

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

WRIT PETITION NO.31936 OF 2016

Between:

Dr.Kovi Sreehari

.. Petitioner

and

Commissioner of Ayush, State of AP,
Secunderabad and others

.. Respondents

DATE OF THE JUDGMENT PRONOUNCED: 03.03.2017

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS**

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

ANIS, J

*** THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS
+ WRIT PETITION NO.31936 OF 2016**

% DATED 3rd MARCH, 2017

Dr.Kovi Sreehari

.. Petitioner

Vs.

\$ Commissioner of Ayush, State of AP,
Secunderabad and others

.. Respondents

<Gist:

>Head Note:

! Counsel for the Petitioner : Sri P.V.Krishnaiah

^Counsel for the Respondents 1 to 5 : Government Pleader for
Services

^Counsel for the Respondent 6 : Sri Mamidi Venu Madhav

^Counsel for the Respondent 7 : --

? CASES REFERRED:



**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT JUSTICE ANIS**

WRIT PETITION NO.31936 OF 2016

O R D E R

(Per Hon'ble Sri Justice Sanjay Kumar)

The petitioner is the applicant in O.A.No.2812 of 2016 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (*for brevity*, 'the Tribunal'). He filed the said O.A. challenging the proceedings dated 11.07.2016 issued by the Commissioner, Department of Ayush, Andhra Pradesh (*hereinafter*, 'the Commissioner'), in so far as it related to his posting as a Medical Officer instead of as a Lecturer. He also challenged the Memo dated 16.06.2016 issued by the Commissioner, whereby the sixth respondent was posted as a Lecturer (Ayurveda) at Dr.NRS Government Ayurvedic College, Vijayawada, on 'Utilization of Services' basis and sought a consequential direction to the authorities to forthwith issue him posting orders as a Lecturer at the said college. By order dated 04.08.2016, the Tribunal dismissed the O.A. Aggrieved thereby, he is before this Court.

By order dated 22.09.2016, this Court granted interim suspension of the proceedings dated 11.07.2016, being of the opinion that as the services of the petitioner were already converted from that of a Medical Officer (Ayurveda) to a Lecturer (Ayurveda), under the proceedings dated 10.07.2009, it was no longer open to the Government to post him as a Medical Officer. This Court left it open to the Government to utilize his services as a Lecturer at the place of its choice, but categorically stated that posting of the petitioner as a Medical Officer could not be countenanced.

WVMP No.495 of 2017 was filed by the State of Andhra Pradesh and its authorities in the Department of Ayush to vacate the aforesaid order, while WVMP No.626 of 2017 was filed by the sixth respondent with the same prayer.

Heard Sri P.V.Krishnaiah, learned counsel for the petitioner, the learned Government Pleader for Services for the authorities and Sri Mamidi Venu Madhav, learned counsel for the sixth respondent.

Hitherto, the 'Andhra Pradesh Indian Medicine and Homeopathy Service Rules', promulgated under G.O.Ms.No.265 dated 30.06.1994, governed the categories of posts under Ayurveda branch of medicine also. The post of Medical Officer (Ayurveda), which included Lecturer, fell in Category 4 of Class B under these Rules. Rule 3 provided the method of appointment to this category of posts through direct recruitment or by appointment by transfer of Compounders (Ayurveda). Note-3, appended to Rule 3, stated to the effect that teaching posts in Ayurveda colleges should be filled, as far as possible, by posting those who possessed a PG Degree in the relevant system of Indian medicine.

In supersession of these rules, in so far as Ayurveda Medical Service was concerned, the Government of Andhra Pradesh framed the 'Andhra Pradesh Ayurvedic Medical Service Rules, 2005', *vide* G.O.Ms.No.67 dated 14.03.2005. Under Rule 2 of these Special Rules, constitution of the service was set out in three classes. Class-B, with which we are concerned, was sub-divided into four categories. Category-IV, falling in Class-B, reads as under:

'Category-IV:

- a. Teaching Cadre.
 - (i) Lecturer
 - (ii) Technical Assistant.

b. Non Teaching Cadre:

- (i) Medical Officer
- (ii) Drug Inspector
- (iii) Medical Officer (L.R.)'

Under Rule 8, the 'Appointing Authority', in so far as posts in Category IV of Class-B are concerned, is the Commissioner. Rule 11 deals with the 'Unit of Appointment' and specifies to the effect that for the purpose of recruitment and appointment as a full member to the categories of Medical Officer, Lecturer and above, the unit of appointment shall be the State. Relevant to note, the post of Medical Officer, as set out *supra*, falls under the 'non-teaching cadre' while the post of Lecturer is shown under the 'teaching cadre'. Rule 3, read with Annexure I to the Rules, prescribed the method of appointment to the posts of Lecturer and Medical Officer only through direct recruitment. Rule 5, read with Annexure-II, specifies that qualification for appointment as a Lecturer is a PG Degree in Ayurveda while a Degree in Ayurveda is sufficient for appointment as a Medical Officer.

The petitioner secured M.D (Ayurveda) Degree in Rasashastra in the year 2002 from Banaras Hindu University. He was appointed as a Medical Officer (Ayurveda) under proceedings dated 07.02.2009 of the Commissioner. Prior to the appointment of the petitioner as a Medical Officer in February, 2009, the Government of Andhra Pradesh, in its wisdom, issued G.O.Ms.No.16 dated 22.01.2009. Thereunder, taking into consideration the letter dated 20.12.2008 addressed by the Commissioner and having secured concurrence of the Andhra Pradesh Public Service Commission, the Government relaxed Rule 3 of the Special Rules framed under G.O.Ms.No.67 dated 14.03.2005, which provided that appointment to the post of Lecturer

shall only be by direct recruitment, and allowed conversion of existing qualified Medical Officers as Lecturers instead of resorting to direct recruitment, as a one-time arrangement in the interest of administration. As the petitioner, a Medical Officer possessing a PG Degree in Ayurveda, was eligible to seek conversion in terms of the aforesaid relaxation, he opted for the same when options were called for from existing Medical Officers. The Commissioner thereupon issued proceedings dated 10.07.2009 appointing him by conversion as a Lecturer in Rasashastra and Bhaishajya Kalpana. These proceedings are of relevance and are reproduced *verbatim*:

‘GOVERNMENT OF ANDHRA PRADESH
PROCEEDINGS OF THE COMMISSIONER, DEPARTMENT OF
AYUSH, A.P. : HYDERABAD.

PRESENT: DR. VIJAY KUMAR, IAS,
COMMISSIONER.

Procs.No.5419/Ayur.1/2008 dated 10/07/2009

Sub:- Department of AYUSH – Relaxation of Rule (3) of Service Rules (Ayur) i.e., Method of appointment to the post of Lecturer by way of Conversion from the eligible Medical Officers as one time measure – Options called for – Orders – Issued.

- Ref:- 1. G.O.Ms.No.16, HM&FW (12) Dept., dated 22/01/2009.
2. This office Proceedings No.5419/Ayur.2/08, dt.07/02/09 & 17/06/09.
3. Option of Dr.K. Sreehari, Medical Officer, Govt. Ayur. Dispensary, Mudivarthi, Nellore Dist. Dt. 26/06/2009.

&&&

Government vide reference cited above have relaxed Rule-3 of Special Rules entitled “The Andhra Pradesh Ayurvedic Medical Service Rules, 2005” as one time measure and permitted appointment by conversion from the post of Medical Officer (Ayur) to post of Lecturer (Ayur). The eligibility condition for post of Lecturer (Ayur) is as follows:

“Must possess a Post Graduate Degree in Ayurveda awarded by a University in India established or incorporated by or under Central Act or an Institution recognized by the

University Grants Commission, after having undergone regular study of not less than (3) years duration.”

Accordingly options have been called for from the existing Medical Officers (Ayur) working on regular basis for appointment by conversion as Lecturer/Technical Assistant in Ayurveda. Dr.K.Sreehari, Medical Officer, Govt. Ayur. Dispensary, Mudivarthi, Nellore Dist, who is a post graduate in Rasashastra & Bhaishajya Kalpana specialty has opted for teaching and posting at A.L.Govt. Ayur. College, Warangal in Rasashastra & Bhaishajya Kalpana or Allied subjects.

In view of the above, Dr.K.Sreehari, Medical Officer, Govt. Ayur. Dispensary, Mudivarthi, Nellore Dist is hereby appointed by conversion as Lecturer in Rasashastra & Bhaishajya Kalpana specialty and posted on O.D. Basis at A.L.Govt. Ayur. College, Warangal, in continuation of this office proceedings 2nd cited, subject to receipt of Government orders for his inter local cadre transfer in public interest as there is no candidate for this Department.

The Officers concerned are requested to report the date relief and joining duty by the individual promptly to this office.

Dr. Vijay Kumar,
Commissioner.”

The petitioner was accordingly posted as a Lecturer on O.D. basis at A.L.Government Ayurvedic College, Warangal, and continued in service there. Long thereafter, by proceedings dated 17.01.2014, the Commissioner promoted him as an Assistant Professor and posted him as a Senior Lecturer in the P.G.Department of Rasashastra and Bhaishajya Kalpana at Dr.NRS Government Ayurvedic College, Vijayawada. However, the petitioner submitted representation dated 30.01.2014 requesting two months time to report at Vijayawada. There was no response to this communication and in the meanwhile, the erstwhile State of Andhra Pradesh came to be bifurcated under the Andhra Pradesh Reorganization Act, 2014.

While so, the Commissioner issued Memo dated 06.11.2015 taking note of the fact that the Commissioner, Department of Ayush, Telangana, had issued Memo dated 28.10.2015 requesting the Principal, A.L.Government Ayurvedic College, Warangal, to relieve the petitioner with a direction to report before the Commissioner, Department of Ayush, Andhra Pradesh, and he had done so on 03.11.2015, requesting for posting orders as a Lecturer. The Commissioner also took note of the fact that the Principal, Dr.NRS Government Ayurvedic College, Vijayawada, *vide* letter dated 05.11.2015, had informed him that one post of Assistant Professor in Rasashastra and Bhaishajya Kalpana Department was vacant and requested posting of the petitioner in the said vacancy so as to meet the requirement. The Commissioner accordingly posted the petitioner as a Lecturer on O.D. basis in the Department of Rasashastra and Bhaishajya Kalpana at Dr.NRS Government Ayurvedic College, Vijayawada, subject to receipt of Government orders for his inter-local cadre transfer in public interest, as there was no candidate in the department and to meet the CCIM norms, as reported by the Principal, Dr.NRS Government Ayurvedic College, Vijayawada. The petitioner accordingly joined at Vijayawada in November, 2015.

At this stage, the Government of Andhra Pradesh issued Memo dated 06.02.2016, through the Principal Secretary to Government, Health, Medical and Family Welfare (F.2) Department, rejecting the proposal of the Commissioner on the ground that the action taken by him was in breach of Government instructions issued on inter-local cadre transfers from time to time under the Presidential Order and also the instructions issued under the A.P. Reorganization Act, 2014. Consequential Memo dated 28.05.2016 was thereupon issued by the

Commissioner withdrawing the posting of the petitioner as a Lecturer at Dr.NRS Government Ayurvedic College, Vijayawada, and he was directed to report before him. Under proceedings dated 01.06.2016 of the Principal, Dr.NRS Government Ayurvedic College, Vijayawada, the petitioner was relieved from the post of Lecturer. He submitted representation dated 02.06.2016 seeking to be continued as a Lecturer at Dr.NRS Government Ayurvedic College, Vijayawada, to the Commissioner and to the Principal Secretary to Government, Health, Medical and Family Welfare (F.2) Department, Government of Andhra Pradesh, but to no avail.

He thereupon filed O.A.No.2189 of 2016 before the Tribunal challenging the Memo dated 06.11.2015 and the consequential Memos dated 06.02.2016, 28.05.2016 and 01.06.2016. An interim order was passed by the Tribunal directing the authorities to give posting orders to the petitioner within a time frame. W.P.No.23101 of 2016 was then filed by the petitioner to declare that the interim order dated 20.06.2016 passed by the Tribunal in so far as it only directed the authorities to issue him posting orders instead of directing them to allow him to continue as a Lecturer at Dr.NRS Government Ayurvedic College, Vijayawada, was erroneous and contrary to law. He sought a consequential direction to the authorities to continue him as a Lecturer as sought by him.

While so, the Commissioner issued proceedings dated 11.07.2016 posting the petitioner as a Medical Officer (Ayurveda) at the Government Ayurvedic Dispensary, Dhulipudi, Guntur District, subject to the final outcome of O.A.No.2189 of 2016 pending before the Tribunal. Prior thereto, the Commissioner issued Memo dated 16.06.2016 according permission for utilization of the services of four

Medical Officers, working in dispensaries at various places in the State of Andhra Pradesh, as teaching faculty in the concerned departments of Dr.NRS Government Ayurvedic College, Vijayawada. The services of the sixth respondent herein, a Medical Officer working at Government Ayurvedic Dispensary, Tadepalli, Guntur District, were therefore transferred on 'Utilization of Services' basis to fill in the vacancy of teaching faculty in Rasashastra & Bhaishajya Kalpana in Dr.NRS Government Ayurvedic College, Vijayawada. Aggrieved by these developments, the petitioner filed O.A.No.2812 of 2016 before the Tribunal, challenging the proceedings dated 11.07.2016 issued to him and also the Memo dated 16.06.2016 issued in favour of the sixth respondent. The Tribunal, without even inviting a counter, dismissed the O.A., *vide* an eleven page order dated 04.08.2016.

The only consideration by the Tribunal, as is evident from a bare perusal of the order under challenge, was on the issue as to whether the petitioner was holding the post of Lecturer substantively from 2009. The Tribunal opined that he was only posted on deputation basis under the proceedings dated 10.07.2009, as he was still under probation in the post of Medical Officer. This understanding of the Tribunal is opposed to the admitted fact that the appointment of the petitioner as a Lecturer, under the proceedings dated 10.07.2009, was by conversion. It was not open to the Tribunal to introduce a new facet, by jumping to the conclusion that he was appointed as a Lecturer 'on deputation'. This was not even the case of the authorities. That apart, the Tribunal held his appointment as a Lecturer, under the proceedings dated 10.07.2009, to be not in accordance with law. When the said proceedings were never subjected to challenge, there was no cause for the Tribunal to

sit in judgment of the said proceedings. Further, this Court finds it surprising that the Tribunal undertook this kind of adjudication, warranting an eleven page order, without even inviting a counter from the authorities. All the more so, when the issue dated back to the year 2009. Service disputes of this nature require proper adjudication after exchange of detailed pleadings. It was therefore not proper for the Tribunal to support one side at the cost of the other, without even knowing the stand of the opposite side.

The Additional Director (Ayurveda), Department of Ayush, Andhra Pradesh, filed a counter-affidavit before this Court. Therein, he referred to G.O.Ms.No.489 dated 16.08.1991, whereby the Government of Andhra Pradesh ordered that the posts of Medical Officer and Lecturer in the three systems of Indian Medicine, viz., Ayurveda, Unani and Homeopathy, shall be State-wide posts for the purpose of recruitment, posting and transfers. He further stated that though the unit of appointment under Rule 11 of the Andhra Pradesh Ayurvedic Medical Service Rules, 2005, was the State in so far as the posts of Medical Officer and Lecturer were concerned, the Government thereafter issued orders, *vide* G.O.Ms.No.41 dated 04.02.2008, declaring the unit of appointment as the zone for the post of Lecturer. He however conceded that though the posts of Medical Officer and Lecturer were non-gazetted posts when the Presidential Order was promulgated in October, 1975, they were thereafter declared as gazetted posts, *vide* G.O.Ms.No.558 dated 29.03.1980. He also conceded that under G.O.Ms.No.16 dated 22.01.2009, the Government relaxed the method of appointment to the post of Lecturer by allowing conversion of existing qualified Medical Officers as Lecturers in the interest of the administration and

that the petitioner was accordingly appointed by conversion as a Lecturer in Rasashastra & Bhaishajya Kalpana. Though the Additional Director contended that the petitioner's appointment as a Medical Officer was in accordance with the Presidential Order, no material was produced by him in support thereof. The petitioner's appointment order dated 07.02.2009 does not evidence this claim.

Reiterating the factual aspects already set out *supra*, the Additional Director stated that the petitioner was not entitled to be appointed by transfer as a Lecturer in 2009, as he was not even an approved probationer and had not put in the prescribed three years of service as a Medical Officer (Ayurveda) to be appointed by transfer as a Lecturer (Ayurveda). Further, the Additional Director pointed out that he had not passed the prescribed departmental tests by the time he was appointed by transfer as a Lecturer and his very appointment was therefore violative of the rules. He sought to explain as to how the petitioner was temporarily promoted as a Senior Lecturer but stated that as he failed to join duty, he forfeited all rights for such promotion. Reference in this regard was made by him to Rule 11(b) of the A.P. State and Subordinate Service Rules, 1996. He further stated that as the appointment and posting of the petitioner as a Lecturer was in violation of the Presidential Order, he was posted as a Medical Officer (Ayurveda) at the Government Ayurvedic Dispensary, Dhulipudi, Guntur District, under proceedings dated 11.07.2016. He admitted that after the bifurcation of the erstwhile State of Andhra Pradesh, there was only one Government Ayurvedic College at Vijayawada in the new State of Andhra Pradesh. As no other candidates were available in the department for filling up teaching faculty posts in the said college, the Government was stated to have

exercised its discretion and he asserted that the petitioner could not claim entitlement on the ground that he was qualified. The Additional Director further stated that the petitioner was, in fact, not entitled in terms of the zonal nature of the post of Lecturer at Vijayawada was in Zone-II and his local status was Zone-III. No reference was however made by him to the Memo dated 16.06.2016, whereby the sixth respondent, who is also from Zone-III, was accommodated at Zone-II on 'Utilization of Services' basis. The Additional Director therefore justified posting of the petitioner as a Medical Officer and prayed for vacating of the interim order dated 22.09.2016.

In his counter, the sixth respondent stated that he joined service as a Medical Officer on 24.12.2005. He stated that he was an approved probationer, senior in service to the petitioner, and claimed that he is now fully eligible to be posted as a Lecturer at Dr.NRS Government Ayurvedic College, Vijayawada. He sought to rely upon G.O.Ms.No.298 dated 03.06.2011 issued by the erstwhile Government of Andhra Pradesh canceling deputations/ appointments made in contravention of the Presidential Order and contended that the appointment of the petitioner as a Lecturer was therefore liable to be cancelled. He further asserted that, for appointment to a higher post either by promotion or by appointment by transfer, the incumbent should be an approved probationer and as the petitioner was not one when he was appointed as a Lecturer in 2009, his very appointment was liable to be declared illegal. He asserted that his posting as a member of the teaching faculty at Dr.NRS Government Ayurvedic College, Vijayawada, under the Memo dated 16.06.2016 on 'Utilization of Services' basis was valid. He also prayed for vacating of the interim order dated 22.09.2016.

The case on hand presents a classic example of the insensitivity and callousness that the State is capable of displaying while dealing with its employees. The Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975, or the Presidential Order, came into effect in October, 1975. At that time, the posts in Ayurveda Medical Service were governed by G.O.Ms.No.3585 dated 23.11.1964. This G.O was not produced before this Court by either side and its contents remain in the realm of the unknown. Further, the State produced no material before this Court to substantiate its claim that the posts of Medical Officer, which included Lecturers posts also at that point of time, were organized in local cadres in terms of the Presidential Order at that stage. The power of the State Government to organize local cadres, under Para 3(1) of the Presidential Order, expired on 17.1.1978. Thereafter, the State Government no longer had the power to organize classes of posts in civil services under the State into different local cadres for different parts of the State.

In any event, it is the admitted position that in the year 1980, the posts of Medical Officer and Lecturer in Ayurvedic Medical Service were declared as gazetted posts. This fact also supports the conclusion drawn by this Court that these posts were not localized under the Presidential Order. Had it been so, the State would have taken steps immediately to get them included in the specified gazetted categories of posts in Schedule III to the Presidential Order. No such steps were taken. Significantly, in the 'Andhra Pradesh Indian Medicine and Homeopathy Service Rules', promulgated under G.O.Ms.No.265 dated 30.06.1994, there is no indication that any localization of these posts was made in the context of the Presidential

Order. This was obviously because, by the said date, these posts were gazetted posts and as they did not find place in Schedule III to the Presidential Order, they were not covered by it. Unless a gazetted post is shown in the specified gazetted categories of posts in Schedule III to the Presidential Order or is notified by the Central Government to be so included, the question of organizing a local cadre in relation to such a gazetted post would not arise under Paragraph 3(4) of the Presidential Order. The guidelines relating to organization of local cadres in respect of posts under the Government of Andhra Pradesh and for allotment of persons holding such posts to the local cadre to be so organized, promulgated by the Government of Andhra Pradesh *vide* G.O.Ms.No.728 dated 01.11.1975, also spoke of only the posts belonging to each specified gazetted category in each department in each zone being organized into a separate local cadre. Even if the posts of Medical Officer and Lecturer in the Ayurvedic Medical Service were not gazetted posts as on the date of the Presidential Order, once they were declared to be gazetted posts in the year 1980, they had to be included in Schedule III, by way of a separate notification issued by the Central Government. No steps were taken in this regard by the erstwhile Government of Andhra Pradesh. Schedule III to the Presidential Order does not include the gazetted posts of Medical Officer and Lecturer in the Ayurvedic Medical Services even as on date. They therefore stand excluded from the purview of the Presidential Order. With this clear and correct understanding, the Government of Andhra Pradesh issued G.O.Ms.No.489 dated 16.08.1991 declaring the posts of Medical Officers and Lecturers in Ayurvedic Medical Service to be State-wide posts for the purpose of recruitment, posting and transfers. Thereafter, as the general rules

under G.O.Ms.No.265 dated 26.05.1994 were superseded in so far as Ayurvedic Medical Service was concerned and the Special Rules titled “The Andhra Pradesh Ayurvedic Medical Service Rules, 2005” were promulgated in exercise of the power conferred by the proviso to Article 309 of the Constitution, *vide* G.O.Ms.No.67 dated 14.03.2005, the Government reiterated therein that the unit of appointment for the posts of Medical Officer and Lecturer in Ayurvedic Medical Service was the State. Surprisingly, the Government of Andhra Pradesh then issued G.O.Ms.No.41 dated 04.02.2008, without even referring to the Special Rules framed under G.O.Ms.No.67 dated 14.03.2005, and rescinded G.O.Ms.No.489 dated 16.09.1999, declaring that treating these posts as State-wide posts was against the Presidential Order.

However, in the light of the analysis *supra*, this later opinion of the Government that these posts should be treated as zonal posts covered by the Presidential Order was contrary to the correct understanding of the authorities earlier, as evidenced by the Special Rules framed under G.O.Ms.No.67 dated 14.03.2005 in exercise of constitutional power. Once these posts were declared to be gazetted posts, they necessarily had to be included in the specified gazetted categories in Schedule III to the Presidential Order and in the absence thereof, they stood excluded from the localization of cadres required under the Presidential Order. The present stand of the authorities to the contrary is therefore unsustainable.

As regards the relaxation of Rule 3 of the Special Rules, in 2009, it is relevant to note that the petitioner was not even in service as on the date of such relaxation. There can therefore be no insinuation to the effect that such relaxation was made by the erstwhile authorities to benefit him. It appears that owing to the

pressing interest of the administration, the said rule was relaxed, *vide* G.O.Ms.No.16 dated 22.01.2009, permitting appointment as Lecturers by conversion of eligible Medical Officers, as a one-time measure, instead of resorting to the prescribed mode of direct recruitment. It is relevant to note that this general power of relaxation vesting in the State under Rule 31 of the A.P. State and Subordinate Service Rules, 1996, cannot be doubted, as the authorities themselves do not dispute applicability of these general rules, going by their own counter-affidavit averments. It is therefore too late in the day for the present-day authorities to negate or attack this relaxation of the rule, effected as long back as in the year 2009.

It is also relevant to note that the Government itself issued proceedings dated 07.02.2009 and 17.06.2009 calling for options from existing Medical Officers (Ayurveda) working on regular basis for appointment by conversion as Lecturers (Ayurveda). The petitioner submitted his option on 26.06.2009, as by that date he had been appointed on regular basis as a Medical Officer, though he was still on probation. It is relevant to note that under G.O.Ms.No.16 dated 22.01.2009, the Government did not prescribe that only approved probationers in the category of Medical Officers would be considered. Consideration of all existing Medical Officers, who had the requisite qualification to become Lecturers, was the norm prescribed therein. Significantly, what was undertaken, by way of relaxation of the rule under G.O.Ms.No.16 dated 22.01.2009, was not appointment by promotion or by way of transfer, but an 'appointment by conversion'. Therefore, Rule 7 of the Special Rules framed under G.O.Ms.No.67 dated 14.03.2005, relating to minimum service of three years in the category from which promotion or appointment by transfer is made

would have no application to such appointment by conversion. In that view of the matter, neither the rule relating to minimum service nor the rules relating to only approved probationers being eligible for promotion or for appointment by transfer or passing of departmental tests, could have been made applicable to the petitioner for being appointed by conversion as a Lecturer. He was accordingly so appointed under the proceedings dated 10.07.2009, extracted *supra*.

Significantly, the second last paragraph of the said proceedings reflects that, on the one hand, he was appointed by conversion as a Lecturer in Rasashastra and Bhaishajya Kalpana, and on the other hand, he was posted on O.D. basis at A.L.Government Ayurveda College, Warangal, subject to receipt of Government orders for his inter-local cadre transfer in public interest as there was no other candidate in the department. His appointment was thus complete in itself even at that point of time. It was only his posting on O.D. basis that was made subject to receipt of orders from the Government. The latter part, with regard to his posting being subject to Government orders, reflects total non-application of mind as the Special Rules under G.O.Ms.No.67 dated 14.03.2005, framed in exercise of the power under the proviso to Article 309 of the Constitution, held the field as on that date and prevailed over the contrary orders in G.O.Ms.No.41 dated 04.02.2008, issued in exercise of executive power under Article 162 of the Constitution. The Presidential Order thus had no application to the gazetted post of Lecturer, for which the unit of appointment remained the State. Notwithstanding the erroneous understanding of the authorities, even in the year 2009, as regards the necessity of obtaining Government orders for posting the petitioner at Warangal, the fact remains that he was appointed as a

Lecturer by conversion. The question of his being repatriated as a Medical Officer (Ayurveda) at this late stage therefore does not arise.

Pursuant to his appointment by conversion, the petitioner rendered service as a Lecturer from July, 2009. Significantly, he was promoted as an Assistant Professor under proceedings dated 17.01.2014. Unless the petitioner was treated as a full member of the service in the category of Lecturer, he would not have been promoted as an Assistant Professor. No doubt, this promotion was not given effect to as the petitioner sought time and in the meanwhile, the erstwhile State of Andhra Pradesh came to be bifurcated. However, the fact that the State promoted him to the said post speaks for itself.

In view of the bifurcation of the erstwhile combined State and as the petitioner belongs to the residuary State of Andhra Pradesh, he necessarily had to be accommodated there. It was at that stage that the present-day authorities seem to have decided to renounce him and turn their back upon all that happened since 2009.

Though it is stated by the Additional Director, Department of Ayush, in his counter, that steps are afoot to cancel the proceedings dated 10.07.2009 on the ground that the relaxation order under G.O.Ms.No.16 dated 22.01.2009 would not apply to the petitioner who was not in service as on that day, nothing further was placed before the Court. Whether such a step is even permissible when the matter is *sub judice* is a question that would arise. Suffice it to state that any such action would only add insult to injury.

It is not open to the State to utilize the services of an employee and thereafter cast him out ruthlessly because of a change of guard. It is indeed surprising to note that on the one hand, the State and its medical authorities now seek to justify sending the petitioner back as

a Medical Officer to Guntur in Zone-III, asserting that he cannot be taken to Dr.NRS Government Ayurvedic College, Vijayawada, which is in Zone-II, but on the other hand, they brazenly issued Memo dated 16.06.2016 seeking to post the sixth respondent, a Medical Officer also working at Guntur in Zone-III, as a Lecturer at the college in Zone-II on 'Utilization of Services' basis. The counter filed by the authorities is stridently silent as to how this appointment was made when such an appointment under 'Utilization of Services' mode is not even contemplated under the rules. It is therefore clear that candidates who are to the liking of the present-day authorities are sought to be accommodated to the exclusion of those who were appointed long ago and rendered loyal and dedicated service to the institution. The petitioner, who has rich teaching experience having worked as a Lecturer since 2009 and who was also found fit to be promoted as an Assistant Professor, is now shown the door to make way for the sixth respondent, who does not have any teaching experience and belongs to the non-teaching cadre of Medical Officer. There cannot be a more shocking instance of abuse of power by the authorities to suit their own vested interests.

This Court therefore finds that the appointment of the petitioner as a Lecturer by conversion, in view of the relaxation of the Special Rules in the year 2009, was valid and fully justified. Having allowed the same to attain finality and having acted upon it all these years, it is not open to the authorities to now negate or attack it. Permitting them to do so would be wholly illegal. This Court therefore cannot condone the measures now sought to be adopted by the present-day authorities to sweep the developments over the years under the carpet and cast out the petitioner by reducing him to the

post of Medical Officer at this late stage. The days of hire and fire are long past and the State, being a model employer, is not expected to resort to such outrageous tactics while dealing with its employees.

On the above analysis, this Court finds that the impugned proceedings dated 11.07.2016 posting the petitioner as a Medical Officer (Ayurveda) cannot be sustained. The same are accordingly set aside. This Court further finds that the Memo dated 16.06.2016 is also without legal basis as there is no prescribed mode of recruitment by 'Utilization of Services', whereby the sixth respondent could have been transferred from the non-teaching post of Medical Officer to the teaching post of Lecturer. The said Memo is accordingly set aside in so far as it pertains to the sixth respondent. The petitioner shall forthwith be appointed as a Lecturer at Dr.NRS Government Ayurvedic College, Vijayawada, Krishna District.

The writ petition is accordingly allowed. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

Given the facts of the case, which clearly demonstrate that the petitioner was victimized by the present-day authorities, while showing undue favour to the sixth respondent and others, this is a fit case to mulct the State and its errant officers with costs. The respondent authorities shall accordingly pay costs of Rs.25,000/- (Rupees Twenty Five Thousand only) to the petitioner within eight weeks from the date of receipt of a copy of this order.

SANJAY KUMAR, J

ANIS, J

3rd MARCH, 2017

**Note: L.R. copy to be marked
B/o PGS**