

***THE HON'BLE SRI JUSTICE SUJOY PAUL**
AND
***THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

+ Writ Petition Nos.38060 of 2013; 19711, 19353 and 21776
of 2015; 2891, 2892, 2894, 4752, 5265, 5414 and 9901 of 2018;
11279 of 2019; 15229 of 2023 and 27990 of 2023

AND
Writ Appeal Nos.774, 779, 783, 808, 835 and 850 of 2022;
290, 296, 298, 299, 300, 305, 335, 342, 343 and 344 of 2023 and
724 of 2024

% Date: 29-11-2024

G.Nagaraju and Others.

...Petitioners

vs.

\$ The Government of A.P., rep. by its Principal
Secretary, Health, Medical and Family Welfare
Department, Secretariat, Hyderabad and Others

... Respondents

! Counsel for the Petitioners in W.P.No.38060 of 2013:
Sri M.Surender Rao, learned
Senior Counsel representing
Sri V.V.Prabhakar Rao

Counsel for the Petitioners in W.P.Nos.19353, 19711 and 21776 of 2015:
Sri T. Suryakaran Reddy, learned
Senior Counsel representing
Sri K.Sita Ram

^ Counsel for State of Telangana: Sri S. Rahul Reddy, learned
Special Government Pleader, representing
learned Addl. Advocate General

^ Counsel for State of Andhra Pradesh: Sri B. Rajeshwar Reddy, learned
Government Pleader

^ Counsel for Unofficial Respondents: Sri G. Vidyasagar, learned
Senior Counsel

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> Head Note :

? Cases referred

1. (2022) 18 SCC 144
2. (2019) 13 SCC 185
3. AIRONLINE 2021 SC 811
4. AIR 1998 SC 18
5. (2009) 1 SCC 386
6. (1969) 2 SCC 283
7. 1975 Supp SCC 1
8. 1993 Supp (1) SCC 96 (2)
9. (1994) 6 SCC 77
10. (1995) 6 SCC 16
11. (1996) 11 SCC 428
12. (1996) 7 SCC 637
13. (1997) 1 SCC 326
14. (2014) 12 SCC 696
15. (2016) 6 SCC 602
16. 2022 (12) SCC 455
17. (2011) 8 SCC 737
18. (2009) 9 SCC 352
19. 2003 (3) SCC 485
20. (2003) 2 SCC 111
21. (2008) 1 SCC 683

IN THE HIGH COURT FOR THE STATE OF TELANGANA HYDERABAD

* * * *

**Writ Petition Nos.38060 of 2013; 19711, 19353 and 21776 of 2015;
2891, 2892, 2894, 4752, 5265, 5414 and 9901 of 2018; 11279 of
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**Writ Appeal Nos.774, 779, 783, 808, 835 and 850 of 2022; 290,
296, 298, 299, 300, 305, 335, 342, 343 and 344 of 2023 and
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Between:

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The Government of A.P., rep. by its Principal
Secretary, Health, Medical and Family Welfare
Department, Secretariat, Hyderabad and Others

... Respondents

JUDGMENT PRONOUNCED ON: 29.11.2024

THE HON'BLE SRI JUSTICE SUJOY PAUL

AND

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to
see the fair copy of the Judgment? :

SUJOY PAUL, J

NAMAVARAPU RAJESHWAR RAO, J

**THE HONOURABLE SRI JUSTICE SUJOY PAUL
AND
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724 of 2024**

COMMON JUDGMENT: (*per* Hon'ble Sri Justice Sujoy Paul)

Regard being had to the similitude of the questions involved, on the joint request of the parties, these matters were analogously heard and decided by this common order:

FACTUAL BACKGROUND:

2. The combined State of Andhra Pradesh issued a notification for recruitment of para-medical posts i.e., Multi Purpose Health Assistant (MPHA) (Male) on 22.07.2002. As per the said notification, the qualification for the said post was S.S.C.+M.P.H.A. Aggrieved by the prescription of aforesaid qualification, Original Application No.6856 of 2002 was filed before the Andhra Pradesh Administrative Tribunal (Tribunal). The qualification so prescribed in the notification dated 22.07.2002 was upheld by the Tribunal. The Government pursuant to certain complaints regarding bogus certificates conducted enquiry and

cancelled the selection process vide G.O.Ms.No.484, dated 24.12.2002.

3. Certain petitioners feeling aggrieved by aforesaid order of Tribunal in O.A.No.6856 of 2002 and cancellation of selection by order dated 24.12.2002, filed two Writ Petitions i.e., W.P.No.15107 of 2002 and 422 of 2003 before this Court. Apart from the above Writ Petitions, some other similar Writ Petitions were also filed. Initially, this Court permitted the candidates having qualification of Intermediate to participate in the selection. However, said Writ Petitions were decided on 11.09.2003 and qualifications so prescribed as S.S.C. and Diploma in Health Assistant from recognized institute were upheld. However, the Government as well as aggrieved parties assailed the said order of this Court before the Apex Court in Civil Appeal No.4428 of 2006 and 4267 of 2006. During the pendency of said appeals, the State Government filed a modification petition before the Supreme Court seeking leave to appoint MPHA in exigency of administration. The Supreme Court on 07.08.2006 permitted the State Government to proceed with appointment of MPHA. Consequently, on 15.09.2006, GO.Rt.No.1234 was issued permitting the Director of the Department to notify and fill-up the vacancies existing as on

15.09.2006. The aforesaid Civil Appeals came up for hearing before the Supreme Court and ultimately, by order dated 09.08.2011, the appeals were dismissed and common order of this Court in WP.No.15107 of 2002 and batch, dated 11.09.2003, was upheld.

4. In obedience of this Court's order in W.P.No.15107 of 2002 and batch, the Government issued G.O.Rt.No.273, dated 16.02.2012 directing termination of candidates, who were less meritorious and further directed to appoint meritorious candidates by redrawing the selected list. The merit list was, accordingly, redrawn. During 2012-2013, a sizeable number of less meritorious candidates, who were appointed beyond the sanctioned strength were terminated.

Contention of petitioners of W.P.No.38060 of 2013:

5. Sri M.Surender Rao, learned Senior Counsel, informs that said termination orders were challenged by certain terminated employees by filing O.A. before the Tribunal which came to be dismissed.

6. During the process of considering the meritorious candidates, the Government issued G.O.Rt.No.1207, dated

09.10.2013 to take back the terminated employees, who were terminated pursuant to G.O.Rt.No.273, dated 16.02.2012. O.A.No.7455 of 2013 was filed by meritorious candidates, who could not be appointed, wherein G.O.Rt.No.1207, dated 09.10.2013 was also called in question. The O.A. was dismissed on 20.08.2013. WP.No.38060 of 2013 and two other writ petitions were filed challenging the aforesaid order of Tribunal dated 28.11.2013. Initially, this Court by order dated 05.02.2014 stayed the G.O.Rt.No.1207, dated 09.10.2013. However, during hearing in vacate petitions, this Court directed on 15.09.2015 both the States of Andhra Pradesh and Telangana to appoint all those candidates, who are more meritorious than the candidates who were covered by G.O.Rt.No.1207, dated 09.10.2013.

7. Sri M.Surender Rao, learned Senior Counsel, submits that the Tribunal erred in rejecting the O.A. It is submitted that the petitioners are more meritorious and therefore they could not have been deprived from the fruits of selection. The Go.Rt.No.1207 of 2013 is bad in law and the Tribunal ought to have interfered with the said G.O.Rt. The learned Senior Counsel further submits that the Court order dated 15.09.2015 passed in this case has great significance. By taking this Court to the said order, it is

strenuously contended that the language of the said order makes it crystal clear that the order was passed in *rem* and not in *personam*. Thus, in view of the judgment of the Supreme Court in the case of **Rushibhai Jagdishbhai Pathak v. Bhavnagar Municipal Corporation**¹, the said order must be treated as an order in *rem* and it should have been implemented by the State on its own in favour of all similarly situated candidates.

8. During the course of joint hearing of these batch of petitions, learned counsel appearing for the parties informed that pursuant to the issuance of G.O.Rt.No.1207 of 2013, a sizeable number of employees terminated earlier were taken back in service. Such taken back employees were approximately 1200. Certain candidates who were more meritorious than the candidates, who were taken back, preferred representations for their consideration for appointment. By issuing various rejection orders including the order dated 25.06.2021 (filed in W.A.No.850 of 2022), the prayer for consideration was declined. The counter filed in W.P.No.3178 of 2014 is heavily relied upon to submit that as per the stand of the Government also, more meritorious candidates are required to be accommodated.

¹ (2022) 18 SCC 144

9. It is further stand of the parties that after bifurcation of the State, certain posts out of original 2324 number of posts were bifurcated to the State of Andhra Pradesh upon division of States and also subsequently added posts pursuant to permission of Supreme Court. The State of Andhra Pradesh took a decision to appoint all the selected candidates.

10. Sri M. Surender Rao, learned Senior Counsel, further urged that all the petitioners of W.P.No.38060 of 2013 now belongs to the State of Andhra Pradesh. In furtherance of the Court order dated 15.09.2015 in W.P.No.38060 of 2013, all of them have been engaged and they are still working in Andhra Pradesh.

11. Sri M. Surender Rao, learned Senior Counsel for the petitioners in W.P.No.38060 of 2013, has drawn our attention to the relief clause of O.A.No.7455 of 2013 impugned in W.P.No.38060 of 2013 and urged that G.O.Rt.No.1207 of 2013 was subject matter of challenge therein. In view of the settled legal position, the meritorious candidates having requisite qualification must occupy the post first. They have a preferential right on the posts. So far remaining candidates are concerned, their selection may depend on the availability of the posts, etc.

12. By placing reliance on the Division Bench order in W.A.No.450 of 2022 passed by the High Court for the State of Andhra Pradesh relating to the same selection, it is submitted that the said High Court has considered the interim order passed by this Court on 15.09.2015 and passed a specific order which may also govern the fate of the present case.

13. Sri T. Suryakaran Reddy, learned Senior Counsel for the petitioners in W.P.Nos.19353, 19711 and 21776 of 2015, argued supporting G.O.Rt.No.1207, dated 09.10.2013.

Stand of Telangana State and Andhra Pradesh:

14. Sri S. Rahul Reddy, learned Special Government Pleader appearing for the learned Additional Advocate General for the State of Telangana, informed that W.P.Nos.21776, 19353 and 19711 of 2015 are similar. In this batch of petitions, the petitioners have challenged the action whereby the petitions were directed to be dismissed. Admittedly, O.A. filed against the said order was rejected. He fairly submits that the petitioners of these cases are in employment. He further submits that Writ Appeal Nos.774, 779, 783, 808, 835 and 850 of 2022 and 290, 296, 298, 299, 300, 305, 335, 342, 343 and 344 of 2023 and 724 of 2024 are similar wherein similar orders of the Writ Court are subject

matter of challenge. Before the Writ Court, the meritorious candidates were petitioners whose grievance was that few out of the 1200 employees taken back by the States are less meritorious than them. The Writ Courts entertained the Writ Petitions and directed the State to appoint more meritorious persons and if necessary create supernumerary posts.

15. Learned Special Government Pleader on more than one occasion urged that the fate of all these Writ Petitions and Writ Appeals will depend on the outcome of W.P.No.38060 of 2013. So far W.P.Nos.2891, 2892, 2894, 4752, 5265, 5414, 9901 of 2018 and 11279 of 2019 are concerned, it is submitted that these Writ Petitions were directed to be tagged with W.P.No.38060 of 2013 because the factual backdrop and grievances of the candidates are interconnected. Naturally, the fate of these Writ Petitions will also depend on the outcome of W.P.No.38060 of 2013.

16. Sri S. Rahul Reddy, learned Special Government Pleader representing the State of Telangana, lastly submits that 1200 employees, who were taken back through G.O.Rt.No.1207-13, dated 09.10.2013 were appointed on 'contractual basis'. The learned Single Judge has erred in directing creation of supernumerary posts and even granted them 'notional' seniority.

The flood gate has been opened because of which number of new litigants are filing petitions in batches before this Court by citing that less meritorious candidates have already been appointed. They are getting similar orders from single Benches and few of which are already subject matter of challenge in the present Writ Appeals.

17. Sri B. Rajeshwar Reddy, learned Government Pleader representing the State of Andhra Pradesh, urged that interim order of this Court is followed by the Andhra Pradesh High Court in W.A.Nos.432 and 450 of 2022. The taken back as well as more meritorious employees are working in the State of Andhra Pradesh.

Unofficial respondents' stand:

18. Sri G. Vidyasagar, learned Senior Counsel appearing for certain terminated employees, who were beneficiaries of G.O.Rt.No.1207, urged that the group of ministers considered grievance of the terminated employees, who had rendered almost nine years of service and were terminated pursuant to G.O.Rt.No.273, dated 16.02.2012. The group of ministers recommended to take back those employees who were terminated after rendering nine years of service. Their recommendation was

accepted by the Government. This is a 'policy decision' taken by the Government. The Government of Andhra Pradesh has already decided to implement the order.

19. Sri Vidya Sagar, learned Senior Counsel appearing for few of the terminated employees out of 1200 who were taken back pursuant to G.O.Rt.No.1207, submits that the decision to take them back has no relation with the initial notification of recruitment dated 22.07.2002. The decision to take them back is 'stand alone decision'. Thus, comparison with meritorious candidates is uncalled for. The 'birth mark' of these candidates has lost significance.

Contention of respondent Nos.130 to 134:

20. Sri L. Ravichander, learned Senior Counsel appearing for respondent Nos.130 to 134 in W.P.No.38060 of 2013, urged that he is representing the unemployed youth. The Supreme Court by order dated 02.09.2016 permitted the unofficial respondents to withdraw the SLP and permitted them to seek impleadment in the pending petitions before this Court. Thus, by way of impleadment they became parties in this matter. These unofficial respondents are thus neither belonging to the category of such candidates who were initially appointed nor belongs to the category who were

terminated and then taken back in employment. Instead, the unofficial respondents are qualified eligible unemployed youth, who are awaiting a chance for their consideration for employment. It is highlighted that after 2002 till date, no recruitment process was initiated by the Government by issuing any recruitment notification. The less meritorious candidates, who were not covered within sanctioned strength of posts have been appointed, which is illegal. By placing reliance on four Supreme Court judgments, it is canvassed that action of filling up vacancies beyond the posts advertised/notified is impermissible and illegal. The judgment of Supreme Court in the case of **Medical Council of India v. State of Kerala**², is relied upon to submit that no executive instruction can be issued to nullify the effect of a Court order. The appointment of less meritorious candidates pursuant to decision of Council of Ministers is illegal.

21. Parties confined their arguments to the extent indicated above. Parties were heard at length and record was perused.

FINDINGS:

22. From the aforesaid march of events, it is clear that this matter has a chequered history and the parties have fought a long

² (2019) 13 SCC 185

drawn battle in the corridors of the Court. However, facts are not in dispute. It is not in dispute that pursuant to the recruitment notification dated 22.07.2022, the candidates submitted their candidature against 2324 vacancies of MPHA (Male). The question cropped up before this Court regarding basic qualification of the said post. This Court in its final order dated 11.09.2003 made it clear that qualification will be SSC and Diploma in Health Assistant from recognized institute. Admittedly, this order of this Court became subject matter of challenge before the Supreme Court. During the pendency of the Civil Appeals before the Supreme Court, pursuant to an application filed by the combined Government of Andhra Pradesh, more posts were permitted to be filled up in administrative exigency. Undisputedly, the Civil Appeals were ultimately dismissed by order dated 09.08.2011. Thus, there is no cavil of doubt that order of this Court dated 11.09.2003 got stamp of approval from the Supreme Court and curtains are finally drawn by the Supreme Court.

23. The parties, during the course of hearing, fairly admitted that pursuant to order dated 11.09.2003 passed by this Court in W.P.Nos.15107 of 2002 and 422 of 2003, the only exercise required to be done was to redraw the select list by taking into

account the eligible candidates who had the aforesaid qualification based on their *interse* merit. This is also admitted that this Court directed that after redrawing the merit list on the aforesaid basis, remaining employees be terminated. In furtherance of this Court's order, G.O.Rt.No.273, dated 16.02.2012, was issued for terminating the services of those employees and they were terminated. The relevant portion of G.O.Rt.No.273 reads as under:

“15. The Government after careful consideration hereby accord permission to the Director of Public Health and Family Welfare to take action as per the final judgment of the Hon'ble High Court dated 11.9.2003 in W.P.No.15107/2022 and batch cases and to prepare a fresh selected list of candidates of the notification 2002 in accordance to the rules who possessed SSC and Diploma certificate either from Government Institutions or the four Private Institutions including College of Medical Technology, Ongole as the cancellation of recognition of the said College was effected on 5.7.2002 which is the subject matter in separate writ petitions. If any selected candidate from this institution is holding **certificate issued on 5.7.2002 or thereafter it shall not be given effect to. The candidates so selected shall be issued with the Orders duly terminating the services of the candidates, who were appointed on the basis on interim orders and not figuring in the select list prepared under this order, as the Hon'ble Supreme Court dismissed the SLPs, till these contract appointments are replaced by permanent recruitment likely to be taken up later.**”

(Emphasis Supplied)

As per Sri Surender Rao, learned Senior Counsel, O.A. filed by some terminated employees was dismissed.

24. It is pointed out that after their termination after rendering almost nine years of service, the matter was considered by a group of Ministers and they recommended to take them back. The said decision was accepted by the Government and they were taken back pursuant to G.O.Rt.No.1207, dated 09.10.2013. This became reason of heart-burning amongst meritorious candidates who were eligible, having requisite qualification and secured more marks than few of 1200 candidates who were terminated and then taken back. Thus, it is crystal clear that because of G.O.Rt.No.1207, dated 09.10.2013, a new round of litigation started and present situation is being created.

25. The learned Government Pleader expressed difficulty being faced by the State of Telangana where number of employees directed to be taken back by single Bench are more in number than the vacancies available. He submitted that this happened because of the pressure on the Government arising out of the contempt proceedings initiated by meritorious candidates who succeeded from Writ Court.

26. G.O.Rt.No.1207, dated 09.10.2013, became subject matter of challenge in O.A.No.7455 of 2013. The meritorious candidates contended before the Tribunal that they have preferential right of

appointment over and above the less meritorious candidates. The Tribunal dismissed the said OA which is called in question in W.P.No.38060 of 2013.

Impugned Order of Tribunal:

27. A bare perusal of the order of Tribunal shows that the Tribunal has taken into account the legal journey in sufficient detail and considered the order passed by this Court in W.P.No.15107 of 2002 and batch, interim order of the Supreme Court dated 07.08.2006 whereby certain more vacancies were permitted to be filled up and thereafter opined that the decision to take 1200 candidates back is founded upon the decision of group of Ministers which was duly accepted by the Government. Thereafter, the Tribunal opined that such employees were taken back on contract basis. While declining the relief to the applicants, it is observed that by passing G.O.Rt.No.1207, dated 09.10.2013, it is decided to take back the candidates on contract basis in respect of vacancies which arose subsequent to the vacancies notified in the year 2002. The vacancies so notified in 2002 were already filled up by candidates as per their merit and seniority as per the order of High Court affirmed by the Supreme Court. In addition, it was held that the names of the applicants of

OA did not figure in the select list prepared by the Department. In this backdrop, the OA was dismissed.

28. A careful reading of the finding portion of the order of the Tribunal shows that Sri Vidya Sagar, learned Senior Counsel for such taken back employees, has advanced argument in the line of reasoning given by the Tribunal that the taken back employees have not only occupied new vacancies, but the event and action of taking back has not even a thread relation with the recruitment notification dated 22.07.2002. This point is ponderable.

29. We have examined the factual backdrop with utmost care and we are unable to persuade ourselves with this line of reasoning of the learned Tribunal and argument put-forth by Sri Vidaya Sagar, learned Senior Counsel. Admittedly, the recruitment notification dated 22.07.2002 became foundation for submission of candidature by the candidates. Neither from the order of the Tribunal it is evident nor during the course of argument of Sri Vidaya Sagar, it could be pointed out that any further/fresh notification after issuance of notification dated 22.07.2002 was ever issued. Thus, it is not established that those 1200 taken back employees were selected pursuant to any other subsequent notification or recruitment process. Their earlier

selection admittedly took place pursuant to selection process arising out of notification dated 22.07.2002. Pursuant to this selection only, they rendered nine years of service and were terminated upon issuance of G.O.Rt.No.273, dated 16.02.2012.

30. A plain reading of G.O.Rt.No.273, dated 16.02.2012, leaves no room for any doubt that their termination was a consequence of order of this Court in W.P.No.15107 of 2002 and batch which was affirmed by the Supreme Court. Merely because they rendered nine years of service with the Department, the group of Ministers in their wisdom thought it proper to recommend to take them back and consequently, G.O.Rt.No.1207, dated 09.10.2013, came into being. Thus, there is a clear relation and nexus between the notification dated 22.07.2002 and the order of this Court in W.P.No.15107 of 2002 and batch, pursuant to which they were terminated by G.O.Rt.No.273, dated 16.02.2012. In the recommendation of group of Ministers also, the decision was to 'take them back' and not to 'appoint' them afresh. This also establishes the clear relation between the previous recruitment, their termination and action of taking them back. Thus, even if umbilical cord of 1200 employees with notification dated 22.07.2002 was severed pursuant to G.O.Rt.No.273, dated

16.02.2012, for all practical purposes, their initial engagements was outcome of the said notification dated 22.07.2002. Thus, we are unable to countenance the finding of the learned Tribunal in the impugned order that these 1200 employees were different merely because they were appointed against subsequent vacancies. The said finding could have gathered some merit and force provided such re-engagement of 1200 employees would have been based on any fresh recruitment in accordance with law. Thus, 'birth mark' related argument of Sri Vidya Sagar, learned Senior Counsel, cannot be accepted.

31. The second reasoning of Tribunal in the impugned order is that the names of the original applicants do not find place in the merit list. In these batch of Writ Petitions, during the course of argument, on more than one occasion, learned counsel for the parties fairly admitted that the petitioners of W.P.No.38060 of 2013 are admittedly more meritorious than many of taken back employees out of 1200 employees. Thus, both the reasons, on which entire order of learned Tribunal is founded upon, cannot get stamp of approval by this Court.

Validity of G.O.Rt.No.1207, dated 09.10.2013:

32. Before dealing with the validity of G.O.Rt.No.1207, it is apt to mention the relevant portion of the said GO which reads as under:

“ HEALTH MEDICAL AND FAMILY WELFARE (J2) DEPARTMENT

G.O.Rt.No.1207

Dated 09-10-2013

Read the following:-

1. G.O.Rt.No.273, HM&FW (J2) Department, dated 16.02.2012
2. G.O.Rt.No.646 G.A. (Cabinet) Department dated 13.02.2012
3. From the Director of Public Health and Family Welfare,
Hyderabad Lr.No.19247/E4.I.A/2012 V-VI, dated
10.06.2013

\$\$\$

O R D E R:

In the G.O 1st read above, Government have accorded permission to the Director of Public Health and Family Welfare, Hyderabad to take action as per the final judgement of the Hon'ble High Court of Andhra Pradesh dated 11.9.2003 in W.P.No.15107/2002 and batch cases and to prepare the merit list accordingly and to terminate the services of the candidates who were appointed on the basis of interim orders and not figuring in the selection list prepared as per the said interim order. Consequently, certain Multi Purpose Health Assistants (Male) were terminated due to recasting of merit list.

2. In the G.O. 2nd read above, Government have constituted a Group of Ministers to examine the matters relating to the Junior Lecturers working on contract basis in the Intermediate Education Department and the Para-Medical Staff working on contract basis in the Medical and Health Department. After detailed discussions, the Group of Ministers have taken the following decision:-

“The name & details of all Multi Purpose Health Assistants (Male) who were terminated as per G.O.Rt.No.273 HM&FW (J2) Department dated 16.02.2012, may be obtained District-wise and necessary orders may be issued for taking them back on contract basis”

3. In the reference 3rd read above, the Director of Public Health and Family Welfare, Hyderabad has furnished the names and details of all the Multi Purpose Health Assistants (Male) who were terminated as per G.O.Rt.No.273 HM&FW (J2) Department, dated 16.02.2012 District-wise in the Annexure appended.

4. The Government, after careful examination of the matter hereby accept the above recommendations of the Group of Ministers and order to take necessary action for taking back all the Multi Purpose Health Assistants (Male) who were terminated in terms of G.O.Rt.No.273, HM&FW (J2) Department, dated 16.02.2012 on contract basis with effect from the date of their reporting back to duty, subject to the following conditions:-...

(Emphasis Supplied)

33. At the cost of repetition, it is worth noting that this Court's order in W.P.No.15107 of 2002 and batch was crystal clear which was affirmed by the Supreme Court. In obedience thereof, the Government already issued G.O.Rt.No.273, dated 16.02.2012. The ancillary question is whether the action of the respondents in issuing G.O.Rt.No.1207 is in accordance with law. In view of judgment of the Supreme Court in **The State of Madhya Pradesh v. Somdutt Sharma**³, **Surinder Singh v. State of Punjab**⁴, **Rakhi Ray v. High Court of Delhi** and **Mukul Saikia v. State of Assam**⁵, it is trite that action of Government cannot be upheld when it intends to fill up more posts than the posts notified/advertised and available.

³ AIR ONLINE 2021 SC 811

⁴ AIR 1998 SC 18

⁵ (2009) 1 SCC 386

34. The operative portion of common order of this Court in W.P.No.15107 of 2002 and batch reads thus:

“60. Our conclusions/directions are:

- (a) W.P.No.422 of 2003 and other similar Writ Petition challenging G.O.Ms.No.484 HM & FW (J2) Department, dated 24.12.2002 directly before the High Court are maintainable,
- (b) Prescribing S.S.C. and diploma certificate from recognized institutions by the Government is competent and legal and it did not over ride the statutory rules in G.O.Ms.No.273, Health, Medical & Family Welfare (H1) Department, dated 24.4.1989 and accordingly the Order of Andhra Pradesh Administrative Tribunal in O.A.No.6856 of 2022 stands modified warranting no amendments to statutory Rules noted supra,
- (c) G.O.Ms.No.484, dated 24.12.2022, is quashed and W.P.No.422/2003 and similar Writ Petitions are allowed,
- (d) All the interim Orders in the Batch of Writ Petitions ceased to have any effect. Consequently, **we direct the State Government to prepare the select list of candidates in accordance with Rules, who possessed S.S.C. and Diploma certificate either from Government Institutions or the four private institutions referred to supra** including College of Medical Technology, Ongole, as the cancellation of recognition of the said College was effected on 5.7.2002 which is the subject matter in separate Writ Petitions. However, if any selected candidate from this institution is holding certificate issued on 5.7.2002 or thereafter it shall not be given effect to. The candidates so selected shall be issued with the appointment Orders within a period of four weeks from today duly terminating the services of the candidates, who were appointed on the basis of interim Orders and not figuring in the select list prepared under this Order.

61. In the result, W.P.Nos.422 of 2003, 591 of 2003, 826 of 2003 and 2172 of 2003 are allowed and Writ Petition No.15107/2002 partly allowed modifying the Orders of the Tribunal in O.A.No.6856 of 2002, dated 30.7.2002.

62. W.P.Nos.25967 of 2002, 2575 of 2003 and 3793 of 2003 are disposed of.

63. W.P.Nos.3625 of 2003, 3630 of 2003, 10522 of 2003, 11572 of 2003, 13608 of 2003, 13621 of 2003, 13792 of 2003, 10888 of 2003, 15359 of 2003, 3998 of 2003, 4371 of 2003, 7728 of 2003, 10822 of 2003, 11463 of 2003 and 15190 of 2003 are disposed of accordingly in terms of the directions referred to above.

64. No order as to costs.”

(Emphasis Supplied)

35. The entire position settled by order of this Court and Apex Court by above decisions was disturbed when G.O.Rt.No.1207, dated 09.10.2013 was issued for taking those employees back. Thereafter, sizable number of meritorious candidates approached this Court and this Court in W.P.No.38060 of 2013 passed a detailed interim order dated 15.09.2015. This interim order became foundation for filing several new Writ Petitions and pursuant to said interim order, the meritorious candidates were directed to be appointed by Writ Courts. However, it cannot be forgotten that order passed by this Court dated 15.09.2015 is only an interim order and does not create any right finally.

36. Pausing here for a moment, the argument of Sri Surender Rao, learned Senior Counsel, may be taken into account based on **Rushibhai Jagdishbhai Pathak**'s case (supra) that the order dated 15.09.2015 is an order in *rem* and therefore, it should be

implemented for all the similarly situated candidates. For this purpose, the order of learned single Judge of Andhra Pradesh High Court was also referred wherein following directions were issued.

“ Considering the submissions made by both respective counsels, keeping in view the undisputed factual and legal position referred to supra, and also the Memo, dated 24.05.2016, this Court is inclined to dispose of the Writ Petitions with the following directions:-

i) The respondents shall consider cases of the Writ Petitioners for appointment as MPHAs within a period of four (04) weeks from the date of receipt of copy of this order, in terms of Memo No.7342/G2/2015-8, dated 24.05.2016 based on their merit, if any candidate less meritorious than the Writ Petitioners are appointed;

ii) If any of the Writ Petitioners have not submitted the relevant certificates/documents they should be called upon to submit the same by granting reasonable time of not less than four (04) weeks;

iii) In the event of any genuine objection for considering the case of any of the Writ Petitioners, they shall be notified the same by issuing appropriate notice/communication and afforded an opportunity before taking further action in the matter.

There shall be no order as to costs.

As a sequel, Interlocutory Applications pending, if any, shall stand closed.”

(Emphasis Supplied)

37. This order of learned single Judge was unsuccessfully challenged before the Division Bench of Andhra Pradesh High Court in W.A.No.432 and 450 of 2022. The relevant portion of this order reads as under:

“7. We are faced with the situation where in addition to 217 notified vacancies in the year 2002 in relation to East Godavari District, 217 +118 candidates are continuing in the posts and 263 vacancies are available as on date. It is also not in dispute that the petitioners are more meritorious than 118 candidates, who are still continuing in service on the strength of recommendations of group of ministers, based on which G.O.Rt.No.1207 was issued.

8. It is to be noted that the Division Bench of erstwhile composite High Court of Judicature at Hyderabad has passed interim orders in favour of the candidates, who are more meritorious than the candidates covered under G.O.Rt.No.1207. **It is not a case where the Court has protected the appointment of less meritorious candidates. On the contrary, the Division Bench left it open to the Government by observing in the interim order dated 15.09.2015 that the order shall not be construed as a reflection of the opinion of the Court that 1200 candidates who have been offered employment on contract basis pursuant to the orders contained in G.O.Rt.No.1207, dated 09.10.2013 shall be discontinued. In other words, whether they have to be continued or not was left open to be decided by the Government.** They are protected under the recommendations of group of ministers. It is strange to note that when less meritorious candidates who were protected under the recommendations of group of ministers why cannot the State consider the case of the persons who are more meritorious than the persons who were recommended by group of ministers.

9. Admittedly, less meritorious candidates are still enjoying their appointment. Therefore, the contention made by the learned Government Pleader that the petitioners could not secure their position in notionally drawn list of meritorious candidates amongst first 263 candidates, does not appeal to us, because there is no direction nor we expect the Government to offer appointment to all the candidates in all future vacancies, which have arisen after interim order was passed by the Division Bench. At no point of time, an effort has been made to get the interim order passed by the Division Bench vacated.

10. Since the interim orders are in subsistence and the persons, who are less meritorious than the petitioners, are in employment, we cannot deny the relief to the writ petitioners....”

(Emphasis Supplied)

38. The Division Bench of Andhra Pradesh High Court has relied upon the aforesaid interim order passed by this Court dated 15.09.2015 and recorded that it is not in dispute that the petitioners before it are more meritorious candidates *qua* 118 candidates who are still continuing in service pursuant to G.O.Rt.No.1207, dated 09.10.2013. It was further noted that the Court is not protecting the appointment of less meritorious candidates. The Division Bench of this Court in the aforesaid interim order dated 15.09.2015, left it open for the Government to take a decision to continue such 1200 employees or not.

39. Pertinently, G.O.Rt.No.1207 was not subject matter of challenge in W.P.No.17665 of 2021 before the A.P. High Court and therefore, for the Division Bench in W.A.No.432 of 2022 also there was no occasion to examine the validity of G.O.Rt.No.1207.

40. This is trite that even after finality of a judgment by the High Court/Supreme Court, in certain circumstances, the Government may bring an act to validate its action/legislation and this can be done even with retrospective effect. The Apex Court considered this aspect in great detail in the judgment of **Medical Council of India** (supra). The Apex Court has re-emphasized that a judicial pronouncement, either declaratory or conferring rights on the

citizens cannot be set at naught by subsequent legislative act. However, the Legislature shall be competent to pass an amending or a validation act, if deems fit, with retrospective effect removing the basis of the decision of the Court by amending the law.

41. The Five Judge Bench of Supreme Court in **Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality**⁶ clearly held that it is not sufficient to merely declare that the decision of the Court shall not bind, that amount to reversing decision in exercise of judicial power which Legislature does not possess or exercise. A Court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. This principle is consistently followed in catena of judgments (see **Indira Nehru Gandhi v. Raj Narain**⁷, **Cauvery Water Disputes Tribunal, In re.**⁸, **Bhubaneshwar Singh v. Union of India**⁹, **S.R. Bhagwat v. State of Mysore**¹⁰, **Medical Council of India** (supra), **K.Sankaran Nair v. Devaki Amma Malathy Amma**¹¹, **Indian Aluminium Co.**

⁶ (1969) 2 SCC 283

⁷ 1975 Supp SCC 1

⁸ 1993 Supp (1) SCC 96 (2)

⁹ (1994) 6 SCC 77

¹⁰ (1995) 6 SCC 16

¹¹ (1996) 11 SCC 428

v. State of Kerala¹², State of T.N. v. Arooran Sugars Ltd.¹³, State of T.N. v. State of Kerala¹⁴ and Goa Foundation v. State of Goa¹⁵.

42. A Three Judge Bench of Apex Court considered the aforesaid legal journey in **Madras Bar Association v. Union of India¹⁶** and poignantly held that nullification of mandamus by an enactment would be impermissible legislative exercise. Principles are culled out in para 50 of the said judgment. It was made clear that even interim directions of the Court cannot be reversed by a legislative veto. If G.O.Rt.No.1207, dated 09.10.2013, is examined in juxtaposition to the direction contained in para (d) of para 60 of the common order passed by this Court in W.P.No.15107 of 2002 and batch, it will be crystal clear that the direction was clear and candid that appointment order needs to be issued only for those candidates whose names figure in the merit list. Remaining candidates were required to be terminated. The Government in obedience of the said order initially terminated their services by G.O.Rt.No.273, dated 16.02.2012, but re-employed them by issuing G.O.Rt.No.1207. Thus, the State has undertaken an

¹² (1996) 7 SCC 637

¹³ (1997) 1 SCC 326

¹⁴ (2014) 12 SCC 696

¹⁵ (2016) 6 SCC 602

¹⁶ 2022 (12) SCC 455

exercise of taking them back indirectly and continued them in employment by issuing G.O.Rt.No.1207 which exercise of continuance was not possible to be undertaken directly as per this Court's order in W.P.No.15107 of 2002 and batch.

43. The Apex Court in **State of T.N. v. K.Shyam Sunder**¹⁷ held that “what cannot be done directly, is not permissible to be done obliquely, meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance on the principle of *quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud*. An authority cannot be permitted to evade a law by ‘shift or contrivance’.”

44. The rights of the parties which were settled, crystallized and attained finality till Supreme Court were sought to be unsettled by issuing G.O.Rt.No.1207. The Supreme Court disapproved such executive action in **Santosh Kumar Shivgonda Patil v. Balasaheb Tukaram Shevale**¹⁸ and opined that a settled thing should not be permitted to be unsettled.

45. Learned counsel for the unofficial respondents, who are beneficiaries of G.O.Rt.No.1207, have taken pains to contend that

¹⁷ (2011) 8 SCC 737

¹⁸ (2009) 9 SCC 352

pursuant to the said GO, the unofficial respondents have been engaged and working for several years. If said GO is set aside, it may have chilling effect on their fate. We are also not oblivious of this reality. In this backdrop also, validity of G.O.Rt.No.1207 needs to be examined.

46. To protect such beneficiaries, as noticed above, heavy reliance was placed on the Division Bench judgment of Andhra Pradesh High Court in W.A.Nos.432 and 450 of 2022. A careful reading of single Bench order of Andhra Pradesh High Court which got seal of approval in Writ Appeal shows that it is based on an interim order passed by this Court in W.P.No.38060 of 2013, dated 15.09.2015, which does not confer any enforceable right. The legality, validity and propriety of G.O.Rt.No.1207 was not subject matter of adjudication before the A.P. High Court.

47. This is trite that the precedential value of a judgment relates to the point which has been actually decided and not what is logically flowing from it (see **Dr. (Mrs.) Chanchal Goyal v. State of Rajasthan**¹⁹). It is equally settled that a singular different

¹⁹ 2003 (3) SCC 485

fact/point may change the precedential value of a judgment (see **Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd.**²⁰).

48. In view of principles laid down in these Apex Court judgments, Andhra Pradesh High Court's orders which are based on an interim order in W.P.No.38060 of 2013, without considering the validity of G.O.Rt.No.1207, are of no assistance to re-engaged employees.

49. We may summarize our reasons for disapproving G.O.Rt.No.1207 as under:

(i) By taking an administrative decision and issuing G.O.Rt.No.1207, dated 09.10.2013, the specific direction of this Court in clause (d) of Para 60 in W.P.No.15107 of 2002 and batch was indirectly altered and tinkered with. The order of this Court was for terminating the services of such candidates, but despite terminating them, they were taken back from back door through G.O.Rt.No.1207.

(ii) G.O.Rt.No.1207 is not an outcome of any validation act whereby exercising the legislative power, the

²⁰ (2003) 2 SCC 111

defects which became reason of decision in W.P.No.15107 of 2002 and batch were cured with retrospective effect. In absence thereof, administrative decision and issuance of G.O.Rt.No.1207 against the spirit of Court order cannot be countenanced.

- (iii)** The rights of the parties finally determined by this Court in W.P.No.15107 of 2002 and batch and affirmed by Supreme Court, but the same was unsettled by G.O.Rt.No.1207. The settled things cannot be permitted to be unsettled.
- (iv)** Re-engagement of beneficiaries of G.O.Rt.No.1207 is without subjecting them to any recruitment process. Their re-entry amounts to backdoor entry and against the public policy.
- (v)** The re-engagement of such employees beyond the sanctioned vacancy is impermissible and against public policy.
- (vi)** G.O.Rt.No.1207 has given rise to number of Writ Petitions whereby more meritorious candidates than

the beneficiaries of 1200 employees came forward.

This became possible only because of issuance of G.O.Rt.No.1207.

(vii) A plain reading of G.O.Rt.No.1207 and the stand taken by the State shows that singular reason for taking back the terminated employees was that they have worked for about nine years before their termination. Once the said employees were directed to be terminated by this Court and said judgment had attained finality, in consequence of which they were terminated, it was not just and proper to take them back through G.O.Rt.No.1207. If we approve such re-engagement, we will be deciding contrary to the spirit of the final order passed by this Court in W.P.No.15107 of 2002 and batch affirmed by the Supreme Court.

50. In view of the above findings, the State was not justified in issuing G.O.Rt.No.1207 and take them back on the basis of services rendered by them. If we fail to disturb G.O.Rt.No.1207, we will be committing same mistake which was committed by the Government. Putting it differently, there was no legal basis for

issuing G.O.Rt.No.1207 and it was issued only on the consideration of services rendered by them. This was clearly against the Court's order and settled legal position. If we approve G.O.Rt.No.1207 considering the service rendered by them after being taken back, this will be a repetition of same mistake for same reason. We are unable to persuade ourselves in that direction.

51. The OA and Writ Petitions filed after issuance of G.O.Rt.No.1207 were not filed on the ground that the petitioners therein were more meritorious than the candidates who were directed to be appointed by order passed in W.P.No.15107 of 2002 and batch. On the contrary, the petitioners of OA and Writ Petitions are claiming preferential right over and above the beneficiaries of G.O.Rt.No.1207. Thus, this is G.O.Rt.No.1207 which has given rise to many rounds of litigation. If G.O.Rt.No.1207 would have been valid, we also would have taken same view as taken by the Division Bench of the Andhra Pradesh High Court that meritorious candidates have a preferential right over such beneficiaries. But, we are unable to approve G.O.Rt.No.1207 and hence any benefit arising out of and based on the said GO cannot be permitted to be reaped by others.

Naturally, this aspect was not under consideration before the single Benches. The singular point before the Writ Courts was regarding the right of more meritorious candidates *qua* beneficiaries of G.O.Rt.No.1207. The validity of G.O.Rt.No.1207 was not impugned before single Benches.

52. A holistic view of the matter leads to the conclusion that G.O.Rt.No.1207 is bad in law and its beneficiaries were re-engaged by a process which is unknown to law and bad in law as well. Thus, G.O.Rt.No.1207 cannot sustain judicial scrutiny. The Writ Appeals deserve to be allowed because the benefit directed to be given to the Writ Petitioners was based on the comparison with the beneficiaries of G.O.Rt.No.1207. Since G.O.Rt.No.1207 is disapproved by us, any parallel or benefit claimed on the basis of it deserves rejection.

53. The order of learned single Judge deserves to be interfered with for yet another reason. The learned single Bench has directed to appoint meritorious candidates by creating supernumerary posts. The supernumerary posts cannot be directed to be created on mere asking or as a matter of routine. In **Aravali Golf Club v.**

Chander Hass²¹ it was held that decision of creation of posts is in the province of executive and Courts ordinarily cannot issue direction for creation of posts.

54. We are constrained to observe that by no stretch of imagination, re-engagement of terminated employees can be said to be a 'necessary evil'. If we assuage our judicial conscience and treat such action as 'necessary evil', it will look more and more necessary and less and less evil.

55. In view of above analysis, we reluctantly **set aside** the G.O.Rt.No.1207, dated 09.10.2013. Both the Governments shall take consequential action upon setting aside of G.O.Rt.No.1207 within ninety days. As held in W.P.No.15107 of 2002 and batch, only such employees deserve continuance whose names find place in the select list prepared as per clause (d) of para 60 of the judgment in W.P.No.15107 of 2002 and batch. If any vacancy has arisen thereafter, it must be filled up as per 'public policy' and in accordance with the relevant recruitment rules.

56. Resultantly, W.A.Nos.774, 779, 783, 808, 835 and 850 of 2022; 290, 296, 298, 299, 300, 305, 335, 342, 343 and 344 of

²¹ (2008) 1 SCC 683

2023 and 724 of 2024 are **allowed** and W.P.Nos.19711, 19353 and 21776 of 2015; 2891, 2892, 2894, 4752, 5265, 5414 and 9901 of 2018; 11279 of 2019; 15229 of 2023 and 27990 of 2023 are **dismissed**.

57. So far the petitioners in W.P.No.38060 of 2013 are concerned, both the States shall examine whether any candidate in the select list prepared pursuant to clause (d) of para 60 of order of W.P.No.15107 of 2002 and batch is less meritorious than these petitioners. If yes, such petitioner will have a preferential claim of appointment from the said date with 'notional' benefits. This limited exercise shall be completed by both the States within a period of 120 days from the date of production of copy of this order. Thus, W.P.No.38060 of 2013 is **disposed of**. These petitioners cannot reap any benefits by comparing their claim with beneficiaries of G.O.Rt.No.1207.

58. There shall be no order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

SUJOY PAUL, J

NAMAVARAPU RAJESHWAR RAO, J

29th November, 2024.
Note: L.R. copy be marked.
B/o. TJMR