

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.9292 of 2008

ORDER:

This Writ Petition is filed, under Article 226 of the Constitution of India, requesting to issue writ, order or direction, more particularly one in the nature of writ of *Mandamus* declaring the action of the respondents in not issuing the appointment/regularization orders in favour of the petitioner even after his selection was published in the list of the selected candidates as long back as in the year 2004, as illegal, arbitrary and in violation of Articles 14, 16 and 21 of the Constitution of India, and consequently, direct the respondents to forthwith issue the appointment/regularization order in favour of the petitioner.

I have heard the submissions of Sri Siva, learned counsel for the petitioner, and of Smt. K.Udaya Sri, learned counsel for Respondents. I have perused the material record.

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

3. He was initially appointed as contract worker in the year 1989 in the Commercial Sub-Division, Madanapalle, vide Chit Agreement No.K2.Agt.7/88-89 and the same was extended from time to time. Subsequent to the abolition of casual labour appointments, his services were converted into that of a contract labour and he was discharging his duties without any stigma or complaint from any quarter. While so, the respondents issued B.P. Ms.No.36, dated 18.05.1997, whereunder 50% of existing

vacancies were reserved for the employees who were working on contract basis. However, when the petitioner's case was not considered by the respondents on the ground that he was over-aged at the time of entering into service, he along with 14 others filed W.P.No.7826 of 1998 before this Court and this Court by order, dated 24.03.1998, disposed of the said writ petition directing respondents to consider the claim of the petitioner for regularization of his services in the establishment of the respondents in terms of BP (P&G Per) Ms.Nos.36 and 37, dated 18.05.1997, notwithstanding the earlier court orders, but subject to the petitioner fulfilling the prescribed eligibilities. By the said orders the respondents were further directed not to disqualify the petitioner on the ground that he was over-aged at the time of initial appointment. On receipt of the said orders of this Court, the petitioner was permitted to participate in the selection process and was called for an interview. He was successful in the selection process and his name eventually figured in the list of selected candidates. However, even after completing the selection process and despite the name of the petitioner figuring in the selected list of candidates, respondents have not issued any appointment or regularization orders to the petitioner and some other similarly placed persons. His representation to the respondents 2 and 3 in person and further representation in writing on 23.06.2006 were of no avail and the petitioner is continuing to work as a contract labour. Hence, the petitioner filed the present writ petition.

4. In the counter of the respondents, while not disputing the chronology of events, it is, *inter alia*, alleged as follows: 'That the petitioner failed to produce valid certificate to establish that he was

working as a contract labour, along with his application. Subsequently, he produced the certificate, dated 06.04.1998 issued by the Contractor. However, the said certificate was not attested and countersigned by the officials of the respondents duly verifying the details therein. Therefore, his candidature was not considered while making appointments to the vacancies available under B.P. Ms.No.36, dated 18.05.1997. All the eligible candidates have been selected and appointed. The proceedings in B.P.Ms.No.36, dated 18.05.1997, have been subsequently withdrawn. Therefore, at this distance of time, the claim of the petitioner is misconceived.'

5. At the hearing, the learned counsel for respondents reiterated these two contentions and also brought to the notice of this Court a judgment of a Division Bench of this Court, dated 31.03.2015 passed in W.A.No.260 of 2010, whereby the Division Bench of this Court disposed of the said Writ Appeal with certain directions while dealing with the writ petitions of some of the contract labourers said to have been placed similarly as that of the present writ petitioner.

6. The learned counsel for the writ petitioner, while drawing the attention of this Court to the contents of the reply-affidavit and the documents obtained by the writ petitioner by invoking the provisions of the Right to Information Act, contended that the contentions in the counter-affidavit of the respondents are untenable and cannot be countenanced.

7. Dealing first with the aspect as to whether the petitioner submitted, along with the application, a valid certificate to

establish that he was working as contract labourer, though the contention of the respondents is that he produced certificate, dated 06.04.1998, issued by the Contractor, which was not attested and countersigned by the officials of the respondents, what is to be noted is that the petitioner along with his application produced an Identification Certificate, which was signed by the Contractor and attested by Board's Officer of the rank of Assistant Divisional Engineer, Operation. The said certificate, on perusal, would reflect that the place of work of the applicant was South Section, Madanapalle, (o) Sub-Division, Madanapalle, (o) Division, Madanapalle. That apart, the information furnished to the petitioner, under the provisions of the Right to Information Act by the Divisional Engineer (Technical) and Public Information Officer of the respondents concerned, would disclose that a copy of the selected candidates list, which was displayed, in May, 2004, on the Notice Board of the office of the Superintending Engineer (O) Tirupati, under B.P.Nos.36 and 37, dated 18.05.1997, was also furnished to the writ petitioner. In the said selected list displayed on the Notice Board, the name of the petitioner appears at serial No.9 is not in dispute. Therefore, the contention that the petitioner did not submit the certificate is untenable, as the name of the petitioner figured eventually in the selected list of the candidates. As rightly contended, the petitioner's name would not have figured in the final select list, had he not produced, along with his application, the certificate showing that he was working as a contract labourer under a Contractor. Further, another document also furnished to the petitioner, styled as 'List of the contract labours (Graduate Candidates) for whom vigilance received

(genuineness)' contains the name of the petitioner at serial No.1. The said document makes it manifest that a vigilance enquiry was held in respect of selected candidates and that insofar as the petitioner, a genuine vigilance report was also received. Hence, the contention that the case of the petitioner was not considered for the reasons stated in the counter does not merit consideration and is liable to be rejected. The said contention is accordingly rejected.

8. Dealing next with the aspect that the eligible candidates have already been appointed and the proceedings in B.P.Ms.No.36, dated 18.05.1997, are withdrawn, it is to be noted that the Memo, dated 21.07.2015, of the office of the Superintending Engineer, Operation, Tirupati, reflects that as per instructions in the Memo dated 13.07.2015, one, G.Sarada, a Job Typist, Office of the Inspector of Police/Vigilance & APTS/APSPDCL/Tirupati, was appointed as Typist against 50% vacancies existing on 18.05.1997 under B.P.Ms.No.36, dated 18.05.1997 in the eligible time scale with usual allowances. The said undisputed document shows that B.P.Ms.No.36 was not totally withdrawn and is being pressed into service in certain cases. Further, the Division Bench of this Court in the orders in the Writ Appeal No.260 of 2010, referred to supra, gave directions to the respondents herein to ascertain whether the service certificate of the writ petitioners therein conformed to the requirements as per B.P.Ms.No.36, dated 18.05.1997, while giving other directions. Therefore, the Division Bench of this Court did not approve the contention of the respondents herein that B.P.Ms.No.36, dated 18.05.1997, was withdrawn. Hence, the second contention of the respondents is also untenable and stands rejected.

9. Before proceeding further, it is pertinent to note that the learned counsel for the respondents alternatively contended that in case this Court holds that the petitioner is entitled to a relief in this Writ Petition, the Writ Petition may be disposed of in terms of the orders in the Writ Appeal No.260 of 2010 giving similar directions as the case of the petitioner is on par with the writ petitioners therein. However, the learned counsel for the petitioner herein rightly contends that the case of the writ petitioner stands on a totally different footing and that on facts of the present case, the petitioner is entitled to the relief claimed.

10. In view of the said contentions, I have carefully gone through the orders in the writ appeal, a copy of which is placed on record. A perusal of the said order would show that the case of petitioners therein was rejected mainly on two grounds viz., the writ petitioners therein have enclosed service certificates that were issued by the Contractor without the signatures of the concerned Assistant Divisional Engineer and that enquiry revealed that the said certificates are not genuine. On the contrary, in the case on hand, the writ petitioner's name undisputedly appeared in the selected list of the candidates and a vigilance enquiry also revealed the genuineness of his certificates and candidature. Further, the writ petitioners in the Writ Appeal challenged the order, dated 10.03.2005, passed by the Superintending Engineer concerned rejecting their candidatures for appointment. Hence, this Court is not inclined to accept the submission of the learned counsel for respondents that the case of the petitioner herein is on par with the writ petitioners in W.P.No.22713 of 2004, which is the subject matter of the Writ Appeal in W.A.No.260 of 2010.

11. This Court, on careful perusal of the orders in the Writ Appeal, finds itself in agreement with the contentions of the learned counsel for the petitioner that since name of the writ petitioner finds place in the final select list and a vigilance enquiry revealed the genuineness of his candidature, his case requires an independent consideration while granting the relief, in view of the facts peculiar to this case.

12. On the above analysis, this Court finds that the case of the petitioner merits consideration and that the petitioner is entitled to the relief claimed and the writ petition can be allowed with appropriate directions.

13. In the result, the Writ Petition is allowed and accordingly the respondents are directed to issue appointment/regularization orders in favour of the petitioner as per the select list published and displayed on the Notice Board in May, 2004, within a month from the date of receipt of a copy of this order. Further, for the purpose of counting service for pensionary benefits and seniority his date of appointment shall be deemed as the date of the appointment of the other candidates, in the said select list, who are already appointed. No costs.

Miscellaneous petitions pending, if any, in this writ petition shall stand closed.

M.Seetharama Murti, J

14th February, 2017
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