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J. RANGASWAMY

v.

STATE OF ANDHRA PRADESH AND ORS.

APRIL 28, 1995

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[B.P. JEEVAN REDDY AND S.C. SEN, JJ.]

Service Law : Diploma holder from Bhabha Atomic Research Centre—Already working in Special Ad hoc post with pay scale higher than that of professor—Plea that the diploma be regarded as adequate qualification for the post of professor—State directed to consider the plea—State without considering the question downgraded the post to that lecturer—Held : He has to be treated to be posted as professor—Decision of downgrading the post to be kept in abeyance till his superannuation—Rules not to be amended or modified since order passed in particular facts and circumstances of the case.

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The petitioner filed a Writ Petition and Civil Appeal before this Court with the plea that for efficient discharge of the duties of the post of professor of Radiological Physics, the diploma in Radiological Physics from Bhabha Atomic Research Centre (BARC) held by him is more relevant than a doctrate in Nuclear physics.

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This court permitted the petitioner to move the appropriate authorities for a review of the prescribed qualification and directed that if the doctrate in Nuclear Physics was made out to be irrelevant for the post, the authorities concerned should take expeditious steps to revise necessary qualifications.

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Pursuant to the direction of the court, the petitioner filed representation before the Government of Andhra Pradesh to amend the rules governing the post of professor of Radiological Physics in order to treat the qualification held by him as sufficient for the post.

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Petitioner filed I.A. with the plea that inspite of his representation have been examined by an enquiry commission appointed by the government which had submitted its report in this favour, the government was not taking any steps to consider the report and revise the rules.

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The court directed the Government of Andhra Pradesh to examine

the report of the enquiry commission and take appropriate decision at the earliest. A

Despite the direction of the court, Government not having taken any steps, the petitioner filed a Contempt Petition. The counter affidavit filed was without any indication with regard to any definite step taken by the Government. The counter stated that separate Departmental Rules were framed, governing the service of Department of Medical Education which were under consideration. B

The Court granted time to the State Government for taking all necessary steps and extend all benefits to the petitioner. C

On the next date of hearing the Government stated to have complied with all the orders of the court and in support of which a copy of G.O. Ms. No. 176 Health, Medical and Family Welfare (M1) Department dated 13.4.1995 was filed which stated that since no one qualified for the post and the post is not mandatory according to the guidelines of the Medical Council of India, the post is down-graded to the post of lecturer. D

A copy of the observation of the Screening Committee was also filed which said that the post existed only in the college of the petitioner, which was created in order to accommodate a particular candidate and that, under normal university rules lecturer does not straightaway become professor and at the relevant time none of the available persons was fit to be promoted. E

A letter dated 13.4.1995 from Secretary to Government, Health, Medical and Family Welfare Department Government of A.P. to the Advocate-on-Record was also produced. F

Disposing of the contempt petition, the Court

HELD : 1.1. The material placed before the Court does not indicate that the Government of Andhra Pradesh has ever considered properly the petitioner's representation - and in particular the question, whether diploma held by the petitioner is adequate qualification for the post of professor of Radiological Physics. The "Observation of the Screening Committee" contains no reference to this aspect nor does G.O.Ms. No. 176 dated April 13, 1995. Only in the letter dated April 13, 1995, one sentence occurs that "the rules governing the said post have been examined *vis-a-vis* the H

A recommendation of One Man Commission/The Director of Medical Education and also the guidelines prescribed by the Medical Council of India and it is felt that Ph.D in Physics or Nuclear Physics is essential for a professor". No material has, however, been produced to substantiate the said statement. [881-D to F]

B 1.2. The fact of the case show that the Government has been dragging its feet in the matter. Petitioner has meanwhile, been placed in a post equal to or higher than the post of Professor of Radiological Physics. Accordingly, the decision to down grade the said post of Professor of Radiological Physics shall be kept in abeyance till the superannuation of the petitioner.

C The petitioner shall be treated as having been appointed regularly to the post of Professor of Radiological Physics in the Andhra Medical College, Vishakhapatnam with effect from 1st May, 1995. The said post shall stand down graded to the post of lecturer. [881-G, H, 882-A]

D 1.3 These orders are passed in particular facts and circumstances of the case and shall not be treated as a precedent nor would it be necessary to amend or modify the rules for this purpose. [882-A]

1.4. If the petitioner is at present drawing emoluments higher than those admissible to the post of professor, the same shall not be withdrawn. [882-B]

E CIVIL ORIGINAL JURISDICTION : Contempt Petition No. 211 of 1994.

IN

F Interlocutory Application No. 1 of 1992.

IN

Writ Petition (c) No. 4619 of 1985.

G (Under Article 32 of the Constitution of India.)

Petitioner in-person.

G. Prabhakar, T.V.S. N. Chari and Nikhil Nayar for Andhra Pradesh Service Commission for Respondents.

H The following Order of the Court was delivered :

In their Order dated 20th December, 1989, a Bench of this Court comprising S. Ranganathan and M.M. Punchhi, JJ. gave the following direction in Interlocutory Application No. 1 of 1989 (in Writ Petition (C) No. 4619 of 1985 in Review Petition No. 177 of 1989) and Interlocutory Application No. 2 of 1989 (in Civil Appeal No. 4344 of 1986):

"The plea of the petitioner is that, for efficient discharge of the duties of the post in question, the diploma and radiological physics (as applied in Medicines) 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 prescribed for various posts. The post in question is that of a professor and the prescription of a doctorate as a necessary qualification therefore 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 doctorate in nuclear physics has been prescribed. There is nothing *prima facie* preposterous about this requirement. It is not for us to assess the comparative merits of such a doctorate and the BARC diploma held by the petitioner and decide or direct what should be the qualifications to be prescribed for 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 nuclear is so absolutely irrelevant for the post in question as is sought to be made out by the petitioner, the authorities concerned will take expeditious steps to revise the necessary qualifications needed for the post appropriately. But, on the qualifications as they stand to-day, the petitioner is not eligible to the post and cannot legitimately complain against his non-selection."

Pursuant to the said observations, the petitioner-J. Rangaswamy filed a representation before the Government of Andhra Pradesh to amend the Rules governing the post Professor of Radiological Physics so as to treat

A the qualification held by him (a diploma awarded by Bhabha Atomic Research Centre) as sufficient qualification for holding the said post. Complaining that the Government of Andhra Pradesh is taking no action upon his representation, the petitioner moved I.A. No. 1 which came up before a Bench comprising S Ranganathan, V. Ramaswami, JJ. and one of us (B.P. Jeevan Reddy, J.) on October 16, 1992 when the following order was passed :

C "On 20.12.89 this court permitted the petitioner to apply to the appropriate authority for a revision of the rules of recruitment to the post of Professor of Radiologist Physics with the hope that the authorities concerned will take expeditious steps to revise the necessary qualifications appropriately. The petitioner's grievance is that though he made a representation which was examined by an Enquiry Commission appointed by the Govt. and though the Enquiry Commission submitted its report on 12.3.92, according to the petitioner in his favour, the Govt. has not yet taken steps to consider the report, take decision thereon and revise the rules as they may consider appropriate. There is some substance in this grievance for almost 3 years have passed when we passed the above order. In the circumstances we hope that the Govt. of Andhra Pradesh will examine the enquiry commission report and take appropriate decision at the earliest if possible by the end of this year.

This application has been misguidedly styled as Contempt Petition. It is only for directions. So his petition is disposed of. "

F The petitioner has approached with the present contempt petition against complaining that inspite of the later direction, the respondents are not taking any action in the matter. We issued notice to the respondents, who appeared and filed an affidavit (affirmed and signed on 6th February, 1995) sworn-to by Sri K.R. Narayanan, Deputy Secretary to the Government, Health, Medical and Family Welfare Department, Government of Andhra Pradesh, which merely referred to the movement of the concerned file from office to office but did not indicate that any definite steps were taken by the Government towards implementing the orders of this Court. The counter-affidavit requested for grant of three months; time for passing final orders in the matter. It stated further : "(I)t is submitted that the

separate Departmental Rules governing the services of Department of Medical Education are prepared and the same are under consideration and some time is required for issuing final orders and Notification." A

Finding that the said affidavit is evasive and that the complainant's grievance cannot be said to be unjustified, we passed the following order on February 20, 1995: B

"The counter-affidavit filed by the State Government makes a sad reading. It is evident that the State Government has been sleeping over the matter and has not been prompt enough, as it ought to be, in implementing the orders of this Court. In the circumstances we direct that within six weeks from today the State Government should take all necessary steps and extend all benefits which are due to the petitioner in accordance with the orders of this Court, without fail. If this is not done within the period so prescribed, the officers concerned shall personally be liable to explain the non-compliance." C D

List on 17th April, 1995".

When matter came up on April 17, 1995, the learned counsel for the State of Andhra Pradesh stated that the government has complied with the orders of this Court. In support of the said plea, he placed before a copy of the letter No. 2213/M1/94-6 dated April 13, 1995 from the Secretary to the Government, Health, Medical and Family Welfare Department, Government of Andhra Pradesh, Secretariat, addressed to the Advocate-On-Record. The letter states the following facts: the representation of the petitioner was placed before the Screening Committee which found that the none of the lecturers have requisite qualification of Ph.D. for inclusion in the panel for the post of Professor of Radiological Physics/Chief Physics in the Andhra Medical College, Visakhapatnam : "I am further to inform that rules governing the post of professor of Radiological physics have been examined *vis-a-vis* the recommendations of the One Man Commission/the Director of Medical Education and also the guidelines prescribed by the Medical Council of India and it is felt that a Ph.D. in Physics or Nuclear Physics is essential for a Professor"; as per the guidelines prescribed by the Medical Council of India, it is not necessary to have a post of professor of Radiological Physics in any Medical College, that in other medical colleges in State no such post of professor exists; the Government has, therefore, E F G H

A decided to down-grade the said post to that of the post of Lecturer to ensure uniform pattern in all Medical Colleges.

B Alongwith the aforesaid letter, a copy of G.O.Ms. No. 176 Health, Medical and Family Welfare (MI) Department dated April 13, 1995 is enclosed. The G.O. says that inasmuch as there is no qualified candidate to fill up the said post of professor and also because it is not mandatory to have such a post according to Medical Council of India guidelines, the said post is down-graded to the post of Lecturer with immediate effect. Another document enclosed to the said letter is a copy of the "Observations of the Screening Committee which met on 18.3.1995 in connection which preparation of Panel for filling up the post of Professor of Radiological Physics/Chief Physicist in Andhra Medical College Visakhapatnam". This note sets out the three orders of this Court aforementioned and says, "The Screening Committee was informed that it is not mandatory as per Medical Council of India's guidelines to have a post of professor of Radiological Physics for any Medical College; that only in the Andhra Medical College, Visakhapatnam, a post had been created sometime ago apparently to accommodate one particular candidate, who was serving as Lecturer at that time; that under the normal University pattern, a Lecturer does not straightaway become a Professor and an intermediate level of eight a Reader or Asst. Professor is normally available instead of a straight jump from lecturer to Professor". The Screening Committee asked the Government to decide whether the post of Professor should be continued in the Medical College at Visakhapatnam and if it is decided to continue, whether to revise the existing Rules inasmuch as at present none of the available persons is fit to be promoted. At the same time, it added, "it is not desirable to amend rules merely to suit an individual or to enable the promotion of an individual."

G From the material placed before us, it appears that by proceedings of the Director of Medical Education, Government of Andhra Pradesh, Hyderabad dated December 18, 1992, the petitioner was appointed to the "Special promotion post" with effect from February 26, 1983 and allowed to draw the scale of pay of Rs. 1400-2000 in the pre-revised scale of pay of 1986 attached to the promotional post of Professor of Radiological Physics in terms of G.O. Ms. No. 117-Fin. & Plg. (FW) Dept. dated May 25, 1981. The said proceedings says further that "(A)fter fixing the pay in special promotional post, in the above scale, Sri J. Ranagaswamy, lecturer

in Radiological Physics/Radiological Physicist, on completion of (22) years of service in the present category on 25.2.90, is appointed to special *Ad-hoc* promotion post scale-II w.e.f. 26.2.90, in the scale of pay of Rs. 2590-100-3090-110-4300 (in 1986 RPS) next above the scale of pay of the post of professor in Radiological Physics, Rs. 2410-90-2950- 100-4080, (in 1986 RPS), in term of G.O. (P) No. 2-Fin. & Plg. (Fin.Wing) dt. 14.1.88." From these proceedings, it is clear that with effect from February 25, 1983 the petitioner has been placed in a special promotion post carrying the pre-revised pay scale of the Professor of Radiological Physics and that with effect from February 26, 1990 he has been placed in a scale above the scale of pay of the post of Professor of Radiological Physics. Petitioners, however, says that he is entitled to be promoted to the post of Professor with effect from February 26, 1973 (*vide* his representation dated May 10, 1991 - Annexure 'C' to the contempt petition). In view of the orders of this Court dated December 20, 1989, however, it is not possible to accede to the said request. At the same time, we must say that the material placed before us does not indicate that the Government of Andhra Pradesh has ever considered properly the petitioner's representation - and in particular the question, whether the diploma held by the petitioner is adequate qualification for the post of Professor of Radiological Physics. The "Observation of the Screening Committee" contains no reference to this aspect nor does G.O.Ms No. 176 dated April 13, 1995. Only in the letter dated April 13, 1995 referred to above (from the Secretary to the Government addressed to the Advocate-on-Record for Andhra Pradesh in Supreme Court) one sentence occurs that "the rules governing the said post have been examined *vis-a-vis* the recommendation of the One Man Commission/the Director of the Medical Education and also the guidelines prescribed by the Medical Council of India and it is felt that a Ph.D. in Physics or Nuclear Physics is essential for a Professor." No material has, however, been produced to substantiate the said statement. The facts of this case show that the Government has been dragging its feet in the matter. Of course, the petitioner has meanwhile been placed in a post equal to or higher than the post of Professor of Radiological Physics. In the circumstances, all that remains is to make suitable orders in the matter. Accordingly, we direct that the decision to down-grade the said post of Professor of Radiological Physics shall be kept in abeyance till the superannuation of the petitioner. The petitioner shall be treated as having been appointed regularly to the post of Professor of Radiological Physics in the Andhra Medical College,

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- A Visakhapatnam, with effect from 1st May, 1995. On the date the petitioner retires, the said post shall stand down-graded to the post of Lecturer. These orders are passed in the particular facts and circumstances of the case and shall not be treated as a precedent nor would it be necessary to amend or modify the rules for this purpose. It is, however, made clear that
- B if the petitioner is at present drawing emoluments higher than those admissible to the post of Professor (to which he shall be treated to have been appointed with effect from May 1, 1995), the same shall not be withdrawn.

The Contempt Petition is disposed of accordingly. No order as to costs.

C D.K.T

Petition disposed of.