

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.6648 and 10835 of 2011

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Date: 22.08.2016

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WP No. 6648 of 2011:

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Between:

K.Chandra Sekhar, S/o Vemanna, Aged 40 years,
Occu: Contract Shramik, R/o Muddannagaripalli (V),
Katarupalli (P), Gandlapenta (M), Kadiri Taluq,
Ananthapur District and another.

.....Petitioners

and

The Vice Chairman & Managing Director,
APSRTC, Musheerabad and another.

.....Respondents

The Court made the following:
HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.6648 and 10835 of 2011

COMMON ORDER:

Petitioners are aggrieved by non-consideration of their candidature for selection to the post of Shramik pursuant to the notification dated 01.11.2010. In both the writ petitions, petitioners claim relaxation of age of eligibility and in the selection to grant them weightage of additional marks of 30 for the apprenticeship training undergone by them.

2. Heard Sri. S.D.Gowd, learned counsel for the petitioners and Sri Arava RAma Rao, learned standing counsel for the respondents.

3. The facts, which are not in dispute, are in narrow compass. Petitioners obtained ITI Certificates and have undergone apprenticeship in the respondent corporation and thereafter petitioners have worked on contract basis. In response to the notification issued on 01.11.2010, petitioners applied for the above post. However, they were not considered for selection.

4. The notification dated 01.11.2010 prescribes educational qualifications of ITI (Diesel) and maximum age as 30 years for open competition candidates with five years age relaxation to the candidates belonging to SC/ST/BC and additional four years age relaxation to ex-apprentices of the respondent-corporation. Since petitioner in WP No.10835 of 2011 belong to SC category and is a trained apprentice, he is entitled to additional age relaxation of 9 years. The social status of petitioners in WP No.6648 of 2011 is not stated in the affidavit. Admittedly, all the petitioners, depending on their social status crossed the prescribed age as on 01.11.2010. It appears, in WP No.6648 of

2011, first petitioner was over aged by one day and 2nd petitioner by one year. Petitioner in WP No.10835 of 2011 was over aged by 11 days. Seeking relaxation of maximum age prescribed, after accounting for age relaxation, petitioners prayed to consider them for selection and while considering them for selection, petitioners further prayed for grant of weightage marks for the apprenticeship service rendered by them.

5. No interim order was granted and petitioners were not subjected to selection process.

6. Learned counsel for petitioners contends that petitioners have rendered long service on contract/outsourcing basis with fond hope that their services would be absorbed by the respondent corporation. They have rendered un-blemished service and their services have been appreciated all along. They are entitled to weightage for the apprenticeship service rendered by them. Though petitioners have been working since 1999, initially as apprentices and subsequently, on contract/outsourcing basis, no recruitment was made for long time and for the first time recruitment was taken up in November, 2010. Thus, having regard to the fact that there was long delay in taking up recruitment, the age relaxation ought to have been considered taking note of the long service rendered by them. Learned counsel submits that whenever persons worked on contract basis, if such persons were within the age of eligibility when initially engaged, the age relaxation ought to be granted at the time of regular selection. Therefore, the same benefit ought to have been extended to the petitioners and not granting the age relaxation for the contract/ outsourcing service is *ex facie* illegal. In support of his contention, learned counsel placed reliance on **STEEL AUTHORITY OF INDIA LTD AND OTHERS Vs. NATIONAL UNION WATERFRONT WORKERS AND OTHERS**^[1]. He has particularly drawn my attention to paragraphs 124 and 125 (6) of

the said decision.

6.1 He would submit that persons having no experience of working with the respondent corporation and the persons, who were not apprentices and freshers were considered, ignoring the experienced candidates, like petitioners. Such action of the respondents amounts to arbitrary exercise of power and making illegal selections ignoring legitimate claim of the petitioners.

7. Learned standing counsel submits that the age relaxation was available only to the reserved candidates and to the apprentices. While considering the claim of the petitioners, the age relaxation as applicable was considered, but petitioners were found over aged. Corporation has not formulated any scheme of granting age relaxation to the persons who worked on contract/outsourcing basis and, therefore, no relaxation can be granted to the petitioners. He would, on instructions, further submit that pursuant to the notification dated 01.11.2010, selections were finalized and vacancies were filled up and, therefore, no direction can be granted, as sought at this distance of time.

7.1. He would further submit that similar issue was considered in W.P.No.5913 of 2011. Learned single Judge of this Court on consideration of the fact that the petitioners were over aged and selections were already finalized, held that no relief could be granted and the writ petition was dismissed. He would further submit that identical issue has come up for consideration before the Division Bench in WA No.723 of 2013. Petitioner therein was over aged and, therefore, he was not considered. Petitioner therein relied on the Government orders granting additional age relaxation. The Division Bench held that petitioner therein was not entitled to age relaxation and over aged persons cannot be considered for selection.

8. The facts which are not in dispute are that petitioners are ineligible for consideration on the ground that they became over aged on the cut-off date prescribed in the recruitment notification. The maximum age prescribed is 30 years. The policy of the respondent corporation envisaged relaxation of maximum age prescribed by five years to the reserved category candidates, in addition to four years to the persons, who had undergone apprenticeship. Even after counting the age relaxation as above, petitioners became over aged by 01.11.2010. As long as petitioners are over aged, whether they became over aged by one day or few days would make no difference. Though learned counsel for petitioners sought to contend that contract/outsourcing employees are entitled to relaxation of the age for the service rendered by them on contract/outsourcing basis, no policy decision of the respondent Corporation is placed on record, which would support the claim of the petitioners. If a person is seeking exemption, he must show the provision under which such exemption can be availed. On the contrary, it is settled principle of law that there must be certainty to the eligibility conditions to any recruitment, which include the maximum age of eligibility and educational qualifications. The cut-off date prescribed is sacrosanct. In the instant case, the cut-off date prescribed was the date of the notification and as on the date of notification, admittedly, petitioners became over aged. In two decisions relied upon by the learned counsel for respondents, the very same issue was considered and stand of the respondent corporation was upheld.

9. In **STEEL AUTHORITY**, as seen from paragraph-2 of the judgment of the Supreme Court, reference to larger bench was made on the issue as to whether the contract employee would automatically be absorbed in the establishment of the principal employer as a consequence to abolition notification issued under Section 10 (1) of the Contract Labour (Regulation and Abolition) Act, 1970. On detailed

analysis of the issues arising in the batch of cases, Supreme Court delineated the relevant observations in paragraph 125. Paragraph 125 (6) reads as under:

“(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.”

10. Reading of the above extracted observations would disclose that in case, if a person's appointment was found to be genuine and prohibition notification under Section 10 (1) of the Act, 1970 in respect of the concerned establishment was issued by the appropriate Government prohibiting employment of contract labour in any process, operation or work of any establishment and the principal employer intend to employ regular workmen, he should give preference to the erstwhile contract labour, if otherwise found suitable, taking into consideration age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

11. In the instant case, it is not brought on record to show that there was abolition of the contract employment in accordance with the provisions of the said Act after appointment of the petitioners. The observations of the Supreme Court in paragraph 125 (6) of STEEL AUTHORITY would apply only in case where such conditions are fulfilled. Thus, said decision does not come to the rescue of the petitioners. At any rate, I am not inclined to grant any relief to the petitioners, since the recruitment process initiated in the year 2010

was finalised long ago and none of the candidates who were selected in pursuance to the recruitment notification are parties to these writ petitions. Unless such selections are set aside, no relief as sought by the petitioners can be granted. Thus, I see no merit in the writ petitions and accordingly the same are dismissed. No Costs. Miscellaneous petitions, if any pending, stand dismissed.

JUSTICE P.NAVEEN RAO

Date:22.08.2016
Kkm/tvk

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