

K. VINOD CHANDRAN, J.

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W.P.(C) No.13685 of 2013 - I

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Dated this the 15th day of December, 2015

J U D G M E N T

The petitioners herein were aggrieved with the fact that despite their sponsorship and an alleged interview on 11.05.2011, the petitioners were not appointed and other persons, who were employed earlier in casual employment were appointed. Another learned Single Judge of this Court had passed a judgment on the ground that the appointment was made after an interview on 11.05.2011. The respondent company had contended that the respondent does not intend to fill up permanently, the existing vacancies of workers, due to their financial constrains. The respondent Company as of now only employs workers on a casual basis, from amongst candidates sponsored by the Employment Exchange, was the contention.

2. This Court held that even if casual appointments are made, the same has to be from amongst the candidates sponsored by the Employment Exchange. It was also held by this Court that in making permanent appointments, the respondent company is not fettered by the sponsorship alone and could also resort to regular selection process complying with the provisions under Article 14 and 16 of the Constitution of India. Noticing the contention of the respondent company regarding the financial constraints, it was also held that this Court would not coerce the company into engaging workers permanently or making permanent appointments. Hence, it was directed that if any further appointments are made to the post of workers, otherwise than by a due process of selection, then it shall be only from the sponsorship of the Employment Exchange. The said judgment was reviewed on a review filed by the respondent company, specifically contending that there was no interview on 11.05.2011. The learned Counsel for the petitioners while asserting the fact of interview all the same submits that

unfortunately, there is nothing on record to prove that an interview was conducted.

3. The petitioners would rely on the various call letters issued to the petitioners produced as Ext.P1 series. The learned Counsel for the petitioner would rely on **M.P. State Agro Industries Development Corporation Ltd. And another v. S.C Pandey [(2006) 2 SCC 716]** to contend that when a permanent vacancy is available, necessarily, the same has to be filled up by a proper selection procedure. The learned Counsel for the petitioners would also refer to Exts.P3, P4 and P5 to substantiate the contention that the respondents have been appointing persons, in casual employment, granting them higher pay than that specified in the interview call letters at Ext.P1 series. The respondent company submits that no interview as per Ext.P1 was held, since the company decided not to make any permanent appointments and decided to continue engaging casual labourers on a need-to basis.

4. Ext.P3 is a certificate dated 02.04.2012, issued to

one person, engaged as casual worker from 03.10.2011 to 21.03.2012. He was also paid wages @ Rs.300/- per day during the period engaged. Immediately it is to be noticed that Ext.P3 is also with respect to a candidate sponsored by the Employment Exchange. The contention that wages paid @ Rs.300/- would be far in excess of the salary indicated in Ext.P1, is only to be noticed to be rejected. The scale of pay indicated in Ext.P1 shows only the basic pay to which would be added the D.A, which is a percentage of the basic pay and also other allowances, which definitely would be more than that indicated in Ext.P3, computed as daily wages. Exts.P4 and P5 is a reply to the query made under the Right to Information Act, wherein, it has been stated by the respondent company that there are 84 permanent vacancies of workers existing in the company.

5. The reliance placed by, the petitioners on **S.C Pandey** (supra) cannot be countenanced. True, when there exists a vacancy, if it is required to be filled up by the employer, then resort has to be made to the procedure known to law. But

however, no dictum can be deduced from the aforesaid decision to find that, when there is a permanent vacancy, then immediately there should be a regular appointment made. The respondent company would definitely have discretion to decide, based on its financial capacity, as to whether all the vacancies existing and sanctioned are to be filled up or not. Such a decision would depend upon the need or requirement of manpower for the activities carried on in the company.

6. Further the facts in the cited decision show that there could be no parallel drawn to the facts of the instant case. Therein, the respondent was appointed as a temporary Typist and transferred, while in employment, but terminated after about two years. The claim for regularisation made before the Labour Court ended in the finding that the termination was illegal. The High Court in a challenge made and the consequent appeal also affirmed the order of the Labour Court and the employer was before the Hon'ble Supreme Court. The Hon'ble Supreme Court found that no such finding could have been entered, since, there

was nothing to show that the employee was appointed by resorting to a procedure known to law.

7. Considering the totality of the circumstances and the reliefs prayed for, this Court cannot issue any positive directions to the respondent company to appoint the petitioners or to make regular appointments to permanent vacancies existing in the company. However, it has to be directed that if any appointments are made to the existing vacancies, on a permanent basis, it has to be from the candidates sponsored by the Employment Exchange, which according to the Company is the manner in which appointments are now made to the post of workers; or in any manner as decided by the company, however ensuring transparency in the recruitment process.

8. A casual appointment could be made as against a permanent vacancy, considering the financial constraints of the company, but in that event also, necessarily those persons, sponsored by the Employment Exchange alone, are to be considered. It is also trite that such appointments cannot be

continued endlessly and after the initial period, a sponsorship should be again taken from the Employment Exchange and then a fresh appointments made from such fresh lists. The opportunities for employment has to be distributed amongst the persons, who have registered themselves in an Employment Exchange, and hence the system of making fresh appointments. Only if there is no sponsorship, could the company resort to appointments of persons earlier engaged on a casual basis, who were also sponsored by the Employment Exchange.

The writ petition would stand closed, with the above observations. No costs.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB/15/12/2015

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P.A to Judge