

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI**

WRIT PETITION NO.19692 OF 2016

O R D E R

(Per Hon'ble Sri Justice Sanjay Kumar)

Aggrieved by the dismissal of O.A.No.441 of 2016 by the Andhra Pradesh Administrative Tribunal, Hyderabad (for brevity, 'the Tribunal'), *vide* order dated 29.04.2016, the applicant therein filed this writ petition. The said O.A. was filed by her impugning the letter dated 28.07.2015 and the Speaking Order dated 29.01.2016 of the Director of Medical Education, Andhra Pradesh, in relation to cancellation of her appointment as an Assistant Professor (Anaesthesia) at Rajiv Gandhi Institute of Medical Sciences (RIMS), Ongole. She sought a consequential direction to the authorities to appoint her as an Assistant Professor with all consequential benefits.

By the order dated 29.04.2016, the Tribunal opined that the application submitted by the petitioner for direct recruitment was invalid as she was an in-service candidate, being a Civil Assistant Surgeon at Guntur under the Directorate of Public Health, and could not have aspired for direct recruitment to the post of Assistant Professor. The Tribunal held that the petitioner's application for direct recruitment was fraudulent as she had not disclosed that she was working as a Civil Assistant Surgeon at the Government Fever Hospital, Guntur, and had played a fraud by receiving posting orders at RIMS, Ongole, after her appointment as an Assistant Professor without getting herself relieved from the Government Fever Hospital at Guntur. The Tribunal therefore upheld the cancellation of her appointment as an Assistant Professor and dismissed the O.A.

Heard Sri G.Vidya Sagar, learned senior counsel representing Smt. K.Udaya Sri, learned counsel for the petitioner, and the learned Government Pleader for Services, Andhra Pradesh, appearing for the State and its medical authorities.

The petitioner is a post-graduate in Anaesthesiology. She was initially appointed as an Assistant Professor of Anaesthesiology on contract basis at RIMS, Ongole, in August, 2011. She worked in that capacity up to February, 2014. Thereafter, she was appointed as a Civil Assistant Surgeon and posted at the Government Fever Hospital, Guntur. She was unsuccessful in securing regular appointment as an Assistant Professor by lateral entry in the quota reserved for in-service candidates. While so, the Directorate of Medical Education, Government of Andhra Pradesh, issued notification dated 13.04.2015 for direct recruitment to the posts of Assistant Professors in Andhra Pradesh Medical Education Service. One of the specialties mentioned was Anaesthesia and out of the 33 posts notified against this discipline under various reservation categories, four were allotted to Scheduled Castes (SC-General 3, SC-Women 1), the category pertaining to the petitioner. Significantly, the notification did not state that in-service candidates were debarred from participating in this direct recruitment. On the other hand, it provided for weightage marks up to 15% for Government service, including contract service. The methodology for allotting weightage marks was as under: 2.5 marks per six months of service in tribal areas; 2 marks for every six months in rural areas and 1 mark for six months in urban areas.

The notification also stated that the decision of the Selection Committee as per G.O.Ms.No.109, Health, Medical and Family

Welfare (A2) Department, dated 23.06.2014, would be final. Under G.O.Ms.No.109 dated 23.06.2014, the Government had accorded permission to the Director of Medical Education, Andhra Pradesh, to issue a notification for filling up vacancies in the posts of Assistant Professors and undertake selection through a Departmental Selection Committee. This G.O. also spoke of weightage marks for Government service, including contract service. While so, it appears that the Government of Andhra Pradesh issued Memo No.5549/A1/2015 dated 25.05.2015 purporting to give certain clarifications for the ongoing recruitment to the posts of Assistant Professors undertaken *vide* G.O.Ms.No.109 dated 23.06.2014 and the consequential notification dated 13.04.2015. One of the clarifications issued thereunder was to the effect that the contractual service rendered in all programmes/schemes under the control of the Commissioner of Health and Family Welfare/Director of Public Health and Family Welfare/Commissioner of Andhra Pradesh Vaidya Vidhana Parishad in the present and the erstwhile State of Andhra Pradesh would be counted for weightage of marks, excluding compulsory Government service and regular Government service.

Be it noted that the petitioner only sought weightage marks for her contract service and not for the regular Government service rendered by her, after being appointed as a Civil assistant Surgeon. She was granted 40.714287 marks towards weightage for her qualification, 4 marks towards weightage for her seniority and 5 marks towards weightage for her contract service. In total, she secured 49.714287 marks. In the merit list drawn up by the authorities, she stood at Serial No.23. By letter dated 16.07.2015, the Director of Medical Education, Andhra Pradesh, called upon her

to submit her original certificates for verification on 22.07.2015/ 23.07.2015. Significantly, this letter contained Clause No.11, which reads as under:

‘If presently working in Govt. service as CAS/Tutor, service, a certificate must be produced from the Controlling authority.’

Amongst the original certificates produced by the petitioner in response to this communication was the service certificate issued by the Superintendent, Government Fever Hospital, Guntur, certifying that she had worked as a Civil Assistant Surgeon at the said hospital from 20.02.2014 till the date of issuance of the certificate and that it was issued only for the purpose of applying for the post of Assistant Professor. After verification of her original certificates, including the aforestated service certificate, the Director of Medical Education, Andhra Pradesh, issued proceedings dated 23.07.2015 appointing the petitioner as an Assistant Professor of Anaesthesia at RIMS, Ongole. The petitioner immediately submitted her letter of resignation dated 23.07.2015 to the Director of Medical Education, Andhra Pradesh, Hyderabad, and the Director of Public Health, Andhra Pradesh, in relation to relinquishment of the post of Civil Assistant Surgeon at the Government Fever Hospital, Guntur. She then submitted her joining report to the Director, RIMS, Ongole, on 24.07.2015. The Director, RIMS, Ongole, issued movement order dated 24.07.2015 noting that the petitioner had reported for duty on the said date and requested the Professor and HOD of Anaesthesia, RIMS, Ongole, to admit her to duty and send a compliance report.

While matters stood thus, the Director of Medical Education, Andhra Pradesh, issued the letter dated 28.07.2015 informing the Director, RIMS, Ongole, that the appointment order issued to the

petitioner, who was selected as an Assistant Professor of Anaesthesia at RIMS, Ongole, was cancelled as her weightage marks were disallowed as she had not informed about her regular Government service at the Government Fever Hospital, Guntur, and as her weightage marks had been wrongly calculated. The Director, RIMS, Ongole, was requested to take necessary action. Acting thereupon, the Director, RIMS, Ongole, issued order dated 29.07.2015 relieving the petitioner from her duties as Assistant Professor (Anaesthesia).

Aggrieved thereby, the petitioner filed O.A.No.6420 of 2015 before the Tribunal assailing the cancellation letter dated 28.07.2015. By order dated 18.12.2015, the Tribunal disposed of the said O.A., taking note of the fact that the petitioner had submitted representation dated 23.09.2015 to the Director of Medical Education, Andhra Pradesh, and directed the said authority to consider and dispose of the same on merits and as per relevant rules within a time frame. Pursuant thereto, Speaking Order dated 29.01.2016 was issued by the Director of Medical Education, Andhra Pradesh. Therein, the Director observed that as the petitioner had availed the benefit of contract service weightage marks for her previous recruitment as a Civil Assistant Surgeon, she was not eligible to avail the same for recruitment to the post of Assistant Professor and that her appointment was therefore cancelled. Reference was made to the Memo dated 25.05.2015 and the Director observed that in-service candidates who had not been selected for lateral entry to the reserved 40% of the vacancies in the posts of Assistant Professors had competed for the 60% vacancies allotted to direct recruitment and were claiming service weightage marks. The Director further stated that as these in-service doctors had already

been selected to Government service and had claimed service weightage earlier during their selection as Civil Assistant Surgeons and had come up for direct recruitment for a second time, they could not be given the benefit of service weightage marks again. Reference was made to the case of one Dr.M.Manjula, Tutor, Government Medical College, Ananthapur, who had been selected as an Assistant Professor (Anaesthesia), but whose appointment was cancelled as she had availed weightage marks in her previous direct recruitment and whose challenge to the same was stated to have been unsuccessful as the Tribunal dismissed O.A.No.5509 of 2015 filed by her. In these circumstances, the Director negatived the representation made by the petitioner.

Aggrieved by the rejection of her representation, the petitioner filed O.A.No.441 of 2016 before the Tribunal. As interim relief was denied to her, she filed W.P.No.9184 of 2016 before this Court. By order dated 31.03.2016, a Division Bench of this Court disposed of the writ petition observing that the Tribunal should consider the request for interim relief and pass appropriate orders either granting or refusing the same as non-consideration of the request for grant of interim relief may result in miscarriage of justice. The petitioner was therefore given liberty to file an application before the Tribunal for grant of interim relief and in the event such an application was filed, the Bench observed that the Tribunal would surely consider the same and pass appropriate orders thereon. Taking note of this order, the Tribunal took up the main O.A. itself for disposal as the pleadings were complete and passed the order presently under challenge.

In the meanwhile, it appears that the petitioner submitted representation dated 21.03.2016 in relation to her grievance and the

Director of Medical Education, Andhra Pradesh, issued another Speaking Order on 26.03.2016. While reiterating the contents of the earlier Speaking Order dated 29.01.2016, the Director adverted to the fact that some of the vacancies in the posts of Assistant Professors had been earmarked for lateral entry of in-service candidates and asserted that selection by way of direct recruitment to the posts was done strictly as per the Memo dated 25.02.2015. Reference was made to the case of Dr.Y.V.Tripti who was selected as an Assistant Professor as per her position in the merit list prepared according to the said Memo. Reference was also made to the cases of Dr.B.Malleswari and Dr.Vijaya Krishna Murthy who were stated to have been selected as per their merit and as per rules of reservation in accordance with the orders of the Tribunal. Stating so, the Director once again negated the request of the petitioner.

This being the factual scenario, Sri G.Vidya Sagar, learned senior counsel, would assert that the finding of the Tribunal that the application of the petitioner for direct recruitment was invalid *ab initio* was wholly unsustainable on facts and in law. The learned senior counsel pointed out that neither the notification nor the relevant Government Order barred in-service candidates from aspiring for direct recruitment to the post and the general principles of service jurisprudence also do not postulate such a bar. He would further submit that though the petitioner and Dr.Y.V.Tripti were identically situated, the authorities strangely conferred her with the benefit of service weightage marks for her contract service, though she was also appointed as a Civil Assistant Surgeon, while recruiting her to the post of Assistant Professor (Anaesthesia). He would place

reliance upon the cases of others similarly situated who were granted relief by the Tribunal and the authorities implemented the same.

Per contra, the learned Government Pleader for Services, adopting the averments made by the Director of Medical Education, Andhra Pradesh, in his counter, would contend that as the petitioner already availed the benefit of service weightage marks for recruitment as a Civil Assistant Surgeon, she could not again seek the benefit thereof for direct recruitment to the post of Assistant Professor. She would assert that this position was clarified by the Government under Memo dated 25.05.2015 and in the light of the said clarification, the action of the authorities in cancelling the weightage marks erroneously extended to the petitioner was justified. She would further state that the cases of others, relied upon by the learned senior counsel, are wholly incomparable on facts but would point out that Dr.M.Manjula, who stood similarly situated, failed to secure any relief from the Tribunal. She would therefore assert that the writ petition is devoid of merit and warrants dismissal.

In reply, Sri G.Vidya Sagar, learned senior counsel, would reiterate that no explanation worth the name is forthcoming as to how the authorities distinguished the case of the petitioner from those of identically situated persons. He would further state that Dr.Y.V.Tripti was granted relief by the authorities straightaway without even being driven to the Tribunal but the petitioner was being subjected to discrimination.

At the outset, it may be noticed that neither the notification nor the relevant Government Order barred in-service candidates from aspiring for direct recruitment to the notified posts. On the other hand, the very fact that service weightage marks were provided for

Government service and also contractual service clearly demonstrates that in-service candidates were eligible to respond to the said notification. Significantly, G.O.Ms.No.109 dated 23.06.2014 and the notification dated 13.04.2015 spoke of such weightage marks being allotted for Government service, including contract service. It was only under the Memo dated 25.05.2015 that a clarification was given to the effect that compulsory Government service and regular Government service would not be counted for allotment of weightage marks. Significantly, this Memo was held to have no application to the notification issued on 13.04.2015 *vide* order dated 19.08.2015 passed by the Tribunal in O.A.No.4599 of 2015 filed by Dr.Vijaya Krishna Murthy. A Division Bench, comprising the Chairman of the Tribunal and an Administrative Member, allowed the said O.A. holding that as the notification was issued prior to the Memo dated 25.05.2015, it could not have application to the recruitment process undertaken pursuant to the said notification or to the claim of Dr.Vijaya Krishna for weightage marks towards Government service.

Surprisingly, the very same Bench of the Tribunal brushed aside its own finding and observed in the order, presently under challenge, that the said judgment had no application as the facts relating to the earlier case were totally different. This Court is at a loss to understand the reasoning of the Tribunal. Once the Tribunal held, on principle, that the Memo dated 25.05.2015, having been issued after the notification dated 13.04.2015, could not have application to the recruitment process undertaken thereunder, the question of adopting a different stand in this case, when it related to the same recruitment process under the very same notification, did not arise. That apart, this Court finds that the Memo dated

25.05.2015 does not even further the case of the authorities in so far as the present issue is concerned. It is to be noted that the petitioner did not seek any service weightage marks for her Government service as a Civil Assistant Surgeon. She only sought service weightage marks for her contract service. All that the Government clarified under the Memo dated 25.05.2015 was that no service weightage marks would be granted for compulsory Government service or regular Government service. This clause in the Memo dated 25.05.2015 reads as under:

‘v) The contractual service rendered in all programmes/schemes under the control of Commissioner of Health & Family Welfare / Director of Public Health & Family Welfare, A.P., Hyderabad / Commissioner, A.P. Vaidya Vidhana Parishad, Hyderabad in present and erstwhile Andhra Pradesh State, excluding compulsory Government service and regular Government service will be counted for weightage of marks.’

This clause is now sought to be interpreted by the authorities to mean that the petitioner would not be entitled to her contract service weightage marks as she already availed the benefit thereof for recruitment as a Civil Assistant Surgeon. The aforesaid clause does not, by any stretch of imagination, lend itself to an interpretation whereby it could support this stand of the authorities. On the face of it, the clause does not speak of denial of contract service weightage marks to candidates who had already availed the benefit thereof during a prior recruitment. Similarly, neither did G.O.Ms.No.109 dated 23.06.2014 nor the notification dated 13.04.2015 state to this effect. In the absence of such a stipulation in clear terms, the authorities cannot now come up with a new restriction in relation to the recruitment undertaken pursuant to the notification dated 13.04.2015. As pointed out by the Supreme Court

in ***K.MANJUSREE V/s. STATE OF ANDHRA PRADESH***¹, it is not open to the authorities to change the rules once the game has begun. This principle was perhaps the basis for the Tribunal to hold in favour of Dr.Vijaya Krishna Murthy in O.A.No.4599 of 2015. Significantly, Dr.Vijaya Krishna Murthy was directly covered by the so called clarification issued under the Memo dated 25.05.2015 as he wanted service weightage marks to be allotted for his Government service. Despite the same, the Tribunal held in his favour on the ground that the Memo could not be given retrospective effect. The petitioner, on the other hand, only sought service weightage marks for her contract service and though there was no bar against her seeking such benefit, she was denied.

It may also be noticed that one Dr.B.Malleswari, who was working as a Civil Assistant Surgeon at the Government General Hospital, Ananthapur, also applied for direct recruitment to the post of Assistant Professor pursuant to the notification dated 13.04.2015. She approached the Tribunal by way of O.A.No.4320 of 2015 aggrieved by the action of the authorities in not awarding her service weightage marks. The said O.A. was disposed by the same Bench which disposed of O.A.No.4599 of 2015 *vide* order dated 28.07.2015, directing the authorities to award service weightage marks to her for her past Government service. This order was also implemented and both Dr.B.Malleswari and Dr.Vijaya Krishna Murthy have been appointed as Assistant Professors.

It would be relevant at this stage to examine the case of Dr.M.Manjula, which has been pressed into service by the authorities time and again in support of their cancellation of the petitioner's

¹ (2008) 3 SCC 512

appointment. Dr.M.Manjula was a Tutor at the Ananthapur Government Hospital. She was also selected as an Assistant Professor pursuant to the notification dated 13.04.2015. She filed O.A.No.5509 of 2015 seeking a direction to the authorities to relieve her from the post of Tutor at Ananthapur Government Hospital to enable her to join as an Assistant Professor at S.V.Medical College, Tirupati. The authorities thereupon informed the Tribunal that the appointment of Dr.M.Manjula as an Assistant Professor was cancelled *vide* proceedings dated 04.08.2015 of the Director of Medical Education, Andhra Pradesh, as her weightage marks were wrongly calculated. Taking note of the said cancellation order dated 04.08.2015, the Tribunal dismissed O.A.No.5509 of 2015 opining that the same did not deserve consideration for directing the authorities to permit her to get herself relieved at Ananthapur as her remedy, if any, would be against the cancellation order dated 04.08.2015. It is therefore clear that Dr.M.Manjula never questioned the cancellation of her appointment in the said O.A. but only sought relieving of her services at Ananthapur so as to enable her to join at Tirupati. In the light of the cancellation order which remained unchallenged, the Tribunal rightly dismissed the said O.A. Repeated reliance placed upon this order of the Tribunal by the authorities is misconceived as this case had nothing to do with the validity of the cancellation of the appointment of Dr.M.Manjula. Reference to this case in the Speaking Orders dated 29.01.2016 and 26.03.2016 by the Director of Medical Education, Andhra Pradesh, is thus either deliberately misleading or reflects total non-application of mind.

Significantly, the case of Dr.Y.V.Tripti was referred to by the petitioner in her O.A. but the counters filed by the authorities, be it

before the Tribunal or before this Court, are studiously silent as to why she was granted the benefit of service weightage marks when she stood identically situated as the petitioner and why she was provided with appointment as an Assistant Professor. It is the specific case of the petitioner that she and Dr.Y.V.Tripti stood on par as both of them worked as Civil Assistant Surgeons at the Government Fever Hospital, Guntur, but despite the same, their cases were dealt with disparately so as to deny her the benefit of service weightage marks though the same was extended to Dr.Y.V.Tripti. The learned Government Pleader has no answer to this.

It is relevant to note that Dr.Vijaya Krishna Murthy, a BC-B category candidate, secured 48.3929 marks, while Dr.Y.V.Tripti, an OC category candidate, secured 47.9286 marks. Dr.Malleswari, once she was given additional weightage marks, secured 46.75 marks. On the other hand, the petitioner secured 49.7143 marks.

Given the aforestated facts, this Court is left with the strong impression that the case of the petitioner alone was singled out for discriminatory treatment. Others who stood directly covered by the Memo dated 25.05.2015 were given benefit by the Tribunal, holding that the said Memo could have no retrospective application to the recruitment process undertaken pursuant to the notification dated 13.04.2015, but though the said Memo had no application at all to the claim of the petitioner, the same was pressed into service by the authorities to support their action in cancelling her appointment.

Surprisingly, though the authorities never alleged any fraud on the part of the petitioner in submitting her application for direct recruitment, the Tribunal concluded so without there being any pleading to that effect. Trite to state, fraud must be specifically

pleaded and proved. When it was not even the case of the authorities that the petitioner had played a fraud, the finding of the Tribunal to that effect has no legs to stand upon.

On the above analysis, this Court finds that the authorities seem to have been totally at sea as to what should be the procedure to be followed by them while undertaking direct recruitment pursuant to the notification dated 13.04.2015. The relevant Government Order and the notification provided for weightage marks for Government service but the authorities seem to have had second thoughts on this issue after the process had begun. Hence, the clarification under the Memo dated 25.05.2015 to the effect that compulsory Government service and regular Government service would not be counted for weightage marks. All through, the authorities never thought it fit to make it public that they did not want to award service weightage marks to those candidates who had already availed the benefit of such contract service weightage marks during an earlier recruitment to Government service. Having failed to divulge the same, it is not open to them to now come up with this new bar which is not even supported by the Memo dated 25.05.2015. Their action in treating the case of Dr.Y.V.Tripti differently speaks volumes in this regard. This pick and choose method of applying whimsical norms adopted on an *ad hoc* basis to suit their own vested interests by the authorities requires to be condemned in no uncertain terms. More deserving candidates, such as the petitioner, are sought to be excluded by these arbitrary tactics while accommodating those who are perhaps to the liking of the authorities.

Sri G.Vidya Sagar, learned senior counsel, would state that the petitioner is still being continued at RIMS, Ongole, in the capacity of

a Tutor so as to help the organization meet the norms of the Medical Council of India. The exploitative methods adopted by the authorities, while sacrificing merit at the altar of an arbitrary selection process, therefore beseeches interference by this Court. Having implemented the orders passed by the Tribunal in the cases of Dr.Malleswari and Dr.Vijaya Krishna Murthy and having shown special favour to Dr.Y.V.Tripti, the authorities seek to distinguish the case of the petitioner by placing reliance on the wholly unconnected case of Dr.M.Manjula in O.A.No.5509 of 2015. These misleading and misguiding tactics adopted by the authorities warrant special mention as it justifies imposition of costs.

The writ petition is accordingly allowed setting aside the order dated 29.04.2016 passed by the Andhra Pradesh Administrative Tribunal in O.A.No.441 of 2016. The letter dated 28.07.2015 and the Speaking Order dated 29.01.2016 of the Director of Medical Education, Andhra Pradesh, are also set aside. The subsequent Speaking Order dated 26.03.2016, which is a mere reiteration of the earlier order, is also set aside. The respondents shall forthwith restore the appointment of the petitioner as an Assistant Professor (Anaesthesia) at Rajiv Gandhi Institute of Medical Sciences, Ongole, with all consequential benefits.

Pending miscellaneous petitions shall stand closed in the light of this final order.

For the reasons already set out *supra*, the respondents are directed to pay costs of Rs.20,000/- (Rupees Twenty Thousand only) to the petitioner which shall be recovered, in accordance with the due procedure, from the officers responsible for mishandling her case and

for adopting misleading tactics, as set out in the Speaking Orders dated 29.01.2016 and 26.03.2016.

SANJAY KUMAR, J

N.BALAYOGI, J

27th FEBRUARY, 2017

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