

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

WRIT PETITION No.13942 of 2017

ORDER : (Oral)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, petitioner has assailed the order dated 20th July 2015, passed in O.A.No.9928 of 2012, whereby, the learned Tribunal, while allowing the O.A. filed by the 1st respondent, directed the 1st petitioner to treat the period from 12.04.2012 to 12.02.2013 as compulsory wait for the respondent as Professor of General Surgery in Government Medical College, Anantapur and directed the petitioners 1 to 3 to pay salary of the 1st respondent as Professor for General Surgery in Government Medical College, Anantapur. The Tribunal further directed to complete the exercise within a period of three months from the date of receipt of the order.

2. The 1st respondent was working as Associate Professor, General Surgery in Government Medical College, Anantapur. He was promoted to the post of Professor of General Surgery and posted at Sri Venkateswara Medical College, Tirupathi. The 1st respondent, vide O.A.No.2664 of 2012, challenged his posting to Tirupathi being without conducting counselling. In the same posting order, two other Associate Professors were also given promotions and were posted to different places. They also questioned their postings without conducting counselling in accordance with G.O.Ms.No.273, Health, Medical & Family Welfare (C2) Department, dated 21.05.1999. While so, the 1st respondent was relieved as Associate Professor in Government Medical College, Anantapur on 12th April 2012. After relieving

the 1st respondent from the post of Associate Professor, another Associate Professor joined in that post at Anantapur.

3. Learned counsel appearing on behalf of 1st respondent submits that the Tribunal issued interim order in O.A.No.2664 of 2012, therefore, the 1st respondent could not join as Associate Professor at Anantapur as the said post was occupied by another incumbent. Finally, O.A.No.2664 of 2012 along with two other O.As., was allowed vide order dated 12th July 2012 directing the petitioners herein to conduct counselling for the 1st respondent and others and give them posting orders accordingly as Professors of General Surgery in accordance with G.O.Ms.No.273, Health, Medical, Family Welfare (C2) Department, dated 21.05.1999. By the same order, the Tribunal set aside the relieving order dated 12th April 2012 of the 1st respondent from the post of Professor in Government Medical College, Anantapur.

4. Learned counsel for 1st respondent further submits that in the counselling conducted in pursuance of the order passed in O.A.No.2664 of 2012, the 1st respondent wanted posting to Government Medical College, Anantapur only on the ground that his spouse was working at that place. Since there was no vacancy of Professor of General Surgery in Government Medical College, Anantapur, the Director of Medical Education recommended for posting of the 1st respondent at Government Medical College, Kurnool as Professor of General Surgery. Accordingly, the 1st respondent joined in Government Medical College, Kurnool in the promotional post on 13.02.2013.

5. Thereafter, the 1st respondent filed the aforesaid O.A. on 17.12.2012 complaining that he was not paid his salary as Professor of General Surgery after he was relieved on 12.04.2012 at Government Medical College, Anantapur. Accordingly, he sought payment of salary from 12.04.2012 to 12.02.2013.

6. The case of the petitioners herein is that the 1st respondent is not entitled for his salary as he did not join in Sri Venkateswara Medical College, Tirupathi after he was relieved from Anantapur on 12th April 2012.

7. It is seen that on 10.04.2012, the Tribunal passed interim order in O.A.No.2664 of 2012, which was extended by another order dated 12.04.2012. Meanwhile, the 1st respondent was relieved from the Government Medical College, Anantapur on 12.04.2012 and another incumbent had joined in the resultant vacancy. It is only in those facts and circumstances, the 1st respondent could not work during the period from 12.04.2012 to 12.02.2013. The 1st respondent could join at Kurnool only on 13.02.2013 after he was given promotional posting order after conducting counselling process. Therefore, in case the 1st respondent's vacancy of Professor in Government Medical College, Anantapur was occupied by another person, then it is for the Government to treat the period from 12.04.2012 to 12.02.2013 as compulsory wait and prayed to direct payment of salary to the 1st respondent for the said period in the capacity of Professor of General Surgery.

8. We note, by recording the rival contentions of the parties, the learned Tribunal disposed of O.A.No.9928 of 2012 by directing the 1st petitioner to

treat the period from 12.04.2012 to 12.02.2013 as compulsory wait of the 1st respondent as Professor of General Surgery in Government Medical College, Anantapur and further directed to pay salary of 1st respondent as Professor of General Surgery in Government Medical College, Anantapur.

9. We further note that the learned Tribunal has not given any reasoning for coming to the conclusion as directed in para 3 of the impugned order. Fact remains that vide order dated G.O.Rt.No.518, Health, Medical & Family Welfare (A1) Department, dated 31.03.2012, the 1st respondent was promoted from the post of Associate Professor to the post of Professor and by the same order, he was transferred from Government Medical College, Anantapur to the Government Medical College, Tirupathi. As admitted by the counsel for the 1st respondent on instructions from the 1st respondent present in the Court, the 1st respondent wrote a letter to the Principal, Government Medical College, Anantapur as under :

“Madam,

Sub:- APMES – Filling up of post of Professor of General Surgery
for the panel year 2011-12 – Accepting the promotion –
Request relieve from present post – Regarding.

Ref:- G.O.Rt.No.518, dt.31.03.2012 of Health and Family Welfare.

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As per the reference cited above, I have been promoted as Professor of Surgery. I am accepting my promotion. Please relieve me from the present post for accepting the promotion.”

As per the neat copy, which is at page 77 of the paper book, the said letter is dated 11.04.2012, however, the 1st respondent who is present in person in the Court, admitted that the said letter is not of 11.04.2012, but, is of 01.04.2012.

10. If that is the position, it is not known as to why the 1st respondent challenged the promotion-cum-transfer order dated 31st March 2012 in O.A.No.2664 of 2012 having accepted the promotion. It is not in dispute that the aforesaid order was stayed by the Tribunal vide its order dated 10.04.2012. However, at the request of the 1st respondent, he was relieved vide order dated 12.04.2012. As stated by the counsel for the 1st respondent, the 1st respondent did not join at the transferred place for the reason, the Tribunal, vide its order dated 10.04.2012, stayed the relieving order.

11. It is not disputed by the 1st respondent that the stay order was granted on 10.04.2012 and he made application to the Principal of Government Medical College, Anantapur on 01.04.2012 for relieving him from the present post, for accepting the promotion.

12. It is also not in dispute that after receiving letter from the 1st respondent, the petitioners moved V.M.A.No.971 of 2012, however, the learned Tribunal has not considered the letter dated 01.04.2012 written by the 1st respondent and dismissed the vacate petition moved by the petitioners herein.

13. In view of the jargons of facts as noted above, the 1st respondent was promoted as Professor and transferred vide order dated 31.03.2012, and thereafter, wrote a letter to the Principal, Government Medical College, Anantapur on 01.04.2012 to relieve him from the present post i.e. Associate Professor at Anantapur. Thereafter, he filed the O.A., wherein, the learned Tribunal vide order dated 10.04.2012, stayed the order dated 31.03.2012, therefore, he could not join the promoted post. Finally, the O.A. was

disposed of vide order dated 12.07.2012 by setting aside the order dated 31.03.2012 and directed the petitioners to conduct counselling and thereafter give posting orders. The learned Tribunal has not discussed as to how the petitioners have violated the transfer policy. Since the respondent has accepted the 2nd place of posting i.e. Kurnool, the question for consideration is only whether the 1st respondent is entitled for the salary as Professor, from 12.04.2012 to 12.02.2013, for which period, he worked neither at Anantapur nor at Tirupathi.

14. We are of the considered opinion that the fault is on both sides. The 1st respondent issued letter dated 01.04.2012 asking the Principal, Government Medical College, Anantapur to relieve him, however, he was relieved on 12.04.2012. Meanwhile, the 1st respondent filed O.A. wherein, stay was granted by the Tribunal vide order dated 10.04.2012. The order passed by the Tribunal is not invited by the petitioners, but it is on the initiation of the 1st respondent, without joining at the place of posting at Tirupathi. We understand that on 10.04.2012, the learned Tribunal stayed the relieving order, therefore, he could not join at the place of posting. Thus, the mistake is on both sides.

15. Therefore, in the interest of justice, we modify the order dated 12th July 2012, directing the petitioners herein to pay 50% of salary and allowances for the period from 12.04.2012 to 12.02.2013 in favour of the 1st respondent as Professor of General Surgery in Government Medical College, Anantapur.

16. We hereby made clear that the said period from 12.04.2012 to 12.02.2013 shall be treated as 'on duty' for all purposes, including promotions and retiral benefits.

17. Writ petition is accordingly disposed of. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

U.DURGA PRASAD RAO, J

5th July 2017

ajr

