

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE DR JUSTICE SHAMEEM AKTHER

Writ Petition No.4495 of 2017

ORDER: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

Heard Sri T.Sricharan, learned counsel for the petitioner, Sri B.Narayana Reddy, learned Assistant Solicitor General, and the learned Government Pleader appearing on behalf of the learned Advocate General and, with their consent, the writ petition is disposed of at the stage of admission.

The petitioner herein, a Professor of Surgical Oncology in the MNJ Institute of Oncology and Regional Cancer Centre, Hyderabad, has filed the present writ petition questioning his final allocation to the State of Andhra Pradesh on the ground that both the posts of Professor of Surgical Oncology are available only in the MNJ Institute of Oncology and Regional Cancer Centre, Hyderabad; there is no post of Professor of Surgical Oncology in any of the other institutes in both the States of Telangana and Andhra Pradesh; and, the petitioner cannot be allocated to a non-existent post in the State of Andhra Pradesh.

Learned Government Pleader, appearing on behalf of the learned Advocate General for the State of Telangana, would submit that the petitioner has opted for the State of Andhra Pradesh; it is at the petitioner's request that he was finally allotted to the State of Andhra Pradesh; while it is true that there is no post of Professor of Surgical Oncology in any of the institutes located within the residuary State of Andhra Pradesh, the Government of Andhra Pradesh intends to accommodate the petitioner as a Professor of General Surgery; and, in any event, the mere fact that

he was finally allocated to the State of Andhra Pradesh does not disable the petitioner from seeking review of the final allocation under Section 77(3) of the A.P. Reorganisation Act, 2014 (for short “the Act”).

While it does appear that the petitioner had opted for the State of Andhra Pradesh, Clause 18 of the Guidelines framed by the Advisory Committee contain the principles of guiding allocation. Sub-clause (q) of Clause 18 stipulates that where personnel, in the seniority list of a category of post, are appointed based on subject specialisation like in the case of teaching jobs or medical specialisation, allotment of posts and personnel in such cases should be subject specialisation wise.

As the petitioner is a Professor of Surgical Oncology, Clause 18(q) of the Guidelines require the post of Surgical Oncology to be first bifurcated between the States of Telangana and Andhra Pradesh, and only then for the final allotment of specialised Doctors to such posts. It does not appear to be in dispute that both the posts of Professor of Surgical Oncology continue to remain in MNJ Institute of Oncology and Regional Cancer centre, Hyderabad and, in the absence of any such posts in the State of Andhra Pradesh, the petitioner could not have been allotted to a non-existent post. It does not stand to reason that a Professor of Surgical Oncology should now be asked to teach General Surgery in the State of Andhra Pradesh.

While we were initially inclined to entertain the writ petition and grant interim stay, we find force in the submission of the learned Government Pleader, appearing on behalf of the learned Advocate General, that the petitioner has the remedy of seeking

review of the final allocation, by way of an application to the Central Government under Section 77(3) of the Act.

Sri B.Narayana Reddy, learned Assistant Solicitor General appearing on behalf of the Union of India, would submit that, in case any such review application is filed, the same would be considered in accordance with law, and final orders would be passed thereupon within three months.

In the light of the aforesaid submissions, we permit the petitioner to submit a review application to the 1st respondent within two weeks from today. The 1st respondent shall, within three months from the date of receipt of the petitioner's application for review, consider the said application in accordance with law and pass orders thereupon. Till the 1st respondent considers the petitioner's review application, passes orders thereupon, and communicates the said orders to him, the petitioner shall be continued as a Professor of Surgical Oncology at the MNJ Institute of Oncology and Regional Cancer Centre, Hyderabad. It is made clear that, in case the petitioner does not submit his review application to the Central Government within the afore-stipulated time of two weeks, it is open to the respondents to proceed and take action in accordance with law.

The Writ Petition is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

09th March, 2017
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Date: 09.03.2017

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