

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

WRIT PETITION No.12656 OF 2018

ORDER: (ORAL)

(per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, the petitioner has challenged order dated 20.10.2017 passed in O.A No.6022 of 2015 on the file of Andhra Pradesh Administrative Tribunal at Hyderabad, whereby the application filed by the petitioner under Section 19 of the Administrative Tribunals Act 1985, has been dismissed.

2. The petitioner is working as Dental Assistant Surgeon on contract basis in Rajeev Institute of Medical Sciences, Dr YSR Kadapa District. He filed Original Application seeking direction to consider his case for appointment as Dental Assistant Surgeon against the non-joining 11th vacancy of Dental Assistant Surgeons out of 11 vacancies notified against OC category, in pursuance of Notification No.01/2014 dated 20.07.2014. Commissioner of Andhra Pradesh Vaidhya Vidhana Parishad issued Notification No.01/2014 dated 20.07.2014 for recruitment of 28 posts of Dental Assistant Surgeons.

3. It is not in dispute that among 11 OC category candidates selected for counseling as per their merit, one Dr Machavarapu Martha Florence, who was placed at Sl.No.3 as

per her merit as she secured 67.94 marks, has not opted for the place of posting. Thus, 11th vacancy against the aforesaid candidate is still vacant.

5. Learned Government Pleader for Services –I (AP) appearing on behalf of the respondents does not dispute that the 1st respondent-A.P.Vaidya Vidhana Parishad has adopted G.O.Ms.No.81, dated 22.02.1997. Thus the case of the petitioner is covered by the judgment of the Supreme Court in case of **Munja Praveen and others v. State of Telangana and others**¹, whereby held as under:

9. According to us, the High Court has totally misconstrued the above GOMs. The portion of the GOMs quoted above clearly lays down that there shall be no waiting list and the selection shall be made equal to the number of posts notified. The purpose was that the vacancies arising due to people leaving the posts must be filled up by subsequent selection and not on the basis of a waiting list. It was clarified that after selection of the candidates and after issue of appointment orders, if the candidate fails to join within the stipulated period, that vacancy should be notified again. This portion of the GOMs admits of only one interpretation that after appointment order is issued and the person appointed does not join, then the vacancy cannot be filled up on the basis of the waiting list or by operating the merit list downwards. This is also clear from Clause 9 of the GOMs, which also clarifies that fallout vacancies due to relinquishment or non-joining of the selected candidates may be notified in the next recruitment. This obviously means that the clause will apply after issue of letter of appointment. There can be no relinquishment and non-joining unless an appointment letter is issued.

14. We may also add that the High court did not note an earlier Division Bench judgment of the Andhra Pradesh High Court in **State of A.P. v Bhagam Dorasanamma**², wherein the High Court had correctly interpreted the GOMs in the following manner:

“19. The process of recruitment starts from the date of notifying the vacancies and attains finality with the act of issuing appointment order,

¹ (2017) 14 Supreme Court Cases 797

² 2013mSCC OnLine AP 875

offering the post to the selected candidate. In the absence of reaching the said finality of issuing appointment order in respect of subject vacancy, the question of either relinquishment or non-filing of the same does not arise. The interpretation sought to be given by the authorities for denying appointment to the applicant/ 1st respondent herein is contrary to the very spirit and object of service jurisprudence and we find total lack of justification on the part of the petitioner authorities and such action undoubtedly tantamounts to transgression of Part III of the Constitution of India in the event of testing the same on the touchstone of Article 16 of the Constitution of India.”

6. In view of the dictum of the Supreme Court, we are of the considered view that the petitioner is entitled to get the 11th non-joining vacancy.

7. Therefore, we hereby set aside order dated 20.10.2017 passed in O.A.No.6022 of 2015 on the file of Andhra Pradesh Administrative Tribunals at Hyderabad, and direct the respondents to give appointment to the petitioner within two (02) weeks from the date of receipt of a copy of this order.

8. Accordingly, the Writ Petition is allowed. There shall be no order as to costs.

Miscellaneous Petitions, if any pending, shall stand closed.

SURESH KUMAR KAIT, J.

ABHINAND KUMAR SHAVILI, J.

Date : 18-07-2018

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