

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.27667 of 2017

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking verbatim the following relief/ s:

“..to issue Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in not considering the petitioner's case for appointment as MPHA (M) on contract basis under non-local candidate as per the merit following the orders in WVMP No.1015/2014 in WP No.38060/2013 & Batch cases, dt.15-9-2015 and consequential Govt. Memo No.7342/G2/2015-09, dt.27-11-2016, as highly illegal, arbitrary and consequentially this Hon'ble Court may be pleased to declare that the petitioner is entitled for appointment as MPHA (M) on contract basis in 20% quota under non-local category in the existing vacancies as per the orders of the Hon'ble High Court in WVMP No.1015/2014 in WP No.38060/2013 & Batch cases, dt.15-9-2015, and consequential Govt. Memo No.7342/G2/2015-09, dt.27-11-2016, and pass such other order or orders may deem fit and proper in the circumstances of the case.”

2. I have heard the submissions of *Sri M.R.Tagore*, learned counsel appearing for the petitioner, and of the learned Government Pleader for Medical & Health (AP) appearing for the respondents. I have perused the material record.

3. In W.P.M.P.No.34366 of 2017, the petitioner sought the following relief:

“...to direct the respondents herein to consider the petitioner's case for appointment as MPHA (M) on contract basis in the existing vacancies as per the orders of the Hon'ble High Court in WVMP No.1015/ 2014 in WP No.38060/ 2013 & Bath cases, dt.15-9-2015 and consequential Govt. Memo No.7342/ G2/ 2015-09, dt.27-11-2016 pending disposal of the above writ petition and pass such other order or orders may deem fit and proper in the circumstances of the case.”

This Court, on 29.08.2017, while admitting the writ petition, granted the interim relief, as prayed for.

4. Later, the respondents filed W.V.M.P.No.3762 of 2017 seeking to vacate the interim order, dated 29.08.2017, supported by the affidavit of the District Medical & Health Officer/ 1st respondent.

5. To begin with, be it noted that the only short question that was raised in this writ petition is with regard to the maintainability of the writ petition on the point of jurisdiction.

6. Learned Government Pleader submits that as the issue involved is related to a service matter, the petitioner ought to have approached the Administrative Tribunal instead of approaching this Court and hence, the writ petition is not maintainable and is liable to be dismissed.

7. However, learned counsel for the petitioner invited the attention of this Court to the interim order referred to supra and also the submissions in the counter affidavit of the 1st respondent at paragraph no.12, which reads as under:

“It is submitted that for the reasons stated above, the petitioner was not considered for appointment as MPHA (M) earlier in 110 posts, as he was not figured in the 20%list. Further, his request for appointment in 20 reappoint posts will be examined and considered as per rules while filling up of the posts after receipt of clarification & clearance from the Director of Public Health and Family Welfare, Gollapudi, Vijayawada.”

Having drawn the attention of this Court to the above extracted portion of the counter affidavit of the 1st respondent, learned counsel for the petitioner submitted that one person who is similarly placed as the present writ petitioner, that is, K.Dharmendra Chary, approached the Administrative Tribunal; and, filed O.A.no.1458 of 2017 and that by an order, dated 14.6.2017, the Tribunal refused to entertain the said OA *inter alia* observing as follows:

“...When the ball is in the High Court, this Tribunal cannot entertain this Original Application to consider passing of any order contrary to that of the High Court.”

Having so stated, learned counsel further submitted that in view of the interim order granted by this Court, the pendency of the matters before this Court and the further fact that the Tribunal is not entertaining any OAs, this Court may exercise its jurisdiction and grant an order to consider the case of the petitioner under 20% quota as stated in the counter affidavit of the 1st respondent and pleaded that such a course would meet the ends of justice.

8. However, in the considered view of this Court, merely because the Tribunal is not entertaining the Original Applications rightly or wrongly, this Court will not be vested with the jurisdiction to deal with the matter without the petitioner first approaching the Tribunal for an appropriate relief. In that view of the matter, this Court finds that the writ petition is not maintainable and is liable for dismissal.

9. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

20.06.2018
RAR