

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.12699 of 2007

Dated:12.02.2008

Between

Dr.Yerra Haribabu

.....Petitioner

and

1.The Nizam's Institute of Medical
Sciences, Panjagutta, Hyderabad
Rep., by its Executive Registrar
And another.

...Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.12699 of 2007

ORDER

This writ petition is filed seeking a Mandamus to declare the notification in Rc.No.5/2/ACAD/A5/2005, dated 16.5.2007 issued by the Nizam's Institute of Medical Sciences, Hyderabad so far as inviting applications for the post of Associate Professor of Orthopedics and action of the respondent authorities in not promoting the petitioner as Associate Professor under the Assessment Promotion Scheme framed under Standing Order No.35 as arbitrary, illegal and consequently to direct the respondents to promote the petitioner as Associate Professor of Orthopedics with retrospective effect.

It appears that the petitioner passed Master of Surgery in Orthopedics in the year 1991. Thereafter, he acquired experience as Medical Officer and was selected and appointed as Senior Resident in the Department of Orthopedics at Nizam's Institute of Medical Sciences, Hyderabad (for short 'NIMS') in the year 1995 and continued in the same post till 1998.

Subsequently, he was appointed as Assistant Professor in the Department of Orthopedics from 23.10.98 and since then he has been working as such. As per the NIMS Standing Order No.35, dated 20.9.1995 Assessment Promotion Scheme was introduced. According to the said scheme, 100% eligible Assistant Professors shall be promoted as Associate Professors.

The grievance of the petitioner is that ignoring the said promotional scheme, NIMS issued notification dated 12.11.2002 opting to conduct direct recruitment for the post of Associate Professor and conducted selections on 20.1.2003. Questioning the said notification and selection, the petitioner earlier filed WP No.2187 of 2003. While admitting the said writ petition, on 17.4.2003 in WPMP No.2870 of 2003 this Court passed an interim order directing the respondents to consider the candidature of the petitioner for promotion to the post of Associate Professor under the Assessment Promotion Scheme.

In said writ petition, counter was filed by the respondents. They have not denied the fact of existence of the Assessment Promotion Scheme

framed under Standing Order No.35 and the guidelines prescribed therein. The respondent institute took a stand that the notification was issued only to appoint on “tenure basis” but resorted for regularizing the appointments which had been made on tenure basis and they did not consider the case of the petitioner under the said scheme. Suo motu contempt proceedings were initiated against the respondents in CC No.653 of 2005 for not considering the case of the petitioner for promotion and for resorting regularization of the candidates appointed on tenure basis. At this stage, the respondents have passed the order dated 16.8.2005 informing that the case of the petitioner had already been considered and rejected. It was further informed that that his case shall be re-assessed in the next Assessment Promotion Committee and therefore, the said contempt case was closed. Again the present notification has been issued without considering the candidature of the petitioner.

It is the grievance of the petitioner that he is entitled to be considered for the post of Associate Professor Orthopedic as per the Standing Order No. 35 whereas the notification was issued again contrary to

the said Standing Order.

There is no necessity to go into all the details.

Though in the counter filed by the respondents it is stated that the Standing Order No.35 was repealed and it is no more in existence, learned counsel for the respondents, on verification, stated that the said Standing Order is not repealed and it is in vogue as of now.

Under these circumstances, prima facie, it appears that issuance of the said notification inviting applications for filling up the post of Associate professor Orthopedic is illegal. However, learned counsel Sri J.Sudheer appearing for the respondents stated that NIMS is ready, to consider the case of the petitioner, as per the Standing Order No.35.

In view of the above, without expressing any opinion on merits, the respondents are directed to consider the case of the petitioner for promotion to the post of Associate Professor Orthopedic as per the Standing Order No.35 and pass appropriate orders within a period of four weeks from the date of receipt of copy of this order. However, it is made clear that any application received in pursuance of the notification

dated 16.5.2007 against the post of Associate Professor Orthopedic shall not be taken into consideration for the purpose of selection and appointment etc.

Writ petition is disposed of accordingly. No costs.

12-02-2008

Note: Issue CC by one week.
(B.O) rkk