

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION Nos. 3396 of 2009, 13025 of 2009
and 15773 of 2013

COMMON ORDER:

- 1) The petitioner in all the three writ petitions is one and the same.
- 2) W.P.No.3396 of 2009 came to be filed to declare the action of the Andhra Pradesh Road Transport Corporation (hereinafter referred to as "Corporation") in filling up the post of Senior Medical Officers, by changing the rosters, in violation of G.O.Ms.No.5, dated 14.02.2003 and G.O.Ms.No.21, dated 18.03.2003, as illegal and improper.
- 3) W.P.No.13025 of 2009 came to be filed to declare the action of the Corporation in effecting promotions for the post of Senior Medical Officers by promoting respondent Nos.2 to 4 therein as illegal, improper and incorrect.
- 4) W.P.No.15773 of 2013 came to be filed to declare the order No.ED/ 752(1)/ 2012-PD, dated 13.03.2013, whereby the objections of the writ petitioner, were rejected and consequent issuance of final seniority list showing the petitioner as junior to respondent No.2 as illegal and improper. Respondent No.2 in this writ petition and respondent No.3 in W.P.No.3396 of 2009 is one and the same.

5) The facts in issue are as under:

6) The petitioner, who is a member of Scheduled Tribe passed M.B.B.S and also did her post graduation in M.D. (Obs. & Gyn.). She was appointed as a Regular Medical Officer in the Corporation on 02.08.2003 and was promoted as Senior Medical Officer (Spl.) on 20.02.2010. Respondent No.2 was appointed as Assistant Medical Officer on 17.02.2000 and was promoted as Medical Officer on 21.05.2004. Thereafter, the final seniority list of Medical Officers came to be published, wherein the petitioner was shown at S.No.22 and respondent No.2 was shown at S.No.28. In the year 2010, 18 vacancies for the post of Senior Medical Officers came to be filled up, pursuant to which, the petitioner and respondent No.2 were promoted as Senior Medical Officers, vide order dated 20.02.2010. Provisional Seniority List of Senior Medical Officers were issued vide proceedings dated 28.05.2012. In the said seniority list, respondent No.2 was shown at S.No.10, where as the writ petitioner was shown at S.No.17, which is now sought to be challenged.

7) Learned counsel for the petitioner mainly submits that respondent No.2 was a junior to the writ petitioner in the Medical Officer category as disclosed from the final seniority list of Medical Officers dated 30.03.2009, wherein the petitioner was shown at S.No.22 while respondent No.2 was shown at S.No.28. Both of them were promoted on the same day as Senior Medical Officers ie. on 20.02.2010. The counsel for the petitioner further

submits that the reason for treating respondent No.2 as senior to the petitioner appears to be that she was promoted in the vacancy reserved for S.C.(Women) roster point, where as the petitioner was promoted in the vacancy reserved for ST (W) ie. roster point No.25. It is said that Rule of Reservation for promotion of SC & ST employees in the Corporation came into force with effect from 27.03.2003. As per the Rule of Reservation, the post of Senior Medical Officer was earlier filled up in pursuance of selection held on 17.01.2007. In the year 2007, there was no ST person working in the cadre of Senior Medical Officer. Hence, it is urged that the said roster point should have been carried forward and made available to the writ petitioner, for the promotion made now. Learned counsel for the petitioner placed reliance on Section 11 and 15 of the Indian Medical Council Act to show that post graduate diploma awarded by IGNOU is not recognized by the Medical Council of India and as such the second respondent is not entitled for any promotion.

8) A counter came to be filed by respondent No.1-Corporation disputing the averments made in the affidavit filed in support of the writ petition. It is stated that the objections filed by the petitioner were duly attended and thereafter only a final seniority list of Senior Medical Officer was published vide notification dated 16.12.2013. According to him, respondent No.2 was appointed as an Assistant Medical Officer on 17.02.2000 and was promoted as Medical Officer on 21.05.2004. The petitioner joined the services

directly as a Medical Officer on 02.08.2003. It is said that since the petitioner joined as a Medical Officer earlier to the promotion of respondent No.2 as Medical Officer, the petitioner and respondent No.2 were shown at Sl.No.22 and 28, in the final seniority list of Medical Officers dated 30.03.2009.

9) It is said that respondent No.2 did her P.G. Diploma in Maternity and Child Health from IGNOU, which though not mentioned in Schedule-I of the Indian Council Act, is accepted by A.P.S.R.T.C. Recruitment Regulations, 2004. Since the recruitment is based on A.P.S.R.T.C. Recruitment Regulations and as the eligibility criteria therein prescribe appointment of diploma holders as well, it is stated that there is nothing wrong in promoting the second respondent.

10) It is further stated in the counter that respondent No.2, who was junior to the petitioner in the cadre of Medical Officer, was promoted against SC-W Roster Point No.16, to maintain adequate representation of S.C.Community, where as the petitioner, who belongs to S.T.community, was selected against S.T.roster point No.25. It is said that though the Rule of Reservation came into force with effect from 27.03.2003, a need was felt to fill up three SC doctors and 1 ST doctor, to ensure adequate representation of SC & ST communities. It is stated that there was adequate representation in ST community in the cadre of Senior Medical Officer till the retirement of Dr.C.Suvarnamala on 30.06.2007. As there was enough representation till 2004, the roster point No.8

which was reserved for ST Women was filled with general candidate in the selections held on 10.08.2004. Therefore, it is stated that carrying the roster Point No.8, does not change the selection held on 17.01.2007. Since the next roster point earmarked for S.T. is 25, the same was duly filled with the petitioner in the selection held on 09.02.2010. Hence, it is stated that there is no illegality or impropriety in the promotions held.

11) Respondent No.2 filed her counter disputing the averments made in the affidavit. It is stated that though there is no vacancy of Senior Medical Officer (Gynecology & Obstetrics), the petitioner was promoted, by the division of one post of Senior Medical Officer (Specialist) and her promotion was considered against roster point No.25, which was earmarked for ST. It is further stated that based on the regulations of A.P.S.R.T.C., respondent No.2 completed the course of P.G.Diploma from IGNOU after obtaining permission from the Corporation. By virtue of additional qualification, she was promoted as Senior Medical Officer (FWCC) which is reserved for SC Women in the existing vacant post. Since the regulations did not prescribe P.G.degrees recognized by Medical Council of India, respondent No.2 was rightly promoted to the post of Senior Medical Officer. It is further stated that as per the letter of U.G.C. dated 05.05.2005, the degrees/ diplomas awarded by Indira Gandhi Open University have to be treated as equivalent to the corresponding degrees awarded by the universities in the Country.

12) It is to be noted here that both of them were promoted as Senior Medical Officers on the same day. The petitioner belongs to S.T. Community, while the respondent No.2 belongs to S.C. community. In the provisional seniority list, respondent No.2 was shown at Sl.No.10, whereas the petitioner was shown at Sl.No.17. Further, as seen from the record, respondent No.2 joined as Assistant Medical Officer on 17.02.2000 and became eligible for promotion as Medical Officer after completion of three years ie. on 17.02.2003. Since the post of Assistant Medical Officer was abolished in the year 2002, the petitioner was directly recruited as Medical Officer in S.T.Category on 02.08.2003, but respondent No.2 was promoted as Medical Officer on 21.05.2004 ie. after the date of appointment of the petitioner, as Medical Officer, which was on 02.08.2003. A final seniority list came to be prepared, wherein the petitioner was shown at Sl.No.22, where as respondent No.2 was shown at Sl.No.28. The Provisional seniority list was prepared on 28.05.2012, wherein the position of the petitioner was shown at Sl.No.17, which is below the seniority of respondent No.2. These proceedings are subject matter of challenge in these writ petitions.

13) In view of the above, the following points/ questions would arose for consideration:

1. Whether respondent No.2 is qualified and eligible to hold the post of Senior Medical Officer (Specialist) and whether respondent No.2 can be shown as senior

to the petitioner on the strength of her promotion against roster point No.16 when petitioner was promoted against roster point No.25 even though respondent No.2 was junior to the petitioner in the cadre of Medical Officer?

2. Whether the final seniority list which has been prepared by showing the writ petitioner at roster point No.25 is illegal or improper?

3. Whether the seniority list of the feeder category have to be followed in the promotion category also when the panel prepared by the Selection Committee is not questioned?

POINT NO. 1:

14) When the final seniority list was prepared, the writ petitioner submitted her objections contending that the diploma obtained by respondent No.2, is not recognized by the Medical Council of India and as such she is not entitled for promotion to the post of Senior Medical Officer (Specialist). It was pleaded that as the respondent No.2, was at Sl.No.28 in the seniority list of Medical Officer, she could not have been shown above the petitioner.

15) In other words, the grievance of the petitioner appears to be that she is senior in the feeder category post and therefore she must be shown above the petitioner, in the promotion post of

Senior Medical Officer, as herself and respondent No.2 were promoted to the post of Senior Medical Officer on the same day ie. on 20.02.2010, apart from contending that the P.G.Diploma course obtained by respondent No.2 is not recognized by the Medical Council of India.

16) It is not in dispute that respondent No.2 is SC (W) candidate and the reservations in promotion post are applicable in the Corporation. It is also to be noted here that promotion of respondent No.2 was not challenged and only the seniority list prepared in the year 2012, came to be challenged. Apart from that, as per the letter dated 05.05.2004 issued by University Grants Commission, the Degrees/Diplomas awarded by Indira Gandhi Open University have to be treated as equivalent to the corresponding awards of the Universities in the country. Therefore, the argument of the learned counsel for the petitioner that respondent No.2 is not qualified for promotion since she is not having the diploma, recognized by Medical Council of India, cannot be accepted.

17) Even otherwise, it is to be noted here that the Road Transport Corporation Act and the Medical Council of India Act are Central Acts. Regulations of R.T.C. do not require P.G. Qualification recognized by Medical Council of India. Their own regulations, which were in vogue as on 20.02.2010, led to promotion of respondent No.2. Therefore, the said aspect namely

as to whether respondent No.2 is qualified to be promoted need not be gone into in these writ petitions.

POINT NOs.2 and 3:

18) The selection committee has prepared a panel on 09.02.2010, which was made the basis for giving promotion to the post of Senior Medical Officer on 20.02.2010. In the panel prepared, the name of respondent No.2 was shown at S.No.6 where as the name of writ petitioner was shown at S.No.15. The said panel, which has been prepared by the Selection Committee and which was made the basis for preparing the final seniority list in the year 2013, remained un-challenged. No explanation is forthcoming as to why the said panel, was challenged. Therefore, the argument of the learned counsel for the petitioner that the final seniority list is illegal and improper cannot be accepted.

19) It is to be noted here that there are no regulations in R.T.C. Act, to follow the seniority of feeder category, in the promotion post, particularly when the promotions were made on the same date. Admittedly, the writ petitioner joined as Medical Officer prior to the promotion of respondent No.2 as a Medical Officer, but both of them were promoted to the post of Senior Medical Officer on the same day. The writ petitioner belongs to ST, where as respondent No.2 belongs to S.C. Admittedly, both the petitioner and respondent No.2 were promoted as Senior Medical Officers, by office order dated 20.02.2010.

20) The contention of the petitioner is that as there was no ST candidate available for promotion to the post of Senior Medical Officer, she is eligible to be considered against the roster point No.8, earmarked for ST (W). It is to be noted that in the Corporation, the Rule of Reservation came into effect from 27.03.2003. As on the said date, one Smt. Dr.Suvarnamala, who belongs to ST, was working as Senior Medical Officer and she retired on 30.06.2007. Hence, roster point No.8 which was earmarked for ST (W), was not carried forward to the selections held in the year 2007. As there was no eligible SC (W) candidate available, roster point No.2, which was earmarked for SC (W), was carried forward to the selections held in the year 2007. In the year 2010, roster point No.2 was filled up with Dr.B.Vijaya Kumari. The next roster point which was earmarked for SC (W) is 16 and for ST (W) at 25. In the selections held in the year 2010, the petitioner was promoted as Senior Medical Officer as against roster point No.25, which was earmarked for ST (W), where as respondent No.2 was promoted as Senior Medical Officer against the roster point No.16, which was earmarked for ST (W).

21) It is to be noted here that as per Circular No.PD-34/ 2013, dated 08.10.2013, issued by the Vice Chairman & Managing Director, Andhra Pradesh State Road Transport Corporation, the existing qualifications for promotion to the post of Senior Medical Officer (Specialist) is as under:

“For Promotion: The Civil Assistant Surgeon ie. Medical Officer/ Asst. Medical Officer.

- a. Must possess MBBS/ BDS or an equivalent qualification as entered in the schedule to the Indian Medical Council Act, 1956 as amended; and
- b. Must possess P.G. Degree/ P.G. Diploma in related clinical speciality; and
- c. The Medical Officer/ Assistant Medical Officer with P.G. Degree must put in five years service in the Corporation of which two years service must be after obtaining P.G. Degree or the Medical Officer/ Assistant Medical Officer with P.G. Diploma must put in 9 years service in the Corporation of which two years service must be after obtaining P.G. Diploma.”

22) As stated earlier, respondent No.2 joined as Assistant Medical Officer on 17.02.2000 where as the petitioner was appointed as Medical Officer on 02.08.2003. As per the existing method of recruitment mentioned in Appendix-A, the post of Senior Medical Officer (Specialist) is to be filled in by promotion by selection from among the Civil Assistant Surgeon ie. Medical Officer/ Assistant Medical Officer. Respondent No.2 was appointed as Assistant Medical Officer earlier to the petitioner. Apart from that respondent No.2 was promoted in the roster point No.16 earmarked for SC (W) and the petitioner was promoted in the roster point No.25 earmarked for ST (W). Since the promotions are to be given from the feeder category of Medical Officer/ Assistant Medical Officer, respondent No.2 being senior to the petitioner was promoted as Senior Medical Officer (Specialist),

which is in accordance with Rules of Reservation of the Corporation and also as per Appendix-A of Andhra Pradesh State Road Transport Corporation Employees (Recruitment) Regulations, 1966. Hence, I see no grounds to interfere with the action of the authorities in promoting the second respondent.

23) Accordingly, all the writ petitions are dismissed. Consequently, miscellaneous petitions, if any, pending in these Writ Petitions shall stand closed. There shall be no order as to costs.

03.11.2017
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JUSTICE C. PRAVEEN KUMAR