

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.29210 of 2008

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner to declare the action of the 1st respondent, Superintendent Engineer (Operation Circle), Andhra Pradesh Central Power Distribution Company Limited, ('APCPDCL' for brevity) in rejecting the case of the petitioner for regularization, vide Lr.No.SE/ OP/ NLG.ADM/ D.No.2554/ 2005, dated 28.03.2006, in the post of LDC as illegal, arbitrary and unconstitutional. The petitioner also sought a consequential direction to set aside the impugned proceedings and declare that the petitioner is entitled for regularization.

2. I have heard the submissions of *Sri M.R.Tagore*, learned counsel appearing for the petitioner, and of *Sri R.Vinod Reddy*, learned Standing Counsel for the respondents-TSTransco. I have perused the material record.

3. The case of the petitioner and the submissions made on behalf of the petitioner, in brief, are as follows:

A notification, dated 11.03.2001, was issued by the 1st respondent, Superintendent Engineer (Operation Circle), APCPDCL, on behalf of the 2nd respondent, Chairman & Managing Director, APCPDCL, inviting applications from eligible ex-casual labour/ village electricity workers/ contract labours, who worked or were engaged in erstwhile APSEB, Nalgonda Circle of APCPDCL, for consideration against the left over vacancies in the cadre of Lower Division Clerk or Sub-Engineer under the 50%of the existing vacancies as on 18.05.1997. The said notification was issued pursuant to the judgment, dated 08.11.1999, in W.P.No.5064 of 1999 for filling up the left over vacancies of LDC/ Sub-Engineers under the 50%quota as on 18.5.1997 as per the B.P.Ms.No.36, dated 18.5.1997. The petitioner submitted his application by enclosing the relevant attested copies including his community certificate and service certificate

under contract labour category. The 2nd respondent published the list of the candidates, who are selected for interview and an interview was scheduled to be held on 12.05.2001. The petitioner's name figured at S.No.22. However, the 2nd respondent did not issue appointment orders even after publication of the selection list by disputing the correctness of the certificates issued to the petitioner by the Contractor. The petitioner filed W.P.No.18526 of 2002. The said writ petition was disposed of, on 24.12.2002, with a direction to the respondents to verify the certificates issued by the contractor and counter signed by the officials of the respondents with reference to the agreement under which particular contract labourers are engaged as on 18.05.1997 and consider the case of the petitioner for appointment in accordance with B.P.Ms.No.36, dated 18.5.1997. Subsequent to the said orders, the 1st respondent by letter, dated 13.03.2003, intimated the petitioner that his candidature is not considered for the post of LDC as the contractor who was said to have issued the certificates deposed that the petitioner has not worked under him. Surprisingly, the 1st respondent changed his stand and issued another letter No.SE/ OP/ NLG/ ADM D.No.58/-03, dated 14.04.2003, canceling the earlier order dated 13.03.2003 and gave a fresh reason that the petitioner had not possessed the Typewriting qualification as per the B.P.Ms.No.235, dated 03.08.1993. Having been aggrieved of the said letter, dated 14.04.2003, the petitioner herein once again filed W.P.No.15954 of 2003. The said writ petition was disposed of, on 01.11.2004, holding that the petitioner need not possess the Typewriting qualification. Further, this Court directed the respondents to consider the case of the petitioner for regularization and pass appropriate orders in accordance with law, if he is otherwise qualified under B.P.Ms.No.36, dated 18.5.1997. Accordingly, the rejection order, dated 14.04.2003, was set aside. Since the respondents failed to implement the said orders of this Court in W.P.No.15954 of 2003, the petitioner filed a contempt case in C.C.No.1421 of 2005. During the pendency of the contempt case, the

1st respondent issued the present impugned proceedings, vide letter dated 28.03.2006, rejecting the claim of the petitioner with fresh reasons that the Review Selection Committee re-examined the petitioner's candidature as per the B.P.Ms.No.36, dated 18.5.1997, and rejected the case of the petitioner on the ground that no BC-B candidate who has put up lesser number of man-days than the petitioner herein was appointed as LDC in the BC-B roster point in the vacancies earmarked under the B.P.Ms.No.36, dated 18.5.1997 and available as on 12.5.2001, i.e., the date of the interview. The said order was passed during the pendency of the contempt case. The respondents cannot deny relief to the petitioner on the grounds stated by them from time to time. This Court, in W.P.No.2651 of 2004, was pleased to direct the respondents herein to consider the cases of similarly situated persons in future vacancies and the same was implemented by the respondents in their Memo, dated 29.11.2005. However, the petitioner's claim was rejected. The said course is highly illegal, arbitrary and unconstitutional. Hence, the writ petition is filed.

4. The case of the respondents as stated in the counter affidavit of the 1st respondent, in brief, is this:

It is a fact that the claim of the petitioner for appointment to the post of LDC was considered and rejected, since there is no vacancy available in the Operation Circle, Nalgonda, in the cadre of LDC under 50% quota earmarked under B.P.Ms.No.36, dated 18.05.1997, and a speaking order, dated 23.12.2005, was also issued. In the contempt case, this Court expressed an opinion to review the appointment of the petitioner against the vacancies available as on 12.05.2001, that is, the date of interview. The Government has taken a decision to abolish 33 categories of posts through G.O.Ms.No.41, Labour Department, dated 23.09.1996, from Contract Labour system in the APSEB. The issue of those working in 33 abolished categories of posts has cropped up. Negotiations and conciliations took place between the recognized Trade Unions and the management of the organization. In a joint meeting, it was agreed by

the management of the organization to fill up 50% of the vacancies in the initial recruitment cadres with ex-casual labour, contract labour and village electricity workers, as the case may be. As such, the respondent organization has issued Notification in accordance with the B.P.Ms.No.36, dated 18.5.1997, inviting applications in the prescribed proforma from amongst the ex-casual labour, contract labour and village electricity workers. It is false and incorrect to state that the 2nd respondent herein published the selected list of candidates. The list was only consisting of candidates, who are eligible for interview. The name of the petitioner was placed at Sl.No.22, which was not the roster point based on communal & caste reservation, but it is only a list of candidates having minimum qualification and eligibility to attend the interview. After completion of interviews, the selection process started; the educational qualifications, as per the APSEB regulations as adopted by the APCPDCL, and the service certificates produced by the candidates were duly verified and the list of man days put up by each candidate was also prepared for appointment of LDC/ Sub-Engineers. At the time of verification of service certificate issued by the Contractors, certain certificates were disputed due to denial of the same by some of the contractors by saying that the contractors have not issued such certificates and that the candidates whose name were shown in the certificates have not worked in their contract firms. The petitioner is one amongst such persons, whose service certificates were disputed by the contractor concerned. Appointments were denied due to more than one reason; not possessing Typewriting qualification is one of the other reasons. This Court, in W.P.no.15954 of 2003, directed the respondents to consider the case of the petitioner, if he is otherwise qualified and eligible. The respondents considered the case of the petitioner and issued proceedings, dated 23.08.2006, rejecting the claim of the petitioner, as the Review selection committee re-examined the candidature of the petitioner in accordance with the B.P.Ms.No.36, dated 18.5.1997, without reference to

letter dated, 14.04.2003 and rejected the same due to the reason that no BC-B candidate who had put up lesser number of man days than the petitioner herein was appointed as LDC in the BC-B roster point in the 50% vacancies earmarked under B.P.Ms.No.36, dated 18.05.1997. The contempt case was closed. The petitioner did not respond nearly for about two years after passing the order, dated 28.03.2006, by the respondents. The petitioner approached the respondent authorities only after withdrawing the B.P.Ms.No.36, dated 18.5.1997, and after exhausting 50%LDC posts earmarked for the village electricity workers by virtue of the B.P.Ms.No.36, dated 18.5.1997. The petitioner did not challenge the speaking orders, dated 28.03.2006, until about two years thereafter; and, by which time, all the LDC vacancies were exhausted and B.P.Ms.No.36, dated 18.05.1997, was withdrawn. Hence, the writ petition is devoid of merit and is liable to be dismissed.

5. I have given earnest consideration to the facts and submissions.

6. Learned counsel for the petitioner while reiterating the chronology of events and the case of the petitioner would submit as follows:

Through notification, dated 11.03.2001, which was issued by the 1st respondent, Superintendent Engineer (Operation Circle), APCPDCL, on behalf of the 2nd respondent, Chairman & Managing Director, APCPDCL, applications were invited from eligible ex-casual labour/village electricity workers/contract labours, who worked or were engaged in erstwhile APSEB, Nalgonda Circle of APCPDCL, for consideration against the left over vacancies in the cadre of Lower Division Clerk or Sub-Engineer under the 50%of the existing vacancies as on 18.05.1997. The petitioner submitted an application. His name was short-listed for interview. His case was not considered on the ground that the certificates issued by the contractor were disputed. Therefore, he filed a writ petition and this Court directed to verify the certificates issued by the

contractor and counter signed by the officials of the respondents with reference to the agreement under which particular contract labourers are engaged as on 18.05.1997 and consider the case of the petitioner for appointment in accordance with B.P.Ms.No.36, dated 18.5.1997. Later, the case of the petitioner was rejected on the ground that the contractor stated that the petitioner has not worked under him. Changing the said stand, another letter, dated 14.05.2004 was issued stating that the petitioner did not possess Typewriting qualification as required under B.P.Ms.No.235. Therefore, the petitioner filed W.P.No.15954 of 2003. The same was allowed holding that the petitioner need not possess Typewriting qualification; hence, it was directed that the respondents may consider the case of the petitioner and pass appropriate orders in accordance with law, if the petitioner is otherwise qualified under B.P.Ms.No.36, dated 18.5.1997. After the said orders, the impugned orders, dated 28.03.2006, were passed. In the said orders, it is stated that the Review selection committee re-examined the candidature of the petitioner in terms of B.P.Ms.No.36, dated 18.5.1997, without reference to letter dated, 14.04.2003, and rejected the same due to the reason that no BC-B candidate who has put up lesser number of man days than the petitioner herein was appointed as LDC in the BC-B roster point in the 50% vacancies earmarked under B.P.Ms.No.36, dated 18.05.1997, and available as on 12.05.2001, i.e., the date of interview and as such no injustice or no discrimination was done to the petitioner and that the petitioner was not within the zone of consideration of vacancies available for BC-B category.

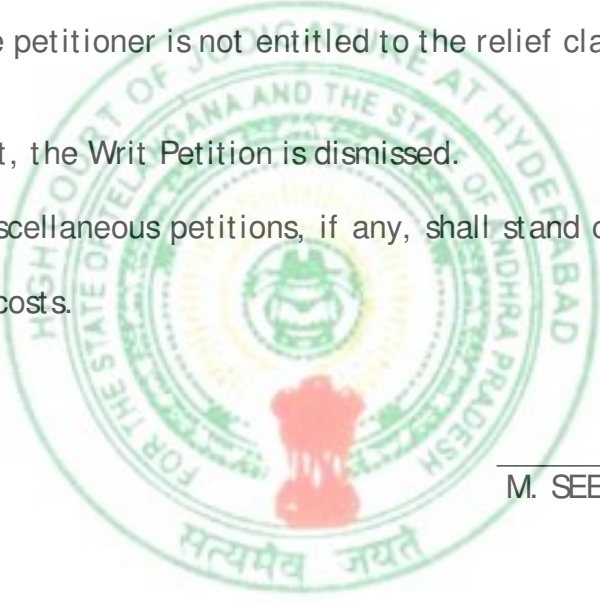
7. Thus, the fact of the matter is that eventually the case of the petitioner came up for consideration before the Review Selection Committee. On verification, the said committee found that the petitioner's candidature for appointment could not be considered as he was not within the zone of consideration of vacancies available for BC-B category and that no BC-B candidate, who has put up lesser number of man days than the petitioner

herein was appointed as LDC in the BC-B roster point in the 50% vacancies earmarked under B.P.Ms.No.36, dated 18.05.1997, and available as on 12.05.2001, i.e., the date of interview. Thus, the petitioner's case was rejected on its merit as he did not come within the zone of consideration. Be that as it may, after the orders, dated 28.03.2006, the petitioner kept quiet for nearly two years. By the time he raised the issue once again challenging the impugned proceedings, dated 28.03.2006, all the LDC vacancies were exhausted and even B.P.Ms.No.36, dated 18.05.1997 was withdrawn and the respondents were not in a position to consider the case of the petitioner.

8. On the above analysis, this Court finds that the writ petition is devoid of merit and that the petitioner is not entitled to the relief claimed.

9. In the result, 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

26th April, 2017
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