

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.4786 of 2006

ORDER:

This writ petition under Article 226 of the Constitution of India by the sole petitioner is filed requesting to declare the inaction of the respondents in regard to non-inclusion of the petitioner's name in the information, comprising of all the eligible candidates to be recruited to 50% vacancies under the D.P (P & G-Per) Ms.No.36 dated 18-5-1997, furnished to the Andhra Pradesh Central Power Distribution Company Limited (APCPDCL) and consequently not considering the candidature of the petitioner for employment as arbitrary, illegal and violative of the said proceedings in D.P (P & G-Per.) Ms.No.36, dated 18.5.1997 & D.P (P & G-Per) Ms.No.271, dated 31.12.1997, and Articles 14, 16 and 21 of the Constitution of India; and consequently direct the respondents to include the name of the petitioner in the list of eligible candidates in the information furnished in respect of the last cadre post and grant such other orders as the Court may deem fit and proper under the circumstances of the case.

2. I have heard the submissions of *Sri S.Ashok Anand Kumar*, learned counsel appearing for the petitioner and of *Smt. J.Koteswari Devi*, learned Standing Counsel appearing for the APSPDCL.

3. The case of the petitioner, in brief, is this:

The 7th respondent herein was engaged as a Contractor by the 6th respondent, AP TRANSCO (Operations), Kurnool Zone. The 7th respondent has to provide Billing Clerks for discharging the billing work of the respondents 1 and 2 herein, i.e., of AP TRANSCO. The petitioner was engaged as Billing Clerk by the 7th respondent. The petitioner served under the 6th respondent as Billing Clerk during the period from 01.05.1988 to 1993. The identity card

issued by the Assistant Accounts Officer working under the control of the 6th respondent clearly evidences the said fact. On 05.03.1996, an agreement was entered into between the erstwhile A.P State Electricity Board and the present respondents and their recognized union to the effect that 50% of the vacancies in the initial recruitment cadres shall be filled up by ex-casual labour, who had obtained court orders, Village Electricity Workers and contract labour working in the 88 abolished categories. The respondents 1 and 2/ AP TRANSCO issued D.P (P & G-Per) Ms.No.228 dated 27.01.1997 categorically stating that the contract labour other than those engaged in (33) abolished categories in the generating station will be considered and appointed against 50% of the existing vacancies. The said D.P (P & G-Per) Ms.No.228 dated 27.01.1997 also prescribed for relaxation of age, educational qualifications, seniority and other requisite criteria for appointment. The said D.P (P & G-Per) Ms.No.228, dated 27.01.1997 was superseded by D.P (P & G-Per) Ms.No.36, dated 18.5.1997. In D.P (P & G-Per) Ms.No.271, dated 31.12.1997, instructions were issued prescribing the eligibility criteria, unit of operation, age, educational qualifications, seniority and rule of reservation and order of preference. The petitioner possessed requisite qualifications and criterion prescribed for appointment. He made a representation to the official respondents in the month of December, 2005, seeking consideration of his candidature for appointment. Through Memo, dated 20.01.2006, the Chief General Manager, APCPDCL, requested the 6th respondent to compile the information of all the persons eligible to be considered for recruitment in the 50% category in D.P (P & G-Per) Ms.no.36 dated 18.5.1997 and furnish the same on or before 28.01.2006. The petitioner was informed by the officials of the 6th respondent that the respondents 1 to 6 proposed to appoint the employees in the last cadre of service. On enquiry made with the 7th respondent as to whether the petitioner's name was furnished or not, the 7th respondent informed the petitioner that he did not send his name to the 6th respondent as he did not

receive any communication so to do. The non-consideration of the candidature of the petitioner, who is eligible for employment to the last cadre post is contrary to the D.P (P&G-Per) Ms.No.36 dated 18.5.1997 and D.P (P & G-Per) Ms.No.271, dated 31.12.1997. Therefore, the action of all the respondents is arbitrary, illegal and violative of the aforesaid D.P.Mss and Articles 14, 16 and 21 of the Constitution of India. Hence, the writ petition is filed.

4. The case of the official respondents 1 to 6, as stated in the counter affidavit of the Superintendent Engineer (Operations), Kurnool/ 6th respondent, in brief, is this:

The material allegations in the affidavit filed in support of the petition are false and are denied. The then APSEB Board in the year 1988, entered into an agreement with the 7th respondent to maintain the accounts and records relating to Electric Revenue Office/ Rurals/ Kurnool. Accordingly, accounting work was entrusted to the 7th respondent. In the agreement, it is clearly stated by the Board that the agreement may be terminated if the performance of the work entrusted to the 7th respondent is not to the satisfaction of the Board. The 7th respondent has to do the works entrusted to him by the Board. The allegation that the 6th respondent has to provide billing Clerks for discharging the billing work of the respondents 1 and 2 is not correct. The petitioner might have done the work under the control of the 7th respondent. The petitioner was never engaged by the respondents 1 to 6 for billing work or any other work. He is no way concerned with the APSEB. Hence, the allegations that the petitioner served under the 6th respondent for billing work during the period from 01.05.1988 to 1993 is not correct. In the Joint Meeting held on 05.3.1996 with three recognized unions, it has been agreed to fill up 50% vacancies in initial recruitment cadres by ex-casual labour who obtained court orders, Village Electricity Worker and Contract Labour working in other than (33) abolished categories. The erstwhile APSEB had issued guidelines after careful examination of the views expressed by unions in the BP (P & G- Per)

Ms.No.228, dated 27.1.1997 prescribing the eligibility criteria, age, educational qualifications, seniority etcetera, for considering the cases of ex-casual labour/ contract labours/ VEWs, who have put in 5 years of continuous service as on 05.03.1996. The APSE Board again had issued instructions in B.P (P & G Per) Ms.No.36 dated 18.5.1997 superseding the guidelines issued in the B.P (P& G Per) Ms.No.228, dt.27.1.1997 and stating that the Ex-Casual Labour who were already interviewed but failed in the test and given Second Chance and also obtained interim orders from the High Court of AP for consideration are only eligible for selection for appointment against the 50%existing vacancies. The Village Electricity Workers cases shall be considered for selection and appointment against 50%of the existing vacancies. The contract labours other than those engaged in 33 abolished categories in Generating stations shall be considered for selection and appointment against 50%of the existing vacancies. Further, the APSE Board issued guidelines for considering the cases of the candidates regarding Age, Seniority, Educational Qualifications and Rule of Reservation. Subsequently, the orders were issued in the B. P (P & G.Per) Ms.No.261, dated 19.12.1997 stating that 50%vacancies in initial recruitment cadres, i.e., Jr. Lineman/ J.P.A/ J.A/ L.D.Clerk/ Typist/ Revenue Cashier/ Sub-Engineers existing as on 18.5.1997 shall be filled up by the Ex-Casual Labour/ V.E W/ Contract Labours engaged in other than 33 categories. In the BP (P & G. Per) Ms.No.271, Dated 31.12.1997, it is clearly stated that the 50% vacancies as on 18.5.1997 in initial cadres i.e. J.L.M/ J.A/ L.D.C/ Typist/ Sub-Engineer are only filled up with eligible/ suitable candidates from among the Ex-Casual Labours not engaged in (33) abolished categories and who are working as on 18.5.1997. Further, it is submitted that the contract labours, who are not on the rolls as on 18.5.1997 are not eligible for appointment against the 50%vacancies as on 18.5.1997. The Corporation office requested the office of the 6th respondent to furnish information of all the persons eligible to be considered for recruitment in the left over 50%vacancies in the

cadres of Sub-Engineer, L.D.Clerk, Typist and Jr. Lineman as on 18.5.1997. The name of the petitioner was not included in the list of eligible candidates submitted to the Corporate office, Hyderabad, since the petitioner was not covered under the ex-casual labours, contract labours and Village Electricity Workers. The petitioner was not on the rolls as on 18.5.1997. The petitioner himself has stated in paragraph 2 of the affidavit that he served under the 7th respondent as Billing Clerk during the period from 01.05.1988 to 1993. Hence, he is not eligible for claiming appointment under 50% vacancies as on 18.5.1997. It is clearly mentioned in B.P.Ms.No.36, dated 18.5.1997 and B.P.Ms.No.271, dated 31.12.1997 that the ex-casual labours who obtained orders from Court, Village Electricity Workers and Contract Labours were engaged by a contractor having a valid licence issued by a competent authority and who were on rolls as on 18.5.1997 are only eligible for appointment under the 50% vacancies in the initial cadres such as J.L.M/ J.A/ L.D.C/ Typist/ Sub-Engineers as on 18.5.1997. The office of the 6th respondent prepared list of eligible candidates in accordance with the above instructions and submitted the same to the Corporate Office. The works which were entrusted to the 7th respondent have to be done by him. The 7th respondent might have engaged many workers to do the works, which were entrusted to him and also other companies and institutions. The APCPDCL is not responsible for providing employment to the workers engaged by the 7th respondent. The action of the respondents 1 to 6 in not including the name of the petitioner for consideration for employment to the last cadre post is neither illegal nor arbitrary. Hence, the writ petition may be dismissed.

5. At the hearing, the learned counsel for the petitioner and the learned Standing Counsel for the respondents advanced arguments in line with the respective contentions of the parties, which are adverted to supra.

6. From the pleadings of the petitioner itself, it emerges that the 7th respondent engaged the services of the petitioner for the period from 01.05.1988 to 1993. Admittedly, the petitioner was not on the rolls of the AP TRANSCO and APCPDCL. The petitioner's services were also not engaged by the 7th respondent-contractor after 1993. Therefore, the petitioner was not working under the contractor even as on 18.05.1997. The Contractor, admittedly, did not furnish the name of the petitioner for recruitment in the left over 50%vacancies related to the last cadre posts. Though the petitioner pleaded that he was given identity card by the 6th respondent, the same was not produced. Further, the service certificate said to have been issued by the Contractor does not bear any date and it is not countersigned by any of the officers of the AP TRANSCO or the respondents 3 to 6. The petitioner also did not bring to the notice of this Court that any other individual, who is similarly placed as that of the petitioner, was considered for appointment by the respondents 1 to 6 and that the petitioner was discriminated for no valid reasons. Therefore, the petitioner could not satisfy any of his contentions and place any material before this Court to come to even a *prima facie* conclusion that he is eligible for consideration to the last cadre post as claimed by him in the writ petition. In that view of the matter, this Court finds that the writ petition is devoid of merit and is liable to be dismissed.

7. Accordingly, the Writ Petition is dismissed.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

01st March 2017
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