

THE HON' BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition Nos.10036 & 10005 of 2016

COMMON ORDER

(per Hon'ble Sri Justice M. Seetharama Murti, J)

In W.P.No.10036 of 2016, the challenge is to the order dated 13.11.2015 of the Andhra Pradesh Administrative Tribunal, Hyderabad, in OA.No.5218 of 2015.

1.1 In W.P.No.10005 of 2016, the challenge is to the order dated 12.10.2015 passed by the said Tribunal in O.A.No.5227 of 2015.

2. We have heard *Sri P.V. Krishnaiah*, learned counsel for the petitioner in both the writ petitions, the learned Government Pleader for Services I, State of Andhra Pradesh, appearing for the State, and *Sri V. Maheswar Reddy*, learned counsel for the 4th respondent. We have perused the material on record.

3. The undisputed facts and facts essential for consideration are as follows:

3.1 The applicant was an Associate Professor of Ophthalmology and was working at Andhra Medical College, Visakhapatnam. The 4th respondent was also working as Associate Professor of Ophthalmology, Andhra Medical College, Visakhapatnam. While so, departmental action was initiated and charges were framed against the 4th respondent for his unauthorised absence from duty during the period from 08.11.2001 to 30.07.2010. The 4th respondent submitted an explanation stating that he was inextricably involved in several domestic and personal problems and requested to sanction extra ordinary leave and sought permission for voluntary retirement. However, his request for voluntary retirement was rejected as he was not eligible for the same and an Enquiry Officer was appointed. After due enquiry, a report was submitted opining that the absence of the 4th respondent from duty was unauthorised and that he was attending to professional work elsewhere during the period of his

unauthorised absence from duty and that he did not satisfactorily substantiate the contents of his explanation. Consequently, a notice along with a copy of the enquiry report was issued by the Government to the 4th respondent calling for his explanation, if any, thereon. At that stage, on his request, the 4th respondent was referred to Medical Board, King George Hospital, Visakhapatnam (KGH). The Superintendent of the said hospital forwarded to the Government, a medical report of the 4th respondent furnished by the Medical Board. In that report it was opined by the Medical Board that the 4th respondent was suffering from Cervical Spondylitis with triceps weakness since the year 2000 onwards and that he underwent surgical treatment for the same and that on the date of the said report he was physically fit to resume his duties. The Government, in order to verify the correctness of the said medical certificate, directed that the 4th respondent be subjected to medical examination by another medical board to be constituted by the Director of Nizam's Institute of Medical Sciences (NIMS). In the report furnished to the Government by the Medical Board of the NIMS, it was certified that the 4th respondent has the history of Cervical Spondylitis with triceps weakness and that he underwent cervical disectomy and fusion of vertebral bones C4, C5, C6 and C7 and that the certificate issued by the Medical Board of the KGH, Visakhapatnam, is genuine. Thereafter, the Government decided to drop the charges against the 4th respondent and issued G.O.Rt.No.1755, Health Medical & Family Welfare (VCII.1) Department, dated 21.10.2011, (hereinafter, 'G.O.Rt.No.1755') and accordingly dropped the charges against the 4th respondent. Since the said G.O has affected the applicant's seniority as Associate Professor of Ophthalmology and also his chances of promotion, the applicant wanted the Government to review the decision taken by the Government vide G.O.Rt.No.1755. However, as his representations in that regard were not considered, he filed the first of the two OAs viz., OA.No.5227 of 2015 to direct the respondents 1 and 2 to forthwith review G.O.Rt.No.1755

issued by the 1st respondent and initiate further action against the 4th respondent pursuant to the representations of the applicant.

3.2 While things stood thus, the Government issued G.O.Rt.No.539, Health, Medical & Family Welfare Department, dated 05.09.2015, (hereinafter, 'G.O.Rt.No.539 of 2015') whereby the 4th respondent was given promotion retrospectively as Professor for the panel year 2000-01 and was posted as Professor, Andhra Medical College, Visakhapatnam. Further, *vide* G.O.Rt.No.540, Health, Medical & Family Welfare Department, dated 05.09.2015, the applicant was promoted as Professor and posted at Rangaraya Medical College, Kakinada. Therefore, the applicant filed the other O.A.No.5218 of 2015 to declare G.O.Rt.No.539 of 2015 as arbitrary, illegal, *mala fide* and discriminatory etcetera and set aside the same and to declare G.O.Rt.No.540 insofar as it related to the posting of the applicant to Rangaraya Medical College, Kakinada, instead of posting him as Professor of Ophthalmology at Andhra Medical College, Visakhapatnam, as arbitrary, illegal and discriminatory etcetera and issue consequential directions to respondents 1 to 3 to forthwith post the applicant as Professor of Ophthalmology at Andhra Medical College, Visakhapatnam, instead of at Rangaraya Medical College, Kakinada.

4. By separate orders impugned in these two writ petitions, the Tribunal dismissed both the OAs of the applicant/writ petitioner herein. While dismissing OA.No.5227 of 2015, wherein G.O.Rt.No.1755 was subjected to challenge, the Tribunal held that the applicant is a third party insofar as departmental enquiry proceedings against the 4th respondent are concerned and that he has no *locus standi* to maintain the O.A and that the O.A questioning the said G.O.Rt.No.1755 is barred by limitation. As a sequel thereto, the Tribunal dismissed O.A.No.5218 of 2015, *inter alia*, observing that the fact that the 4th respondent is merely a competitor to the applicant for the posting on promotion as Professor at Andhra Medical College, Visakhapatnam,

will not clothe the applicant with any right to question the 4th respondent's promotion retrospectively as Professor for the panel year 2000-2001 and that, at best, it may clothe the applicant with locus to question the 4th respondent's posting on promotion to Andhra Medical College, Visakhapatnam, and nothing more and that the applicant has no *locus standi* to question the 4th respondent's promotion as Professor of Ophthalmology retrospectively for the panel year 2000-01.

5. *Sri P.V. Krishnaiah*, learned counsel for the petitioner, would point out that after the 4th respondent was found guilty in the departmental proceedings no further action was taken pursuant to the serious charges held proved against him and that the 4th respondent was referred on his requisition to Medical Board and that on certification by the Medical Board that he was unwell and that he was absent from duty on medical grounds, his long absence from duty for nearly ten years even without obtaining leave on medical grounds was subsequently treated as leave to which he was found eligible and that G.O.Rt.No.1755 was illegally and arbitrarily issued dropping further action ignoring the finding in the Enquiry Report that the 4th respondent's absence from duty was unauthorised and also the vital fact that during such unauthorised absence he was attending professional work elsewhere and that he played fraud in obtaining the said G.O.Rt.No.1755. He would also submit that G.O.Rt.No.539 of 2015 was issued as a sequel to the above said G.O and that both the said G.Os adversely affected the seniority of the applicant and also his chance of promotion as Professor of Ophthalmology and his posting as professor in Andhra Medical College, Visakhapatnam, and that therefore the applicant has *locus standi* and a legal right to challenge the GOs impugned in both the O.As. He would further contend that the undeniable fact that the 4th respondent attended professional work elsewhere during the period of his unauthorised absence from duty and that he did not even apply for leave on medical grounds even though he was absent from duty for about ten long years coupled with the fact that no explanation is forthcoming from the 4th

respondent for not applying for leave on medical grounds and the further fact that he did not plead in his explanation about his ill-health would reflect that the 4th respondent played fraud on the Government in stating that he absented from duty on medical grounds. He would finally submit that as fraud vitiates every solemn act, the applicant has a right to question both the GOs as the same adversely affected the seniority and promotional opportunity of the applicant and also his posting at Andhra Medical College, Visakhapatnam, and that in the facts and circumstances of the case, the question of bar of limitation does not arise, as the cause of action arose on the detection of fraud and on the date of the issuance of the later G.O.Ms.No.539 of 2015 giving the 4th respondent promotion as Professor retrospectively from the panel year 2000-01 though he indulged in acts of fraud for getting the further departmental action dropped against him and that the findings of the Tribunal in the orders impugned in the writ petitions are erroneous and are liable to be set aside.

6. *Per contra*, Sri V. Maheswar Reddy, learned counsel for the 4th respondent, supported the orders of the Tribunal saying that the applicant has no *locus standi* as he is not eligible for the promotion during the panel year 2000-01 and that his belated challenge to G.O.Rt.No.1755 is barred by law of limitation and that only because of posting of the applicant on his promotion as Professor at Rangaraya Medical College, Kakinada, instead of at Andhra Medical College, Visakhapatnam, he raked up with oblique motive, the issue, which has become stale.

7. We have given earnest consideration to the facts and the submissions. *Prima facie* there is a finding recorded by the Enquiry Officer that the 4th respondent was guilty of unauthorised absence from duty for a period of nearly ten years. The 4th respondent, in his explanation, did not state that he could not attend to duty on medical grounds. *Ex facie*, it appears that he had only stated that he absented from duty as he was inextricably involved in several

domestic and personal problems and even requested for permission for voluntary retirement, though he was ineligible for the same. He did not even apply for leave on medical grounds. No explanation is forthcoming to show that his ill-health, if any, was of a serious nature and that it prevented him even from applying for leave on medical grounds during the long ten years of absence from duty. The material papers filed by the applicant would show that during the period of unauthorised absence, the 4th respondent in his capacity as Chief Ophthalmic Surgeon, Sankar Foundation, Visakhapatnam, issued certificate to the applicant herein certifying that the applicant has undergone Manual Small Incision Cataract Surgery (SICS) from 01.02.2006 to 16.03.2006 at Sankar Foundation Eye Hospital, Visakhapatnam. Therefore, the said certificate raises a genuine doubt as to the correctness of the claim of the 4th respondent that he was unable to attend to duty on medical grounds during the long period of ten years and that his ill health was so serious that he either could not even apply for leave on medical grounds or attend to duty for such a long period. The said aspects need detailed examination as the alleged fraud that was said to have been played by the 4th respondent on the Government, if unravelled and established, after due enquiry, may vitiate G.O.Rt.No.1755 as fraud vitiates every solemn act. Be it restated that G.O.Rt.No.1755, whereby the departmental action against the 4th respondent was dropped, is being challenged on the ground that the said G.O was obtained by the 4th respondent by playing fraud on the Government. It is a fact that the G.O.Rt.No.539 of 2015 giving retrospective promotion to the 4th respondent from the panel year 2000-2001 is a consequential order and that it adversely affected the seniority and also promotional opportunity of the applicant and further resulted in his posting as Professor at Rangaraya Medical College, Kakinada, instead of at Andhra Medical College, Visakhapatnam. Thus, it is obvious that the cause of action arose on the detection of the alleged fraud said to have been perpetrated by the 4th respondent and the consequential issuance of G.O.Rt.No.539 in the year 2015 adversely affecting the rights of the applicant.

On the above analysis, we hold that the applicant is having *locus standi* and his Original Applications filed before the Tribunal are also not barred by law of limitation.

8. Nonetheless, since the issue of fraud was raised and was not examined by the Tribunal and as the said issue and other issues, if any, involved in the O.As require adjudication on merits after detailed examination, even as per the submissions of the learned counsel, we deem it appropriate to set aside the orders impugned in these writ petitions and remit the OAs to the Tribunal for fresh disposal on merits and in strict accordance with the procedure established by law, keeping in view the afore-stated findings of this Court.

9. In the result, the Writ Petitions are allowed and the orders impugned are set aside and the OA.Nos.5218 and 5227 of 2015 are remitted to the Andhra Pradesh Administrative Tribunal, Hyderabad, for fresh disposal in strict accordance with the procedure established by law and as expeditiously as possible. Trite to clarify, we have examined and decided only two issues with regard to *locus standi* and bar of limitation without going into the merits of any other issues, including the issue of fraud, which are required to be adjudicated by the Tribunal after detailed enquiry as directed in this common order.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

JUSTICE M. SEETHARAMA MURTI

20.09.2016
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