

***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

***THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
and
*THE HON'BLE SRI JUSTICE M. GANGA RAO**

+Writ Petition Nos.33216 and 33328 of 2016

% 20-12-2017

W.P.No.33216 of 2016

Between:

Dr. G. Sambasiva Rao, M.D., S/o Mallikarjuna Rao,
aged 55 years, Occ: Professor TB & CD, Andhra
Medical College, Superintendent (FAC), Government
Hospital for Chest & Communicable Diseases (CD),
Visakhapatnam.

... Petitioner

Vs.

The State of Andhra Pradesh, Health, Medical and
Family Welfare Department, represented by its
Principal Secretary to Government, Secretariat,
Hyderabad and 3 others

.. Respondents

W.P.No.33328 of 2016

Between:

Dr. G. Sambasiva Rao, M.D., S/o Mallikarjuna Rao,
aged 55 years, Occ: Professor TB & CD, Andhra
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Vs.

The State of Andhra Pradesh, Health, Medical and
Family Welfare Department, represented by its
Principal Secretary to Government, Secretariat,
Hyderabad and 3 others

.. Respondents

For Petitioner : Dr. K. Lakshmi Narasimha

For Respondents : G.P. for Services (A.P.)

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE M. GANGA RAO

Writ Petition Nos.33216 and 33328 of 2016

COMMON ORDER: (V. Ramasubramanian, J)

Challenging the appointment of two persons, one as the In-Charge, Director of Medical Education and another as In-Charge, Director of Medical Education (Academic), the petitioner filed two Original Applications before the Andhra Pradesh Administrative Tribunal. Both the Applications were dismissed by the Tribunal forcing the petitioner, working as a Professor in the Andhra Medical College, to come up with the above two writ petitions.

2. Heard Dr. K. Lakshmi Narasimha, learned counsel for the petitioner and the learned Government Pleader for Services (A.P.) for the respondents.

3. The petitioner was originally appointed as a Civil Assistant Surgeon on 05-01-1987. He was promoted as Assistant Professor on 15-12-1987, as Associate Professor on 19-06-1998 and as Professor on 20-11-2000.

4. All the posts on the teaching side, including the posts of Additional Director of Medical Education and Director of Medical Education formed part of the Andhra Pradesh Medical Education Service. Even the post of Civil Assistant Surgeon on the teaching side, formed part of the Andhra Pradesh Medical Education Service, but the post of Civil Assistant Surgeon on the non-teaching side did not form part of it.

5. When persons working as Civil Assistant Surgeons came over to the teaching side and gained promotions to the posts of Assistant Professors and Professors, a question arose as to whether the service rendered on the non-teaching side should also be taken for the purpose of reckoning the seniority. This issue was finally settled by the Supreme Court in its decision in **Challa Jaya Bhaskar v. Thungathurthi Surender**¹.

6. However, on 27-03-2015, a circular was issued enclosing a list of Professors of Medicine in all disciplines, prepared on the basis of the date of appointment as Civil Assistant Surgeons. Therefore, objecting to the same on the ground that it was violative of the judgment of the Supreme Court in **Challa Jaya Bhaskar**, the petitioner filed O.A.No.1996 of 2015 on the file of the Andhra Pradesh Administrative Tribunal and obtained an interim stay of the said circular.

7. However, a person by name Dr. N. Subba Rao, who is the 3rd respondent in W.P.No.33216 of 2016, was appointed as Director of Medical Education (Academic) against the post of Additional Director of Medical Education under G.O.Rt.No.109, dated 17-03-2016. Therefore, challenging the said order, the petitioner filed an application in O.A.No.1166 of 2016.

8. Similarly, the Government also issued G.O.Rt.No.55, dated 01-02-2016 appointing one Dr. T. Venugopal Rao, the 3rd respondent in W.P.No.33328 of 2016 as In-charge Director of

¹ (2010) 13 SCC 348

Medical Education. Challenging the said order, the petitioner filed O.A.No.1164 of 2016.

9. Both the applications O.A.Nos.1164 and 1166 of 2016 were taken together by the A.P. Administrative Tribunal and were disposed of by a common order dated 19-08-2016. Aggrieved by the said common order, the petitioner is before us.

10. The main ground on which the petitioner assailed the appointments of the 3rd respondent in both these writ petitions was that the services rendered on the non-teaching side in the post of Civil Assistant Surgeon, cannot be counted for the purpose of seniority, as the same would run contrary to the decision of the Supreme Court in **Challa Jaya Bhaskar**. But the said contention was rejected by the Tribunal on the ground that what was in question before the Supreme Court in **Challa Jaya Bhaskar** was only one set of amendments to the Service Rules under G.O.Ms.No.502, dated 13-09-2003 and that the subsequent amendment made under G.O.Ms.No.748, dated 30-08-2006, which was not the subject matter of the dispute before the Supreme Court in **Challa Jaya Bhaskar**, had already been upheld by the Tribunal.

11. But the contention of Dr. K. L. Narasimha, learned counsel for the petitioner, is that G.O.Ms.No.748, cannot stand in the light of the decision of the Supreme Court in **Challa Jaya Bhaskar** and that in any case G.O.Ms.No.748 did not give leverage to the respondents to count the service rendered in the post of Civil Assistant Surgeon for the purpose of seniority.

12. We have carefully considered the above submissions.

13. All that is required in these two cases is just to have a careful look at (1) the Special Rules for Andhra Pradesh Medical Education Services, as amended from time to time; (2) G.O.Ms.No.502, dated 13-09-2003, G.O.Ms.No.748, dated 30-08-2006 and the judgment of the Supreme Court in **Challa Jaya Bhaskar v. Thungathurthi Surender**.

14. Under G.O.Ms.No.154, Health, Medical & Family Welfare dated 04-05-2002, the Government, in exercise of the power conferred by the proviso to Article 309 of the Constitution, issued a set of Rules known as "the Andhra Pradesh Medical Education Service Rules". These Rules were issued in supersession of the 25 Government Orders, which were earlier in force from the year 1963 to the year 2001.

15. Under Rule 2 of the Andhra Pradesh Education Service Rules, the Medical Education Service was constituted to comprise of about 25 categories of posts. For the present purpose, it is enough if we take note of Category-1, 2, 3, 4, 5, 7, 8, 9 and 10.

"Category (1) : Director of Medical Education;

Category (2) : Additional Director of Medical Education including Principal of Medical College; and Superintendent of Teaching General Hospital.

Category (3) : (a) Special Grade Professor (Clinical) / (Non-Clinical)

(b) Superintendent of Teaching Specialist Hospital.

Category (4) : (a) Professor (Clinical)

(b) Professor (Non-Clinical)

Category (5) : (a) Special Grade Civil Surgeon-R.M.O.

including Hospital Administrator in Teaching General Hospital and other Teaching Specialist Hospital.

- Category (7) : (a) Associate Professor (Clinical)
(b) Associate Professor (Non-Clinical)
- Category (8) : Deputy Civil Surgeon including Deputy Civil Surgeon – R.M.O.;
- Category (9) : (a) Assistant Professor (Clinical)
(b) Assistant Professor (Non-clinical)
- Category (10) : Civil Assistant Surgeon including – R.M.O. Casualty Medical Officer and Tutors belonging to the same specialty posted teaching side.”

16. Rule 3 of the Special Rules indicated that the method of appointment for all the categories of posts shall be as shown in Annexure-I. The relevant portion of Annexure-I to the Special Rules, which dealt with appointment to the posts of Director and Additional Director, read as follows:

Category and post	Method of appointment
1. Director of Medical Education	By promotion of Cat.(2) Additional Director of Medical Education including Principal of Medical College and Superintendent of Teaching General Hospital included category-2
2. Additional Director of Medical Education including Principal of Medical College and Supdts. of Teaching General Hospital	By promotion of Cat.3 (a) Special Grade Professor (Clinical)/ (Non-clinical) from a combined seniority list prepared on the basis of their seniority in the category of Assistant Professor (Clinical) / (Non-clinical) to which they were initially appointed. Provided one must possess basic MBBS Degree with P.G. qualification in the concerned specialty.

17. In the year 2003, the Government issued G.O.Ms.No.502, dated 13-09-2003, amending the said Rules issued under G.O.Ms.No.154. By this amendment the post "Civil Assistant Surgeon" was inserted as Category-9 (c), just below the posts of Assistant Professor (Clinical) and Assistant Professor (Non-Clinical) found in Category 9 (a) and (b) respectively. An amendment was also made to column-3 of the table contained in Annexure-I, as against the post of Additional Director, Medical Education, by including the post of Civil Assistant Surgeon as one of the posts, the seniority in which would eventually count.

18. It was the validity of this G.O.Ms.No.502, dated 13-09-2003 that came up for consideration before the Supreme Court in **Challa Jaya Bhaskar**. The Supreme Court rejected the claim of the persons who were originally appointed as Civil Assistant Surgeons but who switched over to the teaching side after acquiring Post Graduate degrees, to have the service rendered by them as Civil Assistant Surgeons counted for the purpose of seniority. An argument was advanced before the Supreme Court that there was no formal of separation of teaching and non-teaching side. The said contention was repelled by the Supreme Court in Paragraph 28 of its decision as follows:

"28. We are unable to accept such a proposition on behalf of the respondents since although there was no formal separation between the teaching and non-teaching staff, there was this existing distinction that those belonging to the non-teaching line could not be appointed in the teaching line till they had acquired the postgraduate degree. This distinction always remained till the 1988 Rules when teaching and non-teaching cadre was calculated from the date of their appointment as Assistant Professors. Even if the feeder post for appointment of Assistant

Professors was Civil Assistant Surgeons at the initial stage, the said situation stood altered with the amendment of the Rules whereunder Assistant Professors could be recruited only by way of direct recruitment.....”

In Paragraph 29 also the Supreme Court held as follows:

“We do not, therefore, agree with the submissions made on behalf of the respondents that such candidates, who had obtained lateral transfer from the non-teaching to the teaching line, would be entitled to carry their period of service as non-teaching staff for the purpose of computing their seniority in the cadre of Assistant Professors, since the basic qualification for being appointed as Assistant Professors in the teaching line was a postgraduate degree, which the respondents acquired during the course of their service as Civil Assistant Surgeons and were thereafter transferred to the teaching line. The view of the Tribunal to the contrary cannot be supported having particular regard to the view expressed by this Court in N. Suresh Nathan case and in Shailendra Dania case, wherein the same view which we have taken, was taken by this Court upon holding that those diploma-holder Junior Engineers who had obtained degrees while in service were not entitled to count their service prior to obtaining the degree for computing the required period for the purpose of promotion.....”

19. Accordingly, the Supreme Court not only allowed the appeals of the individuals, but clearly set aside G.O.Ms.No.502, dated 13-09-2003. This judgment was rendered by the Supreme Court on 19-10-2010.

20. But in the meantime, the Government issued one more set of amendments in G.O.Ms.No.748, dated 30-08-2006. By this amendment, the pre-existing Category-10 viz., “Civil Assistant Surgeon including R.M.O., Causality Medical Officer, and Tutors belonging to the same specialty posted on teaching side” was numbered as category-10 (a) and another category viz., Assistant Director Medical was inserted as category-10 (b).

21. In so far as the method of appointment prescribed in Annexure-I is concerned, the same underwent a modification under

G.O.Ms.No.748, in so far as the post of Additional Director of Medical Education is concerned. It may be recalled that Serial No.2 in the table under Annexure-I related to Additional Director, Medical Education. The method of appointment prescribed in column-3 as against the Serial No.2 was modified by G.O.Ms.No.748 to the following effect:

Category and Post	Method of appointment
2. Additional Director of Medical Education including Principal of Medical College and Superintendent of Teaching General Hospital.	By promotion of Professors (Clinical, Non-clinical and Super Specialties) including Special Grade Professors (Clinical, Non-Clinical and Superspecialties) from a combined seniority list prepared in the substantive cadre to which they were initially appointed by the APPSC/DSC as per the ranking assigned by APPSC/DSC provided one must possess basis MBBS Degree with PG qualification in the concerned speciality with a minimum of 10 years of teaching experience, out of which at least five years as Professor.

22. Today, the defence taken by the Government, which was also accepted by the Administrative Tribunal is that for the purpose of promotion to the post of Additional Director, the seniority of individuals in the category of professors, prepared on the basis of the original appointment to the substantive cadre should be taken into account and that since the same was not the subject matter of the dispute in **Challa Jaya Bhaskar**, the appointment given to the 3rd respondent in these two writ petitions was perfectly in order.

23. Therefore, the only question that arises for consideration is as to whether the amendment made under G.O.Ms.No.748 can

survive the decision of the Supreme Court rendered in **Challa Jaya Bhaskar** or not.

24. As we have pointed out earlier, the question that arose before the Supreme Court in **Challa Jaya Bhaskar** was about the procedure to be adopted in determining the seniority of Civil Assistant Surgeons in the Andhra Pradesh Medical and Health Services. In Para-6 of its judgment, the Supreme Court pointed out that to begin with, there were no posts of Assistant Professors and that only the post of Civil Assistant Surgeons was used for teaching in Medical Colleges. In fact, when Civil Assistant Surgeons were assigned the task of teaching, after acquiring Post Graduate qualifications, the Medical Council of India threatened to withdraw the recognition to certain Medical Colleges. Therefore, an amendment was brought under G.O.Ms.No.182, dated 29-03-1988 by which the services were divided into three parts viz., a) teaching; (b) non-teaching; and (3) laboratories. But the Rules were followed more in breach than in compliance forcing several individuals to go before the Tribunal seeking strict implementation of G.O.Ms.No.154, dated 04-05-2002. Paragraph 9 of the decision in **Challa Jaya Bhaskar** may be usefully extracted as follows:

“9. As the Department was not implementing the Rules, various Original Applications were filed before the Andhra Pradesh Administrative Tribunal, which were disposed of on 28th April, 2003, with directions to the Departments to strictly follow the Rules issued under G.O.M. No.154 dated 4th May, 2002. However, there were certain deviations which resulted in Civil Assistant Surgeons also being made part of the teaching cadre, thereby making such persons eligible to be promoted as Associate Professors and, thereafter, to the post of Professors. It is this issue which is at the

centre of controversy in all these matters and which has given rise to various questions relating to the main issue as to whether persons who had joined earlier as CAS, with only M.B.B.S. qualifications, and could not be appointed as Assistant Professors since they did not have Post- Graduate qualifications, and were subsequently appointed as Assistant Professors after attaining such qualifications, would be entitled to seniority over others who had already been appointed as Assistant Professors earlier. In other words, would those CAS with only M.B.B.S. qualification be given seniority over those appointed as Assistant Professors from CAS, who already had Post-Graduate qualification, but were appointed after those CAS with only M.B.B.S. qualification?....”

25. After analyzing the Service Rules and the case law on the point, the Supreme Court pointed out in Para-25 that there was a clear division between the teaching cadre and non-teaching cadre. Paragraph 25 of the judgment reads as follows:

“25. From the submissions made on behalf of respective parties what emerges is that the Medical Service under the Medical and Health Department in the State of Andhra Pradesh is governed by the Special Rules framed under the proviso to Article 309 of the Constitution and issued under G.O.Ms.No.43 dated 16th January, 1982. Under the said Rules, there was no post of Assistant Professor and provision had been made only for appointment of Civil Assistant Surgeons, both for teaching and non-teaching purposes in the medical colleges. The Medical Council of India threatened to withdraw recognition to the medical colleges unless separate provision was made to separate the teaching and the non-teaching cadre by appointment of Assistant Professors, which resulted in the amendment of the Rules vide G.O.Ms.No.182 dated 29th March, 1988. The said Rules provided for the division of the medical services into teaching cadre, non-teaching cadre and laboratories.”

26. Therefore, it is clear that there was clear recognition by the Supreme Court, of the division between the teaching and non-teaching cadre, originally introduced under G.O.Ms.No.182, dated 29-03-1988.

27. As we have pointed out earlier, G.O.Ms.No.154, contained the special rules for Andhra Pradesh Medical Education Service. It was to comprise of 25 categories of posts including the post of Director of Medical Education and Additional Director of Medical Education. The post of Civil Assistant Surgeon on the teaching side alone was included in Category-10. But by G.O.Ms.No.502, the post of Civil Assistant Surgeon was inserted as Category 9 (c), even above Category-10. The words “teaching side” appearing along with the word “Civil Assistant Surgeon” Category-10 were conspicuously absent when the post of Civil Assistant Surgeon was sought to be introduced as Category-9 (c) under G.O.Ms.No.502. This G.O.Ms.No.502 has been set aside in entirety. Therefore, the post of Civil Assistant Surgeon without an indication of the same being on the teaching or non-teaching side, has now gone after the decision in ***Challa Jaya Bhaskar***.

28. Once the post of Civil Assistant Surgeon, inserted as Category 9 (c) under G.O.Ms.No.502 is gone, then it will be easy to interpret the amendment made to column-3 against Serial No.2 in the Annexure to the special rules under G.O.Ms.No.748. Column-3 indicating the method of appointment as against the post of Additional Director in Serial No.2 of the table under Annexure-I, as amended by G.O.Ms.No.748, merely stipulated a combined seniority list to be prepared in the substantive cadre to which a person was appointed by the Public Service Commission. Today the case of the respondents is that the appointment of the 3rd respondent in both these writ petitions to the post of Civil Assistant Surgeon was an

appointment to the substantive cadre and hence, the service rendered in the category of Civil Assistant Surgeon should be taken into account by virtue of the amended Annexure-I.

29. But the moment the post of Civil Assistant Surgeon, inserted as Category 9 (c) in the special rules has gone, due to the judgment of the Supreme Court setting aside G.O.Ms.No.502, the question of reckoning the service rendered in such a post on the ground that it was the substantive cadre does not arise. Hence, the Tribunal was wrong in putting G.O.Ms.No.748 against the writ petitioner.

30. For the purpose of easy appreciation of facts, the service particulars of the petitioner, the 3rd respondent in W.P.No.33216 of 2016 and the 3rd respondent in W.P.No.33328 of 2016 are provided as follows:

Post	Service Particulars of		
	Writ petitioner	R-3 in W.P.No.33216 of 2016	R-3 in W.P.No. 33328 of 2016
1. Civil Asst. Surgeon	05-01-1987	07-03-1986	07-03-1986
2. Asst. Professor	15-12-1987	29-12-1987	06-05-1988
3. Associate Professor	19-06-1998	----	----
4. Professor	20-11-2000	20-11-2000	20-11-2000

31. It can be seen from the above table that the 3rd respondent in both these writ petitions got appointed as Civil Assistant Surgeons earlier than the petitioner herein. But the petitioner got appointed as Assistant Professor on the teaching side, earlier than the appointment of the 3rd respondent in these two writ petitions.

32. In the light of the fact that all the three were appointed as Civil Assistant Surgeons, we directed on the last date of hearing, both the counsel to file an affidavit indicating as to whether they were appointed on the teaching or non-teaching side. The petitioner filed an additional affidavit indicating that all of them were appointed originally on the non-teaching side as Civil Assistant Surgeon, but they came to the teaching side when they were appointed as Assistant Professors. With reference to the date of appointment as Assistant Professor, the petitioner is senior to the 3rd respondent. This is why in the seniority list originally prepared, the name of the petitioner was shown at Serial No.9 and the name of the 3rd respondent was shown at Serial No.35. This seniority list was dated 24-07-2013. Therefore, the circular issued on 27-03-2015 altering the seniority position was wrong and the same was challenged by the petitioner in O.A.No.1996 of 2015. In the said application, the circular dated 27-03-2015 was also suspended, despite which promotions were granted to the 3rd respondent in these two writ petitions. These facts were lost sight of by the Tribunal, on account of G.O.Ms.No.748, which had no application to the facts of the case.

Hence, the writ petitions are allowed, the orders of the Tribunal are set aside and the orders promoting the 3rd respondents in these two writ petitions as In-charge Director of Medical Education and as Director of Medical Education (Academic), are set aside. The Government is directed to appoint the senior most among the persons on the teaching side, as Director of Medical Education

subject to eligibility and suitability, by taking into account the services rendered on the teaching side alone, as per the decision of the Supreme Court in ***Challa Jaya Bhaskar v. Thungathurthi Surender***. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

Date: 20-12-2017

Ksn

M. GANGA RAO, J

