HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

WEDNESDAY ,THE EIGHTH DAY OF JANUARY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE SUJOY PAUL
AND
THE HONOURABLE DR. JUSTICE G.RADHA RANI

WRIT PETITION (TR) NO: 2915 OF 2017
AND
CONTEMP CASE (TR) NO: 244 OF 2017

Between:

SMT.BHARATHI JOHANNA, W/o.Anka Rao, Aged about 57 years, Working as Head Nurse, M.N.J. Institute of Oncology and Regional Cancer Centre, Red Hills, Hyderabad.

...PETITIONER

AND

1. The Government of Telangana, Rep. by its Principal Secretary to Government, General Administration Department, Secretariat, Hyderabad.
2. The Government of Andhra Pradesh Rep. by its Principal Secretary to Government, General Administration Department, Secretariat, Hyderabad.
3. The Government of Telangana. Rep. by its Chief Secretary to Government, General Administration Department, Secretariat, Hyderabad.
4. The Government of Andhra Pradesh, Rep. by its Chief Secretary to Government, General Administration Department, Secretariat, Hyderabad.
5. The Government of Telangana, Rep. by its Principal Secretary to Government, Health Medical and Family Welfare Department, Secretariat, Hyderabad.
6. The Government of Andhra Pradesh. Rep. by its Principal Secretary to Government, Health Medical and Family Welfare Department, Secretariat, Hyderabad.
7. The Director of Public Health and Family Welfare, A.P.Hyderabad.
8. The Director of MNJ Institute of Oncology & Regional Cancer, Centre, Red Hills, Hyderabad.
9. The Regional Director of Medical and Health Services, Kadapa.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be

pleased to declare the action of the respondents in not taking steps to continue the services of the applicant as Head Nurse in MNJ Institute of Oncology and Regional Cancer Centre, Hyderabad on the strength of Govt.Memo.No.10411-Incl/SR/A1/2014, Dt- 15-05-2014 issued by the 4th respondent till she attains the age of superannuation of 60 years in light of the orders issued by the Government of A.P. vide G.O.Ms.No.147, Finance(HRM-IV) Department, dated 30-06-2014 and Letter in Rc.No.1337/B1/2014, dated 09-09-2014 of the 9th respondent as being arbitrary, illegal, unjust, discriminative and violative of Articles 14, 16 and 21 of the Constitution of India besides being opposed to the principles of equity and fair play and consequently hold that the applicant is entitled to be continued as Head Nurse at MNJ. Institute of Oncology and Regional Cancer Centre, Hyderabad on the strength of Govt.Memo.No.10411-Incl/SR/A1/2014, Dt- 15-05-2014 issued by the 4th respondent by extending the benefit of enhancement of the age of superannuation from 58 to that of 60 years as per G.O.Ms.NO.147 Finance (HRM-IV) Department, Dt- 30-06-2014 issued by the Government of Andhra Pradesh and on the strength of Letter in Rc.No.1337/B 1/2014, dated 09-09-2014 of the 9th respondent with all consequential benefits

I.A. NO: 1 OF 2017(WVMP(TR). NO: 572 OF 2017)

Between:

1. The Government of Telangana, Rep. by its Principal Secretary to Government, General Administration Department, Secretariat, Hyderabad.
2. The Government of Andhra Pradesh. Rep. by its Principal Secretary to Government, General Administration Department, Secretariat Hyderabad.
3. The Government ofTelangana. Rep. by its Chief Secretary to Government, General Administration Department, Secretariat, Hyderabad.
4. The Government of Andhra Pradesh, Rep. by its Chief Secretary to Government, General Administration Department,Secretariat, Hyderabad.
5. The Government of Telangana, Rep. by its Principal Secretary to Government, Health Medical and Family Welfare Department, Secretariat, Hyderabad.
6. The Government of Andhra Pradesh. Rep. by its Principal Secretary to Government, Health Medical and Family Welfare Department, Secretariat, Hyderabad.
7. The Director of Public Health and Family Welfare, A.P.Hyderabad.
8. The Director of MNJ Institute of Oncology & Regional Cancer Centre, Red Hills, Hyderabad.
9. The Regional Director of Medical and Health Services, Kadapa.

...APPLICANTS/RESPONDENTS

AND

SMT.BHARATHI JOHANNA, W/o.Anka Rao, Aged about 57 years, Working as Head Nurse, M.N.J. Institute of Oncology and Regional Cancer Centre, Red Hills, Hyderabad.

...RESPONDENT/APPLICANT

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim orders dated: 27-10-2014 in OA.No.6124/2014

Counsel for the Petitioner: SRI K. KIRAN KUMAR REP., FOR SRI. N ASHWANI KUMAR

Counsel for the Respondent Nos.1 & 3: Ms. M. SHALINI GP FOR SERVICES II

Counsel for the Respondent Nos.5&8: SRI SANTHAPUR SATYANARAYANA RAO GP FOR SERVICES I

Counsel for the Respondent Nos.2,4,6,7&9: SRI B. RAJESHWAR REDDY GP FOR THE STATE OF AP

CONTEMPT CASE (TR) NO: 244 OF 2017

Between:

SMT.BHARATHI JOHANNA, W/o.Anka Rao, aged about 58 years, Working as Head Nurse, M.N.J. Institute of Oncology and Regional Cancer Centre, Red Hills, Hyderabad.

...PETITIONER

AND

1. Sri B.Venkateswar Rao IAS, Principal Secretary to Government, General Administration Department, Secretariat, Hyderabad.
2. Sri Suresh Chandra IAS, Principal Secretary Government of Telangana HM and FW Department Secretariat Hyderabad
3. Sri Dr.N. Jayalatha, Director of M.N.J.Institute of Oncology Regional Cancer Centre Red hills Hyderabad

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to summon and punish the respondents for willful disobedience negligence and flouting of the interim orders dated 27.11.2014 in O.A.No.6124 of 2014 which was extended by an order dt. 21.11.2014 and 1.12.2014 until further orders under Section 10 to 12 of the Contempts of the Courts Act r/w. Sec.17 of the Administrative Tribunals Act 1985 and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: SRI K. KIRAN KUMAR REP., FOR SRI. N ASHWANI KUMAR

Counsel for the Respondents: GP FOR SERVICES III

The Court made the following: COMMON ORDER

THE HONOURABLE SRI JUSTICE SUJOY PAUL
AND
THE HONOURABLE DR. JUSTICE G. RADHA RANI

WRIT PETITION (TR) No.2915 of 2017
and
CONTEMP CASE (TR) No.244 of 2017

COMMON ORDER (Oral): *(Per Hon'ble Justice Sujoy Paul)*

The petitioner initially filed petition in O.A.No.6124 of 2014 before the Andhra Pradesh Administrative Tribunal at Hyderabad (Tribunal) and upon abolishment of the said Tribunal, the matter is transferred to this Court and re-registered as W.P.(TR)No.2915 of 2017. In the said O.A., the Tribunal granted interim protection to the petitioner by its order dated 27.10.2014, which was subsequently extended till 21.11.2014 and 02.12.2014 and finally, on 01.12.2014, the said interim protection was extended until further orders. As the said order was disobeyed by the respondents, the petitioner initiated contempt proceedings before the Tribunal and the same is transferred to this Court and re-registered as C.C.(TR).No.244 of 2017 on the abolishment of the Tribunal.

Contentions of the petitioner:

2. Sri K. Kiran Kumar, learned counsel representing Sri N. Ashwani Kumar, learned counsel for the petitioner submits that

the petitioner's parent department is the Regional Director of Medical and Health Services, Kadapa, i.e., respondent No.9. The petitioner was sent to work on deputation in the Director of MNJ Institute of Oncology and Regional Cancer Centre, Red Hills, Hyderabad, i.e., respondent No.8. The age of the superannuation of the employees working in the petitioner's category in Telangana State was 58 years, whereas it was 60 years in the State of Andhra Pradesh. Since the respondents did not permit the petitioner to continue on deputation, she filed O.A.No.6124 of 2014 before the Tribunal with following relief:

> "to declare the action of the respondents in not taking steps to **continue the services of the applicant** as Head Nurse in MNJ Institute of Oncology and Regional Cancer Centre Hyderabad on the strength of Govt.Memo No.10411/Incl/SR/A1/2014, dated 15.05.2014 issued by the 4th respondent till she attains the age of superannuation of 60 years in light of the orders issued by the Government of AP *vide* G.O.Ms.**No.147** Finance HRMIV Department dated 30.06.2014 and Letter in Rc.No.1337/2014 dated 09.09.2014 of the 9th respondent as being arbitrary illegal unjust discriminative and violative of Articles 14, 16 and 21 of the Constitution of India besides being opposed to the principles of equity and fair play and consequently hold that the applicant is entitled to be continued as Head Nurse at MNJ Institute of Oncology and Regional Cancer Centre Hyderabad on the strength of Govt. Memo No.1044Incl/SR/A1/2014 dated 15.05.2014 issued by the 4th respondent by extending the benefit of encashment of the age of superannuation from 58 to that of 60 years as per G.O.Ms.No.147 Finance HRMIV Department dated 30.06.2014 issued by the Government of Andhra Pradesh and on the strength of Letter in Rc.No.1337/B/1/2014, dated 09.09.2014 of the 9th respondent with all consequential benefits and pass such other orders."
>
> (Emphasis Supplied)

3. Learned counsel for the petitioner fairly submits that the petitioner stood retired and received all her retirement benefits in view of order passed in separate legal proceedings. In the instant case, the relief is only about salary for the period between 27.10.2014 to 31.10.2016. To elaborate, it is submitted that against the action of respondents in not continuing the petitioner, the O.A. was filed before the Tribunal. The Tribunal on 27.10.2014 directed the respondents to continue the petitioner in respondent No.8 institution. In furtherance thereof, the petitioner continued for some time and respondent No.8 paid her salary upto January, 2015. Thereafter, she was not allowed to continue and no salary was paid to her. Thus, learned counsel for the petitioner fairly submits that the petitioner is only claiming salary from January, 2015 to 31.10.2016 in the present proceedings.

4. It is submitted by the learned counsel for the petitioner that the said interim order passed by the Tribunal was continued on 01.12.2014 till further orders, despite the fact that the State filed application for vacating the said interim order on 14.11.2014. It is further submitted that respondent No.8 institution is in Tenth Schedule of **the Andhra Pradesh Reorganisation Act, 2014** (Reorganisation Act). Being institution under Tenth Schedule, all

the 'facilities' available before the appointed date i.e., 02.06.2014 should have been continued in favour of the petitioner. 'Facilities' includes the 'facility' to serve department till attaining the age of 60 years.

5. Non-payment of salary was criticized by placing reliance on the order passed by the Supreme Court in **Transmission Corporation of Andhra Pradesh Ltd and ors. v. P.B.Karunakar and ors.**[1]. It is submitted that if employees were continued to remain in the services of the department, they were bound to work and it was duty of the employer to assign the work and extract work from them. Respondent No.8 could not have deprived the petitioner from the fruits of salary. In order to support the contention based on Section 75 of the Reorginisation Act, the judgment of the Supreme Court in the case of **Andhra Pradesh State Council of Higher Education v. Union of India**[2] was referred. Learned counsel for the petitioner submits that although said judgment relates to the assets, the analogy can be drawn from the said judgment for the purpose of interpreting Section 75 (1) of the Reorginasation Act.

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[1] Special Leave to Appeal (C) Nos.35299-35302/2015, dated 08.04.2016.
[2] Civil Appeal Nos.3019-3020 of 2016, dated 18.03.2016.

6. In nutshell, learned counsel for the petitioner submits that pursuant to the interim order which is subsisting till date, the petitioner should have been continued in respondent No.8 institution and she is entitled to get salary from February, 2015 to 31.10.2016.

Contentions of the respondents:

7. Ms. M. Shalini, learned Government Pleader for Services-II appearing for respondent Nos.1 and 3, Sri Santhapur Satyanarayana Rao, learned Government Pleader for Services-I appearing for respondent Nos.5 and 8 and Sri B. Rajeshwar Reddy, learned Government Pleader for the State of Andhra Pradesh for respondent Nos.2, 4, 6, 7, and 9 commonly submitted that the parent department of the petitioner was the Regional Director of Medical and Health Services, Kadapa, Andhra Pradesh i.e., respondent No.9. The petitioner came to Hyderabad as 'deputationist' to work in the Director of MNJ Institute of Oncology and Regional Cancer Centre, Red Hills, Hyderabad, i.e., respondent No.8. The deputationist has no enforceable right to remain on deputation as per her choice. Respondent No.8 while considering the fact that the age of superannuation in the State of Andhra Pradesh is 60 years, whereas in the State of Telangana/Hyderabad is 58 years communicated to the parent

department of the petitioner for repatriation. After certain internal communications, a specific order of repatriation was duly communicated to the petitioner, which is filed by the petitioner herself along with the rejoinder. Heavy reliance is placed on the Rc.No.1337/B1/2014, dated 22.11.2014, whereby the petitioner was repatriated and thereby, directed to report before respondent No.9. The said order was duly endorsed to the petitioner. Thus, it is urged that this course of repatriation is permissible under Section 79 of the Reorganisation Act. Learned counsel for the respondents also relied on certain judgments to submit that the petitioner is not entitled for any relief.

8. No other point is pressed.

9. We have heard the parties at length and perused the record.

Findings:-

10. Admittedly, the parent department of the petitioner is respondent No.9 and order was passed directing the petitioner to work on deputation in respondent No.8. It is trite that deputationist has no indefeasible right to continue on deputation. The borrowing department or lending department has right to

repatriate the deputationist at any time. The Supreme Court in **Kunal Nanda v. Union of India**[3], held as under:

> "6. On the legal submissions made also there are no merits whatsoever. It is well settled that unless the claim of the deputationist for permanent absorption in the department where he works on deputation is based upon any statutory Rule, Regulation or Order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation."

11. Thus, it is clear that petitioner has no vested, statutory or constitutional right to remain posted on deputation in respondent No.8 institution.

12. To wriggle out of this aspect, learned counsel for the petitioner placed heavy reliance on Section 75 of the Reorganisation Act, which reads thus:

> "75. Continuance of **facilities** in certain State institutions.—
>
> (1) The Government of the State of Andhra Pradesh or the State of Telangana, as the case may be, shall, in respect of the institutions specified in the Tenth Schedule to this Act, located in that State, continue to provide facilities to the people of the other State which shall not, in any respect, be less favourable to such people than what were being provided to them before the appointed day, for such period and upon such terms and conditions as may be agreed upon between the two State Governments within a period of one year from the appointed day or, if no agreement is reached within the

[3] (2000) 5 SCC 362

said period, as may be fixed by order of the Central Government.

(2) The Central Government may, at any time within one year from the appointed day, by notification in the Official Gazette, specify in the Tenth Schedule referred to in sub-section (1) any other institution existing on the appointed day in the States of Andhra Pradesh and Telangana and, on the issue of such notification, such Schedule shall be deemed to be amended by the inclusion of the said institution therein."

(Emphasis Supplied)

13. Pertinently, Section 75 forms part of the Part-VII of Reorganisation Act, which talks about 'Provisions as to certain Corporations'. Respondent No.8 by no stretch of imagination can be said to be a corporation. Thus, Part-VII is not applicable for the purpose of superannuation of the petitioner. So far, Section 75 aforesaid is concerned, a minute reading of this provision makes it clear that it talks about the 'Continuance of facilities in certain State institutions' and provides that the facilities are to be continued 'for the people'. The provision does not deal with service conditions of the employees of the state institution at all. On the contrary, it talks about other general facilities available to the people.

14. Part-VIII of the Reorganisation Act deals with 'Provisions as to services'. Section 79 of the said Act reads thus:

"79. Provisions as to continuance of officers in same post.—

> Every person who, immediately before the appointed day, is holding or discharging the duties of any post or office in connection with the affairs of the existing State of Andhra Pradesh in any area which on that day falls within one of the successor States shall continue to hold the same post or office in that successor State, and shall be deemed, on and from that day, to have been duly appointed to the post or office by the Government of, or other appropriate authority in, that successor State:
>
> Provided that nothing in this section shall be deemed to prevent a competent authority, on and from the appointed day, from passing in relation to such person any order affecting the continuance in such post or office."

(Emphasis Supplied)

15. The *proviso* of Section 79 leaves no room for any doubt that the Competent Authority is equipped with the power to pass a specific order relating to an employee for his/her continuance in the post/office. In view of this enabling provision, the repatriation order dated 22.11.2014 was issued and the petitioner was repatriated. Apart from this, the prayer clause of the O.A.No.6124 of 2014 shows that the respondents had already discontinued the petitioner. The petitioner could not make out any legal ground to continue in employment with respondent No.8.

16. Thus, we do not find any illegality or unconstitutionality in the process adopted by the respondents. The petitioner had no legal, statutory or constitutional right which has been infringed. Merely because an *ex parte* interim order was passed by the

Tribunal, it will not reap any benefit of salary as claimed by the petitioner.

17. In view of the aforesaid, no relief is due to the petitioner. The petition sans substance and accordingly, the Writ Petition as well as the Contempt both are **dismissed**. There shall be no order as to costs. Miscellaneous applications, if any, shall stand closed.

SD/- B. SATYAVATHI
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. One CC to SRI. N ASHWANI KUMAR Advocate [OPUC]
2. One CC to SRI B. RAJESHWAR REDDY GP FOR THE STATE OF AP [OPUC]
3. Two CCs to GP FOR SERVICES III, High Court for the State of Telangana. [OUT]
4. Two CCs to GP for Services-I, High Court for the State of Telangana at Hyderabad. [OUT]
5. Two CCs to GP for Services-II, High Court for the State of Telangana at Hyderabad. [OUT]
6. Two CD Copies

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KKS

HIGH COURT

DATED:08/01/2025

COMMON ORDER

WRIT PETITION (TR) NO: 2915 OF 2017
AND
CONTEMP CASE (TR) NO: 244 OF 2017



DISMISSING THE WRIT PETITION
AND CONTEMPT CASE
WITHOUT COSTS

(11)

24/3/25