

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.21947 of 2005

ORDER:

Aggrieved by the Award dated 15.06.2005 passed in I.D.No.218 of 2000 by the Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Anantapur, wherein the Labour court allowed the I.D., declaring the action of the Chief Engineer in not regularizing the services of 1st respondent herein as illegal and consequently direct reinstatement of 1st respondent into service as regular employee with continuity of service and attendant benefits, but without backwages, the present Writ Petition came to be filed.

2) The facts in issue are as under:-

For the sake of convenience, the parties hereinafter will be referred to, as arrayed in I.D.No.218 of 2000.

On the basis of a reference made by the State Government in G.O.Rt.No.1525 dated 08.08.2000, both the parties appeared through their respective counsel and petitioner filed claim statement and the respondent i.e., Chief Engineer, R.T.P.P., Kalamalla, Cuddapah filed rejoinder (counter). No oral evidence was adduced on behalf of either of the parties but, however documents were marked on bothsides. As per the claim statement, claimants, who are, 30 in number were engaged as skilled and semi-skilled workmen in the respondent's management on 10.10.1996. All of them were working under the control of the respondent and were discharging duties onpar with permanent employees. While the petitioner was working as

workmen, the Government of Andhra Pradesh in G.O.Ms.No.41 dated 23.09.1996 prohibited engagement of contract labour in 33 categories, in the generation stations of A.P.S.E.B. The said G.O., was prior to the date of engaging the petitioner herein by the respondent/management. Inspite of that the petitioner was engaged and worked in the category of Sl.No.23 and 31 of the said Government order. Later in pursuance of the said Government order, the respondent issued proceedings dated 18.05.1997 for absorbing the labours working under 33 categories. Since the petitioner was working in one of the said categories he was called upon to attend the interview and accordingly the petitioner appeared for interview and did well. But the management again issued another proceedings dated 19.12.1997 to absorb the contract labourers in 33 categories as employees, and asked them to wait till further instructions from the competent authority. Basing on the proceedings issued from time to time, the contract labourers, who possessed diploma qualifications, were absorbed with effect from 06.12.1997, whereas the petitioner was not, though he worked for morethan 240 days continuously without any break in service. At that point of time, the petitioner filed W.P.No.7049 of 1998, which was dismissed on 18.03.1998. Then a Writ Appeal No.562 of 1998 came to be filed, which was disposed of on 02.12.1999 directing the petitioner to redress his grievance before the Assistant Commissioner of Labour, Cuddapah but the respondent did not accede to the representation, for conciliation. Then the matter was referred to the court for adjudication. After considering the material placed before the Court, the Labour Court passed an order holding that the action of the respondent in not regularizing the service of the petitioner, as illegal and arbitrary and consequently declared that the petitioner, is

entitled for reinstatement into service as regular employee with continuity of service and attendant benefits but without backwages . Challenging the same, the present Writ Petition came to be filed.

3) On 07.10.2005 this Court while issuing notice ordered interim suspension of the order. Thereafter on 23.01.2008 an application, filed for modification of the stay order, came to be dismissed.

4) The averments made in the affidavit filed in support of the Writ Petition, disclose that the petitioner/Corporation entrusts certain petty maintenance works such as grass cutting, rewinding of electrical motors, jungle clearance, sanitary works, petty repairs to buildings and colony quarters, repairs and replacements to plant and equipment overhaul works etc., to the independent job work firms/agencies/contractors, who are having their own establishments and work contract/job work/piece rate work basis. These works are not perennial and the said works are awarded to such independent job work firms/agencies/contractors after inviting tenders and duly following the procedure. The said firms/agencies/contractors will be paid in lump-sum amount on submission of bill. It is urged that there is no master and servant relationship between the corporation and the workers/labourers employed by the independent job work firm/agency/contractor. The petitioner/Corporation is only concerned with the execution of the work in accordance with the specifications. However, it is admitted that to enter into the vital installations of power generating stations of the petitioner/corporation, which is a prohibited area, necessary identity cards or gate passes will be issued to the independent job work firms/agencies or individual contractors. Merely because, the ID cards

and gate passes are given, it cannot be said that 1st respondent/worker be treated as an employee of Corporation in the absence of relationship between them. It is further urged that during November, 1996, the work of replacement of clamps, connectors, jumpers cables, checking and testing of internal wiring, which is not covered under 33 categories of employment and prohibited by the Government of A.P., in its G.O.Ms.No.41 dated 23.09.1996 was awarded to M/s. B.Rama Chenna Reddy, individual contract having his own establishment and the duration of contractor was from 01.10.1996 to 31.03.1997. It is urged that as the job is not covered under 33 categories of employment, prohibited by the Government of Andhra Pradesh, the 1st respondent is not entitled for any relief.

5) Placing reliance on the Judgments of Hon'ble Supreme court of India in **Steel Authority of India Limited and others v. National Union Water Front workers etc.**, the learned counsel for the petitioner herein would submit that the request of the 1st respondent for absorption as regular employee can not be considered as the concept of automatic absorption, even if he works in abolished categories of employment is quashed, absorption of any contract labour would not arise. It is further urged that as on the date of Award, there is no scheme for absorption of the 1st respondent since the scheme framed in B.P.(P&G-per) Ms.No.37, dated 18.05.1997 read with B.P.(P&G-Per) Ms.No.272 dated 31.12.1997, was cancelled by the petitioner/corporation in the context of Apex Court judgment in C.A.Nos.6009-6010 of 2001. As the petitioner is not working as contract labour on the date of issuance of G.O.Ms.No.41, the question of considering his case for

absorption on regular basis does not arise. Hence, the present Writ Petition came to be filed.

6) A counter came to be filed by R-1 denying the averments made in the Affidavit except those, which are specifically admitted by him. It is contended that himself and one P.Rama Subba Reddy were initially engaged as semi-skilled contract labour on 10.10.1996 by M/s. B.Rama Chenna Reddy, contractor and some were initially engaged as un-skilled contract labour. It is said that all of them worked without any disturbance till 31.03.1998. By the time of his initial appointment, himself and one Sri B.Kumar Reddy possessed SSC and ITI qualification, and one P.Rama Subba Reddy possessed only SSC qualification. Later, he also acquired ITI qualification. While things stood thus, the Government issued G.O.Ms.No.41, Labour, Employment Training & Factories (Lab.II) Department dated 23.09.1996 prohibiting employment in 33 categories in the then APSEB. Later A.P.S.E.B., issued B.P. (P&G.Per) Ms.No.37, dated 18.05.1997, framing guidelines for appointing, those who are working in 33 abolished/prohibited categories, on regular basis.

7) In the light of the above Government orders and Board proceedings a paper notification was issued in the year 1997, by the writ petitioner herein duly giving the list of 812 contract labour, who used to work under 33 prohibited categories a per G.O.Ms.No.41, Labour, Employment Training & Factories (Lab.II) Department, dated 23.09.1996 requesting them to attend for interviews to be held in October, 1997. In response to the above notification and individual call letters, R-1 and others appeared for interview on 18.10.1997. It is averred that all the contract labourers, who were shown

in paper notification, R-1 and other 29 members were given regular appointments of JPAs and Mazdoors. The person who possessed SSC & ITI were given JPA posts whereas others, who did not possess ITI, were appointed as Mazdoor. The first respondent and others, who are 30 in number, were denied appointment saying that they were not on rolls as on cut-off date i.e., 23.09.1996, basing on clause 4(iii) of the B.P. (P&G Per.) Ms.No.272, dt:31.12.1997. Aggrieved by the said order, Writ Petition was filed, which was dismissed, and against which Writ Appeal came to be filed, which was disposed of on 02.12.1999 directing the petitioners therein to seek alternative remedy by reference under Section 10 of the Industrial Disputes Act. In the light of the above, they approached the concerned authorities, who rejected their request.

8) The material placed on record would show that subsequent to the passing of the interim order by this Court, the Writ Petitioner herein addressed a letter to the Chief General Manager (HR), A.P.Genco, requesting to accord permission to entrust certain works to Colony Development Welfare Committee (CDWC) and as such sanction was accorded vide memo dated 15.11.2007. Subsequently, it is stated that in the month of December, 2007 R-1 and others were appointed as semi-skilled workmen to work under the control of the Secretary, CDWC, RTPP on consolidated pay basis and were given individual appointment orders. It is said that they have been discharging the duties to the utmost satisfaction of one and all.

9) The averments in the counter further indicate that though there are number of vacancies, the petitioner/Corporation is not filling the same and that the request of R-1 to fill the said vacancies by considering his request

was not acted upon till date. Though various grounds are raised, the issue that ultimately falls for consideration is with regard to applicability of G.O.Ms.No.41 dated 23.09.1996 to the 1st respondent herein. At this stage, it would be appropriate to refer to the G.O.Ms.No.41, which reads as under :-

ORDER:

The following Notification will be published in the Extraordinary issue of the Andhra Pradesh Gazette.

NOTIFICATION

In exercise of the powers conferred by sub-section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (Central Act 37 of 1970) and after consulting the Andhra Pradesh State Advisory Contract Labour Board required under the said sub-section and after having regard to the conditions of work and benefits provided for the Contract Labour and other relevant factors, the Government of Andhra Pradesh hereby prohibits the employment of Contract Labour in the following 33 categories in Andhra Pradesh State Electricity Board.

- 1) Hospital Workers
- 2) Coal Plant Operators
- 3) Soot Blowing Operations
- 4) Ash Plant Operations
- 5) Breaking of Coal
- 6) Boulders of Grid
- 7) Coal feeding to Units through reclamation grids of conveyor.
- 8) Crusher house operations.
- 9) Grid jam cleaning at wagon tippler and coal plant.
- 10) All Feeder operations
- 11) Hydrogen Plant Operations
- 12) Water Boys
- 13) Auxiliary A/c plants
- 14) Jam Removers
- 15) Mixing of Chemicals
- 16) Collection of samples
- 17) Stacker
- 18) Reclaimers
- 19) Sweeper
- 20) Sanitary Mazdoors
- 21) Scavengers
- 22) Pump House Operations
- 23) Electricians
- 24) Coal Mill
- 25) Burner Floor
- 26) Raw Water Pump Operations
- 27) Water Treatment
- 28) Dust Electro Static Operations
- 29) Otis Elevator Plant Maintenance
- 30) Instrumentation

- 31) Helpers
- 32) Pulverizing Mills
- 33) Lab Assistants.

10) A reading of the said G.O., does not anywhere prescribe the cut-off date as 23.09.1996. Infact the G.O., also does not say that one should be on rolls as on 23.09.1996 for consideration of his candidature for regular appointment in terms of either G.O.Ms.No.41 or in B.P.Ms.No.37 dated 18.05.1997. The record discloses that in consonance with the spirit of the G.O.Ms.No.41 dated 23.09.1996, the then APSEB got issued guidelines vide B.P.Ms.No.37 dated 18.05.1997, and it would be appropriate if a cut-off date is fixed.

11) It is to be noted that the contract labourers, who were on the rolls, on the date of G.O.Ms.No.41 Labour Department dated 23.09.1996 were absorbed in the petitioner-management and not R-1 herein, who joined in service of the petitioner, lateron. The respondent Board issued proceedings dated 18.05.1997 basing on the said Government Order. The relevant guidelines 1 and 2 are as hereunder:-

- i) The contract labour working against 33 abolished categories in force Generation Stations shall be considered for appointment by selection against now posts in each of the generation stations being sanctioned separately.
- ii) Such of this contract labour not getting covered for appointment against new posts being created in the respective generating stations shall be considered for appointment by selection against existing vacancies, available at various other places in the Board.

12) Pursuant to the above two guidelines, call letters were issued for interview, on which R-1 attended to the interview. Thereafter, the Board issued proceedings dated 19.12.1997, which are as under :

- i) After careful consideration the A.P. State Electricity Board besides with the contract labour engaged against the 33 prohibited categories mentioned in the Government order dated 23.09.96 be absorbed as employees of the Board.
- ii) Necessary instructions to the competent authorities for absorption will be issued separately.

13) A reading of the above, it may be noted here that the Government order dated 23.09.1996 does not contain specifically as to whether it will have prospective effect or retrospective effect as could be seen carefully in it, except stating that the employment of contract labour in the said 33 categories in A.P. State Electricity Board prohibited. Similarly the proceedings dated 18.05.1997, which was marked as Ex.W-36 and the board proceedings dated 19.12.1997, which was marked as Ex.W-37, do not say that R-1 herein, who was not on the rolls of the employment as on the date of G.O.Ms.No.41. If really, that was the intention of the Corporation, they would not have sent the call letters at all and would not have conducted the interviews, which took place prior to the issuance of the said proceedings. Infact even after the said proceedings R-1 continued to work till 01.04.1998. Therefore, the action of the authorities in issuing proceedings subsequent to the issuance of the G.O. and the terms of which, are contrary to the said G.O., cannot be accepted at their face value. It is to be noted that once R-1 was assured of absorption under proceedings dated 18.05.1997, he cannot again be deprived of in the subsequent proceedings dated 31.12.1997.

It appears that these proceedings appear to have been issued only with a view to denying him employment.

14) In fact identical issue came up for consideration before the Apex Court in C.A.No9793 of 2010. It was also a case where the State of Andhra Pradesh referred a dispute to Industrial Tribunal-cum-Labour Court, Warangal. After elaborately discussing the evidence, the Tribunal passed an award on 09.09.2005 holding that the respondent-workmen have been working in the prohibited categories of employment and that in terms of the guidelines framed by the appellant they are entitled for absorption. The said Award was challenged by the appellant before the High Court of Andhra Pradesh in Writ Petition No.9057 of 2006. A learned single judge of the High Court elaborately considered the evidence before the Tribunal and held that the workmen were entitled for absorption in terms of Government order dated 23.09.1996. The said order was confirmed by a Division Bench. Aggrieved by the same, SLP was preferred before the Apex Court. Identical argument was advanced before the Apex Court. After considering the same, the Apex Court held as under :

"5. Thus, in our view, the Division Bench has rightly held that the finding recorded by the learned Presiding Officer of the Labour Court which has been approved by the learned Single Judge that the respondents were sent on deputation on 23.09.1996 with a view to scuttle their claim for absorption is a pure finding of fact. The same is based on a comprehensive appreciation of evidence produced by the parties."

15) Further, in W.P.No.21176 of 2000 a learned Single Judge of this Court while dealing with the issue as to whether the case of the petitioner

could have been rejected on the ground that as on 18.05.1997 he was not in service as a casual labourer/village electricity worker and whether fixing of the date 18.05.1997 through B.P.Ms.No.271, dated 31.12.1997 was proper or not, held as under :

"The said question was already answered by this Court by a Judgment rendered in Writ Petition No.1071 of 2000, dated 07.02.2007 and as such, this Writ Petition is also liable to be allowed in terms of the said judgment.

In the result, the Writ Petition is allowed. The failure of the 2nd respondent to objectively consider the candidature of the petitioner for appointment as Junior Lineman is declared as illegal and the respondents are directed to consider the case of the petitioner for appointment as Junior Lineman, within a period of two months from the date of receipt of a copy of this Order. If the petitioner is found otherwise eligible and suitable and it is also discovered that any of the persons, who were selected and appointed as Junior Lineman junior to the petitioner in the context of seniority clause contained in B.P.Ms.No.36, dated 18.05.1997, then the petitioner or such of them, who may be senior to the selected, should be appointed as Junior Lineman with retrospective effect from 28.08.1999. However, keeping in view the fact that the matter has remained pending before the Court for more than 7 years, I deem it proper to direct the person, who may be selected in terms of this order, shall not be entitled to monetary benefits for the intervening period. No order as to costs."

16) Similarly, in W.P.No.1071 of 2000 dated 07.02.2007 a learned Single Judge of this Court while dealing with an identical issue and also as to the eligibility of the persons who are employed as contract labour as on 18.05.1997 observed as under :-

"I am also of the view that the cut-off date specified in B.P.Ms.No.36, dated 18.05.1997 and other circulars issued by the Board has bearing only in the context of determination of total number of vacancies which could be filled by considering the candidature of eligible Ex-Casual Labour, Village Electricity Worker and Contract Labour and not for the purpose of determination of eligibility."

17) Having regard to the factual situation and taking into consideration the judgments of this Court referred to above, which have become final, this Court is of the view that the order under challenge warrants no interference and the same is liable to be dismissed.

18) Accordingly, the Writ Petition is dismissed. No costs. Miscellaneous petitions, pending if any, in this Writ Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:16.03.2017
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