

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No. 9515 of 2011

Date: 16.09.2016

Between:

Azam Khan, S/o. Ahmed Khan, Aged about 33 years,
Occu: Contract Labour, R/o. H.No.12-565, Ishlampura,
Mancherial, Adilabad District.

.....Petitioner

and

The Andhra Pradesh Northern Power Distribution
Company Ltd., rep.by its Chief Managing Director,
Warangal and others.

.....Respondents



The Court made the following:

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ORDER:

This writ petition is filed praying to grant the following relief:

“To issue a writ order or direction more particularly one in the nature of writ of mandamus by declaring the action of the respondents in not selecting the petitioner for the post of Contract Junior Linemen in response to the notification dated 21.10.2006 is illegal, arbitrary, violative of Articles 14,16 and 21 of Constitution of India besides violative of principles of natural justice and consequently direct the respondents to consider my candidature in the 11 vacancies as informed by the respondents vide letter No.19.11.2010 as per the decision of this Hon`ble Court in WA.No.1434/2009 & batch”.

2. Heard Sri P.Ananth Nageswar Rao, learned counsel for petitioner and Sri R.Vinod Reddy, learned standing counsel APNPDCL for respondents 1 to 4.

3. The facts which are not in dispute are that petitioner was first engaged as Contract Labour on 04.05.2005 and continues the work in the said capacity. On 08.06.2006, notification was issued to make recruitment to the post of Junior Lineman on contract basis. This notification did not prescribe preference to the Contract Labour already working with the respondent organization. On 21.10.2006 revised notification was issued. This notification prescribed preference to the Contract Labour serving as on the

date of notification. It also prescribed that the age would be the criteria to make selection, in other words more aged person would be preferred than the less aged person irrespective of the amount of contract service rendered. The recruitment process initiated on 06.06.2006 was the subject matter of the litigation before this Court on several rounds as noted hereunder. Presently the matters are pending before the Supreme Court.

4. In W.P.No.19051 of 2007 and batch, this Court directed to give preference to the contract service, held selection based on age criteria as bad and several other directions were also issued. The decision of the learned single Judge of this Court was challenged in W.A.No.1434 of 2008 and batch. The Division Bench upheld the decision of the learned single judge with reference to Condition No.6 (iv)(c) of the revised notification, which prescribed the age as criteria for selection. However, at the stage of passing final orders, it was represented before the Division Bench that without insisting for the condition in Cl.No.6(iv)(c), the selection process would be taken up. The Division Bench directed the application of the benefit of the decision to all the candidates, even to those who have not instituted litigation before this Court.

5. Next round of litigation ensured on the ground that the selection process was not reviewed, whereas vacancies are filled up over and above the vacancies notified, without disturbing the candidates already selected. W.P.No.8794 of 2007 and batch of cases were considered by the Division Bench of this Court in **K.Sesavava Rao and others v. Chairman and Managing**

Director, APSPDC Ltd, Tirupathi and others¹. Division Bench gave declaration on sixteen points. Insofar as this case is concerned, declarations (ii) and (iii) are relevant. They read as under:

“(ii) Among the qualified candidates, the contract labour appointed earlier and working as on the date of issuance of first notification i.e., 6/8/6.2006 with work experience as certified by the concerned Divisional Engineer, shall alone be treated as presently working contract labour and are entitled for preference in selection based on the length of service.

(iii) The persons appointed as on the date of first notification and revised notification, shall be treated as freshers.”

6. As a consequence the Division Bench issued the following directions:

“(a) The selections made contrary to the above declarations are illegal and they are set aside.

(b) The selection of the candidates as against the subsequent vacancies of 7319 posts of JLM that arose pursuant to the permission of the government vide letter No.565/Ser/2011 dated 15.6.2011 is illegal and the same are set aside.

(c) The respondents are directed to review the entire selection process strictly in terms of this judgment and the afore said declarations and pass appropriate orders in accordance with law within a period of eight weeks from the date of receipt of copy of this order.

(d) The respondents are directed to fill up 7319 posts of JLM that arose pursuant to the permission of the government vide letter No.565/Ser/2011 dated 15.6.2011 by issuing the notifications/calling for applications from the

¹ 2012 (5) ALT 744 (D.B.)

eligible candidates, of course, by giving preference to the contract labour as per rules.”

7. This writ petition is instituted by the petitioner contending that even though vacancies are available and even without considering the eligibility of the petitioner as with reference to the contract service rendered by him and as directed by this Court in W.A.No.1434 of 2009 and batch, dated 19.11.2010, his claim is ignored. It is a specific assertion of the learned counsel for petitioner that petitioner was treated as fresh candidate and weightage of contract service was not accorded to him and if only weightage is accorded to him, he would have been selected.

8. A reading of paragraph-6 of the counter affidavit, substantiate the contention of the petitioner. It is clear from the reading of the said averments of the respondents that petitioner was treated as fresh candidate. Thus, even though undertaking was given and judgments are rendered as referred above, the claim of the petitioner was not considered.

9. However, it is now brought to my notice that the decision of the Division Bench in **S.Kesava Rao** was challenged before the Supreme Court and SLP No.1550-1510 of 2013 are pending consideration of the Supreme Court. Supreme Court granted stay of operation of the judgment by order dated 16.04.2013. In view of the stay granted by the Supreme Court and the matter is seized by the Supreme Court, no relief as sought for can be granted at this stage. But, however, observations can be made that in case Supreme Court affirms the decision of the Division Bench in **S.Kesava Rao** and directions are issued for undertaking review of

the selection already made, the claim of the petitioner should also be considered.

10. Thus, the writ petition is disposed of as under:

i) In view of the interim orders of the Supreme Court in SLP Nos.1550-1510 of 2013, no review of appointments already made can be undertaken, as respondents are bound by the stay granted by the Supreme Court. Unless review of selection made is undertaken and weightage for the contract service is assigned to the petitioner, he cannot be selected and unless he is selected no direction for appointment can be issued. Thus, at this stage prayer sought in the writ petition cannot be granted.

ii) However, if Supreme Court upholds the decision of this Court in **S.Kesava Rao** and/or any consequential directions are issued thereon, in terms of such direction, if the petitioner is eligible for consideration for appointment as Junior Lineman, his claim should be considered, including assignment of weightage of contract service, and accordingly he may be granted all consequential benefits.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

JUSTICE P.NAVEEN RAO

Date: 16.09.2016
kkm

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