

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.18644 OF 2005

ORDER :

This petition is filed for a writ of *Mandamus* restraining the respondents to dispense with the services of the petitioner as Technical Assistant as illegal and arbitrary and without jurisdiction and for a consequential direction to the respondents to continue the petitioner as Technical Assistant by protecting continuance of source of livelihood.

The case of the petitioner is that he was employed by the respondent management as contract labour in skilled category through Contractor and has been working for the last seven years and he is holding diploma in electronics and communication engineering. Petitioner is working as Technical Assistant and attends to the regular nature of work at 220/33 KV, Ramgiri Sub-station. It is submitted that petitioner has been working with uninterrupted service in the skilled job entrusted to him and manning the sub-station independently without inviting any comments and unfavourable remarks. While the matter stood thus, the 1st respondent has taken a policy decision to dispense with the services of the contract labourers, who do not possess diploma in electrical engineering. Aggrieved by the same, present writ petition is filed. It is also stated that one S.Masthan, whose services were sought to be terminated on the ground that he does not possess Diploma Electrical qualifications, approached this Court by filing WP.No.2403/2004 and in the said writ petition this Court granted interim direction in WP.MP.No.3171/2004 on 10.02.2004, permitting the petitioner to continue as Sub-Engineer and the said writ petition is pending. It is also submitted that this Court in

WP.No.9424/2000 directed the respondents to prevail upon the existing and future contractors to continue the contract labours till the disposal of the writ petition.

Counter is filed by the 3rd respondent denying the fact that the petitioner is employed by the respondent management as contract labour in skilled category through contractor with technical qualification of diploma in Electronics & Telecommunications Engineering to attend the regular nature of duties at 220 KV Sub-station, Ramagiri, Anantapur on shift basis for the last seven years. It is stated that petitioner is not working as a Sub-Engineer as stated by him and not employed by the respondent Management; that in fact the work of manning of Sub-stations at various places were awarded to various contractors, who are having their own persons on yearly contract basis based on competitive lowest rates with supervision charges on works contract duly calling sealed tenders from the registered contractors; that there is no relationship between contract labours and the respondents 1 to 4 since it is the responsibility of the contractors who were awarded the work by the respondents 1 to 4 and the contractor executes the work through his labour; and that the work awarded to the contractor is purely of electrical nature, and the petitioner is also one among the others engaged on work and it is the responsibility of the contractor to direct his own persons engaged on work to perform the duties assigned as per the terms and conditions of the agreement entered with him by the Department. It is also stated that Mr.S.Masthan is not working as a Sub-engineer and not employed by the respondent management. It is further stated that continuing or terminating the petitioner by the respondents is not under the purview of the respondents. As

per the terms and conditions of the tender specifications, the successful tenderer shall be responsible for engaging the persons at his choice as per the requisite qualifications like Diploma in Electrical Engineering/ITI Electrician as per the tender specifications. It is stated that payment of wages to the contract labour is the responsibility of the contractor. It is stated that payments are made regularly to the contractor upto 31.05.2005 and sought for dismissal of the writ petition.

Heard learned counsel for the petitioner who submits that petitioner is put in seven years service by the time the writ petition is filed, as such, his services cannot be dispensed with.

On the other hand learned Standing Counsel for the respondents submits that though the petitioner filed the present writ petition basing on the interim orders dated 10.02.2004, granted by this Court in WP.MP.No.3171/2004 in WP.No.2403 of 2004, the said writ petition was dismissed by this Court on 20.11.2009. More so, the petitioner has not made the Contractor as party respondent in the present writ petition. He also reiterated the contentions raised in the counter affidavit.

In this case, admittedly the petitioner is a contract labour and the contractor is not made party in the writ petition. In the counter it is clearly stated that contractors have been engaged for manning the sub stations and that it was the responsibility of the contractor to engage employees for executing the contract work and the petitioner is one of such employees appointed by the contractor; and that the respondents have no say in the appointment or continuance of the petitioner. Further, when the petitioner is not appointed by the respondents, there is no

employee and employer relationship between the petitioner and the respondents and more so, the work carried out by the petitioner was awarded to the Contractor basing on the terms and conditions of the tender notification and as such, there is no privity of contract between the petitioner and respondents. More so, the petitioner has not made the Contractor as party to the writ petition.

In view of the above facts and circumstances and in view of the dismissal of WP.No.2403 of 2004 on 20.11.2009, by this Court, on the ground that the contractor is not made as party, the petitioner cannot claim any right for continuation against respondents who was employed by the contractor. As such, I do not see any merit in the writ petition and accordingly, the writ petition is dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

23.07.2015
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