

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.8205 OF 2010

Date: 07.11.2017

Between:

A.Venkata Swamy s/o Permaiah, Aged 31 years,
Occu: Contract Labour, Coal Plant, Ramagundam
Thermal Power Station, Ramagundam, Karimnagar
District and others.

.....Petitioners

and

The APGENCO, rep.by its Managing Director,
Vidyut Soudha, Hyderabad and others.

.....Respondents



The Court made the following:

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ORDER:

This writ petition is filed by ten petitioners praying to direct the respondents to absorb the services of petitioners by regularizing their services w.e.f. the date of their initial engagement as per the service regulations by declaring the action of the respondents in not regularizing the service of petitioners and thereby continuing them on contract basis with daily wages while absorbing number of employees as illegal, arbitrary and violative of Article 14 of Constitution of India.

2. The statement of employees included in paragraph-2 of the affidavit filed in support of the writ petition would disclose that petitioners have been working as contract labourers in Coal Plant (Ash Plant Maintenance) and Coal Mills (Boiler Section). The dates of their initial engagement are between 10th December, 1996 and 10th May, 2003, respectively. Petitioners assert that they have been working through contractor and the contract work is being executed by the said contractor and attending to work in Coal Plant (Ash Plant Maintenance) and Coal Mills (Boiler Section) and other civil works at Ramagundam Thermal Power Station and such work being rendered by them is perennial in nature and in spite of abolition of contract labour by the Government in exercise of its power under Section 10 of Contract Labour (Regulation and Abolition) Act, 1970, petitioners have been continuously engaged as contract labour and exploiting their services in the prohibited categories. Therefore, such action is *ex facie* illegal. Learned

counsel for petitioners contends that since petitioners have been rendering the work of perennial nature, respondents are bound to regularize their services. It is further contends that in addition to the scheme formulated in B.P.Ms.No.37, dated 18.05.1997, service regulations also envisage granting of regularization and, therefore, regularization ought to have been granted to the petitioners.

3. The claim of petitioners is opposed by the respondents. According to the learned standing counsel, the scheme formulated in B.P.Ms.No.37 is no more valid as said B.P.Ms., was subsequently withdrawn. According to the learned standing counsel, petitioners, even according to their own statement, were appointed after 23.09.1996, whereas the scheme of providing employment to the contract labour was applicable only the persons appointed prior to that cut-off date. After judgment of the Supreme Court in **AIR India Statutory Corporation v. United Labour Union**¹, respondents have withdrawn the scheme of absorption, as notified in B.P.Ms.No.37. Learned standing counsel, therefore, contends that petitioners are not entitled to seek regularization as there is no such scheme available and, therefore, without there being a scheme of regularization of contract employees, no such benefit can be granted.

4. The facts, as noted above, are not in dispute. As noted above, one petitioner was engaged on 10.12.1996 and all others were later. In other words, none of the petitioners were in service prior to 23.09.1996. The foundation for regularization claim is based on abolition of contract labour system and scheme notified

¹ (1997) 9 SCC 377: 1997 SCC (L&S) 1344

in B.P.Ms.No.37. The learned standing counsel contended that as of now said scheme is not in force and there is no other scheme, which would enable the claim for regularisation by the contract employee appointed after 23.09.1996. Categorical stand of the respondents in the counter-affidavit about non-availability of scheme of regularization and withdrawal of B.P.Ms.No.37 is not denied. It is settled principle of law that no right vests in a person, more so by person employed by contractor, to seek regularization. The claim for regularization can be only if there is a scheme formulated by the employer. Therefore, relief as prayed for cannot be granted. Writ petition is dismissed accordingly.

Miscellaneous petitions, if any, pending shall stand closed.

There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

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