

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SMT. JUSTICE T. RAJANI

WRIT PETITION No.24447 of 2017

ORDER: (Per VRS,J)

The petitioner was originally appointed as a Civil Assistant Surgeon in February, 1985 in the Government Hospital, Nellore District, coming under the control of the Director of Health Sciences. She was later promoted as Civil Surgeon Specialist in December, 2001.

2. Even During this period, she was posted to an institution known as “*Andhra Pradesh Vaidya Vidhana Prarishad*”, which was constituted by the State of Andhra Pradesh as a Society, in terms of a special enactment known as “*Andhra Pradesh Vaidya Vidhana Parishad Act 1986*”. After serving in the said Society for a period of eight years, the petitioner gave an option to be absorbed in the Society in the year 2009. The option was accepted and she was absorbed into the said Society on 22.10.2009.

3. The petitioner was promoted as District Coordinator of Health Sciences in the said Society in August, 2010 and she continued in such post.

4. With effect from 02.06.2014, the State was bifurcated under the Andhra Pradesh Reorganization Act, 2014. The petitioner exercised

an option to go to the State of Andhra Pradesh. Since no action was taken on her request, she came up with a writ petition in W.P.No.4738 of 2017.

5. By an order, dated 08.03.2017, the said writ petition was allowed, with a direction to the respondents to accept the option of the petitioner and to take her to Andhra Pradesh VaidyaVidhana Parishad within four weeks. Paragraph Nos.7, 8 and 9 of the order, dated 08.03.2017, passed in W.P.No.4738 of 2017, may be of relevance and, hence, they are extracted as follows:

“7. As rightly pointed out by the learned counsel for the petitioner, the cases of the employees of autonomous bodies are governed by Section 82 of the A.P. Reorganisation Act, 2014, which reads as follows:

“82. Provision for employees of Public Sector Undertakings, etc.:- *On and from the appointed day, the employees of State Public Sector Undertakings, corporations and other autonomous bodies shall continue to function in such undertaking, corporation or autonomous bodies for a period of one year and during this period the autonomous body concerned shall determine the modalities for distributing the personnel between the two successor States.”*

8. But no steps have been taken to follow Section 82. Hence, we are of the considered view that the grievance of the petitioner is justified and she is entitled to the reliefs prayed for.

9. Accordingly, the writ petition is allowed directing the respondents to accept the option of the petitioner and take her to the Andhra Pradesh Vaidya Vidhana Parishad and pass appropriate orders within a period of 4 (four) weeks from the date of receipt of a copy of this order. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.”

6. Pursuant to the said order, the Principal Secretary to Government, Health, Medical and Family Welfare Department, has passed an order, dated 04.07.2017, rejecting the request of the petitioner, on the ground that the process of bifurcation of the staff, who do not come within the 9th Schedule or 10th Schedule to the Reorganization Act, will be taken up, after the process of allotment in relation to those employees are first completed, and that, therefore, the question of acceptance of the option exercised by the petitioner would be taken up, after the options are finalized in relation to Officers come under the 9th and 10th Schedules. In other words, the Secretary to Government has postponed the request of the petitioner to a convenient date. It is relevant to note here that the petitioner is due to retire on 31.08.2017 and it appears that the respondents found it convenient to postpone a decision beyond the date of her retirement, so that any decision will only be on paper.

7. The respondents have filed a counter affidavit, contending *inter alia* that the question of bifurcation of staff among the two States is now pending, and that unless and until the cadre strength of District Coordinator of Hospital Services in the erstwhile State of Andhra Pradesh and the consequential allocation are determined by the Kamalnathan Committee, it was not possible to accept the option given by the petitioner.

8. But, the stand taken by the respondents, to say the least, is completely contrary to law and also contemptuous. In Paragraph

No.6 of our order in W.P.No.4738 of 2017, we have held very clearly as follows:

“The posts in this institution did not also fall within the purview of the Kamalnathan Committee.”

Today, by the order impugned in the present writ petition and the stand taken in the counter affidavit, the respondents are attempting to make the finding recorded by the Bench of this Court in its previous order a dead letter.

9. Even according to the counter affidavit, the posts in the institution, Andhra Pradesh Vaidya Vidhana Parishad, do not fall either under the 9th Schedule or under the 10th Schedule. The employees of this Parishad are not employees of the All India Services or the State Services. As a matter of fact, the petitioner exercised option way back in the year 2009 to be absorbed, after which, she ceased to belong to the State services.

10. The defence taken by the respondents appears to be completely contrary to the provisions of the Andhra Pradesh Reorganization Act, 2014. There are three provisions in the Act, which deal respectively with (1) Officers belonging to the All India Services, (2) Officers belonging to the State Services, and (3) Officers employed in Public Sector Undertakings, etc. While Section 76 deals with Officers belonging to the All India Services, Section 77 deals with Officers belonging to the State Services. The posts included in the 9th

Schedule to the Act are referable under Sections 68 and 71 and the posts included in the 10th Schedule are referable to Section 75. The Andhra Pradesh Vaidya Vidhana Parishad is admittedly not one of the institutions included in the 9th Schedule and the 10th Schedule. The post held by the petitioner does not fall under the category of the All India Services, so as to be governed by Section 76. This post also does not come within the category of “*State Services*”, so as to be governed by Section 77.

11. This is the reason why, this Court held in its order in W.P.No.4738 of 2017 that Section 82 alone will govern the case of the petitioner. Section 82, which we have extracted as part of the order passed in the previous writ petition, deals with employees of autonomous bodies. Insofar as persons employed in the autonomous bodies are concerned, the autonomous bodies themselves are empowered under Section 82 to determine the modalities for distributing the personnel between the two successor States. Section 82 required this exercise to be completed within one year. Along with the counter affidavit, the respondents have included the copy of the State Act No.29 of 1986. This Act known as “*Andhra Pradesh Vaidya Vidhana Pariahad Act, 1986*”, provides for the establishment of a Commissionerate called “*Andhra Pradesh Vaidya Vidhana Parishad*” as a body corporate having perpetual succession and a common seal. Though the Governing Council of this Parishad would have representatives of the Government, the composition of the

Governing Council shows that they would be in minority. Apart from the Secretaries to Government in the Departments of Medical & Health and Finance & Planning, the Vice-Chancellor of the University of Health Sciences and five eminent persons belonging to medical profession were to be part of the Governing Council. Therefore, the Parishad constituted under the Act No.29 of 1986 is not a “State” within the meaning of Article 12 of the Constitution.

12. In fact, the Commissionerate was supposed to have financial autonomy, as seen from Section 10 of the Act. Under Section 11 of the Act, all Officers and employees, who were till then under the administrative control of the Director of Medical Education, stood automatically transferred to the Commissionerate and they became employees of the Commissionerate. As a matter of fact, under Section 11 (1) (c), all properties, assets and liabilities, rights and obligations in relation to dispensaries, non-teaching hospitals and all obligations of the Government devolved upon the Commissionerate. In other words, with the advent of the Act 29 of 1986, the umbilical cord connecting the Andhra Pradesh Vaidya Vidhana Parishad Act got cut off and it became an independent institution. The third proviso under Section 11 makes it clear that the Officers and employees, who did not opt for absorption in the Commissionerate, would continue to hold the posts on deputation terms.

13. Therefore, apart from the admission made by the respondents in the impugned order and in the counter affidavit, the Statute also

makes it clear that persons, who have exercised options to be absorbed into the Parishad, are not employees of the All India Services or of the State Services, and that they are governed only by Section 82. If this position is clear, which is also made clear by the judgment in W.P.No.4738 of 2017, we do not know how the respondents can misinterpret the provision of law. What is surprising is that the statutory prescription has also been clarified in the order passed by the Division Bench in W.P.No.4738 of 2017, despite which, a defiance has been shown.

14. In view of the above, the Writ Petition is allowed, directing the respondents to implement the order of this Court passed in W.P.No.4738 of 2017 and pass orders on or before 23.08.2017 and report compliance. If the 1st respondent fails to comply with this direction and fails to produce the copy of the order on 23.08.2017, we may be compelled to initiate *suo motu* contempt proceedings against the 1st respondent.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

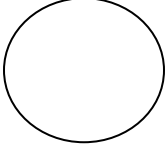
T. RAJANI, J.

16th August, 2017

Note: Issue C.C. by tomorrow.

(b/o)

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THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN ✓

AND

THE HON'BLE SMT. JUSTICE T. RAJANI



Writ Petition No.24447 of 2017
(allowed)

16th August, 2017

cbs

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AND

*THE HON'BLE SMT. JUSTICE T. RAJANI

+W.P.No.24447 of 2017

% 16-08-2017

Dr.M.S.Padmana

.. Petitioner

Vs.

\$ The State of Andhra Pradesh Health Medical
& Family Welfare Department, rep. by its Principal
Secretary to Government of A.P., Velagapudi,
Guntur District and three others

.. Respondents

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>HEAD NOTE:

! Counsel for petitioner : Dr. K. Lakshmi Narasimha

^ Counsel for 1st respondent : The Government Pleader for
Services (AP)

^ Counsel for R.2 to R.4 : ---

? CASES REFERRED : --

1) (2011) 6 CTC 11

