

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI

WRIT PETITION NOS.12794, 31167 AND 37221 OF 2016

C O M M O N O R D E R
(Per Sri Justice Sanjay Kumar)

These three writ petitions arise out of the order dated 27.10.2014 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in O.A.No.10006 of 2011 and are therefore amenable to joint disposal by way of this common order.

O.A.No.10006 of 2011 was filed by Pikki Srinivasa Prasanna Kumar in relation to the recruitment to the post of Medical Officer (Ayurveda) in Zone-I undertaken by the Department of Ayush, Government of Andhra Pradesh, *vide* Notification dated 02.06.2011. Of the 29 posts of Medical Officer (Ayurveda) notified in Zone-I, 9 were under the OC (General) category and 1 post was notified for BC-A (General) category. As regards BC-D category, to which Pikki Srinivasa Prasanna Kumar belongs, two posts were notified under BC-D (General).

Selection to the post was to be made on the strength of two components, totaling 100 marks. 55 marks were for the weightage to be given to the qualification of the candidate and 45 marks were for giving weightage to the service rendered by the candidate on contract basis. 15 marks per year of contractual service in tribal areas, 12 marks per year of such service in rural areas and 6 marks per year of such service in urban areas were the parameters prescribed for allotting service weightage marks.

In terms of the aforestated selection methodology, Pikki Srinivasa Prasanna Kumar secured only 50.1786 marks (35.1786

marks for his qualification and 15 marks for his contractual service). Consequently, he did not figure in the merit list of Zone-I. However, his claim was that the authorities did not allot service weightage marks correctly to him as they erroneously treated the contractual service rendered by him at the Community Health Centre, Bobbili, Vizianagaram District, as urban service instead of rural service. He maintained that he should have been given 30 marks towards service weightage. By way of O.A.No.10006 of 2011, he assailed the appointment of respondents 5 to 7 therein as Medical Officers (Ayurveda) in Zone-I on the ground that he was more meritorious and sought a consequential direction to the authorities to include his name in the list of Medical Officers (Ayurveda) reckoning his contract service at Bobbili, Vizianagaram District, as rural service and to appoint him to the said post in Zone-I with effect from the date others similarly situated were appointed, pursuant to the notification dated 02.06.2011, along with consequential benefits. Dr.Purushothama Rao Pujari, Dr.Setti Uma Devi and Dr.G.Mruthula Rani were shown as respondents 5 to 7 respectively in the O.A.

By the order under challenge, the Tribunal accepted the plea of Pikki Srinivasa Prasanna Kumar and allowed the O.A., declaring that he had secured 65.1786 marks (35.1786 marks for his qualification and 30 marks for his contractual service) and that he was entitled to appointment to the post of Medical Officer (Ayurveda) in Zone-I in preference to respondents 5 and 6. The Commissioner, Department of Ayush, State of Andhra Pradesh, was directed to reschedule the merit list accordingly and issue an appointment order to him in preference to respondents 5 and 6.

Aggrieved by this order, the State of Andhra Pradesh and its Commissioner, Department of Ayush, filed W.P.No.12794 of 2016. No interim order was however granted therein. While so, under threat of contempt proceedings, it appears that the State issued Memo dated 02.09.2016 to one Dr.K.Vivekananda, Medical Officer (Ayurveda), appointed in Zone-I pursuant to the notification dated 02.06.2011, informing him that it had been decided to terminate his services from the post of Medical Officer (Ayurveda) so as to enable the Department to implement the order of the Tribunal in O.A.No.10006 of 2011 and accommodate Pikki Srinivasa Prasanna Kumar in the said post.

Aggrieved thereby, Dr.K.Vivekananda filed W.P.No.31167 of 2016 before this Court. By order dated 15.09.2016 passed therein, this Court opined that as he was not even a party to O.A.No.10006 of 2011 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad, the State could not proceed against him to give effect to the order passed therein. Observing that the Memo dated 02.09.2016 was in violation of the principles of natural justice; this Court suspended it pending further orders.

Not content with issuance of the Memo dated 02.09.2016 to Dr.K.Vivekananda, the Department of Ayush, Government of Andhra Pradesh, issued notice dated 25.10.2016 to Dr.Setti Uma Devi, respondent 6 in the O.A., informing her that it was decided to terminate her services so as to accommodate Pikki Srinivasa Prasanna Kumar as a Medical Officer in Zone-I. Aggrieved thereby, Dr.Setti Uma Devi filed W.P.No.37221 of 2016. By order dated 01.11.2016 passed therein, this Court granted interim stay of all further proceedings pursuant to the notice dated 25.10.2016.

This being the factual position, we have heard the learned Government Pleader for Services (Andhra Pradesh) appearing for the State and its Commissioner, Department of Ayush; Dr.K.Lakshmi Narasimha, learned counsel for Dr.Setti Uma Devi; Sri P.V.Ramana, learned counsel for Dr.K.Vivekananda; and Sri V.Jagapathi, learned counsel for Pikki Srinivasa Prasanna Kumar.

Though various contentions are sought to be urged before this Court touching upon the merits of the case, we are of the opinion that the matter is amenable to disposal on a short ground.

In his O.A., Pikki Srinivasa Prasanna Kumar set out the marks secured by respondents 5 to 7 therein, demonstrating that he was fully aware of the ranking in the merit list and the marks secured by the candidates empanelled therein. He was equally well aware of his own claim whereby his total marks would stand enhanced to 65.1786, if accepted.

In this background, perusal of the merit list of Zone-I which is placed before this Court indicates that the ninth and last Open Category (General) post, as against roster point No.67, was given to Dr.Purushothama Rao Pujari, a BC-A category candidate, on his own merit as he secured 64.9822 marks. However, if the claim of Pikki Srinivasa Prasanna Kumar was accepted he would secure 65.1786 marks and stand over and above Dr.Purushothama Rao Pujari. In effect, Pikki Srinivasa Prasanna Kumar would then become entitled to be considered against the ninth and last Open Category (General) post. Consequently, Dr.Purushothama Rao Pujari would stand displaced but as he belonged to the reservation category of BC-A and had secured higher marks than Dr.K.Vivekananda, the candidate selected against the reserved

post for BC-A (General), with 61.6333 marks, Dr.Purushothama Rao Pujari would have to be adjusted against this reserved post and it is Dr.K.Vivekananda, who would thereupon stand excluded from the merit list.

But, as already pointed out *supra*, Dr.K.Vivekananda was not even made a party to the O.A. On the other hand, Dr.Setti Uma Devi, who was appointed against the second BC-D (General) category reserved post was impleaded. Significantly, one D.Sambasiva Rao who was appointed to the first BC-D(General) category post, with 64.4009 marks, was not impleaded as a party. Pertinently, Pikki Srinivasa Prasanna Kumar did not have to aspire to the BC-D (General) category reserved post as he was entitled to the Open Category (General) post on merit, if his claim was accepted. Inexplicably, he also impleaded Dr.G.Mrudhula Rani, who was selected against the fifth Open Category (General) post, at roster Point No.53, with 66.8228 marks. There is no explanation as to why she alone was impleaded, leaving aside the appointees against the sixth, seventh and eighth Open Category (General) posts, as Pikki Srinivasa Prasanna Kumar could not have displaced her or the others even if his claim was accepted and he was allotted 65.1786 marks.

The aforestated facts clearly demonstrate that the O.A. was filed by Pikki Srinivasa Prasanna Kumar with absolutely no application of mind. If he aspired to the BC-D (General) category post, he ought to have impleaded D.Sambasiva Rao, who was appointed to the first of the two posts under this category, because his seniority stood affected as Pikki Srinivasa Prasanna Kumar would secure higher marks than him, if his claim was accepted. Of

the two persons who would be affected by his claim to the Open Category (General) post, namely Dr.Purushothama Rao Pujari and Dr.K.Vivekananda, he chose to implead only Dr.Purushothama Rao Pujari and left out Dr.K.Vivekananda. In consequence, the State now seeks to proceed against Dr.K.Vivekananda, though he is not even a party to the O.A. The termination notice issued to Dr.Setti Uma Devi reflects total non-application of mind by the State, as Pikki Srinivasa Prasanna Kumar could not be considered for the reserved post to which she was appointed even if his claim was accepted, as he would then have to be accommodated in the last Open Category (General) post.

Needless to state, this confusion arose because Pikki Srinivasa Prasanna Kumar did not file the O.A. with care and forethought by impleading all the proper and necessary parties.

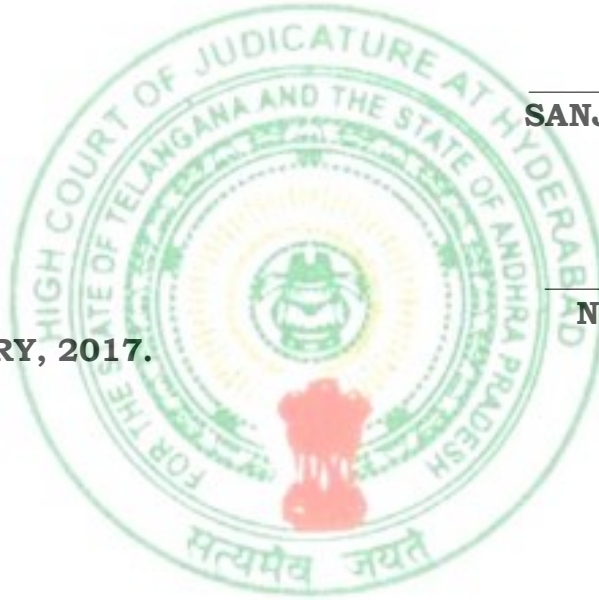
In any event, determination of the issues raised before it by the Tribunal and the consequential grant of relief to Pikki Srinivasa Prasanna Kumar without notice to Dr.K.Vivekananda, though such determination had a fatal effect on his interest, cannot be countenanced. The observation of the Tribunal that the authorities should reschedule the merit list, without even considering as to whether all the persons affected by such rescheduling were before it, amounts to gross violation of the principles of natural justice. Presently, Dr.K.Vivekananda, the vitally affected appointee, is before this Court on this very ground.

The order dated 27.10.2014 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in O.A.No.10006 of 2011 is accordingly set aside on this short ground without going into the merits of the matter.

It is left open to Pikki Srinivasa Prasanna Kumar to seek redressal of his grievance afresh in accordance with law, if he so chooses, by impleading all the proper and necessary parties. In the event he does so, the Tribunal shall consider the matter afresh and in accordance with law, uninfluenced by its earlier order dated 27.10.2014 in O.A.No.10006 of 2011.

The writ petitions are accordingly allowed.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR, J.

N.BALAYOGI, J

8th FEBRUARY, 2017.

PGS