

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION NO.35322 OF 2015

DATED:-03-06-2016

Between:

Dr. Ch. Rajendra Prasad ... Petitioner

And

The State of Andhra Pradesh
and others ... Respondents

COUNSEL FOR THE PETITIONER: Dr. K. Lakshmi Narasimha

COUNSEL FOR RESPONDENT NOs.1 to 4: G.P. for Medical &
Health

(AP)

COUNSEL FOR RESPONDENT NO.5 : Mr. D. Sudersan Reddy

THE COURT MADE THE FOLLOWING:

ORDER: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The petitioner is a Senior Nephrologist with MD and DM degrees. He was appointed as Assistant Professor of Nephrology and was promoted as Associate Professor of Nephrology. He along with respondent No.5 went through the selection process for promotion to the post of Professor of Nephrology. A screening committee was constituted for the said purpose by respondent No.1 and it has made its recommendations through a panel, wherein the petitioner was shown at serial No.1 and respondent No.5 was shown at serial No.2. (The learned Government Pleader for Medical and Health (AP) appearing for respondent Nos.1 to 4 and the learned counsel for respondent No.5 conceded that the names recommended by the screening committee were in the order of merit.) Following the said recommendations, respondent No.1 issued G.O.Ms.No.83, Health, Medical and Family Welfare (A1) Department, dated 27.08.2015, approving the names of the petitioner as well as respondent No.5 for promotion to the cadre of Professor of Nephrology for the year 2014-15. Following the said G.O., respondent No.1 issued G.O.Rt.No.477, Health, Medical & Family Welfare (A1) Department, dated 05.09.2015, temporarily promoting the petitioner as Professor of Nephrology and posting him at Guntur Medical College, Guntur. It needs to be observed in this context that as on the date of issue of the said G.O., the petitioner was working as Associate Professor of Nephrology at Andhra Medical College ('AMC' for short), Visakhapatnam. On the same day on which G.O.Rt.No.477 was issued, G.O.Rt.No.478 was issued temporarily promoting respondent No.5 as Professor of Nephrology and posting him at AMC, Visakhapatnam. These orders

were challenged by the petitioner before the Tribunal. The petitioner's case was that as having invited the options from the petitioner as well as respondent No.5 in pursuance of which, the petitioner has given his option for posting at Visakhapatnam, respondent No.1 has arbitrarily ignored his option, despite the fact that he was placed in the merit list at serial No.1 and posted him at Guntur, while respondent No.5 was posted at Visakhapatnam.

2. On behalf of respondent No.1, Deputy Secretary to Government, Health, Medical and Family Welfare Department (AP) filed a counter-affidavit, wherein he has, *inter alia*, admitted that based on G.O.Ms.No.83, dated 27.08.2015, approving the panel for the year 2014-15, respondent No.2 called for the option of posting from the petitioner on 27.08.2015 and accordingly, the latter attended the office of respondent No.2 on 27.08.2015 and exercised his option for being posted at AMC, Visakhapatnam. It is further averred that respondent No.3 informed that the petitioner, who was Associate Professor of Nephrology, and In-charge Professor of Nephrology, reported for duty on the forenoon of 02.01.2012 at AMC, Visakhapatnam and since then, he has attended the duties for a period of 36 days only and for the remaining period he was on leave. That the long absence of HoD of Nephrology Department has seriously affected the patient care, teaching and training of 9 D.M. Nephrology Post Graduates, that only two kidney transplants were done at AMC/King George Hospital, Visakhapatnam in the last two years and that accordingly, respondent No.3 requested to make necessary arrangements to post a regular professor and HoD for Nephrology Department at AMC/King George Hospital, Visakhapatnam. The counter-affidavit further averred that keeping in view the said letter, respondent No.5 was posted as Professor of Nephrology at AMC, Visakhapatnam and the petitioner was posted at Guntur Medical College, Guntur. That as the Department of Nephrology has suffered with poor patient care when the petitioner was working as Associate and In-charge Professor of

Nephrology at AMC, Visakhapatnam, and as he has attended to duty only for thirty six days at AMC, Visakhapatnam, he was posted as Professor of Guntur Medical College. That no nephrology related work is happening at Visakhapatnam and therefore competent and qualified doctor with commitment is identified for Visakhapatnam.

3. The petitioner filed a rejoinder wherein he has stoutly denied his attending to duty only for thirty six days from 02.1.2012. He has averred that he was deputed to Gandhi Medical College, Hyderabad, on 17.11.2012 by the Director of Medical Education and under Movement Order dt.20.11.2012 he was relieved from Visakhapatnam to report at Gandhi Medical College, Hyderabad, that accordingly he has reported to duty at Gandhi Medical College, Hyderabad, during November 2012 and worked there till 2014 and that during this period he was also given additional charge of Professor of Nephrology, AMC, Visakhapatnam in February, 2012 where he was also associated with Kidney Transplantation, as well as attending the Authorization Committee for Kidney Transplantation at the College thrice a month till February, 2015. That during the period between November, 2012 and 2014 the petitioner was holding in-charge Professor of Nephrology at both the Gandhi Medical College, Hyderabad, and AMC, Visakhapatnam, and he has conducted examinations for Post-Graduate Students of Nephrology of the combined State of Andhra Pradesh, at Gandhi Medical College, Hyderabad. Referring to the leaves availed by him, the petitioner has averred that whatever leave he was entitled to was duly sanctioned and has never absented to his duties unauthorizedly. He has asserted that the action of respondent No.1 in ignoring his option and accepting the option of his Junior constitutes punishment, which is not sustainable.

4. In its order while admitting the O.A., the Tribunal has observed that the petitioner worked for a period of thirty six days from 02.1.2012 till G.O. Rt. No.477 was issued, that he was on leave during the other days and that during that period two kidney transplants were done in

King George Hospital, Visakhapatnam, attached to AMC, Visakhapatnam. Based on these facts, the Tribunal has assumed that the petitioner could not have effectively involved himself in teaching and training of Doctor of Medicine students at AMC, Visakhapatnam.

5. It is significant to note that Professor of Nephrology is a selection post where promotions are effected based on merit-cum-seniority. It is not the pleaded case of any of the respondents that the petitioner was found wanting in his duties either as Associate Professor or in-charge Professor of Nephrology, nor Memos or notices were issued to him in this regard, much less any disciplinary proceedings were initiated against him. The petitioner asserted that being senior to respondent No.5, in ordinary course, he is entitled to be posted at the place opted by him. This assertion is not denied by any of the respondents. As noted supra, the only justification that was offered by respondent No.1 is that it was guided by letter dt.31.8.2015 addressed by respondent No.3 to respondent No.2. As argued by the learned counsel for the petitioner, the timing of the letter dt.31.8.2015 is significant. This letter was stated to have been addressed by respondent No.3 four days after respondent No.1 has issued G.O. Ms. No.83, dt.27.8.2015, accepting the recommendations of the Screening Committee for appointing the petitioner and respondent No.5 as Professors of Nephrology. Till then, neither respondent No.3, nor any other functionary has raised any whisper about the alleged lack of devotion or irregular functioning of the petitioner. What is of interest is that G.O. Rt. No.477 dt.05.9.2015 under which respondent No.1 has promoted the petitioner and posted him at Guntur has not even referred to the letter of respondent No.3 or any communication from respondent No.2, after the said letter dt.31.8.2015 was addressed to him by respondent No.3. If the said letter of respondent No.3 constituted the sole basis for respondent No.1 to ignore the option given by the petitioner, as pleaded by it in its counter affidavit, it is wholly inconceivable that the said letter does not find a reference in G.O. Rt. No.477. The absence of such reference,

leave alone any reasons assigned by respondent No.1 based on the contents of the said letter in the said G.O., proves beyond any pale of doubt that the said letter dt.31.8.2015 was sought to be used only as a ruse to ignore the option of the petitioner and that the same in reality did not weigh with respondent No.1 in denying the petitioner posting at Visakhapatnam. Absence of reference to the said letter thus falsifies the plea of respondent No.1 that the posting of the petitioner at Guntur was impelled by his poor performance. In the absence of any such reference to the said letter in G.O. Rt. No.477 dt.05.9.2015 any amount of pleadings would not justify the otherwise unjustifiable action of respondent No.1 in giving priority to respondent No.5 who is admittedly junior to the petitioner, in the matter of posting. The law is well-settled that the respondents cannot improve their case by supplementing the reasons which are otherwise not found in the impugned order (See *The Commissioner of Police, Bombay v. Gordhan Das Bhanji*^[1] and *Mohindersingh Gill v. The Chief Election Commissioner*^[2]).

6. The respondents have sought to project the petitioner in a poor light by pleading that he worked only for thirty six days in a span of about three years. As noted above, the petitioner has firmly denied the said allegation. In our opinion, this aspect has absolutely no relevance for posting the petitioner, for, when he was found suitable for being promoted as Professor based on merit-cum-seniority, it does not stand to reason that he is found not suitable to work as Professor at Visakhapatnam. As rightly pleaded by the petitioner, no disciplinary proceedings were initiated against him for his availing leaves. His assertion that the leaves availed by him were duly sanctioned and he never absented himself unauthorizedly has not been denied. That these reasons are pressed into service by way of pleadings for the first time is clearly evident from the fact that not even a whisper of these allegations has been made in G.O. Rt. No.477 dt.5.9.2015. As noted

above, denial of posting to a senior in the cadre of Professor at a place of his choice on the ground of unsuitability having been found suitable to and promoted as a Professor is not only a grave incongruity, but also highly arbitrary. We have therefore no hesitation to hold that the alleged unsuitability of the petitioner to work at AMC, Visakhapatnam, is a mere subterfuge, bereft of any basis and legitimacy.

7. For all the above mentioned reasons, the writ petition is allowed as prayed for. Respondent No.1 is directed to forthwith issue fresh posting order as per the option exercised by the petitioner, at AMC, Visakhapatnam, in the place of respondent No.5.

As a sequel to disposal of the writ petition, W.P.M.P. No.45375 of 2015 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

G. SHYAM PRASAD, J

03-06-2016

ghn/bnr

[\[1\]](#) AIR 1952 SC 16

[\[2\]](#) AIR 1978 SC 85