Director has reported. The District Medical and Health Officer is present and she stated that due to gynecological problem she could not travel to Hyderabad and, therefore, deputed another officer to represent her. She stated that it was *bona fide* mistake and her absence was not intentional and deliberate. She apologised to the Court for not properly appraising the issue to the learned Government Pleader and also to this Court. The apology is taken on record and the District Medical and Health Officer is warned to be careful in future in dealing with the Court cases. The approach of the Principal Secretary is not appreciated. He did not bestow seriousness to the issue as expected.

12. Accordingly, the writ petition is allowed with costs of Rs.2,000/- (Rupees two thousand only) to be paid to the petitioner by the District Medical and Health Officer (4th respondent).

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

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