

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN  
AND  
THE HON'BLE Mr. JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.30196 OF 2017

**ORDER:** (Per the Hon'ble Mr. Justice Abhinand Kumar Shavili)

1. This writ petition is filed by the petitioner seeking a mandamus to declare the action of the 3<sup>rd</sup> respondent, in ignoring the letter dated 30.6.2017, which was in response to the letter dated 23.6.2017 of the 2<sup>nd</sup> respondent, even after promoting her as Head Nurse as per proceedings dated 4.8.2017, and in not accepting her joining report dated 5.8.2017 in the promotional post of Head Nurse, and in issuing the impugned proceedings dated 7.8.2017 to the effect that there are no vacant posts of Head Nurse in the 3<sup>rd</sup> respondent-institution, as arbitrary, illegal and against the principles of natural justice, and consequently, to set aside the proceedings dated 7.8.2017 of the 3<sup>rd</sup> respondent.

2. Heard Sri P.V. Krishnaiah, learned Counsel for the petitioner and the learned Government Pleader for Services (Telangana State).

3. It is the case of the petitioner that she was initially appointed as a Staff Nurse in Zone-II of the then composite State of Andhra Pradesh during 1990 and she was deputed to work in 3<sup>rd</sup> respondent-institution during 1992; the 3<sup>rd</sup> respondent-institution is a State wide Institution, which is listed in the 10<sup>th</sup> Schedule of Andhra Pradesh Re-organization Act, 2014; earlier thereto in the combined State of Andhra Pradesh, persons from different zones were drawn to work in the State wide institutions in the ratio of 42:36:22, being the population of three regions of composite State of Andhra Pradesh i.e., Andhra Area, Telangana Area and Rayalaseema Area; under 42% ratio of Andhra Area, the petitioner was allotted to work

in the 3<sup>rd</sup> respondent-institution; when the turn of the petitioner for promotion to the post of Head Nurse in Zone-II came up for consideration, the 2<sup>nd</sup> respondent, who is competent to effect promotions in Zone-II, had sought consent of the 3<sup>rd</sup> respondent for filling up of the post of Head Nurse and the 3<sup>rd</sup> respondent had given consent to promote the petitioner as a Head Nurse and also expressed no objection to continue the petitioner in the said promotional post, vide proceedings dated 30.6.2017; the 2<sup>nd</sup> respondent had promoted the petitioner as Head Nurse vide proceedings dated 4.8.2017 and posted her in the 3<sup>rd</sup> respondent-institution as a Head Nurse; in pursuance of the said promotion orders dated 4.8.2017, the petitioner had given joining report to the 3<sup>rd</sup> respondent on 5.8.2017; surprisingly, the 3<sup>rd</sup> respondent refused to accept her joining report, contrary to the consent given earlier; and on the other hand, the 3<sup>rd</sup> respondent had issued a letter dated 7.8.2017 to the 2<sup>nd</sup> respondent stating that there are no vacant posts of Head Nurses in the 3<sup>rd</sup> respondent-institution and, by oversight, the 3<sup>rd</sup> respondent had given consent earlier. Hence, the present writ petition is filed.

4. It is contended by Sri P.V. Krishnaiah, learned Counsel for the petitioner, that the 3<sup>rd</sup> respondent is estopped from taking a different stand from his consent letter dated 30.06.2017 and, therefore, the petitioner may be permitted to work as Head Nurse in the 3<sup>rd</sup> respondent-Institution. It is further contended that the 3<sup>rd</sup> respondent-institution is placed in the 10<sup>th</sup> Schedule of the A.P. Reorganization Act, 2014 and the 3<sup>rd</sup> respondent-Institution has not yet been bifurcated and its staff are not allocated either to the State of Telangana or to the State of Andhra Pradesh and, therefore, she is entitled to be continued in the 3<sup>rd</sup> respondent-Institution. It is specifically contended that there are many vacancies in the cadre of Head Nurse in the 3<sup>rd</sup> respondent Institution, but there was no specific pleading

in the writ petition with regard to the vacancies in the cadre of Head Nurse in the 3<sup>rd</sup> respondent-institution.

5. On the other hand, the learned Government Pleader has contended that the petitioner originally belongs to Zone-II and she has been drawn from Zone-II to work in the 3<sup>rd</sup> respondent-Institution and the 2<sup>nd</sup> respondent is the competent authority to allot the staff to work in the 3<sup>rd</sup> respondent-Institution and the 2<sup>nd</sup> respondent had rightly issued the revised orders dated 19.09.2017, posting the petitioner as Head Nurse in the Government General Hospital, Kakinada in Zone-II.

6. During the pendency of the writ petition, the 2<sup>nd</sup> respondent based on the letter dated 07.08.2017 of the 3<sup>rd</sup> respondent had modified the earlier promotion orders dated 04.08.2017 vide proceedings dated 19.09.2017, under which the petitioner was given posting orders with partial modifications of the promotion orders and she was posted as Head Nurse in the Government General Hospital, Kakinada.

7. We have considered the rival submissions made by the parties and the fact that the 3<sup>rd</sup> respondent in his letter dated 07.08.2017 had requested the 2<sup>nd</sup> respondent to modify the posting orders of the petitioner, on the ground that there are no vacant posts of Head Nurse in the 3<sup>rd</sup> respondent-Institution. When it is the specific case of the 3<sup>rd</sup> respondent that there are no vacancies in the 3<sup>rd</sup> respondent Institution and this fact was taken into account by the 2<sup>nd</sup> respondent and the 2<sup>nd</sup> respondent had modified the promotion orders in respect of posting the petitioner as Head Nurse in the Government General Hospital, Kakinada, we do not see any illegality in the action of the 2<sup>nd</sup> respondent in giving revised posting orders to the petitioner in the promoted post of Head Nurse in the Government General Hospital, Kakinada. Sri P.V. Krishnaiah,

learned Counsel for the petitioner, during the course of arguments, had submitted that the petitioner is willing to forego her promotion as Head Nurse and she would prefer to continue as Staff Nurse in the 3<sup>rd</sup> respondent-Institution.

8. It is not for this Court to decide who should be posted where, whether be it in substantive post of Staff Nurse or in the promoted post of Head Nurse in the 3<sup>rd</sup> respondent-Institution. It is for the 2<sup>nd</sup> respondent, who is the competent authority, to decide who should be posted in the 3<sup>rd</sup> respondent-Institution representing the Andhra Area share in a State wide Institution and it would be appropriate if such a decision is taken by the 2<sup>nd</sup> respondent. Therefore, liberty is given to the petitioner to submit a detailed representation to the 2<sup>nd</sup> respondent for relinquishment of her promotion in the cadre of Head Nurse and for posting her back as Staff Nurse in the 3<sup>rd</sup> respondent-Institution and, upon such representation being made, the 2<sup>nd</sup> respondent will consider the case of the petitioner and pass appropriate orders, in accordance with law, within a period of two (2) months from the date of receipt of a copy of this order.

9. With the above directions, the Writ Petition is disposed of. Consequently, miscellaneous petitions pending, if any, shall stand disposed of. No costs.

(RAMESH RANGANATHAN, ACJ)

(ABHINAND KUMAR SHAVILI, J)

November, 2017  
cbs/nn

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Mr. ABHINAND KUMAR SHAVILI



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