

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

Coram :

HONOURABLE MR. JUSTICE V.RAMASUBRAMANIAN

And

HONOURABLE SRI JUSTICE G. SHYAM PRASAD

W R I T P E T I T I O N Nos.7984, 8808 & 35495 of 2016

And

CONTEMPT CASE Nos.2240 & 2241 of 2016

Delivered On: 28-04-2017

W.P.No.7984 of 2016

Between:

G. Sreeramulu, S/o. Veerabasavaiah,
Food Safety Officer, (Non-Gazetted),
O/o. The Gazetted Food Inspector, Kadapa,
Dr. YSR Kadapa District, State of A.P.

... Petitioner

Vs.

1. State of A.P. Represented by its Principal Secretary to Government Health Medical & Family Welfare Department, Secretariat Buildings, Hyderabad.
2. The Director, Institute of Preventive Medicine, Public Health Laboratories & Food (Health) Administration, State of A.P., Narayanguda, Hyderabad.
3. K. Jayaprakash S/o. Madhava Rao Occ: Junior Analyst, Water Quality Monitoring Laboratory (WQML), Narasaraopet, Guntur District.
4. D. V. Sesham Rau, S/o. D.V. Rama Raju, Sr. Asst. O/o. the Assistant Food Controller, Zone-II, Kakinada, E.G. District.
5. K. Satish Kumar, S/o. K. Venkatappa, Jr. Asst-cum-Typist, O/o. the Gazetted Food Inspector, Ananthapur.
6. The Registrar, A.P. Administrative Tribunal, Puranihaveli, Hyderabad.
7. G. Venkateswar Rao, S/o. Veera Mohan Rao, Food Safety Officer, Nellore, Nellore District.

... Respondents

W.P.No.8808 of 2016

Between:

G. Sreeramulu, S/o. Veerabasavaiah,
Food Safety Officer, (Non-Gazetted),
O/o. The Gazetted Food Inspector, Kadapa,
Dr. YSR Kadapa District, State of A.P.

... Petitioner

Vs.

1. The Commissioner of Health & Family Welfare & Commissioner of Food Safety, State of A.P., Sultan Bazar, Hyderabad.
2. The Director, Institute of Preventive Medicine, Public Health Laboratories & Food (Health) Administration, State of A.P., Narayanguda, Hyderabad.
3. The Assistant Food Controller, Zone-IV, Old RIMS, Dr. YSR Kadapa District, Kadapa – 516 001.
4. State of A.P. rep. by its Principal Secretary to Govt., HM & FW Department, Secretariat Buildings, Hyderabad.
5. The Hon'ble A.P. Administrative Tribunal, rep. by its Registrar, Purani Haveli, Hyderabad.

... Respondents

W.P.No.35495 of 2016

Between:

G. Sreeramulu, S/o. Veerabasavaiah,
Food Safety Officer, (Non-Gazetted),
O/o. The Gazetted Food Inspector, Kadapa,
Dr. YSR Kadapa District, State of A.P.

... Petitioner

Vs.

1. Commissioner of Panchayat Raj & Employment, Govt., of Andhra Pradesh, Urdugalli, Himayatnagar, Hyderabad.
2. The Commissioner of Health, Medical & Family Welfare & Commissioner of Food Safety, State of A.P., Sultan Bazar, Hyderabad.
3. The Director, Institute of Preventive Medicine, Public Health Laboratories & Food (Health) Administration, State of A.P., Narayanguda, Hyderabad.
4. State of A.P. rep. by its Principal Secretary HM & FW Department, Velagapudi, Guntur District.
5. State of Andhra Pradesh, rep. by its Principal, Secretary, Panchayat Raj & Rural Development Dept., Velagapudi, Guntur District. A.P.
6. A.P. Administrative Tribunal, Purani Haveli, Hyderabad, rep. by its Registrar.

... Respondents

C.C.No.2240 of 2016

Between:

G. Sreeramulu, S/o. Veerabasavaiah,
Food Safety Officer, (Non-Gazetted),
O/o. The Gazetted Food Inspector, Kadapa,
Dr. YSR Kadapa District, State of A.P.

... Petitioner

Vs.

1. Sri B. Ramanjaneyulu, IAS Commissioner of Panchayat Raj & Employment, Govt. of Andhra Pradesh, Charitrasree Buildings, Nakkala Road, Suryaraopet, Vijayawada, Krishna District.
2. I. Samuel Anand Kumar, IAS, the Commissioner of Health, Medical & Family Welfare & Commissioner of Food Safety, State of A.P., Old NRI College Campus, Road No.1 Krishna District.
3. Smt. Manjiri, MD – Director, Institute of Preventive Medicine, Public Health Laboratories & Food (Health) Administration, State of A.P., Narayaguda, Hyderabad.
4. Smt. Poonam Malakondaiah, IAS Principal Secretary to Govt., Health Medical & Family Welfare Department, State of A.P. Secretariat, Velagapudi, Guntur District.
5. Sri K.S. Jawahar Reddy, IAS, Principal, Secretary to Govt., Panchayat Raj & Rural Development Department, Secretariat, Velagapudi, Guntur District, A.P.

... Respondents

C.C.No.2241 of 2016

Between:

G. Sreeramulu, S/o. Veerabasavaiah,
Food Safety Officer, (Non-Gazetted),
O/o. The Gazetted Food Inspector, Kadapa,
Dr. YSR Kadapa District, State of A.P.

... Petitioner

Vs.

1. Smt. Poonam Malakondaiah, IAS Principal Secretary to Govt., Health Medical & Family Welfare Department, State of A.P., Secretariat, Velagapudi, Guntur District.
2. Smt. Manjiri, MD – Director, Institute of Preventive Medicine, Public Health Laboratories & Food (Health) Administration, State of A.P., Narayaguda, Hyderabad.

... Respondents

For the Petitioner : Mr. P.V. Krishnaiah
In all the matters

For Respondents : G.P. for Services A.P)
In all the matters

Court made the following order.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

WRIT PETITION Nos.7984, 8808 and 35495 of 2016
and
CONTEMPT CASE Nos.2240 and 2241 of 2016

COMMON ORDER: (per V.Ramasubramanian, J.)

The Andhra Pradesh Health Laboratories and Food (Health) Administration Subordinate Service originally comprised of 47 categories of posts and divided into 8 classes. Class-A comprised of 5 categories of posts, Class-B comprised of only one category of post, Class-C comprised of 3 categories of posts, Class-D comprised of 2 categories of posts, Class-E comprised of 10 categories of posts, Class-F comprised of 5 categories of posts and Class-G comprised of 21 categories of posts.

2. The post of Food Inspector (Non-Gazetted) is the only category of post that was included in Class-B. The method of appointment to the post of Food Inspector (Non-Gazetted) in Class-B of the said service, is indicated in column No.2 of the Table under Rule 3 of the Special Rules for Andhra Pradesh Health Laboratories and Food (Health) Administration Subordinate Service. It reads as follows:

“(i) By recruitment from among Junior Analysts.

(ii) By appointment by transfer from the categories of Qualified Sanitary/Health Inspectors working as Food Inspectors in Panchayats and Qualified Health Inspectors in the Medical and Health Department and Qualified Sanitary Inspectors/Health Inspectors of Municipal Corporations/ Municipalities.

(iii) By direct recruitment”.

3. The aforesaid Rules were amended by G.O.Ms. No.425, Health, Medical and Family Welfare (L1) Department, dated 20.10.1997. By this amendment, column No.2 in the Table under Rule 3, relating to the

method of appointment to the post of Food Inspector (Non-Gazetted) in Class B-of the service was modified as follows:

“(i) By transfer from among the Junior Analyst and Ministerial Staff (i.e.) Senior Assistants, Junior Assistants-cum-Typists and Typists of the Andhra Pradesh Institute of Preventive Medicine, Public Health Laboratories and Food (Health) Administration Department.

(ii) By appointment by transfer from the category of Qualified Sanitary/Health Inspectors working as Food Inspectors in Panchayats and Qualified Health Inspectors in the Medical and Health Department and Qualified Sanitary Inspectors/Health Inspectors of Municipal Corporations/ Municipalities and Non-Medical Assistants of Medical and Health Department.

(iii) By direct recruitment”.

4. The Special Rules as originally issued under G.O.Ms. No.459, dated 08-9-1994, also contained Note (1) and Note (2) below the Table under Rule 3 of the Special Rules. Note (2) below the Table under Rule 3 of the Original Special Rules reads as follows:

“NOTE (2): The appointments to the category of Food Inspector (Non-Gazetted) (Class-B) by the different methods of appointment indicated in the table above shall be limited to one third of the posts for each of the methods of appointment as indicated below:

- (i) One third of the posts by transfer of Junior Analysts.
- (ii) One third of the posts shall be filled in from the category of Qualified Sanitary/Health Inspectors of Panchayats, Municipalities and Health Inspectors working in Medical & Health Department.
- (iii) One third of the posts by direct recruitment.

Provided that if qualified candidates by any of the methods of appointment is not available, the vacancies meant for the relevant category will lapse.”

5. But when the Special Rules issued in G.O.Ms.No.459, dated 08-9-1994, were amended under G.O.Ms.No.425, dated 20-10-1997, the

following words, namely, “and Ministerial Staff i.e. Senior Assistants, Junior Assistants-cum-Typists and Typists in the ratio of 1:1 (Junior Analyst: Ministerial Staff, as in the above order)” were directed to be included along with the words “one third of the posts by transfer of Junior Analysts”.

6. Similarly, Note (2)(ii) appearing below the Table under Rule 3 of the Special Rules issued under G.O.Ms.No.459, was also replaced by the following, under G.O.Ms.No.425, dated 20-10-1997:

“(ii) one third of the posts shall be filled in from the category of Qualified Sanitary / Health Inspectors of Panchayats, Municipalities, Health Inspectors and Non-Medical Assistants working in Medical and Health Department.”

7. By a further amendment issued under G.O.Ms.No.79, Health, Medical and Family Welfare (L1) Department, dated 09.03.2007, Note (2)(ii) below the Table under Rule 3 was modified to the following effect:

“(ii) One third of the posts shall be filled in from the category of qualified Sanitary / Health Inspectors of Panchayats, Municipal Corporations / Municipalities, Health Inspectors and Non-Medical Assistants working in Medical and Health Department.”

8. By the last of the amendments issued under G.O. Ms.No.306, Health, Medical and Family Welfare (L.1) Department, dated 14-9-2007, the entire entry in column No.2 in the Table under Rule 3 relating to the method of appointment was directed to be omitted. In other words, what was omitted was the entry relating to “by appointment by transfer from the category of Qualified Sanitary/Health Inspectors working as Food Inspectors in Panchayats and Qualified Health Inspectors in the Medical and Health Department and Qualified Sanitary Inspectors/Health Inspectors of Municipal Corporations/Municipalities and Non-Medical Assistants of Medical and Health Department.”

9. As a consequence of the entire omission of the method of appointment by transfer from the category of Sanitary/Health Inspectors working as Food Inspectors in Panchayats and Health Inspectors in the Medical and Health Department and Qualified Sanitary Inspectors/Health Inspectors in Municipal Corporations/ Municipalities, Note (2)(ii) was also omitted by the amendment under G.O.Ms.No.306, dated 14-9-2007.

10. Challenging the amendments made under G.O.Ms.No.306, dated 14-9-2007, 2 persons by name G. Sreeramulu (the petitioner in these writ petitions) and G. Venkateswara Rao jointly filed an application in O.A.No.3806 of 2008 on the file of the Andhra Pradesh Administrative Tribunal, at Hyderabad. They also filed one more application in O.A.No.6953 of 2008 on the file of the A.P. Administrative Tribunal seeking to set aside the 1st entry in column No.2 of the Table under Rule 3 that enabled appointment to the post of Food Inspector (Non-Gazetted) by transfer from among Junior Analysts, as provided in the Original Rules under G.O.Ms.No.459, dated 08-9-1994.

11. When both the applications came up for hearing before the A.P. Administrative Tribunal on 08-6-2012, it was informed by the Government Pleader that the 2nd applicant G. Venkateswara Rao had already been appointed as Food Inspector under G.O.Ms.No.69, dated 29-3-2011. Therefore, without going into the question of validity of the amended rule, the Tribunal disposed of O.A.No.3806 of 2008 directing the Government to consider the case of G. Sreeramulu, the 1st applicant in the aforesaid original application and the petitioner in these writ petitions, for appointment to the post of Food Inspector (Non-Gazetted) without reference to G.O.Ms.No.306, dated 14-9-2007, on par with G.

Venkateswara Rao. In view of the said direction, the other application O.A.No.6953 of 2008 was dismissed as no orders are necessary.

12. Challenging the order passed in O.A.No.3806 of 2008 on 08.06.2008 by the A.P. Administrative Tribunal, the Government filed a writ petition in W.P.No.23530 of 2014. Similarly, 3rd parties filed W.P.No.32361 of 2014. Both these writ petitions were disposed of by a Bench of this Court by an order dated 15-12-2014, setting aside the order of the Tribunal and remanding the matter back to the Tribunal for a fresh disposal. This was done by the Division Bench on the ground that when a Rule is challenged, the Tribunal was obliged to give reasons before issuing a direction to consider the case of one person without reference to the Rule. This Court also found that the promotion of one of the 2 applicants before the Tribunal was ordered under threat of contempt.

13. After remand, the A.P. Administrative Tribunal passed a fresh order on 10-3-2015 dismissing O.A.No.3806 of 2008, on the ground that when the applicants could not dispute the power of the Government to amend the Rules, the vires of the Rule should be taken to be not in dispute. The Tribunal also found that since the amendment did not affect the promotions/appointments by transfer already made to the post of Food Inspector (Non-Gazetted), the amendment cannot also be said to be retrospective in nature. The Tribunal pointed out that on the date of the amendment, there was no vacant post to accommodate the 1st applicant G. Sreeramulu. Therefore, the Tribunal came to the conclusion that no vested right of the 1st applicant was taken away.

14. As against the order dated 10-3-2015 passed by the A.P. Administrative Tribunal dismissing O.A.No.3806 of 2008, only one applicant, namely, G. Sreeramulu filed a writ petition in W.P. No.10487 of

2015. This writ petition was allowed by a Bench of this Court, by an order dated 15-4-2015, on the short ground that the A.P. Administrative Tribunal heard arguments and reserved O.A.No.3806 of 2008 for judgment on 06-02-2015 and that thereafter the Government filed a counter affidavit on 24-02-2015, but that the same was taken into account by the Tribunal without an opportunity to the applicant, while dismissing the original application on 10-3-2015. On these reasonings, the original application was again remanded back to the Tribunal for a fresh disposal.

15. In the meantime, 2 orders came to be passed on 01-4-2015 and 07-4-2015 repatriating the applicant G. Sreeramulu to his parent organisation in the original post, on the basis of the dismissal of O.A.No.3806 of 2008 by the Tribunal by order dated 10-3-2015. Therefore, G. Sreeramulu moved a fresh application in O.A.No.4438 of 2015 challenging the repatriation to the original post.

16. As a result, the A.P. Administrative Tribunal took up for consideration O.A.No.3806 of 2008 which was remanded back by this Court by order dated 15-4-2015 along with O.A.No.4438 of 2015. Eventually, the Tribunal dismissed both the applications by order dated 20-8-2015.

17. The petitioner G. Sreeramulu as well as the other applicant G. Venkateswara Rao filed 2 applications for review in Review M.A. Nos.2522 and 2523 of 2015 on the file of the A.P. Administrative Tribunal. Both the review applications were dismissed by the Tribunal by an order dated 09-11-2015.

18. Challenging the dismissal of Review M.A. No.2522 of 2015 as well as O.A.No.3806 of 2008 and also challenging G.O.Ms.No.306, dated

14-9-2007, G. Sreeramulu has come up with the 1st writ petition W.P.No.7984 of 2016. Similarly, the very same person G. Sreeramulu has come up with the 2nd writ petition W.P.No.8808 of 2016 challenging the order passed by the A.P. Administrative Tribunal in Review M.A. No.2523 of 2015 and O.A.No.4438 of 2015 as well as challenging the orders of repatriation dated 01-4-2015 and 07-4-2015.

19. It appears that after filing of the aforesaid 2 writ petitions, the petitioner also made a representation dated 07-4-2016 to the Commissioner of Panchayat Raj seeking posting as Sanitary Inspector in the event of accepting the repatriation and also requesting the Commissioner of Health and Food Safety to retain him as Food Inspector. After making such a representation, the petitioner also filed an application in O.A.No.3734 of 2016 on the file of the A.P. Administrative Tribunal seeking a direction to the respondents to issue posting orders on the basis of his representation. In the original application, he also prayed for an interim direction to issue posting orders and to pay salary.

20. On 28-9-2016, the Tribunal admitted O.A.No.3734 of 2016 and also issued an interim direction to consider the claim of the petitioner in accordance with the Statutory Rules and to pass orders within a timeframe.

21. Complaining that the A.P. Administrative Tribunal should have straightaway issued a direction to issue posting orders and to pay salary and that the Tribunal should not have merely directed the respondents to dispose of his representation, the petitioner filed a writ petition in W.P.No.35495 of 2016 on the file of this Court contending that he has been without any posting order for the past one year. The prayer made in this writ petition W.P.No.35495 of 2016 is to modify the interim order

dated 28-9-2016 passed in O.A.No.3734 of 2016 and to issue a positive direction to the respondents to issue posting orders and to pay salary.

22. When W.P.Nos.7984 and 35495 of 2016 came up for orders as to admission, we were informed by the learned Government Pleader for Services-I (Andhra Pradesh) that the writ petitioner will be given posting as Food Inspector. On the basis of the said statement, we passed an order on 27-10-2016 directing the respondents to pass orders and handover a copy of the order to the counsel for the petitioner within one week. Complaining that the said order was not complied with, the petitioner has come up with 2 contempt cases in C.C.Nos.2240 and 2241 of 2016. In the meantime, the Government had come up with a petition for a modification of the interim order.

23. Thus we have on hand 3 writ petitions and 2 contempt cases. Since all of them revolve around (1) the validity of G.O.Ms.No.306, dated 14-9-2007, (2) the correctness of the order of the Tribunal in 2 review applications and (3) the issue of posting orders to the petitioners, all of them were combined together and taken up for disposal.

24. We have heard Mr. P.V. Krishnaiah, learned counsel for the petitioner and the learned Government Pleader for Services-I (Andhra Pradesh) for the official respondents.

25. Before proceeding further, it would be ideal to present in tabular column, the reliefs sought in the three writ petitions on hand.

Writ Petition No.	Reliefs sought
W.P.No.7984/2016	1. To declare G.O.Ms.No.306 dated 14.09.2007 as illegal; 2. To set aside the order of the Tribunal dated 20.08.2015 passed in O.A.No.3806/2008 and order dated 09.11.2015 passed in R.A.No.2522/2015; 3.To consider the case of the petitioner for promotion to the post of Food Inspector (non-

	gazetted), as well as Food Safety Officer, on par with his juniors, by reviewing all the promotions made after G.O.Ms.No.306.
W.P.No.8808/2016	1. To declare the proceedings dated 01.04.2015 of the Commissioner of Health and Family Welfare as illegal; 2. To declare the proceedings dated 7.04.2015 of the Assistant Food Controller as illegal; 3. To set aside the orders of the Tribunal dated 20.08.2015 in O.A.No.4438/2015 and order dated 09.11.2015 in R.A.No.2523/2015; 4. To allow the petitioner to continue as Food Inspector/Food Security Officer (non-gazetted).
W.P.No.35495/2016	1. To set aside the order of the Administrative Tribunal dated 28.09.2016 in O.A.No.3734/2016; and 2. To issue a direction to the respondents to forthwith issue posting orders.

W.P.No.35495 of 2016

26. It will be easy to dispose of W.P.No.35495 of 2016, as the dispute raised therein lies in a narrow compass. The petitioner in this writ petition was initially appointed as Health Assistant in Medical and Health Department in the year 1990. Subsequently, he was appointed by transfer as Sanitary Inspector in the Panchayat Raj Department in 1997.

27. As stated earlier, the Andhra Pradesh Health Laboratories and Food (Health) Administration Subordinate Service Special Rules were amended by G.O.Ms.No.306, dated 14.09.2007, taking away the opportunity for the petitioner to seek appointment by transfer to the post of Food Inspector (non-gazetted). Challenging the amendment of the Rules, the petitioner filed O.A.No.3806 of 2008, which was disposed of by the Tribunal without looking into the challenge to the Rule, but giving a direction to the respondents to consider the case of the petitioner without reference to the amended Rules.

28. Immediately after the order of the Tribunal, the petitioner filed a Contempt Application and secured appointment as Food Inspector (non-gazetted), by an order dated 12.09.2014.

29. However, the judgment of the Tribunal in O.A.No.3806 of 2008 was set aside by this Court and the matter was remanded back to the Tribunal, for determination on the substantial challenge to the amendment to the Special Rules. Pursuant to the said order the Tribunal took up the application and dismissed O.A.No.3806 of 2008.

30. But the judgment of the Tribunal dismissing O.A.No.3806 of 2008 was set aside by this Court by an order dated 15.04.2015 in W.P.No.10487 of 2015 and the matter was remanded back once again to the Tribunal for fresh consideration, after giving liberty to the petitioner to meet the contentions raised in the counter affidavit of the Government.

31. In the meantime, the Commissioner issued an order dated 01.04.2015 repatriating the petitioner back to the Panchayat Raj Department, as his appointment as Food Inspector was pursuant to a Contempt Case filed after the first order of the Tribunal in O.A.No.3806 of 2008.

32. Therefore, the petitioner filed O.A.No.4438 of 2015 challenging the repatriation. This application was taken up along with O.A.No.3806 of 2008 and both of them were dismissed by the Tribunal. The review applications were also dismissed by the Tribunal.

33. Thereafter, the petitioner filed O.A.No.3734 of 2016 seeking a direction to the respondents to issue posting orders as Food Inspector (non-gazetted). This prayer was made on the ground that his repatriation on 01.04.2015 was illegal and that the same is also the subject matter of

challenge in a writ petition W.P.No.8808 of 2016 arising out of the dismissal of an Original Application and a review application by the Tribunal.

34. In O.A.No.3734 of 2016 the petitioner prayed for an interim direction to issue posting orders. But the Tribunal granted an interim order merely to consider the case of the petitioner. Contending that he is entitled to an order not merely for the consideration of his claim but also for a positive direction to give him posting orders, the petitioner has come up with the present writ petition.

35. At the outset it should be pointed out that in service matters, no positive Mandamus can be issued to give promotion or appointment to anyone, except in extraordinary circumstances where the directions issued by the Courts for consideration of the claim were repeatedly flouted by the respondents. This is not a case where the directions issued by the Courts were repeatedly flouted by the respondents, so as to entitle the petitioner to seek a positive Mandamus.

36. As seen from column Nos.9 and 10 of the Original Application filed by the petitioner in O.A.No.3734 of 2016, the main prayer as well as the interim prayer made by him before the Tribunal were just the same. The main prayer was for a direction to issue posting orders and to pay salary on the basis of his representation dated 07.04.2016. The interim prayer was also only to issue appropriate posting orders and pay salary on the basis of the very same representation.

37. If such an application had been before this Court, we would have ordered only a notice both in the main application and in the prayer for interim relief. But fortunately for the petitioner or perhaps due to the

persuasive skill of the learned counsel for the petitioner, the petitioner was granted an interim order by the Tribunal while admitting O.A.No.3734 of 2016. The interim order passed by the Tribunal was more than what a Tribunal can grant by way of an interim order. Even in a final disposal, the Tribunal could have granted only the very same relief. Therefore, we are of the considered view that the present writ petition seeking a positive direction in the place of a direction for consideration of his claim, is nothing but a very highly ambitious one and it deserves to be dismissed. Hence W.P.No.35495 of 2016 is liable to be dismissed.

38. Before dismissing the writ petition it should be pointed out that at the time when notice was ordered in the above writ petition, the Government Pleader gave a concession that the petitioner will be given posting orders as Food Inspector. But later the Government came up with an application for being mentioned, contending that the petitioner is entitled to be posted only to the post of Sanitary Inspector. However, the petitioner came up with Contempt Petitions in C.C.Nos.2240 and 2251 of 2016 contending that he must have been given posting orders as Food Inspector.

39. But we are of the considered view that the petitioner cannot ask for anything more than what he is entitled as per the Rules. Unless and until the Rules are set aside, the petitioner will have no right to be posted as Food Inspector. The interim order passed by us at the time of ordering notice in the Contempt Petition, was on a concession given by the learned Government Pleader without appropriate instructions. Therefore, the interim order passed by us will have to go, following the fate of the main writ petition itself. It is needless to point out that when the main writ petition is dismissed, the interim orders passed will also

have to go. Therefore, the interim order passed by us is also recalled. However it will be open to the respondents to give posting to the petitioner as per his entitlement.

40. In view of what is stated above, W.P.No.35495 of 2016 is dismissed. Consequently, W.P.M.P.No.49067 of 2016 is closed as no further orders are necessary.

C.C.Nos.2240 & 2241 of 2016

41. Both these Contempt Petitions arise out of the interim orders passed by us in W.P.Nos.7984 & 35495 of 2016. As we have pointed out earlier, the interim order passed by us was actually confined only to W.P.No.35495 of 2016, as the said writ petition alone related to the issue of posting orders.

42. In the previous part of this order we have dismissed W.P.No.35495 of 2016. Therefore, the interim order has also to follow suit. Once the interim order has gone, the contempt does not survive. We have also indicated the reasons in the previous part of this order as to how there was a mistake on the part of the learned Government Pleader in mentioning Sanitary Inspector as Food Inspector. Therefore, we cannot hold the respondents guilty of wilful disobedience of the interim order of this Court. Hence both the Contempt Petitions are dismissed.

W.P.Nos.7984 & 8808 of 2016

43. The relief sought in W.P.No.7984 of 2016 is to declare the amendment to the Special Rules as null and void and for a

consequential direction to grant promotion to the post of Food Inspector. The relief sought in W.P.No.8808 of 2016 was to set aside the order of repatriation passed as a consequence of the dismissal of the Original Application by the Tribunal in which a challenge to the amendment to the Rules was made.

44. Therefore, it is clear that the order of repatriation dated 01.04.2015, challenged in W.P.No.8808 of 2016 was consequential to the rejection of the challenge to the amendment to the Rules under G.O.Ms.No.306 dated 14.09.2007. Hence what is to be first decided is the validity of G.O.Ms.No.306. It is only if the petitioner succeeds in his challenge to G.O.Ms.No.306 that his challenge to the repatriation would survive. Therefore, we shall first take up the challenge to G.O.Ms.No.306.

45. As we have pointed out earlier, what the Government did under G.O.Ms.No.306 dated 14.09.2007 was to delete the following four categories of posts from the list of feeder categories to the post of Food Inspector (non-gazetted):

1. Qualified Sanitary/Health Inspectors working as Food Inspectors in Panchayats;
2. Qualified Health Inspectors in Medical and Health Department;
3. Qualified Sanitary Inspectors/Health Inspectors of Municipal Corporations/Municipalities; and
4. Non Medical Assistants of Medical and Health Department.

46. The petitioner was working as a Sanitary Inspector in a Gram Panchayat. Therefore his post falls under the first category among the aforesaid four categories of posts, which stand deleted from the list of feeder categories. The reason stated by the Government for deleting the aforesaid categories from the list of feeder categories is that as per the decision of the Supreme Court in V. Jagannadha Rao v. State of Andhra Pradesh¹ the provision of a channel of promotion to candidates belonging to other departments and in Muffasil areas was a clear violation of paragraphs 3(3) and 5(2) of the Presidential Order. Therefore, the main ground of attack of the petitioner to G.O.Ms.No.306 is (1) that the post of Food Inspector (non-gazetted) is a State-wide post not covered by the Presidential Order, as it is neither organised as a District or Zonal or Multy Zonal post; and (2) that if the logic adopted by the Government is correct, then various posts existing in the Head Office cannot be kept as feeder categories, as the same would also be contrary to the Presidential Order.

47. In simple terms the contention of the petitioner is that G.O.Ms.No.306 is brought forth only to confer unfair and undue advantage upon other feeder category employees, and that in any case the Government order can have only prospective application, in respect of persons appointed after the date of the amendment.

48. We have carefully considered the above submissions.

¹ (2001) 10 SCC 401

49. At the outset it should be pointed out that by the impugned Government Order, four categories of employees are removed from the list of feeder categories. Two reasons are stated in the counter affidavit filed by the Government for deletion of these categories. The reasons are (a) that entitling the employees from other departments as eligible for appointment in this department would be violative of the Presidential Order and (b) that Sanitary Inspectors in the Panchayats, like the petitioner herein, have a separate channel of promotion, first to the post of Village Secretary, then to the post of Executive Officer (Panchayat) and lastly to the post of Mandal Development Officer. In addition, it is contended by the Government that the duties and responsibilities of the post of Sanitary Inspector in a local body are confined only to sanitation, epidemic breakout, registration of births/deaths, immunisation programmes etc. Sanitary Inspectors in local bodies may also attend food inspection and sampling on a part-time basis. But the role of a Food Inspector is larger in nature. Hence the department contends that after the issue of the Food Safety and Standard Act, 2006 and the Regulations of the year 2011, the post of a Food Inspector is a coveted post and that the amendments were perfectly in order.

50. Out of the four categories of persons excluded under the impugned Government Order, only two persons belonging to one of those two categories alone have come up with a challenge. These two persons including the writ petitioner herein were Sanitary Inspectors in a local body. These Sanitary Inspectors working as

Food Inspectors in Panchayats got included in the list of feeder categories for the first time only in the year 1994 when the Special Rules for the Andhra Pradesh Health Laboratories and Food (Health) Administration Subordinate Service, were revamped under G.O.Ms. No.459, dated 08.09.1994. In other words, the very right of the Sanitary Inspectors working in local bodies to be considered for appointment to the post of Food Inspector (non-gazetted) came into existence only in 1994. It has been taken away by the impugned amendment of the year 2007.

51. Since the decision of the Supreme Court in *V. Jagannada Rao* is stated to be the reason behind the amendment, it may be necessary to take note of the said decision. What led to the decision of the three member Bench of the Supreme Court in *V. Jagannadha Rao* was a challenge before the Full Bench of the A.P. Administrative Tribunal to the Special Rules issued in the labour department, enabling the Senior Assistants working in another department, viz., Factories and Boilers department, to be considered for appointment by transfer to the post of Assistant Labour Officer and Assistant Inspector of Factories in the labour department. The challenge was made by the employees in the labour department and the Tribunal sustained the challenge on the ground that considering persons from other departments for promotion in labour department was violative of paragraphs-3 and 5 of the Presidential Order.

52. When the judgment of the Tribunal was taken to the Supreme Court (it happened before L. Chandrakumar), heavy

reliance was placed upon two earlier decision of the Supreme Court, one in *Government of Andhra Pradesh v. B. Satyanarayana Rao*² and another in *State of Andhra Pradesh v. V. Sadanandam*³. But the correctness of the views expressed in *Sadanandam* and *B. Satyanarayana Rao* were doubted by a two member Bench, before which *V. Jagannadha Rao*, came up for hearing and hence the matter was referred to a Larger Bench.

53. A three member bench held in *V. Jagannadha Rao* that any Rule made under the proviso to Article 309 would be invalid if it goes contrary to the Presidential Order and that even if an order is made in terms of para-5(2) of the Presidential Order, the same would be invalid, if it was beyond the permissible limits.

54. Strictly speaking the ratio laid down in *V. Jagannadha Rao* would apply only to posts covered by the Presidential Order and not to posts which are not covered by the Presidential Order. To this extent Mr. P. V. Krishnaiah, learned counsel for the petitioner is correct.

55. But a careful look at the counter affidavit filed by the Government shows that the decision in *V. Jagannadaha Rao* was only one of the several factors taken into account by the Government for introducing the amendment. The Government appears to have taken note of the existence of separate channels of promotion in the Panchayat Raj Department itself for persons like

² (2000) 4 SCC 262

³ 1989 Supp.(1) SCC 574

the petitioner herein, apart from taking note of the duties and responsibilities discharged by Sanitary Inspectors like the petitioner herein and the duties and responsibilities of the post of Food Inspector (non-gazetted). These two considerations, viz., (1) the existence of separate channels of promotion in their own department and (2) the difference in the duties and responsibilities of both posts, are very relevant considerations for deciding the question whether one post is to be a feeder category to another or not. Therefore, it follows that the impugned Government order has been issued on the basis of relevant considerations.

56. It must be remembered that a Rule issued by the Government in exercise of the power conferred by the proviso to Article 309 can be challenged only on very limited grounds. These grounds revolve around (1) arbitrary exercise of power; (2) offensive of Articles 14 and 16 of the Constitution; and (3) offensive of any other statutory prescription. None of these contingencies have arisen in this case. The impugned Government Order is not challenged on any of these grounds. At the most the challenge could be taken to be on the ground that the amendment was brought forth on irrelevant consideration, viz., the ratio laid down by the Supreme Court in *V. Jagannadha Rao*. But we have found other relevant considerations on the basis of which the impugned amendment has been issued. Therefore, we are of the considered view that the challenge to G.O.Ms.No.306 is devoid of merits. Hence the order of the A.P. Administrative Tribunal dismissing Original

Application filed by the petitioner in O.A.No.3806 of 2008 and also dismissing the Review Application M.A.No.2522 of 2015 are perfectly in order and they do not call for any interference. Therefore, W.P.No.7984 of 2016 is devoid of merits and accordingly it is dismissed.

57. Once the challenge to G.O.Ms.No.306 is rejected, the repatriation of the petitioner to his parent department, viz., Panchayat Raj Department by the proceedings dated 01.04.2015, cannot be found fault with. Therefore the order of the Tribunal dismissing O.A.No.4438 of 2015 and R.A.No.2533 of 2015 cannot also be found fault with. Hence W.P.No.8808 of 2016 is also liable to be dismissed. Accordingly it is dismissed.

58. However, since by an interim order dated 27.10.2016 we directed to issue posting orders to the petitioner, the respondents shall at least issue the posting orders now to the post to which he can be accommodated and also pay the salary for the period from 27.10.2016.

59. In fine, W.P.Nos.7984, 8808 and 35495 of 2016 and C.C.No.2240 & 2241 of 2016 are dismissed subject to the above directions. Consequently, miscellaneous petitions pending in these writ petitions and Contempt Petitions, if any, shall stand closed. No costs.

V.RAMASUBRAMANIAN, J

28.04.2017
Js.

G.SHYAM PRASAD, J

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition Nos.7984, 8808 and 35495 of 2016
and
Contempt Case Nos.2240 and 2241 of 2016
(per VRS, J.)



April, 2017.
(Js)