

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P. No. 12950 of 2016

ORDER:- (ORAL)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

This writ petition is filed for the following substantive relief:

"...to issue a writ of certiorari calling for the records pertaining to the impugned Proceedings Memo No. 2896/A1/2014, dated 20.04.2015 issued by the 1st respondent and consequently declare the action of the 1st respondent in following executive instructions issued in G.O.Ms.No. 62, dated 08.02.1989, as illegal, arbitrary, contrary to law and unconstitutional; and consequently declare the action of the 1st respondent in calculating the vacancies of Professors of Orthopaedic as only 9 during the panel year 2000-2001, as illegal and contrary to law, and consequently quash the impugned order as wholly without power or jurisdiction, unconstitutional and violative of Articles 12, 14, 16 and 21 of Constitution of India and consequently hold that there were 24 vacancies for the said post for the above said panel year; and consequently declare that the applicant is entitled to be promoted as Professor of Orthopaedic in those vacancies with retrospective effect with all consequential benefits like arrears of pay, seniority, etc. and consequently direct the 1st respondent to consider and promote the applicant herein as Professor of Orthopaedic in those 24 vacancies with retrospective effect with all consequential benefits like arrears of pay, seniority, etc., and consequently after calling for the records pertaining to the impugned order in O.A.No. 4970 of 2015, dated 04.09.2015 passed by the A.P.A.T., Hyderabad, declare the impugned order of the A.P.A.T. in O.A.No. 4970 of 2015, dated 04.09.2015 as contrary to law, and consequently declare the action of A.P.A.T. in not granting the interim directions as prayed for in the above O.A. as contrary to law, and consequently direct the respondents to consider the case of the applicant for promotion to the post of

Professor or Orthopaedic during the panel year 2000-2001 for all the 24 vacancies without reference to executive order issued in G.O.Ms.No. 62, dated 08.02.1989.”

The brief facts of the case are that on 20.10.1987, the petitioner was appointed as Civil Assistant Surgeon, and on 11.07.1988, promoted as Assistant Professor of Orthopaedic. Subsequently, on 23.09.2006, he was promoted as Associate Professor of Orthopaedic and further promoted as Professor of Orthopaedic on 01.04.2012 and retired from service from the State of Telangana on 30.06.2015 on attaining the age of 58 years pending final allocation of employees to the State of Andhra Pradesh. In case the petitioner is allocated finally to the State of A.P., then his retirement age in that State is 60 years and the petitioner would continue in service for another two years.

Dr. K.Lakshmi Narasimha, learned counsel for the petitioner, submits that the petitioner is now allocated to the State of Andhra Pradesh, as such, he is entitled to continue in service up to the age of 60 years. He further submits that when the petitioner was appointed, his appointment was governed by special rules called “A.P. Medical and Health Services Rules” issued in G.O.Ms.No. 43, dated 06.01.1982 as amended from time to time. As per these rules, the nomenclature of the teaching posts was known as Assistant Professors, Associate Professors and Professors. Later, in

order to comply with the regulations of the Medical Council of India, which has stipulated that all appointments in the teaching cadre should be only from the feeder categories, the Government has issued orders in G.O.Ms.No. 310, dated 14.08.1997, whereby it was provided that wherever eligible Associate Professors are not available to be promoted as Professors, then Assistant Professors having 9 years of teaching experience, shall be considered for promotion. The following 7 persons were promoted as Professors of Orthopaedic as per the rules existed then i.e. before the present set of Rules were framed in G.O.Ms.No. 154, which was issued in the year 2002;

- i) Dr. Kailash Rao, retired on 31.05.2001
- ii) Dr. K.V.Subbarao, retired on 31.07.2001
- iii) Dr. V.S.Reddy, retired on 31.07.2000
- iv) Dr. P. Narasimham, retired on 31.07.2001
- v) Dr. B.Sai Reddy, retired on 28.02.2000
- vi) Dr. V.Seshanna, retired on 30.06.2000
- vii) Dr. Koteswar Rao – he was promoted during the year 1997 although he is junior to the petitioner and placed at Serial No. 24 in the final seniority list whereas the applicant is placed at Serial No. 23.

Vide G.O.Ms.No. 291, dated 28.07.1998, the following 5 persons were promoted as Associate Professors of Orthopaedic.

- i) Dr. G.Pulla Rao
- ii) Dr. M. Venkateswar Rao
- iii) Dr. David Raju
- iv) Dr. N. Subramanya Datta
- v) Dr. R. Svaprasad

The learned counsel for the petitioner further submits that subsequently, the Government issued G.O.Ms.No. 325, dated 15.06.1999 directing the DME to prepare seniority list of Assistant Professors of all specialties including clinical and non-clinical other than psychiatry specialty, taking into consideration the date of appointment to the post of Assistant Professor as the criteria for preparing and finalizing the seniority list in the said category, and thereafter, send necessary proposals for review of promotions to the post of Professors of the specialty concerned made on or after 29.03.1988. As per this G.O., the Director of Medical Education was required to prepare seniority list taking into account the date of appointment for the posts of Assistant Professor as the criteria for the purpose of making promotions to the category of Professors. Insofar as the method of promotion to the posts of Professors is concerned, the Government is required to take into account total number of 9 years of service to the posts of Assistant Professors and whoever has completed that period, he is required to be promoted as Professor.

The learned counsel for the petitioner further submits that the petitioner has fulfilled the criteria as he has got 9 years of service as Assistant Professor way back in the year 1997 itself, and therefore, the petitioner is entitled to be

promoted as Professor in terms of the above Government orders.

The learned counsel for the petitioner has drawn the attention of this Court to G.O.Ms.No. 429, dated 20.11.2000, whereby the following 6 persons were promoted as Professors of Orthopaedic:

- i) Dr. R.Sivaprasad
- ii) Dr. S.Vidya Sagar
- iii) Dr. Subramanya Datt
- iv) Dr. V.Prasad
- v) Dr.V. Satya Drv
- vi) Dr. K.Anjeneyulu

Besides the above 6 persons, by an order dated 27.12.2000, the following 5 persons were promoted as Associate Professors;

- i) Dr. P.N.Prasad
- ii) Dr. G.V.S.Murthy
- iii) Dr. D. Uday Kumar
- iv) Dr. M. Srinivasan
- v) Dr. J.Satya Prasad.

He has further submitted that in supersession of earlier rules, the Government of the then A.P. had issued fresh set of rules called "A.P. Medical Education Service Rules" in G.O.Ms.No. 154, dated 04.05.2002, whereby, the date of appointment to the post of Assistant Professor is the only criterion for preparing a seniority list and based on these further promotions, the posts of Associate Professors and Professors should be made. Further, in order to get promotion as Associate Professor, one must have teaching experience of 5 years in the category of Assistant Professor

and for promotion to the post of Professor, one must have a minimum of 4 years of service as Associate Professor. While so, the Government issued an amendment to the above said Rule vide G.O.Ms.No. 502, dated 13.09.2003. As per this rule, for the purpose of preparing the seniority list in the cadre of Assistant Professor, the date of initial appointment as Civil Assistant Surgeon was to be taken into account. This rule was quashed by the Hon'ble Supreme Court in the case of Challa Jaya Bhaskar v. Thungathurthi Surender¹ with a further direction to the respondents herein to implement the orders in G.O.Ms.No. 325, dated 15.06.1999, with all consequential benefits.

However, during the course of litigation, the then Government of A.P. went on making promotions contrary to the rule on *ad hoc* basis. Now, as per the settled proposition of law, all vacancies which arose prior to promulgation of these new rules issued by the Government in G.O.Ms.No. 154, dated 05.05.2002, will have to be filled up as per the rules existing prior to the promulgation of these new rules. As per the facts available on record for the panel year 2000-2001, there were 15 vacancies to be filled up. Subsequently, in contravention of the rules, the respondents have promoted the following 5 persons as Professor of Orthopaedic vide proceedings dated 18.09.2003 in the vacancies which arose

¹ (2010) 13 Supreme Court Cases 348

prior to 2000, and these persons are juniors to the petitioner and are not entitled to be promoted. Be that as it may, they were reverted subsequently. The resultant vacancies which arose due to their reversion belong to the year 2000:

- i) Dr. Mohan Reddy
- ii) Dr. Ramana Rao MV
- iii) Dr. Dakshina Murthy
- iv) Dr. Chandranna
- v) Dr. Prashant

The petitioner was promoted as Associate Professor vide proceedings dated 23.09.2006, however he made a representation to the respondents staking his claim to the vacancies which arose prior to the promulgation of the new rules i.e. prior to 2002. As per the old rules, an Assistant Professor having 9 years of service is entitled to be considered and promoted as Professor, whereas, according to the present rules, before being promoted as Professor, the Doctor must be working as Associate Professor for a period of four years.

It is not in dispute that in the case of *Challa Jaya Bhaskar* cited supra, the Apex Court set aside the G.O.Ms.No. 502, dated 13.09.2003 and G.O.Ms.No. 325, dated 15.06.1999 is restored with all consequences arising therefrom.

It is pertinent to mention here that this Court, by order dated 28.02.2018, directed the respondents to indicate total number of vacancies up to the panel year 2000-2001. The report produced by the respondents shows that in the panel

year 2000-2001 there were total 9 vacancies, however 6 persons were finally promoted and they all were seniors to the petitioner.

The learned Government Pleader for Services appearing on behalf of the respondents submits that till date not a single person who is junior to the petitioner, has been promoted.

The learned counsel for the petitioner has drawn the attention of this Court to the proceedings dated 18.09.2003 whereby the following 5 persons are Associate Professors:

1. Dr. Mohan Reddy P., Asso./ DCS
2. Dr. Ramana Rao MV, Asso. Prof.
3. Dr. Dakshina Murthy A.V., Asso. Prof.
4. Dr. Chandranna B., Asso. Prof.
5. Dr. Prashant, Asso. Prof.

It is not in dispute that the aforesaid Doctors were juniors to the petitioner. Thus, the record is contrary to the statement made before this Court.

The learned Government Pleader for Services has drawn the attention of this Court to the Proceedings dated 23.07.2014 issued by the Director of Medical Education, Telangana, Hyderabad wherein it is stated that Dr.S.Srinivasa Reddy, the petitioner herein, cannot be considered as many of his seniors are waiting for promotion to the posts of Professor of Orthopaedic for the panel year 2000-2001 which is the last panel held prior to the issuance of G.O.Ms.No. 154 HM&FW(A1) Dept., dated 04.05.2002 and also his name cannot

be considered for promotion for the panel year 2003-2004 as he is not having 4 years teaching experience as Associate Professor which is mandatory for this panel year by virtue of G.O.Ms.No. 154, dated 04.05.2002. This order is also contrary to the dictum of the Apex Court in *Challa Jaya Bhaskar's* case cited supra.

In view of the facts recorded above, we have no hesitation to hold that G.O.Ms.No. 62, dated 08.02.1989 is contrary to the directions given by the learned Supreme Court in the aforesaid case.

It is not in dispute that the Doctors, who got promotion as Professors, vide proceedings dated 18.09.2003, have been demoted. Thus, for the panel year 2000-2001, only six doctors were promoted as Professors. The admitted case of the respondents is that 5 persons, who were promoted thereafter, have been finally demoted from the rank of Professors. Thus, in the panel year 2000-2001, there are 14 (9 + 5) vacancies.

Therefore, we hereby direct the respondents to review all the cases of the persons, who were promoted, by duly taking into account total number of vacancies for the panel years up to 2002 in terms of the judgment of the Supreme Court cited supra. This exercise shall be carried out

within a period of four weeks from the date of receipt of a copy of this order.

With the above observations, the writ petition is disposed of. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

SURESH KUMAR KAIT, J

30.07.2018

ABHINAND KUMAR SHAVILI, J

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