

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No.4941 of 2005

ORDER:

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This writ petition was filed with the following prayer:

“For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Hon'ble Court may be pleased to issue a writ of Mandamus or any other writ, order or direction, declaring the inaction of respondents 1 and 2 in considering the petitioner's candidature for absorption/regular appointment as Sweeper-cum-Messenger as being illegal, improper, unjust, capricious, violating principles of natural of justice and Articles 14 and 16 of the Constitution of India apart from Section 25(4) of the Industrial Disputes Act, 1947, and pass such other orders as may deem fit.”

The writ petition was dismissed for default against the third respondent as per the court order dated 30.12.2010 which was given effect on 09.03.2011. However, as the petitioner did not choose to challenge the appointment of the third respondent and no relief was sought against him, the dismissal of the writ petition against the third respondent has no impact on the maintainability of the writ petition as against respondents 1 and 2.

The claim of the petitioner was that he worked on daily wage basis in Pinakini Grameena Bank at Pandillapalli Branch, Vetapalem Mandal, Prakasam District, since 28.02.2002 as Sweeper-cum-Messenger. The bank was stated to have conducted interviews for filling up the post of Sweeper-cum-Messenger during the year 2004 and the petitioner along with the third respondent, who was similarly placed, were subjected to interview. However, the third respondent was selected and posted at Yedugundlapadu Branch of the bank. The petitioner claimed that though he was not selected for the post, he was continued in service. According to him, he was asked not to attend to his work from 09.03.2005 onwards on the ground that the third respondent was appointed in the said post.

The petitioner adverted to Section 25-H of the Industrial Disputes Act, 1947, which provides that when any workman is retrenched and the employer proposes to employ any person, the retrenched workman is to be given an opportunity to offer

himself for such re-employment and preference is to be given to such a person. However, no averment has been made by the petitioner in the writ affidavit that the bank proposes to employ any persons in the posts of Sweeper-cum-Messenger regularly or on daily wage basis. Further, the prayer of the petitioner is not couched for relief in this regard but, on the other hand, the petitioner seeks absorption or a regular appointment as a Sweeper-cum-Messenger. No material is placed before this Court to substantiate the petitioner's claim for such absorption or regular appointment. Admittedly, the regular post was filled up with the third respondent after due selection in which the petitioner remained unsuccessful. The appointment of the third respondent is not even subjected to challenge before this Court.

The writ petition is therefore misconceived and is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

JUSTICE SANJAY KUMAR

1st October, 2015

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