

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition Nos.752, 5334,
5362, 5388 and 5389 of 2012

Common Order: (per V.Ramasubramanian, J.)

All these writ petitions, 4 filed by the Government of Telangana and one filed by a private candidate, arise out of a common order passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in a batch of 4 original applications and one contempt application in an already disposed of original application.

2. Heard the learned Government Pleader for Services-I (Telangana) and Mr. Abhinand Kumar Shavili, learned counsel for the petitioners, Mr. T.Suryakaran Reddy, learned Senior Counsel, Mr. B.Sudhakar Reddy and Ms. Neeraja Reddy, and Mr. Jalakam Satyaram, learned counsel appearing for the unofficial respondents.

3. A Notification dated 04-11-2006 was issued by the Andhra Pradesh Yogadhyayana Parishad, Government of Andhra Pradesh, inviting applications for filling up 5 different kinds of posts, namely (1) Research Professor (Yoga), (2) Senior Medical Officer/Senior Lecturer (Yoga), (3) Senior Medical Officer/Senior Lecturer (Naturopathy), (4) Junior Medical Officer/Junior Lecturer (naturopathy) and (5) Lecturers in Yoga.

4. After the process of selection initiated under the aforesaid Notification was completed, one candidate by name Dr. T.Lakshmi Suvarna filed an application in O.A.No.7220 of 2007 on the file of the A.P. Administrative Tribunal, Hyderabad, challenging her non-selection to the post of Senior Medical Officer/Senior Lecturer (Yoga) and also challenging the selection of 5 candidates who were arrayed as respondents 4 to 8 in the application O.A.No.7220 of 2007. Her challenge to the selection of the private respondents in O.A.No.7220 of 2007 was on the ground that for appointment to the posts of Research Professor (Yoga), Senior Medical Officer/Senior Lecturer (Yoga) and Lecturer in Yoga, a person should possess a degree from a recognized University apart from a degree/diploma in Yoga or Naturopathy from a recognized Institution. According to Dr. T.Lakshmi Suvarna, the applicant in O.A.No.7220 of 2007, the private respondents in her application did not hold 2 degrees.

5. The said application O.A.No.7220 of 2007 was allowed by the A.P. Administrative Tribunal by an order dated 11-9-2009, setting aside the selection and appointment of the respondents 4, 7 and 8 therein and directing the consideration of the case of Dr. T.Lakshmi Suvarna along with that of other eligible candidates who possessed 2 degrees for appointment to the said post. The selection and appointment of the 6th respondent in O.A.No.7220 of 2007 was not set aside, since she had already resigned the post.

Insofar as the 5th respondent therein was concerned, her appointment was upheld by the Tribunal.

6. Aggrieved by the order dated 11-9-2009 passed by the A.P. Administrative Tribunal in O.A.No.7220 of 2007, the 4th respondent therein by name Dr. M.Nagalakshmi filed one writ petition in W.P.No.20472 of 2009. The respondents 7 and 8, namely Smt. Ch.Hima Bindu and Smt. J.Premalatha filed a separate writ petition in W.P.No.20988 of 2009. Both these writ petitions were disposed of by a Division Bench of this Court by a final order dated 28-01-2010. By the said order, the Division Bench upheld the order of the Tribunal holding that Dr. M.Nagalakshmi, Smt. Ch.Hima Bindu and Smt. J.Premalatha did not possess 2 degrees and that therefore their appointments to the posts of Senior Medical Officer/Senior Lecturer (Yoga) were illegal.

7. However, this Court also found that for posts in categories 4 and 5, namely Senior Lecturer/Senior Medical Officer (Naturopathy) and Junior Lecturer/Junior Medical Officer (Naturopathy), those 3 respondents were qualified. Therefore, by the said order dated 28-01-2010 passed in W.P.Nos.20472 and 20988 of 2009, this Court directed the consideration of the candidature of those 3 persons for the post to which they were eligible. In addition, this Court found that there were 2 posts remaining vacant and that therefore those candidates who were not qualified for categories 1, 2 and 3, could be considered as against those vacancies.

The operative portion of the judgment of this Court dated 28-01-2010 in W.P.Nos.20472 and 20988 of 2009 read as follows:

“In the light of the above pleadings of the respective parties, we have heard the learned counsel appearing for the parties in support of their respective case. It is evident from the impugned order of the Tribunal and we had also recorded our *prima facie* satisfaction that respondents 4 to 8 before the Tribunal were not qualified to hold the said posts to which they were appointed.

Learned counsel for the petitioners are unable to satisfy us that the petitioners possess the requisite qualification as per notification and as such their appointments were rightly set aside by the Tribunal. We are therefore of the view that the order of the Tribunal setting aside their appointments does not warrant any interference and the *prima facie* satisfaction recorded by us while giving the directions earlier on 24.9.2009 stand confirmed. Therefore, we reiterate para 11 of the impugned order of the Tribunal whereunder while setting aside the appointment of the writ petitioners, a direction was given to the official respondents to consider the candidature of the applicant in the O.A. along with other candidates who are eligible and qualified to hold the said posts possessing requisite degrees and research experience and the necessary selections shall be completed out of the candidates who are already in the selection process applied pursuant to the notification No.1661/APYP/2005, dated 4.11.2006. As per para 12 of the counter affidavit filed by the Government extracted above, two posts notified under the aforesaid notification are said to be vacant. Therefore, we direct the official respondents to consider the case of the petitioners herein with respect to the filling up said vacant posts on merits for which they claim that they hold requisite qualifications. The impugned order of the Tribunal is therefore confirmed subject to the above modification. The official respondents shall complete the said exercise expeditiously, in any case within a period of three months from today.”

8. Pursuant to the aforesaid order of this Court, the Commissioner of the Department of AYUSH of the Government of Andhra Pradesh undertook the exercise of review of the appointments and passed an order dated 07-6-2010. By the said order, Dr. T.Lakshmi Suvarna who was the applicant in O.A.No.7220 of 2007 was selected for appointment to the post of Lecturer (Yoga). Smt. Ch.Hima Bindu was selected for the post of Junior Medical Officer/ Junior Lecturer (Naturopathy). Smt. J.Premalatha was selected to the post of Senior Medical Officer/Senior Lecturer (Naturopathy).

9. Since Dr. M.Nagalakshmi's name did not find place anywhere in the order dated 07-6-2010 passed by the Commissioner, she was issued with a show cause notice dated 17-6-2010 for the termination of her appointment. Therefore, challenging the order of the Commissioner dated 07-6-2010 reviewing the appointments earlier made and also challenging the show cause notice dated 17-6-2010, Dr. M.Nagalakshmi filed an application in O.A.No.4334 of 2010 on the file of the A.P. Administrative Tribunal. Similarly, 2 candidates by name Dr. P.Lakshman and Dr. T.Albert Asheervadam who were issued with similar show cause notices dated 17-6-2010 consequent upon the review of appointments, filed O.A.Nos.5821 and 5822 of 2010 on the file of the A.P. Administrative Tribunal.

10. One candidate by name Dr. S.Bhavani who was originally selected for the post of Senior Medical Officer/ Senior Lecturer (Naturopathy) as against roster point No.2, but who was placed in roster point No.6 for appointment to the very same post, filed an application in O.A.No.4429 of 2010. As a matter of fact, her grievance was only about her placement in the roster point. She did not lose her employment. Therefore, she should not have come up before the Tribunal at that time. But since a whole lot of confusion was created, Dr. S.Bhavani also thought that there must be some contribution from her side. Therefore, she filed O.A.No.4334 of 2010.

11. In all the 4 original applications, the Tribunal granted an interim order putting on hold the exercise of review undertaken by the respondents only at the behest of the Tribunal pursuant to the order passed in O.A.No.7220 of 2007. Therefore, Dr. T.Lakshmi Suvarna at whose instance the whole selection was put to test in the year 2007 went back to square one under the game of snakes and ladders and she had to go before the Tribunal once again with a contempt petition in Contempt Application No.1428 of 2010.

12. The Tribunal clubbed all the 4 original applications filed respectively by Dr. M.Nagalakshmi, Dr. S.Bhavani, Dr. P.Lakshman and Dr. T.Albert Asheervadam along with the contempt petition filed by Dr. T.Lakshmi Suvarna and

disposed them of by a final order dated 04-11-2011. By the said final order the Tribunal directed Dr. T.Lakshmi Suvarna to be accommodated in the post of Senior Medical Officer/ Senior Lecturer (Yoga). The Tribunal also directed the applicant, namely Dr. M.Nagalakshmi to be appointed as Senior Medical Officer (Naturopathy). Insofar as Dr. P.Lakshman and Dr. T.Albert Asheervadam were concerned, they were directed to be continued as Senior Medical Officer/Senior Lecturer (Naturopathy), to which post they had already been appointed and whose appointments were never under challenge before the Tribunal. Insofar as the appointment of Dr. S.Bhavani is concerned, the same was also not under challenge earlier. Therefore, the show cause notices as against these 3 persons were set aside.

13. In other words, the order passed by the Tribunal was virtually a compromise order so as to accommodate all the applicants and to put an end to the litigation after about 4 years of its commencement. But unfortunately, the Government was not happy with the litigation come to an end and hence the Government has come up with 4 writ petitions.

14. In the meantime, one candidate by name Dr. Raheem Sultana who was nowhere in the picture in any of the previous litigation, has also jumped into the fray by filing a writ petition in W.P.No.752 of 2012. Insofar as she is concerned, the present writ petition W.P.No.752 of 2012 is nothing but an attempt at re-litigating an issue on which the

final lid was put in a litigation that she herself initiated. It appears that her candidature was rejected on the ground that she was over aged. She and another candidate filed an application in O.A.No.8186 of 2008. This application was allowed by the Administrative Tribunal directing the Government to select and appoint Dr. Raheem Sultana, the petitioner in W.P.No.752 of 2012 as a Senior Medical Officer. But unfortunately, that judgment of the Tribunal was set aside by a Bench of this Court in W.P.No.22054 of 2010 by a judgment dated 14-12-2011. Therefore, rightly or wrongly the fate of her claim was sealed in 2011 itself.

15. But now taking advantage of the review of the orders of appointment held on 07-6-2010 pursuant to the order passed in O.A.No.7220 of 2007, Dr. Raheem Sultana has come up with one writ petition challenging the common order of the Tribunal.

16. It will be easier to dispose of W.P.No.752 of 2012 first. There are 3 reasons as to why W.P.No.752 of 2012 is liable to be set aside. They are:

(1) The claim of the writ petitioner stands rejected by the order of a Division Bench of this Court dated 14-12-2011 in W.P.No.22054 of 2010 and hence the petitioner cannot re-agitate the same issue on the basis of subsequent developments, which have nothing to do with the issue involved in her own lis.

(2) The writ petitioner was neither a party to the common order of the Tribunal which is impugned in the other 4 writ petitions, nor could she be considered as a person aggrieved by the common order of the Tribunal. The common order of the Tribunal which is impugned in the other 4 writ petitions revolve around the review of appointments made on 07-6-2010 and the show cause notices issued to the previously selected candidates. The writ petitioner Dr. Raheem Sultana was neither a beneficiary of the review dated 07-6-2010 nor was issued with any show cause notice. Therefore, she can never be aggrieved by the outcome of the original applications that were disposed of by the common order of the Tribunal.

(3) In any case, the petitioner cannot challenge in a single writ petition, a common order passed in 5 different applications. Therefore, W.P.No.752 of 2012 is dismissed.

17. Coming to the writ petitions filed by the Government, it is seen that the order of the Tribunal has ultimately put an end to a long drawn litigation. The Tribunal has ultimately placed square pegs in square holes, depending upon the qualifications of each of the candidates.

18. The fact that Dr. T.Lakshmi Suvarna was qualified for the post of Senior Medical Officer/Senior Lecturer (Yoga) and the fact that she should have been appointed to the said post is borne out by the order in review dated 07-6-2010. Though it is contended that the exercise of review was

undertaken by an incompetent authority, namely the Commissioner, we do not think that the same should now act as an impediment. As a matter of fact, none of the private parties have come up with any writ petitions as against the order of the Tribunal (except Dr. Raheem Sultana). The Government cannot take an issue that the review has been done by an incompetent authority. The private parties are happy with the order of the Tribunal. Therefore, the only manner in which the litigation could be put an end to, is to accommodate each one of these parties as against the posts to which they are qualified.

19. The reason as to why we come to the conclusion that the contesting parties shall be accommodated as against the posts to which they are educationally qualified, is that the earlier judgment of the Division Bench of this Court in W.P.Nos.20472 and 20988 of 2009, issuing such a direction has also attained finality with the dismissal of a special leave petition in SLP (Civil) No.11941 of 2010 by an order dated 16-8-2010. Therefore, the directions issued by the Division Bench earlier had attained finality.

20. Therefore, the other writ petitions W.P.Nos.5334, 5362, 5388 and 5389 of 2012 are disposed of to the following effect:

(1) As per the common order of the Tribunal, dated 04-11-2011, Dr. T.Lakshmi Suvarna shall be appointed to the post of Senior Medical Officer/Senior Lecturer (Yoga).

(2) The other 3 candidates, namely Dr. S.Bhavani, Dr. P.Lakshman and Dr. M.Nagalakshmi shall be continued as Senior Medical Officers/Senior Lecturers (Naturopathy).

(3) Dr. T.Albert Asheervadam shall be continued as Junior Medical Officer/Junior Lecturer (Naturopathy).

(4) The Government shall issue appropriate orders within a period of 8 (eight) weeks from the date of receipt of a copy of this order.

21. In the result, W.P.No.752 of 2012 is dismissed and W.P.Nos.5334, 5362, 5388 and 5389 of 2012 are disposed of. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

G.SHYAM PRASAD, J.

14th December, 2016.
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(per VRS, J.)



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