

Dr.M. Uthrapathy Vs. Union of India

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Court : Chennai

Decided On : Apr-30-2013

Judge : Elipe Dharma Rao

Appellant : Dr.M. Uthrapathy

Respondent : Union of India

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

30. 04-2013 CORAM THE HONOURABLE MR. JUSTICE ELIPE DHARMA RAO AND THE HONOURABLE MR. JUSTICE M. VENUGOPAL WRIT PETITION No.3973 OF 201.and Connected Miscellaneous Petition Dr.M. Uthrapathy Consultant Surgeon .. Petitioner Vs.

1. Union of India, rep. by the Secretary to Government, Government of Pondicherry, Health, Electricity & Works Department, Pondicherry.
2. Union Public Service Commission, Rep. by its Secretary Dolphur House, Shajahan Road, New Delhi 1.
3. The Director of Health & Family Welfare, Directorate of Health & Family Welfare, Government of Puducherry, Puducherry.
4. Dr.G. Sriramulu, Head of Department of Surgery, Indira Gandhi Government General Hospital & Post Graduate Institute, Puducherry (Given up in the W.P.) 5.

The Registrar Central Administrative Tribunal, Chennai 104. .. Respondents
Petition filed under Article 226 of the Constitution of India for the issuance of Writ
of Certiorarified Mandamus to call for records relating to the order of the 5th
respondent made in O.A.No.935 of 2009, dated 21.12.2010 to quash the same
and consequently direct the respondents 1, 2 and 3 to promote the petitioner as
Junior Specialist (Surgery) with effect from 24.11.1995, with all other
consequential benefits arising thereto. For Petitioner : Mr.L. Chandrakumar For
Respondents 1,3 & 5 : Mr. Mani Sundaragopal Govt. Pleader (Pondicherry)
Respondent-4 : Mr.R. Parthiban - - - O R D E R ELIPE DHARMA RAO, J The
petitioner was appointed as Assistant Surgeon in the Health Department of
Pondicherry on 02.5.1989. While serving as Assistant Surgeon, he acquired
Master Degree during October, 1995. The next promotional post is the Junior
Specialist and as per the Recruitment Rules any Assistant Surgeon with Master's
degree and three years of regular service is eligible for the post of Junior
Specialist. While so, the Government adopted a new system called 'the Central
Health Services (CHS) pattern' by G.O.Ms.No.23, dated 21.08.199 with
retrospective effect from 15.02.1996. As per the said pattern, the posts were split
into two cadres (i) Specialist sub-cadre and (ii) GDMO sub-cadre. Specialist Gr.II
(Junior Scale) is the entry grade to the Specialist sub-cadre and GDMO is the
entry grade to the GDMO sub-cadre, which are to be filled-up by direct recruitment
through UPSC. As per the new CHS Pattern, the Medical Officers who are holding
the post of Junior Specialist and Senior Specialist irrespective of adhoc or regular
in the old system prior to 15.2.1996 wee placed in the corresponding grades
carrying the scales of pay attached to the Specialist sub-cadre as Specialist Gr.II
(Senior Scale), Specialist Gr.II (Junior Scale) and Specialist Gr.I. Subsequently, by
proceedings dated 10.7.2009 and by a consequential proceedings dated
03.8.2009, the fourth respondent was appointed as Head of Department of
Surgery effective from 01.8.2009, being junior to the petitioner by two years.
Accordingly, their adhoc service in the post of Junior Specialist was ignored and
taking into their regular service as Assistant Surgeon only, they were considered
to the grade of SMO in the GDMO sub-cadre vide G.O.Ms.No.59, dt.26.10.1998.
However, for want of service of Specialist Doctors, the concerned SMO in the
GDMO sub-cadre were instructed to continue to act as Specialists in the

respective discipline till a final decision is taken by the Department. Aggrieved by the new CHS pattern by which the Medical Officers who were working as Junior Specialists on ad hoc basis, preferred O.A.No.112 of 2000 before the Tribunal. The Tribunal, by following the decision of the Hon'ble Supreme Court in (1983) 3 SCC 28.Y.V. Rengiah and others v. J.

Srinivasa Rao and the letter dated 15.2.1996 issued by the Government of India, allowed the O.A., and directed the respondents to regularise the services of the applicants therein from the date when the vacancies existed. The aforesaid order of the Tribunal was confirmed by a Division Bench of this Court by order dated 23.8.2007 in the writ petition preferred by the Union of India in W.P.No.26250 of 2001. According to the petitioner, as per the Gazette published by the Government on 06.07.1999, the petitioner was at Sl.No.32 and the fourth respondent was at Sl.No.34 in the list of seniority. When such was the factual position, though there were existing vacancies prior to the new system, junior to him, including the fourth respondent were promoted and regularised in the post of Junior Specialist. In fact fourth respondent being a party to the aforesaid writ proceedings came to be regularised in the services in the cadre of Junior Specialist. According to the petitioner, since the petitioner being not a party to the aforesaid writ proceedings, his services was not regularised, though happened to be senior to the fourth respondent. On the aforesaid grounds, the petitioner preferred O.A.No.935 of 2009 for promotion to the post of Junior Specialist on regular basis before the adoption of CHS w.e.f. 15.02.1996 and to accord all other consequential benefits. The Tribunal, rejected the O.A., giving rise to the present writ petition.

2. Heard the learned counsel appearing for the petitioner and the Government Pleader appearing for the Respondents 1, 3 and 5 and also the learned counsel appearing for Respondent No.4 and perused the materials on record.

3. It is not in dispute that the petitioner was appointed as Assistant Surgeon on regular basis and he was eligible to be promoted as Junior Specialist. It is also not in dispute that posts of Junior Specialist in various branches existed even before the adoption of CHS pattern and for certain reasons the UPSC did not agree for holding DPC for filling up the posts. In such a situation, giving retrospective effect

to the new Rules thereby promoting the similarly situated Junior Specialists with effect from 27.5.1999, some of the Junior Specialists preferred O.A.No.112 of 2000. The said Original Application was allowed by order dated 23.5.2001 directing the respondents to regularise the services of the petitioners in the cadre of Junior Specialists from the date when the vacancies existed prior to 15.2.1996 as per the Recruitment Rules in force at the relevant time by following the decision of the Supreme Court in Y.V. Rengiah and others v. J.

Sreenivasa Rao and others (1983) 3 SCC 284. The writ petition in W.P.No.26250 of 2001 preferred against the aforesaid order of the Tribunal was dismissed by this Court on 23.8.2007, speaking through by one of us (Eliphe Dharma Rao, J), observing as follows :- "6. Unfortunately, the Union Public Service Commission has not chosen to file any counter either in the Original application or in the writ petition, though the Division Bench has passed the order on 31.7.2007 to file the counter affidavit. Considering the facts and circumstances of the case, the power to fill up the post either by ad hoc or regular basis is vested with the Government, and the fact that to meet the exigencies in the service and in the public interest the applicants were all posted on ad hoc basis, pending amendment to the Rules, and the instructions issued by the Central Government to adopt the Central Health Service pattern on 15.2.1996, we are of the considered opinion that when the applicants / respondents 2 to 21 were not regularly posted, the question of considering their case as per the amended Rules does not arise. When they were not regularly posted and they were posted only on ad hoc basis, the Tribunal is right in passing the order directing the petitioner herein to regularise the services of the applicants/respondents 2 to 21 in the cadre of Junior Specialists in the respective disciplines from the dates when the vacancies existed prior to 15.2.1996. The said order has been passed following the judgment of the Supreme Court referred to supra. When the claims of the applicants/respondents 2 to 21 are pending consideration from the date of their appointment to meet the exigencies of service by the Pondicherry Government, and to that effect proposals were made periodically for consideration of the Union Public Service Commission, it is the Union Public Service Commission has not considered the proposal only on the ground that the Rules are going to be amended. It is pertinent to note here that the Rules were amended only after a consideration (sic) considerable length of

time. Therefore, we see no reason to interfere with the order passed by the Tribunal, as the Tribunal has passed the order following the proposition laid down by the Apex Court. Therefore, we see no reason to take a different view, except directing the petitioner herein to comply with the order passed by the Tribunal. Accordingly, the writ petition fails and the same is dismissed." 4. We do not see any reason as to why the aforesaid decision of this Court is not applicable to the case of the present petitioner. The present petitioner become eligible for promotion before the new CHS pattern came into effect and there were existing vacancies at that point of time. Therefore, the decision of the Supreme Court in Y.V. Rengiah and others v. J.

Sreenivasa Rao and others (1983) 3 SCC 28.applied by the Tribunal in its earlier order dated 23.5.2001 in O.A.NO.112 of 2000 is squarely applicable to the facts of the present case. In the present case also, the UPSC has not chosen to enter appearance and contest the claim. The Tribunal, without properly considering the earlier Division Bench decision and the decision of the Honourable Supreme Court in the aforesaid case, has come to an erroneous conclusion that the petitioner is not eligible for promotion. When the posts were existing prior to the new Rules and when the petitioner became eligible before coming into existence of new Rules, the Tribunal ought not to have rejected the case of the petitioner for promotion.

5. So far as the question of seniority of the petitioner over the fourth respondent is concerned, from the materials on record, it is seen that the petitioner has entered into service even prior to the fourth respondent and as the fourth respondent by approaching this Court had got his ad hoc services regularised, he happened to become senior to the petitioner. In view of the conclusion reached by us in the preceding paragraphs, we are of the considered opinion that the petitioner is eligible to be promoted from the date on which his immediate junior viz., the fourth respondent was promoted with all consequential benefits. However, it is made clear that the petitioner would not be entitled to any monetary benefits and his promotion is on notional basis.

6. For the reasons stated above, the writ petition is allowed to the extent indicated above. The respondents are directed to complete this exercise within a period of

eight weeks from the date of receipt of a copy of this order. There would be no order as to costs. dpk To 1. Union of India, rep. by the Secretary to Government, Government of Pondicherry, Health, Electricity & Works Department, Pondicherry.

2. Union Public Service Commission, Rep. by its Secretary Dolphur House, Shajahan Road, New Delhi 1.

3. The Director of Health & Family Welfare, Directorate of Health & Family Welfare, Government of Puducherry, Puducherry.

4. The Registrar Central Administrative Tribunal, Chennai 104

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