

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

WRIT APPEAL No.1319 of 2017

12.09.2017

Between:

The State of Andhra Pradesh,
represented by its Principal Secretary,
Health, Medical and Family Welfare Department,
Velagapudi, Guntur District and others

..Appellants

and

K.V.Hanumantha Reddy and others

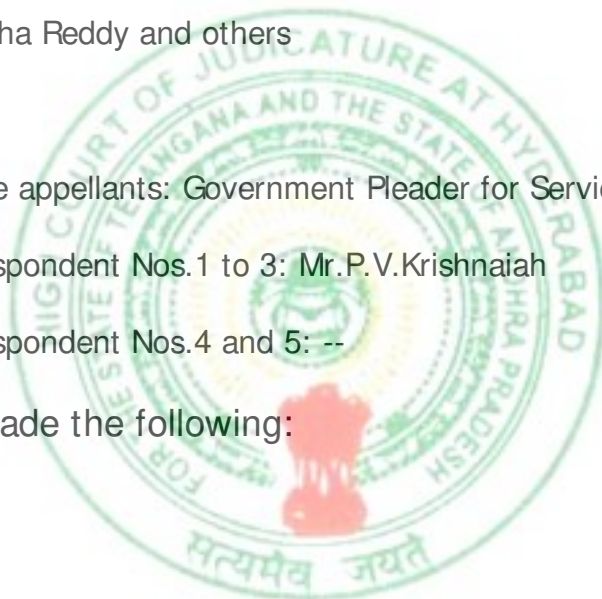
..Respondents

Counsel for the appellants: Government Pleader for Services (A.P.)

Counsel for respondent Nos.1 to 3: Mr.P.V.Krishnaiah

Counsel for respondent Nos.4 and 5: --

The Court made the following:



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

This writ appeal arises out of order, dated 10.08.2017, in W.P.No.24856 of 2017.

2. We have heard the learned Government Pleader for Services (A.P.) appearing for the appellants and Mr.P.V.Krishnaiah, learned counsel for respondent Nos.1 to 3 (for short "the private respondents").

3. The private respondents claimed to be working in Government Ayurvedic dispensaries on temporary basis in various capacities, such as Compounder, Sweeper-cum-Nursing orderly etc.,. Previously, they filed W.P.No.3841 of 2017 for the following reliefs:

"Main Relief:

...to grant appropriate relief more in the nature of Writ of Mandamus declaring the action of the Respondents

a) not paying the salary from April 2016 onwards to the Petitioners and

b) not renewing the services of the Petitioners by executing agreement and obtaining bond from the Petitioners on par with their juniors as well as

c) not filling up 451 vacant Medical officer posts in Ayush in the dispensaries under NRHM scheme as arbitrary, illegal, malafide, discriminatory and unconstitutional violating Article 14, 16 and 21 of the Constitution of India and contrary to the objective sought to be achieved in framing the National Rural Health Mission scheme by Government of India and issue consequential directions directing the Respondents to forthwith

a) pay the salary to the Petitioners from April 2016 onwards and

b) extend the services of the Petitioners by executing agreement and obtaining bond on par with their juniors or alternatively replace the Petitioners in place of their juniors, who are continuing in the dispensaries under NRHM scheme where Medical Officers are continuing and further

c) direct the Respondents to forthwith accommodate /absorb the Petitioners against the vacancies which are existing in the Government dispensaries and also

d) direct the Respondents to forthwith fill up 451 Medical officers (Ayush) in the existing vacant posts in the dispensaries under NRHM scheme and also

e) direct the Government of India to inspect and supervise the dispensaries existing under NRHM scheme in releasing budget to the extent of Union of India share and pass such other order or orders...

Interim Reliefs:

1.....to direct the Respondents to forthwith pay the salary to the Petitioners from April 2016 onwards on par with other paramedical staff, who are continuing in the dispensaries where Medical officers in Ayush are existing pending disposal of the Writ Petition.

2.....to direct the Respondents to forthwith accommodate the Petitioners in the dispensaries under NRHM scheme in place of the Petitioner juniors following last-come-first-go principal or alternatively direct the Respondents to forthwith accommodate/absorb the Petitioners against the vacancies existing in the dispensaries which are under the control of State of Andhra Pradesh pending disposal of the Writ Petition.

3.....to direct the Respondents to forthwith fill up 451 Medial Officer posts which are vacant from January, 2012 in the dispensaries under NRHM scheme.

4.....to direct the Government of India to supervise and inspect the dispensaries established under NRHM scheme and release budget to the extent of Government of India share under NRHM scheme pending disposal of the Writ Petition.”

Pending the said writ petition, the private respondents filed W.P.No.24856 of 2017 for the following relief:

“...to grant appropriate relief more in the nature of Writ of Mandamus under Article 226 of the Constitution of India declaring the Memo No.3353/B/NRHM/2016, dt.20.04.2017 issued by the 3rd Respondent as arbitrary, illegal, unconstitutional and

discriminatory violating Article 14, 16 and 21 of the Constitution of India and issue consequential directions directing the Respondents to forthwith pay salaries till July, 2017 and continue to pay salary every month.”

Before the appellants filed their counter-affidavit in W.P.No.24856 of 2017, the learned Single Judge has directed the appellants to pay salary to the private respondents during the period they worked under the National Rural Health Mission (NRHM) Scheme. Assailing this order, the appellants have filed this writ appeal.

4. The learned Government Pleader for Services (A.P.) appearing for the appellants has submitted that W.P.No.24856 of 2017 is not maintainable for two reasons viz, (1) that as the private respondents are being engaged by Ayush Department, which is a Government organization, they are not entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution of India as they have to avail their remedy before the Andhra Pradesh Administrative Tribunal; and (2) that having already filed W.P.No.3841 of 2017 for several reliefs, including the one that pertains to non-payment of salaries to them, the private respondents are barred from filing a fresh writ petition. As regards the order under appeal i.e., interim direction granted by the learned Single Judge, the learned Government Pleader has submitted that as the said order is in the nature of granting the final relief claimed in the writ petition itself, such a relief ought not to have been granted even before the appellants are called upon to file their counter-affidavit.

5. Mr.P.V.Krishnaiah, learned counsel for the private respondents, has vehemently submitted that grave injustice is being done by the State to the private respondents and various similarly situated persons whose services are being utilized as they are being made to starve without

payment of salaries/wages. He has further submitted that as new cause of action has arisen for the private respondents with the issue of memo No.3353/B3/A2/NRHM/2016, dated 20.04.2017, they are entitled to file a fresh writ petition; that having regard to the pathetic condition of the private respondents, the learned Single Judge has granted the interim relief after hearing both sides and that therefore, the said order cannot be interfered with.

6. We have carefully considered the respective submissions of the learned counsel for the parties. Before considering the submissions of the learned counsel for the parties, we would like to observe that as the writ petition is pending, we do not intend to express our conclusive opinion. The views recorded in this order shall not come in the way of the learned Single Judge to take an independent view after considering the pleadings and hearing the counsel in the writ petition.

7. As regards the first submission of the learned Government Pleader regarding the maintainability of the writ petition in view of availability of the remedy before the Andhra Pradesh Administrative Tribunal, as the writ petition itself is pending before the learned Single Judge, it is not appropriate for us to take a view on this aspect at this stage.

8. With regard to the second submission of the learned Government Pleader, memo impugned in W.P.No.24586 of 2017 contains two aspects viz., (1) the circumstances under which the private respondents and other similarly situated persons are to be discontinued and (2) payment of their salaries. *Prima facie*, we are of the opinion that both the aspects in the impugned memo are covered by prayer (a) and prayer (b) following prayers (c) and (a) in the previous writ petition i.e., W.P.No.3841 of 2017.

As regards the continuance or otherwise of the private respondents, since no interim direction has been granted by the learned Single Judge, it is not necessary for us to deal with the said aspect. So far as the relief of payment of salary is concerned, not only in the main relief but also in the interim relief in the previous writ petition i.e., W.P.No.3841 of 2017, the private respondents claimed payment of salaries. We are of the *prima facie* opinion that when an issue, which has already been directly and substantially in issue in the previous writ petition between the same parties, the same cannot be the subject matter in a subsequent writ petition by operation of principle of *res judicata*. In this view of the matter, the *ad interim* order passed by the learned Single Judge directing payment of salary cannot be sustained at this stage.

9. Hence, the order under appeal is set aside. However, the private respondents are permitted to pursue the writ petition before the learned Single Judge. As the appellants have not filed their counter-affidavit, they are permitted to file the same raising all the legally permissible objections. After completion of the pleadings, the learned Single Judge is requested to dispose of the miscellaneous application filed for interim relief. The Writ Appeal is, accordingly, allowed.

10. As a sequel to allowing the Writ Appeal, W.A.M.P.No.2409 of 2017 filed by the appellants for interim relief shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

M.S.K.JAI SWAL, J

12th September, 2017
GHN

