

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.1261 of 2014

O R D E R:

Heard Sri V.Jagapathi, Counsel for the petitioner, Ms.P.Sarada, Standing Counsel for respondents 1 and 2, and Sri Sricharan Telaprolu, Counsel for 3rd respondent.

2. The issue raised in this Writ Petition is with regard to determination of the seniority of the petitioner vis-à-vis the 3rd respondent in the cadre of Assistant Professor for the purpose of further promotion to Associate Professor.

3. The 1st respondent issued an employment notification dt.07.01.2001 for the post of Lecturer in the college of Physiotherapy reserved for SC(W) candidate prescribing qualification as Bachelor of Physiotherapy(BPT) with two years experience.

4. The petitioner, who belongs to SC community and having the qualification of Bachelor of Physiotherapy(BPT), applied for it. Petitioner was selected and was appointed as Lecturer by order dt.16.04.2001. She joined the duty as Lecturer on 04.05.2001, her services were regularized as Lecturer with effect from 04.05.2001 and her probation was also declared within time. Petitioner obtained Master degree of Physiotherapy(for short 'MPT'), a two years course, in 2007 and on 12.06.2009, petitioner was appointed as Assistant

Professor and she joined the said post also on the same day. Her services were regularized as Assistant Professor with effect from 12.06.2009.

5. The 3rd respondent was initially appointed as a Tutor on 01.07.1999. Later she was appointed to the post of Lecturer and joined on 19.08.2003. Her services were regularized with effect from 19.08.2003. She obtained Master degree in Physiotherapy (MPT) course on 24.03.2006 and she was sanctioned UGC scale of Rs.8,000-13,500 with effect from 24.03.2006. She was also promoted as Assistant Professor on 12.06.2009 and her services were also regularized as Assistant Professor with effect from 12.06.2009.

6. While so, through a Circular dt.25.10.2010, a tentative seniority list from the cadre of Tutor to the cadre of Professor in the College of Physiotherapy was communicated by the 1st respondent, which showed the 3rd respondent as senior to the petitioner, both in the cadres of Lecturer and Assistant Professor.

7. Petitioner objected to the same and contended that she was appointed directly as Lecturer on 04.05.2001, while the 3rd respondent was working in the College as Tutor as on that date and the 3rd respondent continued to work as such till 18.08.2003 by which time petitioner had put in two years three months of service in the Lecturer cadre and therefore

petitioner should be considered as senior to the 3rd respondent in the Lecturer cadre. Petitioner therefore contended that in the next grade of Assistant Professor also she ought to be considered as senior to the 3rd respondent.

8. But by the impugned memo dt.15.01.2013, the 2nd respondent opined that the petitioner obtained MPT qualification in April, 2007 while the 3rd respondent acquired in November, 2006 and the experience gained by the 3rd respondent after securing the MPT qualification in the cadre of Lecturer was more than that of the petitioner and therefore, the 3rd respondent was rightly shown as senior to the petitioner.

9. Assailing the same, this Writ Petition is filed.

10. On 22.01.2014 in WP.MP.No.1471 of 2014 this Court granted stay of filling up of the vacancy of Associate Professor in the College of Physiotherapy in the 1st respondent-University.

11. To vacate the said order, the 1st respondent filed W.V.MP.No.1303 of 2014 and the 3rd respondent filed W.V.MP.No.1214 of 2014.

12. Counsel for the petitioner contended that since the petitioner is senior in the cadre of Lecturer to the 3rd respondent, having been appointed as Lecturer on

04.05.2001 and the 3rd respondent was appointed as Lecturer only on 19.08.2003, and consequently in the next cadre of Assistant Professor also the petitioner ought to be shown as senior to the 3rd respondent. He contended that the qualification prescribed for the post of Assistant Professor as per the Indian Association of Physiotherapy (IAPT) Norms is Bachelor degree in Physiotherapy with Master's Degree in Physiotherapy along with three years full time experience as Lecturer in Physiotherapy, and since the petitioner fulfilled these requirements, and since the norms of IAPT did not require counting experience only after acquiring the MPT qualification, the petitioner has to be held as senior to the 3rd respondent.

13. Counsel for the respondents 1 and 2 on the other hand contended that the action of the 2nd respondent in showing the 3rd respondent as senior to the petitioner in the cadre of Assistant Professor is correct and that the respondents are entitled to count only the experience obtained after the acquisition of the MPT qualification by the candidates.

14. Counsel for the 3rd respondent reiterated the said contentions.

15. It is not in dispute that the 1st respondent has adopted the norms prescribed by the IAPT for affecting promotions to the post of Assistant Professor, Associate Professor and Professor. This was done pursuant to a decision taken in the

Executive Board Meeting of the 1st respondent conducted on 20.01.1998 vide item No.10. Thus, for the post of Assistant Professor, the said IAPT norms state as under:

“20(c) ASSISTANT PROFESSOR/SR LECTURER –
Bachelor Degree in Physiotherapy with MPT/M.P.Th/M.Sc.
3 years full time experience as Lecturer in Physiotherapy
or a PhD. The candidate desirable of heading a dept must
have worked in the core subject area during the lecturer
tenure.”

16. A reading of the above provision shows that to be eligible to be considered for appointment as Assistant Professor, a candidate must possess both Bachelor Degree in Physiotherapy and MPT along with three years full time experience as Lecturer in Physiotherapy or a PhD.

17. This norm does not specify that the three years full time experience as Lecturer in Physiotherapy should be the experience obtained by a candidate only after acquiring the qualification of MPT.

18. So whether the experience as Lecturer in Physiotherapy is gained by a candidate before acquisition of the MPT qualification or after, it is immaterial. Therefore, the respondents 1 and 2 cannot interpret the norm and read into it the requirement that the acquisition of experience as Lecturer in Physiotherapy by a candidate should also be after obtaining the MPT qualification only and that they would not count the experience obtained by a candidate as a Lecturer in

Physiotherapy *before* the candidate obtained a MPT qualification.

19. Therefore, even if the petitioner had obtained the MPT qualification in 2007 and the 3rd respondent had obtained the said qualification on 24.03.2006, since the petitioner had been working as Lecturer since 2001 and since the 3rd respondent had been working as a Lecturer only from 19.08.2003, the duration of experience of the petitioner in the post of Lecturer is considerably longer (by more two years) than that of the 3rd respondent. Thus, the respondents 1 and 2 cannot treat the petitioner as a junior to the 3rd respondent in the cadre of Assistant Professor on the ground that the 3rd respondent has more experience as Lecturer in Physiotherapy after she acquired the qualification of MPT.

20. Accordingly, the Writ Petition is allowed; the impugned order dt.15.01.2013 and the memo dt.28.11.2013 issued by the 1st respondent reiterating that the 3rd respondent is senior to the petitioner in the cadre of Assistant Professor in the 1st respondent, are both set aside; the respondents are directed to treat the petitioner as senior to the 3rd respondent in the cadre of Assistant Professor and consider her candidature for the post of Associate Professor in accordance with law. Consequently, both the W.V.M.Ps are dismissed. There shall be no order as to costs.

21. Miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

08th December, 2016
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