

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

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No. 16885 OF 2004

DATED 31ST AUGUST, 2017

Between:

The Secretary to Government,
Health Medical &
Family Welfare Department and another ... Petitioners

AND

Dr. G.Bal Reddy ... Respondent

Counsel for the petitioners : G.P. for Services (T.S.)

Counsel for the respondent : Sri J.R.Manohar Rao



THE COURT MADE THE FOLLOWING

ORDER: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

This Writ Petition is filed for *certiorari* to quash order dated 07-01-2004 in O.A.No. 1015 of 1999 on the file of the Andhra Pradesh Administrative Tribunal at Hyderabad (for short, 'the Tribunal').

2. We have heard learned Government Pleader for Services (T.S.) appearing for the petitioners and Ms. J.Navya, learned counsel, representing Sri J.R.Manohar Rao, learned counsel for the respondent.

3. The respondent was appointed as Junior Medical Officer on 21-10-1964. He was promoted as Senior Medical Officer on 25-09-1974 and further promoted as Chief Medical Officer on 31-10-1997. He stood at S.No. 4 in the seniority list of Chief Medical Officers. Through the orders issued by the Director, Indian Medicine and Homeopathic Department (for short, 'IMHD') dated 10-10-1990, he was exempted from passing accounts test for executive officers as he has crossed 45 years of age as on 07-08-1985 for being considered for promotion. The said G.O. was issued to bring the medical officers of IMHD on par with those in Allopathy Department. The grievance of the respondent before the Tribunal was that his case for promotion to the post of Additional Director, Ayurveda, was not considered for the panel year 1997-98 though he was fit for promotion and seven other juniors to him were included in the panel. The petitioners filed counter affidavit, wherein it was *inter alia* averred that as the respondent was already given one promotion as Chief Medical Officer on 31-10-1997, he was not entitled to further exemption. The Tribunal however held that neither G.O.Ms.No. 614 nor 165 restricted exemption only to one promotion and that therefore the respondent is entitled to be considered for promotion to the cadre of Additional Director, Ayurveda, during the panel year 1997-98 and that his claim was unjustly overlooked.

4. At the hearing, learned Government Pleader has raised two submissions, namely; (1) that by U.O.Note No. 37275/Ser.C/98-1 dated 22-07-1998, Government clarified that the exemption given in favour of the employees who crossed 45 years of age was restricted only to one promotion and (2) that as per G.O.Ms.No. 225 dated 18-05-1999 also, the exemption is restricted to one promotion only and therefore Tribunal erred in directing that the respondent shall be considered against the first vacancy in the panel year 1997-98 though on his own pleading he stood at S.No. 4 in the seniority list for that year. Learned counsel for the respondent sought to justify the order of the Tribunal.

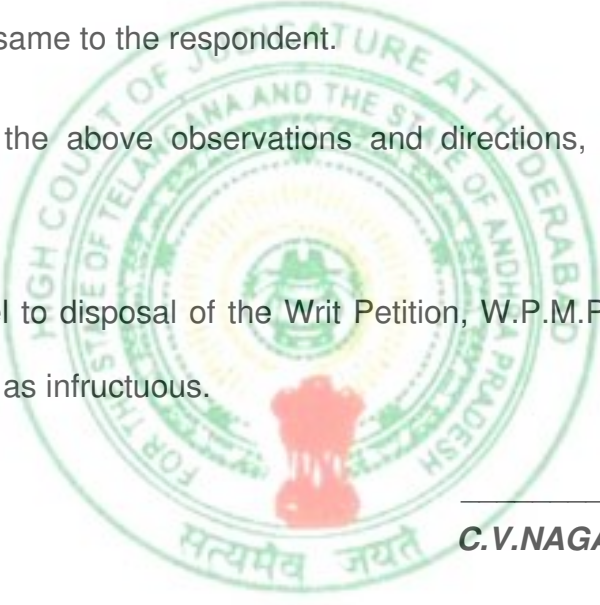
5. On a careful consideration of the submissions of learned counsel for both parties with reference to the record, we are of the opinion that the interpretation placed by the Tribunal on G.O.Ms.Nos. 614 and 165 does not suffer from any error. Neither of the two G.Os. restricted the exemption to one promotion only. The U.O. Note dated 22-07-1998, which purported to clarify Circular Memo dated 26-03-1998, cannot supersede the G.Os. It is only for the first time that the exemption was restricted to one promotion only under G.O.Ms.No. 225 dated 18-05-1999 which was not given retrospective operation. Therefore, even before the said G.O. was issued, the respondent was entitled to be considered for promotion. We are therefore of the opinion that the Tribunal has rightly held that the respondent was unjustly overlooked for promotion to the post of Additional Director, Ayurveda.

6. As regards the second submission of learned Government Pleader, in para No. 6 (a) of the application, the respondent stated that he was at S.No. 4 in the seniority list of Chief Medical Officers/P.G. Professor/Principal (Ayurveda). Therefore, even if he is entitled to be considered, he would be considered along with his other three seniors. The chance of his promotion would depend upon

the number of vacancies available during the panel year 1997-98 and the promotions of his seniors against such vacancies. Accordingly, the order of the Tribunal to extent of directing the petitioners to consider the respondent against the first vacancy that is available is modified by directing that the respondent shall be considered for promotion during the panel year 1997-98 along with his three seniors and take a decision on his entitlement of promotion depending upon the number of vacancies and the entitlement of the respondent's seniors for promotion during that year. The petitioners shall take an appropriate decision within three months from the date of receipt of a copy of this order and communicate the same to the respondent.

7. Subject to the above observations and directions, the Writ Petition is disposed of.

8. As a sequel to disposal of the Writ Petition, W.P.M.P.No. 22132 of 2004 shall stand closed as infructuous.



C.V.NAGARJUNA REDDY, J.

Date: 31-08-2017.

JSK

GUDISEVA SHYAM PRASAD, J.