

POHON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos. 27107, 27363 & 28273 OF 2017

COMMON ORDER:

As the issue involved in all these writ petitions is one and the same, they are being heard together and disposed of by way of this Common Order.

2. W.P.No.27107 of 2017

This writ petition is filed seeking writ of mandamus declaring the Tender Notice dated 20.07.2017 issued by the 1st respondent for Housekeeping services Contract-2017-2018 signed by the 3rd respondent, as illegal and arbitrary and also contrary to the provisions of A.P.Grameena Vikas Bank Staff Service Regulations.

3. The 1st petitioner is the Temporary Employees Union of the 1st respondent Bank with Registered No.H-7/2014. The 2nd and 3rd petitioners are members of the 1st petitioner union and they are working as temporary messengers/casual labours in the 1st respondent Bank. The 1st petitioner is espousing the cause of its employees solely on the ground that the 1st respondent issued impugned tender notification calling for housekeeping services contract to replace the members of the 1st petitioner union, who are temporary employees working on daily wage basis. Case of the petitioners is that the 1st respondent Bank has engaged services of the members of the 1st petitioner Union instead of

recruiting regular employees and the daily wages are being paid by the Managers, Regional Managers. The temporary employees cannot be replaced with other temporary employees and that the members of the 1st petitioner union are working since long time in the 1st respondent Bank. As the 1st respondent is proceeding with inviting applications in pursuant to impugned tender notification dated 20.07.2017 without considering the services rendered by the members of the 1st petitioner union, present writ petition is filed.

4. W.P.No.27363 of 2017

This writ petition is filed by the petitioner union assailing the impugned Tender Notification dated 20.07.2017 issued by the 1st respondent Bank and consequently to direct the respondent Bank to regularize the services of its employees, who are members of the petitioner association.

5. W.P.No.28273 of 2017

This writ petition is filed by the unregistered Telangana Grameena Bank Temporary Employees Union and its members challenging the impugned Tender Notice dated 13.07.2017 issued by the 1st respondent Bank for Housekeeping Services Contract 2017-18.

6. In all these writ petitions, it is the case of the petitioners that they have been working with the respondent Bank for more than 10 years and some of them have been

working even for 20 to 25 years and that they are also being paid bonus and other perks. The 1st respondent Bank has issued impugned tender notifications dated 13.07.2017 and 20.07.2017 for the purpose of outsourcing the Sweeping, Cleaning and maintenance functions by engaging organizations/agencies involved in providing these services for its branches and offices in the Districts of Telangana and Andhra Pradesh. That by virtue of impugned notifications issued by the respondent Bank, all the members of the petitioners association would be rendered jobless, having worked for substantial period and that the respondent Bank has no authority to issue such a notification in as much as the entire field is governed by the Regional Rural Bank Act. There are no guidelines issued by the statutory authorities to issue such a notification.

7. This Court, by order dated 16.08.2017, while ordering notice before admission, granted interim stay as prayed for in WP No.27107 of 2017.

8. The respondents filed counter affidavit along with vacate stay petition in WVMP No.3575 of 2017 in WP No.27107 of 2017 denying the averments in the affidavits filed in support of the writ petitions stating that the writ petitions are not maintainable as there is no statutory rule or provision having statutory force which has been violated for the purpose of maintaining these writ petitions, as such,

the petitioners cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The Central Government in exercise of powers conferred under section 29 of the Regional Rural Banks Act read with Section 17 thereof made the Regional Rural Bank (Appointment and Promotion of Officers and Other Employees) Rules, 1998 and the said Rules were notified in the Gazette of India and that the same provide for recruitment as well as promotions. Petitioner union, being a temporary employees union, does not have any right to challenge the action of the Bank as the temporary employees do not have rights as those of the permanent employees. Mere forming a 'Union' and enrolling members does not qualify the petitioners to question the Bank's valid action in outsourcing some of its functions for the purpose of efficiency and discipline and it is the prerogative of the management to conduct the business as it deems fit but within the parameters of financial, infrastructure and availability of skilled resources for the purpose of attainment of its objective. That the subject tender is called for maintenance of house keeping and other allied activities, which are not the core activities of the respondent bank. Depending on the exigencies the Branch Managers/Regional offices engage the services of casual employees on daily wage basis as per the guidelines issued by the Government of

India from time to time. Petitioners are all casual employees working on daily wage basis, as such, they are neither qualified nor eligible to invoke the provisions of the A.P.Grameena Vikas Bank Staff Service Regulations to buttress their non-existing cause of action which is wishful and without even a speck of substance and moreover, there is no concept of recruitment of temporary employees in the Bank in terms of Regional Rural Banks (Appointment and Promotion) Rules, 2010. Petitioners cannot claim their casual employment with the Bank as a right or automatic entitlement. Petitioners have voluntarily joined in the respondent Bank as casual employees on daily wage basis and they were aware of their nature of employment in the Bank and that the Bank neither promised them of regularization of their services nor assured them of appointment to the sanctioned posts. Petitioners are not even temporary employees but they are casual employees working on daily wage basis.

9. Counter affidavit is filed by the respondents in WP No.28273 of 2017 along with stay petition denying the averments in the affidavit filed in support of the writ petition. The respondents while reiterating the averments in the counter affidavit filed by the respondents in WP No.27107 of 2017 stated that petitioner-union is not a registered Trade Union, as such, it has no *locus standi* to file the writ

petition. In view of the judgment rendered by the Hon'ble supreme Court of India in the case of **State of Karnataka vs. Uma Devi**¹, the persons who are unauthorizedly engaged as Casual Workers by back door entry, do not have any vested right and entitlement as they are not eligible for regularization, as such, the writ petition is not maintainable either under law or on facts. Petitioners though themselves styled as 'temporary employees' are not at all the temporary employees of the 1st respondent bank, as they did not undergo any selection process. Petitioners are not on the pay rolls of the bank as they are not regularly working in the Bank. Petitioners are not entitled to continue in the bank as their initial engagement by the concerned branches is done without the express and prior approval of the 1st respondent Bank. The 1st respondent Bank has no power or authority to regularise the services of the unauthorized casual workers as the Service Regulations of the Bank do not cloth the 1st respondent Bank with such power, to regularize services of casual labourers. The 1st respondent Bank floated the impugned tender pursuant to the recommendations of the Mitra's Committee, which is constituted by the Government of India, for the purpose of recommending manpower planning in the Regional Rural Banks. The writ petition is filed by suppressing the material facts such as finalization of

¹ (2006) 4 SCC 1

tender by the 1st respondent even prior to filing of the writ petition. It is stated that the grievance of the petitioner is misconceived; that they have to approach the Central Government Industrial Tribunal for redressing their grievances, if any and that this Court has no jurisdiction to entertain the writ petition.

10. Heard Sri M.Rajamalla Reddy, learned counsel for the petitioners in W.P.Nos.27107 & 28273 of 2017, Sri P.Venugopal, learned Senior Counsel appearing for Sri T.C.D.Sekhar, learned counsel for the petitioners in W.P.No.27363 of 2017, Smt. V.Uma Devi, learned Standing counsel for respondents 1 to 3 in WP No.27107 of 2017 and for respondents in W.P.No.27363 of 2017 and Sri S.Mujib Kumar, learned Standing Counsel for respondents 1 to 3 in W.P.No.28273 of 2017.

11. Learned counsel appearing on behalf of the petitioners, apart from reiterating the averments in the affidavits filed in support of the writ petitions, vehemently contended that the members of the 1st petitioner union are working in the respondent Bank for long time, as such, they are entitled for regularization of their services. He further submits that since the members of the 1st petitioner union are working for long time, the respondent Bank should have framed a scheme for absorbing them as regular employees. He would contend that by virtue of impugned notifications issued by the

respondent Bank, temporary employees cannot be replaced by other temporary employees, as such, impugned tender notifications are illegal, arbitrary and violative of the rights of the petitioners. In support of his contentions, he relied on the judgments reported in **Commissioner, Kendriya Vidyalaya Sangathan and others v. Anil Kumar Singh and others**², **Hargurpratap Singh v. State of Punjab and others**³, **Secretary, State of Karnataka and others v. Umadevi (3) and others (supra)**.

12. On the other hand, Smt. V.Uma Devi, learned Standing Counsel for respondent Bank while reiterating the averments in the counter affidavit, submits that the members of the 1st petitioner union are neither temporary/*adhoc* employees nor on the rolls of the respondent Bank. She submits that they were only appointed on daily wages as and when there is work load in the branches of the respondent Bank. She further submits that they were not appointed through any selection process nor the respondent Bank authorizes their appointment and that they would be appointed on daily wages as and when need arises in leave vacancies, as such, they have no indefeasible right for continuation of their services or for their regularization. She submits that they have entered into the respondent Bank through back door, without undergoing any selection process, as such, they cannot have

² (2003) 10 Supreme Court Cases 284

³ (2007) 13 Supreme Court Cases 292

any right to seek for regularization of their services. She submits that a decision has been taken by S.K. Mitra's Committee in the matter of manpower planning/staffing and the said decision was adopted by the respondent Bank through circular resolution dated 24.02.2015. She submits that the members of the petitioner's union are only working in non-core activities like sweeping, house keeping services etc., as such, the decision of the respondent-Bank in issuing the impugned tender notifications cannot be faulted by the petitioners. She submits that the respondent Bank can regulate its procedure in having its business and petitioners have no right to challenge the same. In support of her contention, she relied on the judgment reported in **Secretary, State of Karnataka and others v. Umadevi (3) and others (supra)**.

13. Sri S. Mujib Kumar, learned Standing Counsel for the respondent Bank, adopting the arguments advanced by Smt. Uma Devi, strenuously submits that as per condition No. 15 of the tender notification in WP No.28273 of 2017, wherein it is clearly stated that presently some persons are working as casual labourers on daily wage basis and that the same persons may be engaged by the contractors or its agents, sub-contractors, makes it clear that the said condition is in the interest of the casual labourers working in the respondent Bank. He submits that as per the said condition, a contractor cannot engage any other person at

any branch, regional office and Head Office, without considering the approval of the respondent Bank, giving opportunity to the existing casual labourers and that the respondent Bank reserves the right to accept/reject the person deployed by the agent, as such, they should not have any grievance.

14. In this case, it is to be seen that only 1st petitioner's Union and one or two members of the Union have filed writ petitions before this Court. No writ petition is filed by any individual questioning the impugned tender notifications. No list of members of the petitioner's union is enclosed along with these writ petitions and that there are no particulars with regard to each members of the petitioner's Union as to how long they are working and when they have been appointed furnished. It is the specific assertion of the members of the petitioners' union that they are continuously working in the respondent Bank for more than 10 years and some members are working more than 20 years. The said contention of the petitioners is denied by the respondents in their counter affidavits. Though the aforesaid contention is reiterated by the petitioners in their reply affidavit, still no detail particulars are given and no documents are filed by the petitioners to prove that they are working in the respondent Bank since long time. In the absence of any documentary evidence, it is difficult to come to a conclusion

as to who are the members of the petitioners' Union and how long they have been working and what is the basis of their claim for continuation of their services in the respondent Bank. More so, some of the members of the petitioners filed writ petitions for regularization and there is no interim order operating in the said writ petitions. In fact, in the counter affidavit in WP No.27107 of 2017, it is averred that when the petitioners filed WP No.36073 of 2014, this Court granted Status quo order on 03.12.2014 and when the Bank filed vacate petition, in which this Court observed that since the matter is pending before the Assistant Labour Commissioner, status quo order dated 03.12.2014 may be maintained. Aggrieved by the same, respondent Bank preferred WA No.1187 of 2017, wherein this Court clarified that status quo as on 03.12.2014 would mean that 'whatever rights the casual employees/daily wagers had on that date are to be engaged as and when there was work' would continue to be in force. Along with the counter affidavit, letter dated 24.02.2015 issued by the National Bank of Agriculture and Rural Development addressed to the Chairman, all RRBs stating as follows:

"The Chairman,
All RRBs.

Dear Sir,

**Recommendations of Committee on HR policy for RRBs post CBS-
Implementation thereof**

As you are aware the Government of India had constituted the captioned committee in August 2012 under the chairmanship of Shri S.K.Mitra, Executive Director, NABARD to re-assess the manpower planning/staffing pattern in RRBs post CBS.

2. GOI, after consideration of the recommendations of the Committee, has advised us to circulate the recommendations of the Committee on HR Policy for RRBs post CBS, along with NABARD's comments, as per the Annexure. Further, as advised by the GOI, all RRBs are directed to place these recommendations before their respective Boards for adoption, with or without modifications, keeping in mind their HR and financial resources.

3. The receipt of this circular may please be acknowledged.

Yours faithfully

Sd/-
(P.K.Misra)
Chief General Manager.

By virtue of the aforesaid letter, all RRBs have adopted the recommendations of the Mitra's committee by the Board of Directors vide Circular Resolution No.07/2015, dated 13.04.2015. Shri S.K. Mitra Committee's recommended on HR Policy for RRBs Post-CBs with regard to Outsourcing as follows:

		Outsourcing	
15	4.19	RRBs are allowed by Thorat Committee to outsource the following non-core functions. - Sweeping, cleaning and maintenance. - Security. - IT and software development and maintenance. - Business facilitators and intermediaries. - Cash remittance. - Courier service. Considering the technology adoption taking place, in addition to the above, the RRBs may outsource the work of office attendants or any other work, pending on the need.	May be approved. RRBs after approval of the sponsor bank, may as far as possible outsource the work of office attendants and non-core functions.

By virtue of aforesaid circular resolution, the respondent's Bank has adopted the recommendations of Mitra's committee and in pursuant thereto, they have approved the policy of the Bank for engaging the non-core

services through outsourcing, as such, the same cannot be faulted.

15. Sri S.Mujib Kumar, learned Standing Counsel for the respondent Bank has relied on the judgment of this Court in WP No.37167 of 2015 dated 16.11.2015 stating that in similar circumstances, this Court permitted the petitioner therein to approach the Labour Court under the provisions of Industrial Disputes Act, in respect of his grievance, since there was no material before the Court to show that there exists master and servant relationship between the petitioner and the respondent Bank. That apart, it is specifically contended by the learned Standing Counsel that the tenders have already been finalized by the respondent Bank even before filing these writ petitions. More over, it is specifically stated in the counter affidavit filed by the respondent Bank that the interests of casual labourers working in the 1st respondent Bank are well safeguarded in the tender documents impugned in these writ petitions.

16. It is pertinent to mention that the judgments relied on by the learned counsel for the petitioners referred to above pertaining to instances where the petitioners therein were appointed on contract and also on *ad hoc* basis. Moreover, the **Uma Devi's** case pertains to regularisation of services of employees who are continuing for more than ten years, without the intervention of the Courts. But in the present

case, the assertion of the members of the petitioner's Union that they are working continuously for more than 10 years, is specifically denied by the respondent Bank in their counter affidavit. Though reply is filed by the petitioners rebutting the said allegations, no documentary proof is filed by the petitioners in support of their claim. Without the factual basis and without giving any particulars of the members of the petitioner's union, no relief can be granted to the petitioners, as such, the judgments relied on by the learned counsel for the petitioners are not applicable to the facts and circumstances of the case.

17. Though the petitioners have placed one letter dated 08.07.2010 of the Assistant General Manager, NABARD to the Chairman of All RRBs, for collection of details of employees working in part-time sweepers/messengers, as such, the respondent Bank wanted to regularise the services of the members of the petitioner's union, but the said contention was rebutted by the learned Standing Counsel stating that the said data was collected only for information regarding the persons who are working on casual basis and not for regularization purpose, as alleged by the learned counsel for the petitioners. That apart, the issues whether the members of the petitioner's union are working for long time or short time, are all disputed questions of fact, which cannot be gone into in these writ petitions, by exercising

extraordinary jurisdiction under Article 226 of the Constitution of India.

In view of above facts and circumstances, all the three petitions are dismissed. However, it is open for the members of the petitioner's union to approach Labour Court under the provisions of Industrial Disputes Act, if they are so advised, for redressal of their grievances.

30-11-2017
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A.RAJASHEKER REDDY, J

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos.27107, 27363 & 28273 OF 2017



Date: 30.11.2017

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