

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION NOS.22913 AND 23101 OF 2016

COMMON ORDER
(Per Hon'ble Sri Justice Sanjay Kumar)

Dr.Kovi Sreehari is the petitioner in these two cases.

His prayer in W.P.No.22913 of 2016 was to declare the order dated 23.06.2016 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad (*hereinafter*, 'the Tribunal'), in O.A.No.2188 of 2016 as erroneous and contrary to law and to consequently direct the State of Andhra Pradesh and its authorities to allow him to join as a Senior Lecturer in the Rasashastra and Bhaishajyakalpna Department at Dr.NRS Government Ayurvedic College, Vijayawada, pursuant to the order dated 17.01.2014 issued by the Commissioner, Department of AYUSH, Government of Andhra Pradesh (*hereinafter*, the Commissioner'). In the alternative, he sought a direction to the authorities to forthwith promote him as a Senior Lecturer in the Rasashastra and Bhaishajyakalpna Department at Dr.NRS Government Ayurvedic College, Vijayawada, in an existing vacancy with all consequential benefits. He also sought a declaration that the action of the authorities in not allowing him to and in not issuing posting orders to him as a Senior Lecturer in the Rasashastra and Bhaishajyakalpna Department at Dr.NRS Government Ayurvedic College, Vijayawada, pursuant to the order dated 17.01.2014 was illegal.

In W.P.No.23101 of 2016, he assailed the interim order dated 20.06.2016 passed by the Tribunal in O.A.No.2189 of 2016, to the extent it directed the authorities to give him posting orders within four weeks instead of directing them to allow him to continue as a Lecturer at Dr.NRS Government Ayurvedic College, Vijayawada, by suspending the Memo dated

28.05.2016 issued by the Commissioner and the consequential Memo dated 01.06.2016 issued by the Principal of Dr.NRS Government Ayurvedic College, Vijayawada. He sought a consequential direction to the authorities to continue him as a Lecturer in the Rasashastra and Bhaishajyakalpana Department at Dr.NRS Government Ayurvedic College, Vijayawada, pending disposal of the O.A.

This Court had occasion to deal with the facts underlying the cases on hand in W.P.No.31936 of 2016. By order dated 03.02.2017 passed therein, a Division Bench, comprising one of us (SK,J) and another learned Judge of this Court, allowed the said writ petition with costs. The grievance of Dr.Kovi Sreehari, the petitioner in that case, was that the Commissioner had issued proceedings dated 11.07.2016 posting him as a Medical Officer instead of as a Lecturer. In his place, the sixth respondent in the said writ petition was posted as a Lecturer at Dr.NRS Government Ayurvedic College, Vijayawada, by the Memo dated 16.06.2016 issued by the Commissioner.

Perusal of the order passed in that writ petition reflects the following history: 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. Be it noted that in terms of the Andhra Pradesh Ayurvedic Medical Service Rules, 2005 (*for brevity*, 'the Rules of 2005'), the post of Medical Officer falls under Non-Teaching Cadre while the post of Lecturer is shown under the Teaching Cadre. However, the Government of Andhra Pradesh, in its wisdom, issued G.O.Ms.No.16 dated 22.01.2009 permitting conversion of existing qualified Medical Officers as Lecturers, instead of resorting to direct recruitment, as a one-time arrangement in the interest of administration. The petitioner, who entered service as a Medical Officer after

issuance of this G.O., was appointed by conversion as a Lecturer in Rasashastra and Bhaishajyakalpana, by proceedings dated 10.07.2009 of the Commissioner. He was thereupon posted as a Lecturer on OD basis at A.L.Government Ayurvedic College, Warangal. By order dated 17.01.2014, the Commissioner then promoted him as an Assistant Professor and posted him as a Senior Lecturer in the P.G.Department of Rasashastra and Bhaishajyakalpana at Dr.NRS Government Ayurvedic College, Vijayawada. However, the petitioner submitted representation dated 30.01.2014 asking for two months time to report at Vijayawada on the ground that his mother was hospitalized. There was no response to this request and in the meanwhile, the erstwhile State of Andhra Pradesh came to be bifurcated under the Andhra Pradesh Reorganization Act, 2014. The Commissioner thereupon posted the petitioner as a Lecturer on OD basis in the Department of Rasashastra and Bhaishajyakalpana at Dr.NRS Government Ayurvedic College, Vijayawada, subject to receipt of Government Orders for his inter-local cadre transfer in public interest. However, the Government of Andhra Pradesh issued Memo dated 06.02.2016 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. Consequential Memo dated 28.05.2016 was 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. The petitioner thereupon filed O.A.No.2189 of 2016 before the Tribunal challenging the various Memos issued by the Government and the Commissioner. Therein, an interim order was passed requiring the authorities to give him posting orders within a time frame. Aggrieved thereby, he filed W.P.No.23101 of 2016 before this Court asserting that the question of

issuing posting orders to him did not arise as he should have been directed to be continued as a Lecturer at Dr.NRS Government Ayurvedic College, Vijayawada. At that stage, the Commissioner issued proceedings dated 11.07.2016 posting the petitioner as a Medical Officer (Ayurveda) at the Government Ayurvedic Dispensary, Dhulipudi, Guntur District. Prior thereto, the Commissioner issued Memo dated 16.06.2016 according permission for utilisation of the services of the sixth respondent in W.P.No.31936 of 2016, a Medical Officer, as Teaching Faculty on 'utilisation of services' basis at Dr.NRS Government Ayurvedic College, Vijayawada. Aggrieved by these developments, the petitioner filed O.A.No.2812 of 2016 before the Tribunal. This O.A. was dismissed by order dated 04.08.2016. It was against this order of the Tribunal that the petitioner filed W.P.No.31936 of 2016. By the order dated 03.02.2017 passed in W.P.No.31936 of 2016, this Court held that neither the post of Medical Officer nor the post of Lecturer in the Ayurveda Medical Service came within the purview of the Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975, viz., the Presidential Order, and the stand of the authorities to the contrary was unsustainable. This Court also took note of the fact that the petitioner had not even entered service by the time the Government chose to relax Rule 3 of the Rules of 2005, under G.O.Ms.No.16 dated 22.01.2009, permitting appointment of Lecturers by conversion of eligible Medical Officers as a one-time measure. Acting upon this relaxation, the Government itself called for options from existing Medical Officers and thereupon accepted the option submitted by the petitioner on 26.06.2009 and appointed him as a Lecturer under the proceedings dated 10.07.2009. In the light of this appointment, this Court held that the question of his being repatriated as a Medical Officer (Ayurveda) did not arise. This Court also

took note of the fact that he had rendered service as a Lecturer from July, 2009 onwards and was promoted as an Assistant Professor under the order dated 17.01.2014. This Court held that the action of the authorities in trying to show the petitioner the door while accommodating the sixth respondent Medical Officer was a shocking instance of abuse of power and allowed the writ petition with costs, setting aside the proceedings dated 11.07.2016 posting the petitioner as a Medical Officer (Ayurveda) and the Memo dated 16.06.2016 posting the sixth respondent as Teaching Faculty on 'utilization of services' basis.

It is in the light of the aforesaid background that the present litigation would have to be considered and adjudicated.

O.A.No.2188 of 2016 was filed by the petitioner seeking a declaration that the action of the authorities in not allowing him and in not issuing posting orders to him as a Senior Lecturer in Rasashastra and Bhaishajyakalpana Department at Dr.NRS Government Ayurvedic College, Vijayawada, pursuant to the order dated 17.01.2014, was illegal. In the alternative, he sought a direction to the authorities to consider his case for promotion as a Senior Lecturer in the Rasashastra and Bhaishajyakalpana Department in existing vacancies. By order dated 23.06.2016, the Tribunal opined that mere eligibility and entitlement to seek promotion and existence of vacancies would not, by itself, confer any right upon an individual for promotion and appointment. The Tribunal further observed that it was a matter to be considered by the competent authorities as to whether they should fill up the existing vacancies as per merit and seniority. On this reasoning, the Tribunal opined that it was not for it to direct the authorities to forthwith consider and promote the petitioner as a Senior Lecturer in the

Rasashastra and Bhaishajyakalpana Department in an existing vacancy and accordingly dismissed the O.A.

Significantly, the Tribunal did not even deem it appropriate to invite a counter from the authorities before passing the aforesaid order. It is the case of the petitioner that he is the only Lecturer eligible to hold the post of Senior Lecturer in the Rasashastra and Bhaishajyakalpana Department at Dr.NRS Government Ayurvedic College, Vijayawada, and that was the reason why he had been granted promotion as long back as in January, 2014, but unfortunately he could not act upon the promotion order dated 17.01.2014 and requested two months time to join. He would therefore contend that as the authorities did not cancel the promotion order dated 17.01.2014, the same must be deemed to be subsisting and the authorities were bound to accommodate him as a Senior Lecturer pursuant thereto at least at this stage. Perusal of the order dated 17.01.2014 issued by the Commissioner reflects that the petitioner was promoted thereunder as an Assistant Professor temporarily and posted as a Senior Lecturer in the P.G.Department of Rasashastra and Bhaishajyakalpana at Dr.NRS Government Ayurvedic College, Vijayawada, in the existing vacancy. The order however contained the following condition:

‘He should join duty within (15) days from the date of receipt of this order. If he fails to join duty or evade to join duty by applying leave or otherwise within the stipulated time, he shall forfeit all his rights for promotion for present without any notice in terms of A.P. State and Subordinate Service Rules.’

By letter dated 30.01.2014, the petitioner stated that his mother was suffering from chronic kidney disease and was admitted in an intensive care unit at Warangal and he requested for two months time to join in the promotional post, as he was the only person available to look after his

mother. Admittedly, no order was passed upon this representation and no action was taken to cancel the promotion order dated 17.01.2014.

The Additional Director (Ayurveda), Department of AYUSH, Andhra Pradesh, Hyderabad, filed a counter-affidavit, wherein he narrated the past history set out *supra*. However, in the light of the earlier adjudication in W.P.No.31936 of 2016, various issues raised by him stand settled thereby. In so far as the present controversy is concerned, he stated that the promotion order dated 17.01.2014 issued by the Commissioner specifically required the petitioner to join duty within 15 days and as he failed to do so, he forfeited his right to be promoted under Rule 11(b) of the Andhra Pradesh State and Subordinate Service Rules, 1996 (*for brevity*, 'the Rules of 1996'). He asserted that the petitioner's claim that the said promotion order is still subsisting is untenable. He further stated that it was the prerogative of the authorities to fill up or not to fill up a post by assessing the need and therefore, he could not ask for a direction to continue him as a Senior Lecturer pursuant to the promotion order dated 17.01.2014.

An additional counter-affidavit was filed thereafter by the Additional Director (Homoeo) (FAC), AYUSH Department, Andhra Pradesh, on 30.10.2018. Therein, he stated that the initial order dated 10.07.2009 appointing the petitioner as a Lecturer by conversion from the post of Medical Officer was cancelled under Office Memo dated 24.01.2017 and by consequential Memo dated 25.01.2017, the petitioner was repatriated as a Medical Officer at Government Ayurveda Dispensary, Dhulipudi, Guntur District. He then referred to the judgment of this Court in W.P.No.31936 of 2016 and stated that the petitioner was thereafter posted as a Lecturer at Dr.NRS Government Ayurvedic College, Vijayawada, *vide* office proceedings dated 06.04.2017 and he joined as such on 10.04.2017. He then stated that

in terms of the Rules of 2005, a Lecturer must have three years teaching experience in the subject before aspiring for promotion to the post of Senior Lecturer/Assistant Professor/Assistant Research Officer and therefore, the petitioner did not fulfil this requirement as he was posted as a Lecturer only on 06.04.2017. He however admitted that one post of Senior Lecturer in PG Course in Rasashastra and Bhaishajyakalpana and one post of Assistant Professor in the said discipline were sanctioned and that Dr. P.V.N.R.Prasad was working as a Senior Lecturer while one post of Assistant Professor was still vacant. Perusal of the proceedings dated 06.04.2017 issued by the Commissioner reflects that the earlier posting order dated 11.07.2016, whereby the petitioner was posted as a Medical Officer (Ayurveda), was cancelled and he was forthwith posted as a Lecturer in Rasashastra and Bhaishajyakalpana at Dr.NRS Government Ayurvedic College, Vijayawada, subject to the outcome of SLP (Civil) No.10369 of 2017 filed against the order passed in W.P.No.31936 of 2016.

This SLP was dismissed by the Supreme Court on 13.04.2017.

In so far as W.P.No.23101 of 2016 is concerned, it may be noted that the petitioner filed O.A.No.2189 of 2016 assailing the Memo dated 28.05.2016 issued by the Commissioner in so far as it related to posting him on OD basis in the Department of Rasashastra and Bhaishajyakalpana at Dr.NRS Government Ayurvedic College, Vijayawada, instead of posting him as a regular Lecturer at the said college. He sought a consequential direction to continue him as a Lecturer in the Rasashastra and Bhaishajyakalpana Department at Dr.NRS Government Ayurvedic College, Vijayawada. In the said O.A., an interim order was passed by the Tribunal on 20.06.2016 directing the authorities to give a posting order to the petitioner within a time frame. Aggrieved by the fact that the Tribunal has not taken note of his

contention that he was entitled to be continued as a Lecturer in the Rasashastra and Bhaishajyakalpana Department at Dr.NRS Government Ayurvedic College, Vijayawada, the petitioner filed W.P.No.23101 of 2016. However, in the light of the subsequent developments pursuant to the final order dated 03.02.2017 in W.P.No.31936 of 2016, O.A.No.2189 of 2016 and in consequence, W.P.No.23101 of 2016, have become infructuous. Sri P.V.Krishnaiah, learned counsel for the petitioner, fairly concedes that no further orders are required to be passed in this writ petition.

In the light of the aforestated facts, the issue for consideration is as to the status of the promotion order dated 17.01.2014. Rule 11(b) of the Rules of 1996 deals with the time limit for joining upon promotion. This rule reads as under:

'11.The time limit for joining either on first selection or on promotion or on appointment by transfer:-

(a)

(b) *Time to join a post on appointment/temporary appointment under Rule 10 including appointments by transfer or by promotion otherwise than by direct recruitment:-* A person on appointment/temporary appointment on adhoc basis under Rule 10 including appointment by transfer or by promotion otherwise than by direct recruitment, shall be allowed a joining time of fifteen 15 (fifteen) days to join the post from the date of receipt of the order of appointment sent to the candidate by Registered Post with acknowledgement due or by any other means. An employee who does not join the post within the stipulated time or evades to join the post by proceeding on leave, shall lose his promotion right/offer for the current panel year and the name of the candidate shall be placed before the next Departmental Promotion Committee for consideration in the next year panel subject to availability of vacancy. In case of non-selection posts, the name of the candidate who does not join within the stipulated time in the promotion posts shall be considered for promotion again after a period of one year from the date of offer of appointment subject to availability of vacancy.

Provided that the employee, who does not join the post within the stipulated time or evades to join the post by proceeding on leave, second time also, shall lose his promotion right / offer permanently.'

It is significant to note that the Rule specifically speaks of failure on the part of the promoted employee to either join the post within the stipulated time or evade to join the post by proceeding on leave. In the case on hand, the petitioner did neither. He merely requested for more time to join the post on the ground that his mother was admitted in an intensive care unit at Warangal and he was the only one available to look after her. Therefore, the representation of the petitioner seeking more time to join in the promotional post warranted consideration on its own merits. It is however an admitted fact that the Commissioner neither passed an order upon the representation dated 30.01.2014 nor did he cancel the promotion order dated 17.01.2014. Though the said promotion order contained the rider that failure to join duty would result in forfeiture of the right of the promotee to such promotion for the present, it may be noted that this rider went beyond the scope of Rule 11(b) of the Rules of 1996, which only spoke of failure to join duty or evading to join duty by applying for leave, by adding the words 'or otherwise'. Therefore, this further rider does not have the backing or support of Rule 11(b). Needless to state, the authorities cannot be rigid to the extent of requiring a promotee to join the promotional post within the time stipulated, irrespective of his personal circumstances which might warrant extension of time, on an individual case basis, to enable him to join the promotional post. The case on hand is a prime example. When the petitioner's mother was admitted in an intensive care unit, it would be inhuman on the part of the Commissioner to expect him to leave his mother unattended and rush to Vijayawada to join the promotional post. In any event, failure on the part of the Commissioner to act upon the petitioner's representation dated 30.01.2014 or to cancel the promotion order dated 17.01.2014 makes it clear that the said promotion order remains operative

even as on date. However, as in the interregnum the authorities wanted to turn back the clock and reduce the petitioner to his earlier post of Medical Officer (Ayurveda), overlooking all that had happened since 2009, and as the said efforts on the part of the authorities have come to naught by virtue of the allowing of W.P.No.31936 of 2016 on 03.02.2017, which has attained finality, this Court would necessarily have to take these established facts into consideration.

At this stage, it may be noted that the new plea advanced by the authorities to the effect that the petitioner was appointed as a Lecturer only on 06.04.2017 and therefore, he would not have the requisite three years of service to aspire for promotion to the post of Assistant Professor, cannot be countenanced. In the order dated 03.02.2017 passed in W.P.No.31936 of 2016, this Court specifically adverted to the fact that the petitioner had worked as a Lecturer since 10.07.2009 and based on his rich teaching experience, he was also found fit to be promoted as an Assistant Professor. It is therefore too late in the day for the authorities to now brush aside the teaching experience garnered by the petitioner pursuant to his appointment as a Lecturer by conversion in 2009. It may also be noted that the proceedings dated 06.04.2017 do not purport to appoint the petitioner as a Lecturer afresh but merely posted him as such at Dr.NRS Government Ayurvedic College, Vijayawada, in the Rasashastra and Bhaishajyakalpana Department. The authorities therefore cannot contend that the petitioner does not possess the required length of service as a Lecturer for further promotion. It is an admitted fact that even as on date the post of Assistant Professor in Dr.NRS Government Ayurvedic College, Vijayawada, is vacant and available. When the authorities felt the need to fill up the said post as long back as in January, 2014, it is not open to them to now say that they do

not see the need to fill up the said post at this stage. Needless to state, the interest of the students would be at stake if such an important teaching post is left unfilled. It appears that the authorities are merely seeking to punish the petitioner for the earlier litigation initiated by him wherein they suffered imposition of costs. It is not open to the authorities to resort to such tactics so as to get back against an employee merely because he chose to approach a Court of law to seek redressal of his rightful grievance.

However, as the petitioner himself sought time to join the promotional post and he has not yet done so as on date, he would not be entitled to seek any retrospective benefits in relation to such promotion without actually working. There shall accordingly be a direction to respondents 1 to 3 to give effect to the promotion order dated 17.01.2014 and to permit the petitioner to join duty as an Assistant Professor at Dr.NRS Government Ayurvedic College, Vijayawada. However, the said promotion shall take effect only from the date of his assuming charge as such and he would not be entitled to any past benefits in relation to the said post, either monetary or notional.

W.P.No.22913 of 2016 is accordingly allowed with the above directions, setting aside the order dated 23.06.2016 passed by the Tribunal in O.A.No.2188 of 2016. W.P.No.23101 of 2016 is dismissed as infructuous.

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

SANJAY KUMAR, J

M.GANGA RAO, J

16th NOVEMBER, 2018

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