

J. Ranga Swamy

Vs

Government of Andhra Pradesh and Others

I.A. Nos. 1 and 2 of 1989

(S. Ranganathan, M. M. Punchhi JJ)

20.12.1989

JUDGMENT

RANGANATHAN, J. -

1. The petitioner filed two petitions before the Andhra Pradesh Administrative Tribunal. The first petition (R.P. No. 316 of 1977) requested the Tribunal to declare the action of the state of Andhra Pradesh in "isolating and framing the rules for the post of Lecturer in Radiological Physics and converting the non-gazetted post held by the respondent 4, Shri D. K. Subrahmanyam Reddy (hereinafter referred to as 'the respondent'), as gazetted and in appointing respondent 4 to the said post"; the other (R.P. No. 69 of 1984) contained a prayer to declare the government order by which the post of Lecturer in Radiological Physics at the Andhra Medical College, Visakhapatnam, was upgraded to that of Professor of Radiological Physics and G.O.MS. No. 651 dated October 20, 1983, promoting respondent 3 (respondent 4 in the earlier petition) as professor in Radiological Physics as arbitrary and unconstitutional. The Tribunal discussed the various points raised by the petitioner but ultimately disposed of both petitions with certain directions regarding the regularisation of and the grant of certain allowances to the petitioner. This was on April 23, 1984. A review petition appears to have been filed by the petitioner (No. 607 of 1984), which was dismissed by the Tribunal on December 24, 1984.

2. Thereupon the petitioner filed a petition for leave to appeal to this Court from the order of the Tribunal which was granted. This was Civil Appeal No. 4344 of 1986. The petitioner also filed Writ petition No. 4619 of 1985 praying for a writ of certiorari calling upon the state Government to explain the basis of the various government orders conferring benefits on the respondent, a writ of quo warranto restraining the respondent from holding the post mentioned above without having any qualifications therefor and also for the issue of a writ of mandamus directing the state Government to appoint the petitioner to the above post of professor. The civil appeal as well as the writ petition were heard by three learned judges of this court, who dismissed the same on February 7, 1989. The petitioner thereafter preferred review petitions Nos. 177 and 194 of 1989, against the above two orders and these were also dismissed on March 30, 1989. Though the petitioner has now filed what purport to be applications for directions in the above civil appeal, writ petition and review petitions, what the petitioner is seeking in substance is a review of the earlier orders of this Court in the writ petition as well as the civil appeal. On an objection raised by the office to the maintainability of these applications, the matter was posted before court and it was directed that these matters be listed subject to the question of maintainability being agitated before the bench.

3. We are clearly of the opinion that these applications are not maintainable. The petitioner, who appeared in person, referred to the judgment in Antulay case (A. R. Antulay v. R. S. Nayak, (1988)

2 SCC 602 : 1988 SCC (Cri) 372). We are, however, of the opinion that the principle of that case is not applicable here. All the points which the petitioner urged regarding the constitutionality of the government orders in question as well as the appointment of respondent instead of petitioner to the post in question had been urged before the bench, which heard the civil appeal and writ petitions organelle. The petitioner himself stated that he was heard by the bench at some length. It is, therefore, clear that the matters were disposed of after a consideration of all the point urged by the petitioner and the mere fact that the order does not discuss the contentions or give reasons cannot entitle the petitioner to have what is, virtually, a second review.

4. We heard the petitioner at some length as he appeared in person and appeared to be oppressed by a strong sense of injustice that his qualification and long experience have been ignored while, at almost every stage, the respondent who, according to him was less qualified and had a much inferior type of experience, was granted may favors and promotions which he did not deserve. His complaint was threefold. The first was an allegation that posts were created for, and appointments offered to, the respondent to which he was not at all, according to the petitioner, entitled. The second was regarding his non-selection as Professor in Radiological Physics at Vishakapatnam. The third was about the observation of this Court in the review order that the petitioner would be entitled to no further relief.

5. We see no substance in the first of these contentions. The respondent is occupying posts for which he was qualified. The petitioner no doubt pleaded that those posts have been created mala fide and that no valid rules had been framed therefor. It is doubtful how far the petitioner has nay locus to challenge those appointments. However, the petitioner restricted his claims before the Tribunal and it is seen that the Tribunal gave the petitioner the limited reliefs ultimately prayed for by him.

6. So far as the second plea is concerned, admittedly, the petitioner does not have, while the respondent has, a doctorate in nuclear physics. The plea of the petitioner is that, for efficient discharge of the duties of the post in question, the diploma in radiological physics (as applied in Medicine) from the Bhabha Atomic Research centre (BARC) held by him is more relevant than a doctorate in nuclear physics. It is submitted that in all corresponding posts elsewhere, a diploma in radiological physics is insisted upon and that, even in the State of Andhra Pradesh, all other physicists working in the line, except the respondent, have the diploma of the BARC. It is not for the court to consider the relevance of qualifications described for various posts. The post in question is that of a Professor and the prescription of a doctorate as a necessary qualification therefor is nothing unusual. Petitioner also stated before us that, to the best of his knowledge, there is no doctorate course anywhere in India in radiological physics. That is perhaps why a decorate in nuclear physics has been prescribed. There is nothing prima facie preposterous about this requirement doctorate and the BARC diploma held by the petitioner and decide or direct what should be the qualifications to be prescribed fort the post in question. It will be open to the petitioner, if so advised, to move the college, university, government, Indian Medical Council or other appropriate authorities for a review of the prescribed qualifications and we hope that, if a doctorate in unclear physics is so absolutely irrelevant for the post in question as is sought to be made out be the petitioner, the authorities concerned will take expeditious steps to revive the necessary qualifications needed for the post appropriately. But, on the qualifications as they stand today, the petitioner is not eligible to the post and cannot legitimately complain against his non-selection.

7. The third plea made but the petitioner is that the observation made by this Court in the order dated February 7, 1989 in C.A. No. 4344 of 1986 that the "appellant is not entitled to further relief"

is being interpreted by the authorities to deny the petitioner all his legitimate entitlements till today. We may clarify that the order of February 7, 1989 was only intended to foreclose the reliefs sought for by the petitioner in his application to the Tribunal which was the subject matter of appeal to this Court. The respondents should grant to the petitioner the reliefs given to him by the Tribunal and cannot also deny him any other benefits that he may be otherwise entitled to in law.

8. With these observations, we dismiss these applications. There will be no order as to costs.

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