

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

WRIT PETITION NO.32057 OF 2018

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

This Writ Petition was filed by third parties to O.A.No.1620 of 2018 & batch on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad, aggrieved by the interim order dated 28.01.2018 passed therein. O.A. No.1620 of 2018 was filed by respondents 3 to 11 herein with the following prayer:

“In view of the facts mentioned in the above said paras the applicants prayed that this Hon'ble Tribunal may be pleased to hold the action on part of the 2nd respondent in not computing the service rendered in the cadre of Staff Nurse towards the minimum eligibility service for the purpose of promotion to the cadre of Lecturer of AP Colleges of Nursing Service Rules from the category of Nursing Tutor Grade II/PHN (Teaching) despite the applicants are seniors as per the positions indicated in the integrated seniority list of Nursing Tutor Grade II/PHN(T)/Staff Nurse and not applying the adhoc rule issued vide G.O.Ms.No.175 GA (Ser.A) Department dated 27.11.2017 for the purpose of computing the minimum service for 2 years as on the date of preparation of the seniority so as to deny promotions to the applicants as illegal, arbitrary and contrary to law and consequently direct the Respondents to take into consideration the service rendered in the cadre of Staff Nurse and in the cadre of Nursing Tutor Grade II/PHN(T) for the purpose of computation of minimum service as required under rule 6 of AP Colleges of Nursing Service Rules for promotion to the cadre of Lecturer and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.”

Their prayer for interim relief reads as under:

“Pending disposal of the O.A., it is prayed that this Hon’ble Court may be pleased to direct the Respondents to take into consideration the service rendered in the cadre of Staff Nurse and in the cadre of Nursing Tutor Grade II/PHN (T) for the purpose of computation of minimum service as required under rule 6 of AP Colleges of Nursing Service Rules for promotion to the cadre of Lecturer and pass such other order or orders as this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.”

By the common order dated 29.08.2018 passed in O.A.Nos.1620, 1788 and 1808 of 2018, the Tribunal directed the authorities to consider the cases of the applicants in the OAs for promotion to the post of Lecturer treating them as applicants under the category (IV) of Rule 3 of the Andhra Pradesh Colleges of Nursing Service Rules, 1996 (for brevity, Rules of 1996). In effect, the applicants in the OAs, who were working as Nursing Tutors Grade II, were directed to be treated in the category of Staff Nurse. In this regard, Rule 3 of Rules of 1996, relating to appointment by transfer to the post of Lecturer, reads as under:

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| 3. Lecturer | <ul style="list-style-type: none"> (i) By appointment by transfer from the category of Nursing Tutor, Grade I from A.P. Subordinate Nursing Services. (ii) If no qualified Nursing Tutor, Grade I is available then by promotion from the category of Nursing Tutor, Grade II. (iii) If no qualified Nursing Tutor, Gr.II is available then by promotion from the category of Public Health Nurse from A.P. Subordinate Nursing Services. (iv) If no qualified P.H.N is available then by promotion from the category of Staff Nurse of A.P. Subordinate Nursing Services. |
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It is also relevant to note that Rule 6 of the said Rules prescribes the minimum service and it reads as under:

Rule 6 Minimum Service :- No person shall be eligible for appointment by transfer or promotion unless one is an approved probationer and has put in not less than three years of service in the Category from which such promotion or appointment by transfer is made. The period of study of M.Sc. (Nursing) is not considered as service.

It is therefore clear that in the preferential categories set out in clauses (i) to (iv) in the table shown in Rule 3, the category of Nursing Tutors Grade-II stands over and above the category of Staff Nurse. However, for a Nursing Tutor to attain eligibility to be appointed by transfer as a Lecturer, service of three years as such is a must in terms of Rule 6. Having chosen to be appointed by transfer as Nursing Tutors Grade-II from the feeder category of Staff Nurses, obviously with the belief that they would stand in a higher preferential category for appointment as a Lecturer, it is not open to such Nursing Tutors Grade-II to thereafter seek counting of their service rendered as Staff Nurses in the higher category of Nursing Tutors Grade-II. Permitting the same would be violative of Rule 6 of the Rules of 1996 set out supra. Losing sight of this aspect, the Tribunal directed the authorities to act in violation of the Rules.

Though Sri V.Maheswar Reddy, learned counsel for respondents 3 to 11, the applicants in the O.A., would contend that the writ petition itself is not maintainable against an interim order passed by the Tribunal, we are of the opinion that the

impugned interim order suffers on a jurisdictional count as it was not proper for the Tribunal to direct the authorities to act in violation of the Rules and it therefore warrants interference.

Be it noted that in terms of the law laid down by the Supreme Court in ***L.Chandra Kumar vs. Union of India***¹, the power of judicial review vesting in this Court under Article 226 of the Constitution of India is not limited only to final orders passed by the Tribunal and such power of review can also be extended to interim orders passed pending disposal of the OAs by the Tribunal.

Sri V.Maheswar Reddy, learned counsel, placed reliance on the decision of the Supreme Court in ***Shakuntala Sharma (Mrs) vs. High Court of H.P. at Shimla***². However, perusal of the said decision reflects that there was a challenge made to the Rule which prescribed preference amongst the feeder categories with an added condition of minimum service and the Supreme Court ultimately found that the Rule itself was iniquitous and indefensibly unjust. On these grounds, the Rule was struck down. In the case on hand, we find that no challenge has been made by any one to Rule 3 or Rule 6 of the Rules of 1996. Having chosen to abide by the said Rules, respondents 3 to 11 filed the OA before the Tribunal seeking relief by twisting the language and import of the Rules. We are of the opinion that when the Rules are left untouched, it is not open to an employee to seek to get over the Rule by such machinations. The prayer of respondents 3 to 11 in the OA for interim relief to the effect that their service as Staff Nurses should be taken into account in the higher category of Nursing Tutors Grade-II therefore cannot be countenanced, being in violation of

¹ (1997) 3 SCC 261

² (1994) 2 SCC 411

the Rules. Ergo, the order passed by the Tribunal granting them such relief cannot be sustained.

The Writ Petition is accordingly allowed setting aside the interim order dated 29.08.2018 passed by the Tribunal in O.A.No.1620 of 2018.

Pending miscellaneous petitions, if any, shall stand closed.
No order as to costs.

SANJAY KUMAR, J

4th December, 2018
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M. GANGA RAO, J

