

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.10881 of 2019

ORDER:

This writ petition is filed seeking a Writ of Mandamus to call for the records relating to and connected with the impugned order dated 31.01.2019 passed by the 1st respondent appointing/keeping the 3rd respondent as incharge Principal, Government Dental College & Hospital, Hyderabad, as illegal, arbitrary, contrary to law and unconstitutional and quash the same, and sought consequential direction directing the 2nd respondent to appoint the petitioner as Principal, Government Dental College & Hospital, Hyderabad, with all consequential benefits.

2. Heard Dr.K.Lakshmi Narasimha, counsel for petitioner and G.P. for Services-II appearing for respondents 1 and 2 and Sri V.Ravichandran, counsel appearing for respondent No.3.

3. It has been contended by the petitioner that he was appointed as a Dental Assistant Surgeon on 01.07.1994 and since then he has been discharging his duties to the best satisfaction of his superiors and everyone concerned. The petitioner further submits that after rendering considerable length of service, he was promoted as Associate Professor on 22.12.2006 and further promoted as Professor on 27.06.2011. The petitioner further contends that he is fully eligible and qualified to be promoted to the post of Principal, but the 1st respondent, instead of considering his case for promotion to the post of Principal, has passed the impugned orders on 31.01.2019, promoting the 3rd respondent as

incharge Principal, even though the 3rd respondent is not fully qualified and eligible for such promotion. Counsel for petitioner has further contended that Government is competent authority for effecting promotion to the post of Principal, but the 3rd respondent, though not competent authority, has promoted the 3rd respondent as incharge Principal. Counsel for petitioner, referring to the A.P. Medical Education and Health (Dental) Service Rules, contended that the post of Principal is to be filled up by way of promotion from the Special Grade Dental Professors i.e. Category-2 and if qualified Special Grade Dental Professors are not available, then the said post is to be filled up by promotion from the cadre of Professors of Category-3, who have put-in not less than Five years of service in the said category, provided that vertical seniority in the category of initial appointment i.e. Dental Assistant Surgeon or Dental Assistant Professor shall be the basis for promotion to the post of Principal, Dental College from the categories of Special Grade Dental Professors and Professors subject to fulfilling other conditions prescribed in the Rules. Counsel for petitioner contended that admittedly the 3rd respondent was initially appointed in Andhra Pradesh Medical and Health Insurance Services as Dental Assistant Surgeon during September 1988, and later on, she had worked with A.P.Vaidya Vidhana Parishad and finally the 3rd respondent has come into the stream of Dental Assistant Surgeon of A.P. Medical Education and Health (Dental) Services on 10.06.1997. Since the 3rd respondent has entered the A.P. Medical Education and Health (Dental) Services only in 1997, her service has to be counted only from 1997, and admittedly, the

petitioner herein was appointed as Dental Assistant Surgeon on 01.07.1994, and therefore, the petitioner should be treated as Senior to the 3rd respondent. Counsel for petitioner contends that as far as preparation of seniority list is concerned, petitioner has already filed W.P.No.43037 of 2018 and this Court was pleased to suspend the final seniority list and the only issue which has to be adjudicated in the present case is as to whether 1st respondent is competent to promote the 3rd respondent as incharge Principal. Counsel for petitioner has drawn the attention of this Court to Rule 7 of A.P. State and Subordinate Service Rules and contended that upto the 2nd Gazetted post, it is the Head of the Department, who is competent authority to give promotions and in respect of posts of 1st Gazetted rank, Government is the competent authority. Admittedly, the post of Principal falls under Category-1 and the 1st respondent is only competent to fill up the posts of Categories 4 and 5, but not the posts of Categories 1 and 2. Therefore, the impugned orders are liable to be set aside only on the ground of incompetency of the 1st respondent. Therefore, the counsel for petitioner contends that appropriate orders be passed in the writ petition by setting aside the impugned orders passed by the 1st respondent, dated 31.01.2019 promoting the 3rd respondent as incharge Principal, as he is not the competent authority.

4. The Government Pleader appearing for respondents 1 and 2 has contended that admittedly, the 1st respondent is not the competent authority to promote the 3rd respondent in terms of Rule 7 of the A.P. State and Subordinate Service Rules, but it is the Government, which is

competent to give promotion to the post of Principal. The Government Pleader further contended that the 1st respondent has kept the 3rd respondent only as incharge Principal, but regular promotion was not given effect to, and that the 1st respondent is competent to give such incharge promotions. Therefore, there are no merits in the writ petition and the same is liable to be dismissed.

5. The counsel appearing for 3rd respondent has contended that the term used in the promotion orders is 'incharge', and that the 1st respondent is competent to give full additional charge of the post of Principal. Since the 1st respondent has given incharge promotion, it is for the appropriate authority to give regular promotion and posting orders by passing appropriate orders in accordance with law.

6. This Court, having considered the rival submissions of the parties, is of the considered view that though the petitioner has raised several issues regarding seniority, eligibility of 3rd respondent etc., this Court is not inclined to go into those issues as the petitioner has already filed another writ petition in W.P.No.43037 of 2018, which is pending. This Court has examined the case with regard to giving incharge promotion to the 3rd respondent from the angle of competency. Admittedly, in the instant case, 1st respondent is not competent to give promotion to the 3rd respondent as incharge Principal and it is the Government, which is the competent authority. Therefore, order dated 31.01.2019 passed by the 1st respondent giving promotion to the 3rd respondent as incharge Principal, is contrary to Rules, being passed by incompetent authority. On this

ground alone, the impugned order is liable to be set aside and accordingly it is set aside and the writ petition is allowed.

7. It is always open to the 2nd respondent to give promotion on Full Additional Charge basis or on regular basis to the post of Principal, as per Rules. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

25th November 2019

ajr

