

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition Nos.24035 of 2017, 32411 of 2017 & 34568 of 2017

COMMON ORDER:

W.P.no.24035 of 2017 (hereinafter referred to as the '1st writ petition') is filed by one K.Nagalakshmi, under Article 226 of the Constitution of India, requesting to issue a writ of Mandamus declaring the proceedings in Rc.no.3861/E2/OMC/2017, dated 06.07.2017, issued by the Principal, Osmania Medical College, Koti, Hyderabad, as arbitrary, illegal, *mala fide*, discriminatory, unconstitutional & violative of Articles 14, 16 & 21 of the Constitution of India and to set aside the same. A consequential direction to the respondents 1 to 5 to forthwith appoint the petitioner as Assistant Librarian in place of the 6th respondent-B.Jyothi with effect from the date of availability of vacancies of Assistant Librarian, that is, with effect from 01.07.2015, with all consequential benefits including arrears of salary etcetera is also sought.

2. M.Paramesh, the writ petitioner in W.P.no.34568 of 2017, filed W.P.M.P.no.43478 of 2017 for his impleadment as 7th respondent in the 1st writ petition. Having regard to the facts & circumstances and as the petition was unopposed, and as his presence as a party to the 1st writ petition is necessary for effective adjudication, the petition is ordered and he is impleaded as the 7th respondent in the 1st writ petition.

3. The parties in these three writ petitions shall hereinafter be referred to as they are arrayed in the 1st writ petition and also by their names for convenience and clarity.

4. This Court, on 27.07.2017, admitted the first writ petition and granted the following interim order:

“*Prima facie*, the appointment of the 6th respondent as Assistant Librarian, overlooking the case of the petitioner, who is working in a higher grade of Senior Assistant, by the 1st respondent appears to be arbitrary and illegal.

Therefore, there shall be interim suspension as prayed for.”

5. Following the aforesaid interim orders of this Court, the 1st respondent, Principal, Osmania Medical College, by proceedings, dated 06.09.2017, suspended the orders, dated 06.07.2017, whereby, the 6th respondent-Jyothi was promoted to the post of Assistant Librarian, by transfer, on the ground that she was fully qualified for promotion to the said post. Aggrieved of the said suspension orders, dated 06.09.2017, of the Principal, the 6th respondent in the 1st writ petition filed W.P.no.32411 of 2017 (hereinafter referred to as the ‘2nd writ petition’) requesting to issue a writ of Mandamus and quash the suspension orders of the Principal, Osmania Medical College, dated 06.09.2017, as the same are illegal, arbitrary, contrary to law, unconstitutional and consequently direct the 1st respondent-Principal to continue the 6th respondent as Assistant Librarian with all consequential benefits and pass such other orders as this Court may deem fit.

6. W.P.no.34568 of 2017 is filed by M.Paramesh, (impleaded 7th respondent in the 1st writ petition) Junior Steno, Osmania Medical College, Koti, Hyderabad, requesting to issue a writ of Mandamus declaring the inaction of the respondents 1 to 5 particularly of the Principal in not considering his application for the post of Assistant Librarian in Osmania Medical College,

Hydrabad, as arbitrary, illegal, *mala fide*, discriminatory, unconstitutional and violative of Articles 14, 16 & 21 of the Constitution of India and to issue a consequential direction to the Principal/the 5th respondent therein to forthwith appoint him as Assistant Librarian with effect from the date of availability of vacancy, that is, with effect from 01.07.2015, with all consequential benefits including arrears of salary etcetera.

7. The 1st respondent in the first writ petition, i.e., the Principal, Osmania Medical College, Hyderabad, filed W.V.M.P.no.3937 of 2017 to vacate the aforesaid interim order, dated 27.07.2017. The 6th respondent also filed W.V.M.P.no.3309 of 2017 to vacate the above said interim order. When both the said petitions are taken up for hearing, a joint request is made to the effect that instead of the vacate stay petitions, the writ petitions may be heard and disposed of. Hence, all the three writ petitions are heard together and are being disposed of by this common order.

8. I have heard the submissions of *Sri P.V.Krishnaiah*, learned counsel appearing for the petitioner-K.Nagalakshmi, learned Government Pleader for Services appearing for the official respondents; *Dr. K.Lakshmi Narasimha*, learned counsel appearing for the 6th respondent-B.Jyothi, *Sri K.R.K.Gargeya*, learned counsel appearing for the writ petitioner in W.P.no.34568 of 2017, that is, the 7th respondent in the 1st writ petition-M.Paramesh. I have perused the material record.

9. The introductory facts, in brief, are as follows:

The post of Assistant Librarian, Osmania Medical College, has fallen vacant with effect from 01.07.2015, due to retirement of one P.Sunanda, who is

working as Assistant Librarian, on her attaining the age of superannuation, on 30.06.2015. K. Nagalakshmi, the petitioner in the 1st writ petition, worked at various places till 03.03.2010. On her transfer to the Osmania Medical College, Hyderabad, she has been posted as Senior Assistant, on 04.03.2010. The 7th respondent-M.Paramesh is working in Osmania Medical College, Hyderabad, from 22.08.2012. The 6th respondent-Jyothi was initially selected under Direct Recruitment as Book-keeper and was allotted to the office of the Principal, Osmania Medical College, Hyderabad, *vide* proceeding issued in August, 2002, by the Collector & District Magistrate, Hyderabad. She reported to duty, on 02.09.2002. Later, the Principal, Osmania Medical College, *vide* Proceedings, dated 19.09.2002, promoted the 6th respondent as Junior Assistant under backlog vacancies, under Rule 4 of the Last Grade Service Rules, 1992. The 6th respondent joined the post of Junior Assistant; and, she later secured Bachelors Degree in Commerce in December 2011; and, a certificate in Library Science, in the year 2012. Her services in the cadre of Book Keeper were regularized *vide* order, dated 23.08.2004, with effect from 02.09.2002. Later, she was promoted as Junior Assistant, *vide* proceedings, dated 09.11.2012; and, her services in the said cadre were regularized, *vide* proceedings, dated 19.03.2014, with effect from 15.11.2012. The 6th respondent passed Degree in Library & Information Science (B.L.Sc) in December, 2013. She also acquired Post Graduate degree in M.A (Sociology) in June, 2015. Thus, the 6th respondent is admittedly working in the Osmania Medical College from the date of her initial appointment. On the post of Assistant Librarian falling vacant with effect from 01.07.2015, the petitioner, the 6th respondent & the 7th respondent aspired for the said post of Assistant Librarian in Osmania Medical College,

Hyderabad. The Principal of the College is the competent authority for filling up the said post as per the Government orders in force. By orders, dated 06.07.2017, the 1st respondent promoted and appointed the 6th respondent-B. Jyothi to the post of Assistant Librarian, by transfer. Aggrieved thereof, the petitioner filed the present first writ petition. The 7th respondent claims that he is eligible for the post of Assistant Librarian and contends that neither the petitioner-Nagalakshmi nor the 6th respondent-Jyothi are eligible for appointment to the post of Assistant Librarian. According to him, as per the seniority, he is senior to the 6th respondent-Jyothi and that she is junior amongst all the three aspirants. Be that as it may.

10. Now, the only question is as to who amongst all the three aspirants, viz., the writ petitioner or the 6th respondent or the 7th respondent, is eligible for promotion and appointment by transfer to the post of Assistant Librarian, Osmania Medical College, Hyderabad?.

11. This issue need not detain this Court for long in view of the admitted facts. Admittedly, the Principal by the proceedings, dated 06.07.2017, initially promoted and appointed by transfer, the 6th respondent-B.Jyothi, to the post of Assistant Librarian; and, she has accordingly reported to duty. Thereafter, after the interim orders are granted, on 27.07.2017, in the first writ petition, the Principal, by proceedings, dated 06.09.2017, suspended the above proceedings, dated 06.07.2017, and relieved the 6th respondent from the post of Assistant Librarian. The 6th respondent-B.Jyothi is admittedly the seniormost amongst the three aspirants, if the institutional seniority is the criterion. The other two aspirants, that is, the writ petitioner, K.Nagalakshmi, in the first writ petition

and M.Paramesh, the 7th respondent, (the writ petitioner in W.P.no.34568 of 2017), who are seniors in cadre, are however, juniors to the 6th respondent-B.Jyothi, if institutional seniority is taken as the criterion. If the zonal seniority is to be reckoned, there are others in the zone, who are seniors to the writ petitioner and the 7th respondent, is not in dispute. Therefore, if the zonal seniority is the criterion, none of the three aspirants will be eligible for appointment, by transfer, to the post of the Assistant Librarian. Further, as rightly urged before this Court, a Senior Assistant working in the post available in a Medical College is liable for transfer and is under the direct administrative control of the Regional Director. The post of Assistant Librarian is an institutional post and that the Principal is the competent authority for filling up the post of Assistant Librarian, Osmania Medical College, Hyderabad, as it is an institutional post are admitted & undisputed facts. The Deputy Director (Administration), Office of the Director of Medical Education, Telangana State, *vide* his letter, dated 30.07.2015, addressed to the Principal, Osmania Medical College, Koti, Hyderabad, clarified and confirmed the said position. Insofar as the zonal posts, the Principal being the institutional Head is not the competent authority is also an admitted & undisputed fact. Taking into consideration the institutional seniority of the 6th respondent-B.Jyothi, the Principal, by the earliest proceedings, dated 06.07.2017, filled up the post of Assistant Librarian by promoting & appointing her, by transfer. When the Principal is the competent authority of the institution and the post in question is the institutional post, the Principal cannot be faulted for doing so.

12. As rightly contended by the learned counsel for the 6th respondent, the said procedure followed by the Principal is in accord with the A.P Medical &

Health Librarians and Assistant Librarians Subordinate Service Rules, 2007, issued *vide* G.O.Ms.no.207, HM&FW, dated 05.06.2008, which prescribed the appointing authority as well as the mode of appointment. For the category I post, viz., the post of Librarian, the competent appointing authority is Director of Medical Education, and the employees eligible for consideration are the employees of the zone and working in the office of the Director of Medical Education. Whereas, for the post of Assistant Librarian, which comes under category II, the appointing authority is the Head of the Institution and the employees eligible for consideration are the employees working under the control of the Head of the Institution. In the instant case, the institution is Osmania Medical College and the Head of the institution is the Principal. It is brought to the notice of the Court and it is not denied that in the past one S.Pavan Kumar, who was by then working as Junior Assistant in the Osmania Medical College was considered and promoted as Assistant Librarian. Be that as it may.

13. Learned counsel appearing for the writ petitioner submitted that after issuing the proceeding, dated 06.07.2017, favouring the 6th respondent, the Principal addressed a letter on the next day, that is, on 07.07.2017, to the Director of Public Health & Family Welfare, State of Telangana, informing him about the orders, dated 06.07.2017, and seeking necessary orders to fill up the other vacant post with senior-most Senior Assistant, Nagalakshmi, who is also eligible for the said other vacant post of Assistant Librarian. Having drawn the attention of the Court to the said letter, he strongly contended that this conduct of the Principal shows favouritism and biased attitude besides arbitrariness in the matter. However, the Principal adverting to this aspect had

stated in the counter affidavit filed in W.P.no.24035 of 2017 that she addressed letter, dated 07.07.2017, to the Director only due to the pressure exerted by the writ petitioner-K.Nagalakshmi through the Union. Further, as noted, a Senior Assistant working in the post available in a Medical College is liable for transfer and is under the direct administrative control of the Regional Director.

14. On the above analysis, this Court finds that the proceedings in Rc.no.3861/E2/OMC/2017, dated 06.07.2017, of the 1st respondent-Principal, in W.P.no.24035 of 2017, are sustainable under facts and in law, and that therefore, W.P.no.24035 of 2017 is liable for dismissal and the Proceedings of the said Principal, dated 06.09.2017, which are impugned in W.P.no.32411 of 2017, are liable to be set aside by allowing the said writ petition and that as a sequel, W.P.no.34568 of 2017 is liable to be dismissed.

15. In the result, W.P.no.24035 of 2017 & W.P.no.34568 of 2017 are dismissed, and W.P.no.32411 of 2017 is allowed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, in all the three writ petitions shall stand closed.

M.SEETHARAMA MURTI, J

12.10.2018
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