

THE HON'BLE SRI JUSTICE K.C. BHANU
AND
THE HON'BLE MRS JUSTICE ANIS

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WRIT APPEAL No.944 OF 2011

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JUDGMENT: (per Hon'ble Sri Justice K.C.Bhanu)

This Writ Appeal is filed aggrieved by the order, dated 18.08.2011, in W.P.No.1307 of 2000, whereby, the learned Single Judge dismissed the Writ Petition.

2. The appellants herein filed the aforesaid Writ Petition. Brief facts of the case are as follows:

Petitioners were engaged as contract labour in Krishna-Godavari Project of the respondent Corporation more than 15 years ago. They were working as Drivers, Attenders and Helpers on contract basis. They possessed educational qualification of VI Class, but they did not pass S.S.C. examination. Consequent to the notification, dated 08.09.1994 issued by the Government of India, contract labour system stood abolished in the respondent Corporation. The petitioners are entitled to be absorbed in the service as per the judgment of the Honourable Apex Court. As the claim of the petitioners for absorption was not considered, they filed W.P.No.13551 of 1997 and batch before this Court and the said Writ Petitions were disposed of vide order, dated 24.09.1998, directing the Regional Labour Commissioner (Central), Hyderabad to conduct final enquiry and identify the eligible contract labour for absorption in terms of aforesaid judgment. By report, dated 30.12.1998, the Regional Labour Commissioner (Central), Hyderabad recorded that all the petitioners are entitled for absorption. The respondent Corporation filed W.P.No.11794 of 1999 before this Court questioning the report, dated 30.12.1998. But the said Writ Petition was dismissed vide order, dated 27.09.1999. The judgment in W.P.No.13551 of 1997 has become final and the Writ

Appeals filed by the respondent Corporation were dismissed by the Division Bench of this Court.

Pursuant to the judgment in W.P.No.13551 of 1997, the respondent Corporation issued orders on 06.11.1999 appointing the petitioners as casual labour taking into account the eligibility as required under the Recruitment and Promotion Rules, 1997. The respondent Corporation implemented the said Rules upto 01.01.1997. As per 1980 Regulations/Rules, VIII pass and relevant experience is sufficient for appointment to the category of Assistant Operator, Attendant Grade III and a literate is eligible to be appointed as Mali Grade III. In fact, the category of casual labour is not in the cadre structure of the respondent Corporation and appointing the petitioners as casual labour is contrary to the spirit of the judgment of this Court in W.P.No.13551 of 1997 and Batch. The respondent Corporation is applying 1997 regulations while deciding absorption consequent on abolition of contract labour system. As on the date of notification, dated 08.09.1994, 1980 regulations were in force and not the Recruitment and Promotion Regulations, 1997. In order to deprive the legitimate benefits from out of the judgment in W.P.No.13551 of 1997, the respondent Corporation has issued orders appointing them as casual labour. Hence, the Writ Petition is filed. This Court, vide impugned order, 18.08.2011, dismissed the Writ Petition.

3. Learned counsel for the appellants contended that the case of the appellants has not been considered though they are eligible for absorption in the respondent Corporation in terms of Recruitment and Promotion Regulations of Oil and Natural Gas Company, 1980; that out of 161 employees, only 128 employees were absorbed; that the case of the appellants is similarly situated to the persons who were absorbed on 06.11.1999 and therefore, he prays to give a direction to the respondent Corporation to absorb the appellants.

4. On the other hand, learned counsel appearing for the respondent Corporation vehemently contended that the appellants are not eligible for absorption in any post; that the report of the Regional Labour Commissioner (Central), Hyderabad is erroneous and irregular; that the appellants are not eligible for absorption along with other employees as they did not possess the minimum educational qualification of X Class; that after considering the rival contentions, the learned Single Judge dismissed the Writ Petition and that order needs no interference by this Court.

5. The factual matrix is not in dispute. Admittedly, 161 workmen including the present appellants were working as contract labours since 1987 in the Oil and Natural Gas Corporation (ONGC), Rajahmundry, in the works mentioned in the notification dated 08.09.1994. They filed Writ Petitions before this Court for their absorption in the said organization as regular employees with effect from 08.09.1994. The said Writ Petitions were disposed of on 24.09.1998 directing the Regional Labour Commissioner (Central) to verify the claim of the petitioners and thereafter, absorb them if they possess the required qualification as per the regulations of ONGC. The report of Regional Labour Commissioner (Central) Hyderabad held to be correct and legal as observed by the learned Single Judge. Relevant clause in Recruitment and Promotion Regulations of Oil and Natural Gas Company, 1980 reads as follows:

“12.1 In future recruitment will be restricted to the following levels:

(i) Unskilled level at Class IV (Rs.230-308) with a pass in 8th standard as the qualification.”

The same was also mentioned in the Appendix of regulation.

6. It is not in dispute before this Court that admittedly notification was issued on 08.09.1994. There cannot be any dispute that Rules or Regulations for recruitment which were in force as on the

date of notification shall have to be followed. In other words, the regulations as on the date of notification for recruitment would govern the selection process. Any subsequent amendments to regulations cannot be taken into consideration. Therefore, Recruitment and Promotion Regulations of Oil and Natural Gas Company, 1980 would be applicable to the appellants. It is also not in dispute that all the appellants were having requisite qualification of 8th Class by the date of the notification. The respondent-Corporation absorbed 128 employees in Class-IV posts like Junior Helper/Junior Attendant on the basis of X class qualification, which is a qualification under the Modified Recruitment and Promotion Regulations 1980 (which came into force in March 1997) and therefore, the respondent Corporation ought to have considered the case of the appellants as per Recruitment and Promotion Regulations of Oil and Natural Gas Company, 1980. By the date of absorption of 128 employees, as the appellants were having requisite minimum qualification, the respondent Corporation ought to have absorbed them as per the recommendations of the Regional Labour Commissioner (Central) Hyderabad. Law is well settled that the case of the appellants has to be taken into consideration with reference to the Regulations or any other Rules, which were in existence as on the date of notification notifying the posts under Section 10 (1) of the Contract Labour (Regulation and Abolition) Act, 1979. That has not been done and applying Modified Recruitment and Promotion Regulations 1980 is totally unwarranted and thereby injustice has been done to them. This aspect of the case has not been dealt with by the learned Single Judge.

7. Learned counsel for the appellants placed reliance on an unreported decision of Bombay High Court, in **Petroleum Employees Union and another v. Oil and Natural Gas Corporation Limited and others** (W.P.No.414 of 1996, dated 10.03.1998), wherein it was held

thus (para 12):

“12. The matter does not end here. Respondent No.1 took shelter under the service jurisprudence and urged before us that the said employees should possess the requisite qualifications as required under the Rules dated 14.3.1997. The said rules obviously will not come into picture since legally speaking the said employees would be direct employees of respondent No.1 with effect from the date of notification i.e., 8-9-94. The rules applicable would, therefore, be the Service Rules 1980. The petitioners have furnished chart giving the qualifications of the employees and the qualifications required for the posts on which they are working as per the conclusions arrived at by the Regional Labour Commissioner.”

The said judgment was upheld by the Honourable Apex Court vide S.L.P (Civil) No.11139 of 1998, dated 03.08.1998.

8. He also placed reliance on an unreported decision of the Madras High Court in **M.George Ravishekeran and others V.Oil and Natural Gas Corporation Limited and others** (W.P.No.21518 of 2000 and Batch, dated 02.08.2006), wherein it was held thus (para 33):

“33. In the result, the writ petition is allowed as prayed for. The respondents are directed to absorb the petitioners as Marine Assistant Radio Operators with effect from 8-9-1994 on the basis of the abolition of contract labour and as per the recommendations dated 4-6-1999 of the Ministry of Petroleum and Natural Gas, Government of India, to the first respondent and the approval of the competent authority as communicated in the fax dated 23-9-1999 to the third and fourth respondents with all monetary benefits and all other attendant benefits. If for any reason, there is no cadre of Marine Assistant Radio Operator or there are no sufficient posts are available in the cadre of Marine Assistant Radio Operators to accommodate all the petitioners, the respondents are directed to give “pay protection” to the petitioners and sanction them the scale of pay as applicable to the Marine Assistant Radio Operators as recommended by the Ministry of Petroleum and Natural Gas.”

The said judgment was also confirmed by the Honourable Apex Court

vide Civil Appeal No.765 of 2008, dated 30.10.2009.

9. In view of the above decisions and as on the date of notification, dated 08.09.1994, as the Recruitment and Promotion Regulations of Oil and Natural Gas Company, 1980 were in force, the educational qualifications as mentioned in the said regulations have to be taken into consideration for the purpose of absorbing the appellants. If those regulations have to be taken into consideration, the appellants are fully qualified and eligible for absorption in the respondent Corporation as Junior Helper/Junior Attendant. Therefore, the impugned order is liable to be set aside.

10. Accordingly, the Writ Appeal is allowed setting aside the order, dated 18.08.2011 in W.P.No.1307 of 2000 directing the respondent Corporation to absorb the appellants as Junior Helper/Junior Attendant with effect from 24.09.1998, on which date 128 employees were absorbed with all attendant benefits. After absorption, similar benefits have to be extended to the appellants also on par with 128 employees who were already absorbed. The said exercise shall be completed with a period of two (2) weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this Writ Appeal shall stand closed.

JUSTICE K.C. BHANU

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JUSTICE ANIS

JULY 03, 2015

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