

The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and
The Hon'ble Smt. Justice Kongara Vijaya Lakshmi
Writ Appeal No.1479 of 2017
Date: 23.10.2017

Between:

Andhra Pradesh Tourism Development Corporation Ltd.,
Vijayawada, rep. by its Managing Director

... Appellant

and

Y.Satyanarayana and 4 others

... Respondents

Counsel for the Appellant:

**The Advocate-General (AP)
for Mr.A.K.Narasimha Rao**

Counsel for respondent Nos.1 to 4:

Mr.G.Vasantharayudu

Counsel for respondent No.5:

GP for Tourism

The Court made the following:

Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Writ Appeal arises out of Order, dated 03.07.2017, in WP.No.19297 of 2017.

We have heard the learned Advocate-General for the State of Andhra Pradesh appearing for the appellant-Corporation, Mr.G.Vasantharayudu, learned Counsel for respondent Nos.1 to 4 (for short 'the private respondents') and the learned Government Pleader for Tourism appearing for respondent No.5.

The private respondents filed the afore-mentioned Writ Petition with the plea that in the year 2005, the appellant has issued employment notification for recruitment of HMTV drivers on contract basis; that in pursuance thereof, on 08-01-2005, they have applied as they are eligible to be appointed as such; that after conducting verification and writing test, orders were issued by the appellant in the month of April, 2005, informing the private respondents that they were selected for the said posts; and that after paying security deposit and undergoing medical examination, they were engaged from May, 2005, onwards. They have further

averred that though they were selected after following the selection process and were performing their duties under the direct control and supervision of the appellant, the latter has informed them that they should be treated as workers from man power agency.

On the above averments, the private respondents sought for issue of a Mandamus to pay wages to them by applying the principle of equal pay for equal work on par with the regular employees as directed in WP.No.18550 of 2014 and Writ Appeal No.736 of 2016.

On behalf of the appellant, its Executive Director has filed a counter-affidavit in WP.No.19297 of 2017. In Paragraph 5 thereof, he has averred as under:

“I submit that the service contract agreement with manpower agency M/s. Adithya enterprises has entered with APTDC 27.06.2015 and continued upto 30.06.2017. The petitioners filed writ petition to implement the principle of equal pay for equal work on par with regular employees and to pay salaries to them on par with regular employees. It is submitted that, the employment notification issued in the year 2005 for recruitment of HMTV drivers on contract basis is separate process and engaging the present petitioners through outsourcing agency is separate issues and there is no relation between

them. Hence, the petitioners are not entitled to claim the service benefit given to the contract employees in proceedings on 21.01.2013.

By the order under Appeal, the learned Judge referred to the Common Order, dated 23-03-2017, in WP.Nos.7863 and 7872 of 2017 and also Judgment, dated 06.12.2016, in W.A.No.736 of 2016, whereby a Division Bench has affirmed the Order of the learned Single Judge in WP.No.18550 of 2014.

At the hearing, the learned Advocate-General submitted that the facts in the present case are at complete variance with those in WP.No.18550 of 2014. In support of his submission, he has drawn our attention to Paragraphs 3 to 5 of the counter-affidavit filed in the said Writ Petition by the Telangana Tourism Development Corporation Limited as extracted by the Division Bench. For better appreciation, the said part of the counter-affidavit is reproduced below:

“Paragraph Nos. 3, 4 and 5 of the counter affidavit filed by the appellant Corporation may be of relevance and, hence, they are extracted as follows:

“3. It is submitted that a Press Notification was released in Newspapers on 01.12.2004 for filling up of 70 vacancies of HMV Drivers on contract basis at a remuneration of Rs.2,000/- (Basic) + Rs.100/- daily attendance incentive.

In response to the notification, the petitioners have applied for the said post. Against the requirement of 70 HMV Drivers a panel of 136 HMV Drivers was prepared. It is submitted that the services of the petitioners are utilized by the Corporation as HMV Drivers through Manpower Agency, based on the requirement of operation of tours. It is also submitted that in addition, they are paid D.A. night driving allowances, double duty expenses etc. on par with the regular/contract/manpower agencies Drivers, whenever the duties of petitioners as HMV Drivers are utilized.

4. It is true that they have been working in the Corporation through Manpower Agency since 2005.

5. It is submitted that consequent to the notification, there was ban on recruitment. The Corporation has approached the Government in regard to future recruitment based on the recruitment. It is submitted that in the minutes of the meeting held on 30.05.2005 with the Hon'ble Chief Minister of Andhra Pradesh, instructions were issued to take employees on contract basis for supervisory/managerial category and explore the possibility of outsourcing services below the managerial category as far as possible. Accordingly, services below managerial category are outsourced since then."

Based on the above dissimilarities in the pleadings of the two Corporations in the two Writ Petitions, the learned Advocate-General submitted that the learned Single Judge has not rendered any finding that the facts in the instant case are similar to those in WP.No.18550 of 2014 and that

therefore, the order under Appeal suffers from a serious error.

Mr.G.Vasantharayudu, learned Counsel for the private respondents, submitted that though there is no specific finding by the learned Single Judge that the facts in the instant case are similar to those in WP.No.18550 of 2014, the fact, however, remains that the private respondents are also working as HMV drivers in pursuance of the selection made by the appellant- Corporation following the notification issued in the year 2005 as observed by the Division Bench in WA.No.736 of 2016. The learned Counsel further submitted that the stand of the appellant that the private respondents are outsourced employees is nothing but a smokescreen.

A perusal of the order of the learned Single Judge shows that no discussion has been undertaken and no finding has been rendered, as to whether the private respondents were engaged in pursuance of the employment notification issued in the year 2005 and whether they were being continuously engaged since then through man power agency or not, before relying upon the judgment of the

Division Bench in Writ Appeal No.736 of 2016. In order to place reliance on the judgment of the Division bench in Writ Appeal No.736 of 2016, the Court has to be first satisfied that the facts in both the cases are similar.

As noted herein before, the Telangana Tourism Development Corporation has admitted, in its counter-affidavit, that the petitioners therein have applied in pursuance of the notification issued in the year 2005 and their services were utilised by the Corporation through man power agency. However, in the instant case, the appellant has specifically denied the engagement of the private respondents based on the employment notification issued in the year 2005 and the employer-employee relationship between the Corporation and the private respondents.

In the absence of any findings in favour of the private respondents that they stand on par with the petitioners in WP.No.18550 of 2014, they are not entitled to the same relief as granted in WP.No.18550 of 2014 and confirmed in WA.No.736 of 2016. Therefore, the order under Appeal is liable to be set aside and WP.No.19297 of 2017 is liable to be restored to file for disposal of the case afresh having

regard to the respective pleadings of the parties and the record that may be produced by the appellant.

Mr.G.Vasantharayudu, learned Counsel for the private respondents, submitted that the appellant has disengaged the services of his clients only for the reason that they have succeeded in the Writ Petition.

The learned Advocate-General has submitted that he has no instructions on the above aspect.

In our opinion, when private respondents were stated to have been continued from the year 2005, equity lies in their favour for their continuance till WP.No.19297 of 2017 is disposed of afresh. Accordingly, pending the Writ Petition, the appellant is directed to re-engage the private respondents forthwith on the same basis as they were engaged prior to their discontinuance on the same terms and conditions subject to which they were engaged earlier.

The learned Advocate-General submitted that the private respondents have filed a Contempt Case.

The learned Counsel for the private respondents submitted that he has no objection for withdrawal of the Contempt Case, if they are re-engaged.

Accordingly, the above submission of the learned Counsel is placed on record, Order, dated 03-07-2017, in WP.No.19297 of 2017 is set aside and WP.No.19297 of 2017 is restored to file to be heard along with WP.Nos.27211 of 2014, 7863 and 15952 of 2017.

The Writ Appeal is, accordingly, allowed to the extent indicated above.

As a sequel, WAMP.No.2748 of 2017, filed by the appellant for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(Kongara Vijaya Lakshmi, J)

Dt: 23rd October, 2017
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