

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.23352 OF 2012

DATE : 24.04.2017

Between :

Chilla Anil Kumar S/o.Ch.Samuel,
Age : 28 yrs, Occu : Un-employee,
R/o.B53/940, Asbestos Colony,
IDPL Post, Bala Nagar, Ranga Reddy District.

.... Petitioner

And

Andhra Pradesh Power Generation
Corporation Ltd., rep., by its
Vice-Chairman & Managing Director,
Vidyut Soudha, Khairatabad, Hyderabad & others.

..... Respondents



This court made the following :

HON'BLE SRI JUSTICE P.NAVEEN RAO

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ORDER :

On 05.01.2011 recruitment notification was issued calling for applications for the posts of Trainee Sub-Engineers (Mechanical). The notification was also extended to candidates who are working with the respondents on contract basis. Petitioner as well as the 3rd respondent responded to the said notification. Both of them belong to Zone-VI and B.C-C category. The select list was published on 27.09.2011. In the said select list, name of the petitioner was shown as selected and petitioner was asked to submit documents for verification. Though petitioner submitted documents for verification, there was no further correspondence. On enquiries petitioner was informed that the 3rd respondent herein filed W.P.No.27959 of 2011 challenging the selection of petitioner and reducing the marks awarded to him. Petitioner also instituted W.P.No.7349 of 2012 aggrieved by not granting appointment to him. Both the writ petitions were disposed of by common order dated 26.03.2012.

2. The facts recorded by this Court in the earlier round of litigation would disclose that the 3rd respondent was informed that on verification of the documents submitted by the 3rd respondent, it was seen that he was not entitled to weightage marks for the contract service and that petitioner was found more meritorious. Vide notice dated 30.12.2011 he was called upon to furnish further information. He was also informed that selection was not finalized, in view of the pendency of the writ petitions.

3. Having regard to the fact that a notice was already issued on 30.12.2011 and 3rd respondent submitted relevant documents as sought for, W.P.No.27959 of 2011 was disposed of directing the official respondents therein to take into consideration the documents submitted by the 3rd respondent herein to the notice dated 30.12.2011 and pass final orders. In view of the orders passed in the W.P.27959 of 2011, this Court held that no further orders are required in W.P.No.7249 of 2012.

4. Pursuant to the directions of this Court referred to above, orders were passed on 17.07.2012. The order would disclose that on re-assessment of the documents filed by the 3rd respondent, the competent authority holds that the 3rd respondent has worked from February, 2008 to May, 2008 and therefore, entitled to five marks weightage and on adding five marks, the 3rd respondent secured more merit than the petitioner. Petitioner was accordingly informed that his provisional selection was cancelled. Challenging the same, this writ petition is filed.

5. To complete the narration of facts, consequent to the decision impugned in the writ petition, as 3rd respondent was found to be more meritorious, he was appointed and is working as on today.

6. Heard Sri Kowturu Pavan Kumar, learned counsel for the petitioner, Smt K.Udaya Sri, learned standing counsel for R.1 & R.2 and Sri P.S.P.Suresh Kumar, learned counsel for R.3

7. Before noting respective contentions, it is appropriate to record the controversy in issue. As per the recruitment notification, selection is based on performance in written examination and

weightage of marks assigned on three headings. 30 marks are allotted as per the marks obtained in the qualifying examination of Diploma; 10 marks are allotted for passing qualifying examination of Diploma @ 2 marks for each year of passing; and service weightage to contract service. Service for less than six months carries 5 marks and service for more than six months carries 10 marks.

8. The bone of contention revolves around the note appended to para 'B' dealing with weightage marks. The note reads as under :

Weightage marks :

(i) 30 marks will be allotted against marks obtained in the qualifying examination of Diploma (marks secured in Diploma X 30/Totalmarks in diploma)

(ii) weightage up to 10 marks will be given for passing of qualifying examination of Diploma up to the date of notification @ of 2 marks for each completed year of passing. Fraction of months will be ignored.

(iii) Service weightage to contract labour worked in Power Generating Stations of APGENCO :

Service for more than 6 months -10 marks

Service for less than 6 months - 5 marks

Note : *Candidates claiming experience in APGENCO have to submit Gate Pass/Annual Account Slip of EPF i.e., minimum one gate pass for the candidates who are claiming as contract labour to the proof of working for less than 6 months or PF membership and minimum of seven gate passes or Annual Accounts Slip of EPF for the candidates claiming who have worked as contract labour for more than 6 months."*

9. A bare perusal of this note would disclose that a contract labour claiming weightage requires to submit Gate pass/Annual Account slip of E.P.F, with minimum one gate pass for the candidates who worked as contract labour for less than six months or Provident Fund membership and minimum of seven gate passes

or annual account slip of E.P.F., for the candidates claiming to have worked for more than six months.

10. Initially the 3rd respondent was granted weightage of 10 marks for the contract service and accordingly he was awarded total of 54.35 marks. This was reduced to 44.35 marks on the ground that the E.P.F., contribution challan produced by him does not contain the name of the candidate and that the station wise committee has not recommended for granting of weightage and therefore zero marks were awarded. However, vide letter dated 30.12.2011 while informing the reasons for reducing the marks to zero against weightage for service rendered and selection of petitioner, referring to the writ petition filed by the 3rd respondent, the 3rd respondent was directed to submit details of experience with supporting proof/evidence and the validity of experience in order to examine the issue in its entirety. In response 3rd respondent has submitted the documents. Accepting the documents submitted by the 3rd respondent and holding that the documents would disclose that 3rd respondent has worked for a period less than six months; that he is entitled to weightage of five marks, he was declared as more meritorious compared to the marks secured by the petitioner and was selected.

11. Though it has been vehemently contended that in terms of the recruitment notification, only documents submitted/referred to at the time of submission of application alone has to be considered and there cannot be any supplementation of the documents relied upon in support of the experience of working with the official respondent, such contention is no more valid in view of the

directions of this Court dated 26.03.2012 made in W.P.Nos.27959 of 2011 and 7349 of 2012.

12. Having regard to this contention, it is useful to extract relevant paras of the order :

“Thus, keeping in view the fact that the appointment of selected candidate i.e., the 3rd respondent is kept in abeyance, the learned counsel for the petitioner as well as the 3rd respondent submit that it is just and reasonable that respondent Nos.1 and 2 take a final decision in the matter with regard to the entitlement of the petitioner to the weightage marks based on the documents submitted by him in pursuance of the Notice dated 30.12.2011.

W.P.No.27959 of 2011 is accordingly disposed of directing the official respondents to take into consideration the documents submitted by the petitioner in response to the Notice dated 30.12.2011 and pass final orders within a period of ten days from the date of receipt of a copy of this order and consequently issue the appointment orders in favour of either the petitioner or the 3rd respondent whoever is found suitable.”

13. The bone of contentions on behalf of the petitioner is that the rejection of 3rd respondent claim for grant of weightage was on the ground that E.P.F contribution challan did not contain the name of the candidate, whereas the respondents now considered wage register of the company under whom the 3rd respondent worked and granted weightage. It is the forcible contention of learned counsel for the petitioner that as per the recruitment notification, the weightage of marks can be awarded only if the candidate submits gate pass/annual account slip of E.P.F., with a minimum of one gate pass for the candidates who are claiming as contract labour for less than six months and that the notification did not envisage consideration of wage register, alleged to have been maintained by the contractor and therefore, the decision now made

is erroneous and amounts to fraudulent exercise of power to illegally select the 3rd respondent ignoring the petitioner.

14. During the course of arguments, learned counsel for the 3rd respondent relied upon the documents furnished by the Provident Fund authorities of Nagpur office of E.P.F., and contended that these documents would disclose that Provident Fund contributions were made on behalf of the petitioner by the contractor and that would substantiate the claim of the 3rd respondent that he rendered service through the contractor with the respondent company. This contention of learned counsel for 3rd respondent is seriously disputed by the learned counsel for the petitioner on the ground that the initial record did not show any name and there was an insertion of name with initials as B.A.Rao in the statement prepared by contractor, which was subsequently expanded to B.Adbutha Rao which is apparently an interpolation only to reflect that the 3rd respondent worked with the contractor. It is also further contended that the genuineness of the documents produced from Nagpur office are doubted. It is also further contended that even assuming the 3rd respondent worked with the contractor, he may have worked with some other Principal employer but not with the official respondents in this writ petition.

15. The original record of selection was summoned. The original record was produced. In view of the voluminous nature of original record, and also to give opportunity to the petitioner as well as 3rd respondent to respond to various documents available with the official respondents, learned standing counsel was directed to file

Xerox copies of the relevant documents by serving copies on the counsels appearing for petitioner and 3rd respondent.

16.1. The documents are filed in the form of a spiral binding book. Each page of the document contains three different page numbers. For convenience page Numbers starting with 107 and ending with 239 are referred to hereunder. It is relevant to notice few documents.

16.2. Page 110 is the application submitted by the 3rd respondent, page No.111 is a tabulated statement filed by the 3rd respondent. He has furnished the E.P.F, number, amount of contribution and the period of contribution as 2008-09. Though he claims to have worked with other contractors, no further details are furnished.

16.3. Page No.132 is the covering letter of the report of the Committee which was constituted to verify the certificates of contract service. Page No.133 is a tabulated statement containing the assessment of the documents furnished by the 3rd respondent. It is noted that "E.P.F contribution challan are furnished but the names of the candidate is not enclosed". It is noted that he has not furnished the gate pass and muster rolls.

16.4. Page No.143 contains the service certificate dated 21.07.2008 stated to have been issued by the contractor under whom the 3rd respondent worked. The contractor certifies that the 3rd respondent worked as site supervisor at Nagarjuna Sagar Tail Pond Project site from February 2008 to May, 2008.

16.5. Page 172 contains combined challan of State Bank of India, bearing Account number for the contribution to employees Provident Fund Organization. Challan refers to the date of payment as 14.08.2008 by the employer under whom the 3rd respondent claimed to have worked. This challan does not contain the names of employees.

16.6. At Page 173 statement of employees Provident Fund Pension Scheme is enclosed. It contains the contribution for the currency period of 01.04.2008 to 31.03.2009 and at Sl.No.17 the name of 3rd respondent is shown. Page Nos.200 to 212 are the copies of wage register.

16.7. Page Nos.200 to 202 is one period, 203 to 205 is for another period. Page Nos.206 to 208 is one other period, 209 to 210 is one other period, and 211 and 212 is for another period.

16.8. As seen from these statements that in the first period, there was no name of B.A.Rao/B.Adbutha Rao in the muster rolls and it contains 24 names. In the statement of February, 2008 against Sl.No.25 name of B.A.Rao is shown, but his position of work is not disclosed. Signature of B.A.Rao, is not same as appended to the affidavit in this writ petition. By handwriting 'A' was expanded as Adhbhut. Statement for the months of March and April 2008 also contains the name of B.A.Rao against Sl.No.25. The statement for the month of May, 2008 contains only 14 names.

17. Learned counsel for 3rd respondent submitted that petitioner worked with the contractor who executed work of the official respondents; the contractor's head office is located in Nagpur; contractor contributed to the Provident Fund for the employees

engaged by him in the Nagpur office. These documents could not be secured initially. However, the documents support the stand of the 3rd respondent that he worked with the contractor in execution of contract entrusted to him by the official respondents, and therefore, he is entitled to compute the said service towards weightage and that the weightage is validly granted.

18. However, what is intriguing to notice is, in the order impugned reliance is placed more on wage register stated to have been maintained by the employer of 3rd respondent, but not based on the proof of the E.P.F contribution. As noted above, learned counsel for the petitioner seriously disputes the claim of the 3rd respondent by referring to the name in the wage register written as B.A.Rao and B.A.Rao is not same as B.Adbuth Rao and it would amount to interpolation and tampering only to gain employment. As per the notification what is required by a candidate to claim weightage is gate pass or annual account slip of E.P.F. The order impugned does not reflect submission of annual account slip as proof of work and what is considered is not envisaged in the recruitment notification.

19. As seen from the record, weightage of marks awarded to 3rd respondent changes the equation between the petitioner and 3rd respondent. If the 5 marks weightage granted to 3rd respondent is deleted, petitioner would be selected otherwise the selection of 3rd respondent is valid.

20. In the order impugned, the relief granted to 3rd respondent is based on assessment of Wage register of the contractor holding that the 3rd respondent has worked from February, 2008 to May,

2008 and therefore 5 marks weightage was granted to him. The stand of the 3rd respondent and the voluminous material placed on record would show that at least during the period from February to May 2008, there were contributions made by the employer and the name of the 3rd respondent is reflected in the records of Provident Fund authorities. Adding to this, the provident fund authority issued certificate dated 04.10.2011 holding that 3rd respondent is a member of provident fund bearing Account No.MH/66159/25 from 01.02.2008 to 28.02.2010. Primarily these documents of provident fund authorities would disclose that there were contributions and that the name of 3rd respondent was reflected in their records.

21. Learned counsel for petitioner seriously disputes the claim of contributions made on behalf of the 3rd respondent on the ground that (i) in some of the records, name of the person was shown as B.A.Rao, which was later expanded as Adbutha Rao, and it may not be the 3rd respondent; (ii) further, when petitioner applied for information to the provident fund authorities they have informed him that the information regarding holding of account by 3rd respondent and contributions made are not available. He would therefore, submit that if the records were not available, how the certificate was issued by the provident fund authorities and how these records are now produced and therefore contended that these records are not authentic.

22. On a close scrutiny of the provident fund records enclosed to the spiral binding book filed by the official respondents, it is seen that in the declaration filed by the employer more number of names of employees are shown but in the challan the number of

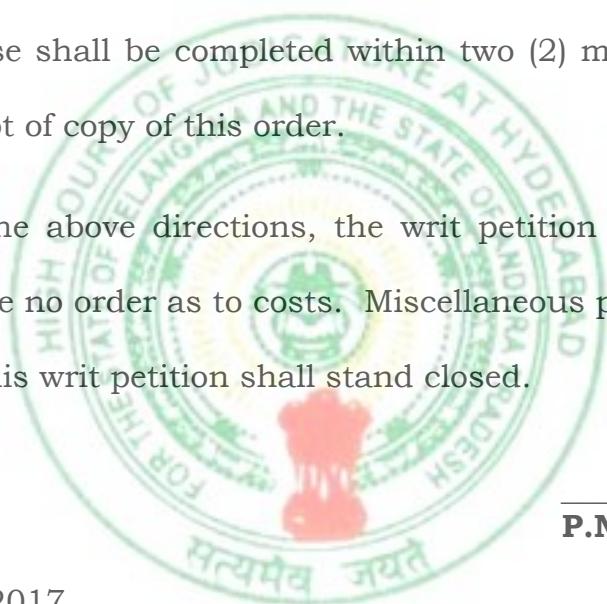
employees shown is less. Thus, how such a discrepancy arose in the records needs explanation. It is also seen from the application filed by the 3rd respondent in response to the recruitment notification, he declared the RPF authority office as in '**Goa**' whereas the certificates now brought on record are from RPF Office of '**Nagpur**'. The order impugned is not based on the assessment of provident fund record but based on the wage register maintained by the employer.

23. A close reading of the recruitment notification particularly the note appended (Extracted above) disclose that awarding weightage marks is based on the Gate pass/EPF Contributions but not based on the wage register maintained by the employer. Further initially when the claim of the 3rd respondent was rejected, he was informed that the record of EPF contributions did not contain the name of the employee.

24. Having regard to these discrepancies and fact that the difference between the petitioner and 3rd respondent revolves on the weightage of marks for the service claimed to have been rendered by the 3rd respondent, I deem it proper to direct the Chief General Manager (Admn.)-2nd respondent to elicit information from the EPF Office at Nagpur, State of Maharashtra, and obtain the relevant documents certified by the Regional Provident Fund Commissioner, Nagpur, on the status of 3rd respondent holding the EPF account and contributions made by the employer treating him as an employee of the contractor, who executed work of the respondent-company during the period from February, to May 2008. On ascertaining such information, if the 2nd respondent, is

satisfied that the record available with the EPF authorities would disclose contributions made on behalf of the 3rd respondent, no further exercise is required to be done by him. He shall have to communicate the report of the provident fund authorities to the petitioner. In case any discrepancy is noticed on the material, that may be furnished by the Regional Provident Fund Commissioner, in pursuant to these directions, which is at variance with the documents already submitted by the 3rd respondent, the 2nd respondent shall cause notice on 3rd respondent and after affording due opportunity to him, shall take further course of action. The entire exercise shall be completed within two (2) months from the date of receipt of copy of this order.

25. With the above directions, the writ petition is disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.



P.NAVEEN RAO,J

Date: 24.04.2017
Rds

THE HON'BLE SRI JUSTICE P.NAVEEN RAO



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