
(1995) 03 AP CK 0041

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10514 of 1994

Dr. M. Rajaiah

APPELLANT

Vs

The Executive Officer, Tirumala Tirupati Devasthanams and
Others

RESPONDENT

Date of Decision : 24-03-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1), 21

Citation : (1995) 1 ALT 821

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : Ramesh Ranganathan, for the Appellant; L.V. Ravichander, for Respondents 1, 2 and 4 and M. Panduranga Rao, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—When this writ petition was filed in this Court on 13-6-1994 the petitioner Dr. M. Rajaiah was serving as Professor of Dravyaguna and Rasasastra in Sri Venkateswara Ayurvedic College, Tirupati. The Executive Officer of Tirumala Tirupathi Devasthanams Tirupathi for short "the T.T.D. by his proceedings No. D6/37759/93 dated 31-5-1994 transferred the petitioner to the department of Dr. V.V. Prasad while transferring Dr. V.V. Prasad as Professor of Dravyaguna and Rasasastra. In this writ petition the petitioner has called in question the validity and legality of the said proceedings of the first respondent Executive Officer.

2. The petition averments disclose that the petitioner is a graduate in Ayurvedic medicine from Kakatiya University and passed in First division having stood first in the University in 1979. The petitioner obtained his Postgraduate degree from the Government College of Indian Medicine, Bangalore in Dravyaguna, Rasasastra and Bhaishajya Kalpana in the year 1983. The Government College of Indian Medicine at Bangalore was established by the Karnataka Government and the Post-Graduate course in Dravyaguna Rasasastra and Bhaishajya Kalpana was

introduced during the academic year 1976-77 vide Government Order No. HMA 503 PIM 72 dated 30-8-1973 under a Centrally sponsored Scheme totally financed by the Government of India. The Government College of Indian Medicine, Bangalore is affiliated to the Bangalore-University throughout the career. The petitioner has submitted numerous scholarly and research papers and has attended number of conferences held throughout the country. The petitioner was an External Examiner for Ayurvedic courses in the subject of Dravyaguna, Rasasastra and Bhaishjya Kalpana for Osmania University, Kakatiya University, Nagarjuna University, M.G.R. Medical University of Madras and Raipur University in the State of Madhya Pradesh.

3. Pursuant to an advertisement issued in the Indian Express on 8-12-1983 by the T.T.D. calling for applications for the post of Lecturers in S.V. Ayurveda College, Tirupati from eligible Candidates, the petitioner applied for the post of lecturer in both Dravyaguna and Rasasastra. The qualifications prescribed for the post of Lecturer was a Degree or Diploma in Ayurveda awarded by a University or a statutory Board of the State Government after undergoing a regular course of study in Ayurveda both in theory and practicals for a period of not less than four years duration in a teaching institute recognised by any University or a statutory board of the State Government and preference would be given to Post-Graduate Degree holders. The petitioner was called for interview both for the post of Lecturer in Dravyaguna and Rasasastra and he appeared for interview only for the post of Lecturer in Rasasastra. The interviews were held on 13-7-1984. The third respondent had also applied for the post of Lecturer only in Dravyaguna and did not apply for the post of Lecturer in Rasasastra since, he had a Post-Graduate degree only in Dravyaguna. The petitioner was selected by the committee constituted by the T.T.D. and he was issued appointment order as lecturer in Rasasastra vide proceedings N0.D6/1909/83, dated 1-8-1984. The petitioner joined duty on 13--8-1984 as Lecturer in Rasasastra. The third respondent was appointed as Lecturer in Dravyaguna and he joined duty as Lecturer in Dravyaguna on 14-8-1984.

4. There afterwards, the T.T.D. issued an advertisement in "Eenadu" Telugu daily dated 16-3-1987 calling for applications from the eligible candidates for various posts including two posts of Assistant Professor in the Department of Dravyaguna and Rasasastra. One of the said two posts was reserved for candidate belonging to the Scheduled Castes and the other was meant for candidates belonging to Open Category. The qualifications prescribed for the post of Assistant Professor was a Degree or Diploma in Ayurveda awarded by any institution recognised by a University or a statutory Board of the State Government after undergoing a regular course of study in Ayurveda for a period of not less than four years duration. In addition, a minimum of three years experience in the concerned subject with Post-Graduate degree was also prescribed. The petitioner applied for the post of Assistant Professor and was interviewed on 25-8-1987. According to the petitioner, the third respondent did not even apply for the post of Assistant Professor in Dravyaguna and Rasasastra because he had Post-Graduate degree

only in Dravyaguna and not both in Dravyaguna and Rasasastra. The selection committee constituted as per the Central Council of India Medicine stipulation for selection of teaching and other staff for S.V. Ayurveda College, Tirupati had interviewed the eligible candidates on 25-8-1987 and selected the petitioner as Assistant Professor in the Department of Dravyaguna and Rasasastra, and the petitioner was informed of his selection by the second respondent vide proceedings Roc.No. D6/4469/ DEO/86, dated 26-9-1987. Just one day prior to that date the promotion to the post of Assistant Professor was effected from among the internal candidates and since the petitioner had been selected by the selection committee as Assistant Professor in the department of Dravyaguna and Rasasastra against the vacancy for Open Category candidates, he was also promoted as Assistant Professor in the same post vide proceedings No. Roc.No. D6/44991/DEO/87, dated 25-9-1987. The third respondent was promoted as an Assistant Professor in the Department of Shareera inasmuch as there was no vacancy in the post of Assistant Professor in the department or Dravyaguna and Rasasastra since the second post of Assistant Professor was reserved for the candidates belonging to Scheduled Castes. The services of the petitioner as Assistant Professor of Dravyaguna and Rasasastra were regularised and his probation was declared on 13-12-1991.

5. S.V. Ayurveda College of Tirupati became affiliated to the University of Health Sciences from 1987-88 onwards and the said communication was received from the University of Health Sciences vide letter dated 26-9-1991. The S.V. Ayurveda College was directed to follow the instructions of the Director of Indian System of Medicine and Homoeopathy, Hyderabad with regard to rules, recruitment and promotions etc. The Director of Indian Medicine, Hyderabad vide letter dated 22-7-1987 had informed the second respondent that the post of Professor in Ayurveda could be filled either by recruitment by transfer from among the senior Medical Officers/Assistant Professors or by direct recruitment. For appointment by transfer to the post of Professor the prescribed qualifications were that one must possess a Degree or diploma in Ayurvedic medicine from any recognised institute and must have put in at least 3 years of service as senior Medical Officer/Assistant Professor with three years teaching experience. Along with the said letter dated 22-7-1987 the extracts of G.O.Ps. No. 129-M & H, dated 27-2-1981 and G.O.Ms. No. 204, dated 17-3-1987 were enclosed. G.O.Ps. No. 129 relates to the appointment of Professors whereas the G.O.Ms. No. 204 relates to appointment of Assistant Professors and Lecturers. For the post of Professor the prescribed qualification was Graduation from a recognised institution with three years teaching experience as Assistant Professor in the relevant subject. The T.T.D. issued advertisement in "Hindu" dated 14-11-1989 calling for applications from eligible candidates for the post of Professors in various Departments including the Department of Dravyaguna and Rasasastra. The qualification prescribed in the said advertisement was that the candidate must possess a degree/diploma in Ayurvedic Medicine from any recognised institution, must possess a Post Graduation degree in Ayurvedic Medicine

awarded by a University or by any recognised institution and not less than 3 three years teaching experience as Assistant Professor in Ayurveda in a recognised Institution. The petitioner at that time did not possess the minimum three years experience as Assistant Professor and there fore he did not apply for that post.

6. The second respondent vide proceedings No. Roc. No. D6/48436/91, dated 3-4-1992 appointed the petitioner as Professor in Dravyaguna and Rasasastra whereas the third respondent was appointed as Professor in the Department of Swasta Vritam. Questioning the appointment of the petitioner as Professor in Dravyaguna and Rasasastra the third respondent filed W.P. No. 4753 of 1992 in this Court seeking to quash the appointment of the petitioner as Professor in Dravyaguna and Rasasastra and to direct the Management to promote him as Professor in Dravyaguna. In the said writ petition the T.T.D. filed its counter-affidavit stating that the petitioner was appointed as Professor in the Department of Dravyaguna and Rasasastra since he had requisite qualifications and was senior to the third respondent.

7. During the pendency of Writ Petition No. 4753/1992 the second respondent issued proceedings dated 4-1-1994 to the petitioner and two others stating that their Post Graduation Degrees were not recognised by the Central Council of Indian Medicine and that they should obtain the recognition particulars from the Universities concerned. According to the said list the petitioner and one Dr. N. Bhasker Rao had obtained their Post Graduation Degrees from Bangalore University and Dr. G. Rammohan Rao had obtained his Post Graduation Degree from Rajasthan University, Jaipur. The Director of Indian System of Medicine and Health, Bangalore vide letter dated 11-2-1994 informed the petitioner that the Post Graduation course conducted at the College of Indian Medicine, Bangalore awarded by the Bangalore University should be considered as a recognised course for all purposes. He also stated in the said letter that the Registrar of Bangalore University had already addressed a letter to the Ministry of Health & Family Welfare, New Delhi for inclusion of qualification of M.D., Ayurveda in the second schedule of the Indian Medicine Central Council Act, 1970, for short "the Act". When the matters stood thus, the second respondent Executive Officer of the T.T.D. issued the impugned proceedings transferring the petitioner to the Department of Swastavritam in the place of third respondent and transferring the third respondent as Professor of Dravyaguna and Rasasastra in the place of the petitioner.

8. Sri Ramesh, the learned Counsel for the petitioner attacked the impugned proceedings of the Executive Officer of the T.T.D. by contending that the action is without jurisdiction and illegal. He would contend that the petitioner being appointed as Assistant Professor in Dravyaguna and Rasasastra and subsequently promoting him to the post of Professor in the same subject, ought not to have been transferred to the Department of Swastavritam. Secondly, Sri Ramesh, the learned Counsel contended that the Act was amended and Schedule I of the Act

pertaining to minimum standards of education in Indian Medicine was revised only with effect from 1-7-1989 and therefore the amended qualification is not applicable to the members of the teaching staff appointed earlier to that date. He also contended that S.V. Ayurveda College in which the petitioner and the third respondent are working is itself is not a recognised one by the Central Council of Indian Medicine and therefore there was no justification on the part of the management of the College to apply the educational standards set by the Act. The learned Counsel also pointed out that the Central Council of Indian Medicine itself in its letter dated 3-6-1991 informed all the concerned that the amended regulations would not affect the promotions of teachers made before 1-7-1989 and in that view of the matter also the impugned action was totally bad in law. The learned Counsel also contended that the impugned action is totally bad, arbitrary, unreasonable and violative of principles of natural justice inasmuch as the same was issued without affording any opportunity to the petitioner to have his say in the matter. The learned Counsel also contended that the impugned proceedings have the effect of affecting his civil rights, and therefore such a consequence should not have been brought about by the Executive Officer without complying with the principles of natural justice. On the other hand, the learned standing counsel appearing for the respondents 1, 2 and 4 and Sri. A. Panduranga Rao, the learned Counsel for the third respondent supported the impugned action. They would highlight that the Post-Graduate degree obtained by the petitioner from Bangalore University is not included in Schedule I of the Act and therefore it is not a recognised degree and in that view of the matter the petitioner did not/does not possess the requisite educational qualification for being appointed either to the post of Assistant Professor or to the post of Professor in Dravyaguna and Rasasastra. They also pointed out that when the petitioner was appointed as Professor in Dravyaguna and Rasasastra by a proceeding dated 3-4-1992 the amended Regulations have already come into force and in that view of the matter the petitioner should not have been appointed as professor in Dravyaguna and Rasasastra and now by the impugned proceedings that error was rectified. It was also pointed out that by the impugned proceedings no prejudice was caused to the petitioner inasmuch as he has been transferred to the department of Swastavritam as professor. Further the petitioner was requested to share the work in Rasasastra in view of his experience in the subject. In support of their rival contentions the learned Counsel appearing for the parties sought to place reliance on certain decisions of the Apex Court.

9. After hearing the learned Counsel for the parties I find an apparent fatal error in the impugned proceedings issued by the Executive Officer of the T.T.D. The facts narrated supra makes it very clear, over which there is no dispute, that the petitioner was appointed as lecturer in Rasasastra with effect from 13-8-1984; as Assistant Professor in Dravyaguna and Rasasastra with effect from 25-9-1987 and he was promoted as Professor in Dravyaguna and Rasasastra with effect from 3-4-1992, When the impugned proceedings were issued by the Executive

Officer of the T.T.D, he was working as Professor in Dravyaguna and Rasasastra. If for any reason the T.T.D. thought that the appointment of the petitioner as Assistant Professor or Professor in Dravyaguna and Rasasastra was not in conformity with the provisions of the Act or the Regulations made thereunder, the right way on the part of the T.T.D. was to initiate necessary proceedings and to notify the petitioner and afford him an opportunity to have his say in the matter. It is very relevant and significant to note that at no stage of his teaching career in S.V. Ayurveda College, the petitioner had applied for the post of Lecturer or to the post of Assistant Professor or to the post of Professor in the subject of Swastavritam. It is quite curious and surprising that the petitioner by the impugned proceedings virtually has been appointed as Professor in the subject of Swastavritam for which the petitioner was never an applicant. There is no substance in the contentions of the respondents that no prejudice was caused to the petitioner by transferring him as Professor in the Department of Swastavritam. It is relevant to note that liberty to work or not to work is a fundamental right as guaranteed under Article 21 of the Constitution of India. A civil servant cannot be compelled to work in a discipline or a Department not chosen by him There is no dispute and there cannot be any dispute that the petitioner did not apply for any position in the Department of Swastavritam. There is also no dispute between the parties that Department of Swastavritam is a separate and different Department and not a part or unit of the Department of Dravyaguna and Rasasastra. A civil servant works under the State not only for the sole purpose of earning salaries and allowances but also works for the self-realisation of the best in him in a chosen career. No State authority can compel a Civil servant to work in a discipline or department not chosen by him. Therefore, the impugned proceedings certainly affects the Constitutional rights and the Civil rights of the petitioner. If that is so, there is a clear violation of the principles of natural justice in passing the impugned proceedings. "Affected should be informed" is a Constitutional requirement flowing from Article 14 of the Constitution of India. Therefore, there is justification in the submission of the learned Counsel for the petitioner that the impugned action was violative of principles of natural justice as well as that of Articles 14, 16(1) and 21 of the Constitution. On this short ground the writ petition is entitled to be allowed he impugned proceedings are liable to be quashed. The other rival contentions urged by the learned counsel for the petitioner and the respondents are kept open to the decided at an appropriate stage.

10. In the result and for the foregoing reasons I allow this writ petition and quash the impugned proceedings and direct the respondents 1 and 2 to permit the petitioner to function as professor in Dravyaguna and Rasasastra in S.V. Ayurveda College at Tirupati. No costs.

11. When this judgment was pronounced, Sri M. Panduranga Rao, the learned Counsel for the 3rd respondent submitted that this order, shall not come in the way of the respondents 1 and 2 to initiate necessary proceedings against the petitioner on the ground that he does not possess requisite prescribed

qualifications to be appointed to the post of Professor in Dravyaguna and Rasasastra if they are so advised. It is ordered accordingly.