

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.17672 of 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the writ petitioner, an employee of Central Power Distribution Company of Andhra Pradesh Limited ('APCPDCL', for brevity), is filed seeking to declare the order viz., C.O.O (Comml.) Ms.No.294, dated 10.08.2007, issued by the 3rd respondent as illegal, contrary to law, arbitrary and against the principles of natural justice and as one made without jurisdiction and consequently set aside the same and pass such other order or orders as this Court may deem fit and proper in the circumstances of the case.

2. I have heard the submissions of *Sri D.V.Stharama Murthy*, learned senior counsel appearing for *Sri N.Ashwini Kumar*, learned counsel appearing for the petitioner, and of *Sri R.Vinod Reddy*, learned Standing Counsel appearing for the respondents. I have perused the material record.

2.1 Be it noted that by orders, dated 20.04.2017, passed in WPMP NO.17276 of 2008 and WPMP No.17344 of 2017, the 4th and 5th respondents are permitted to be impleaded as respondents 4 and 5 in the writ petition.

3. From the pleadings of the parties and the submissions made before this Court, the facts that emerge for consideration, in brief, are as follows:

The petitioner acquired the degrees of Bachelor of Engineering (B.E.) from Osmania University and Master of Business Management (MBM) from Indian Institute of Technology (IIT), Khargapur. The petitioner also completed Ph.D., in the field of Spatial Information Technology from JNTU, which is yet to be conferred. The petitioner was selected and appointed as 'Under Manager' under E-1 Grade of the Singareni Collieries Company Limited (hereinafter, 'SCCL', for brevity) in the year 1991. Thereafter, he was promoted to E-II

Grade in the year 1992 and to E-III Grade in the year 1998. In the year 1999, the post of the petitioner was re-designated as Project Manager (Software Development). Again, he was selected and appointed to the post of E-V Grade in the year 2001. The said E-V Grade post is equivalent to the post of Superintending Engineer. While the petitioner was working in the SCCL, at the request of the 1st respondent, that is, APCPDCL, the petitioner was transferred to APCPDCL as General Manager (IT Services) with effect from 25.10.2004 and since then, the petitioner has been working for the 1st respondent-Company (APCPDCL). He did number of innovative works and projects especially in the field of Enterprise Resource Planning etcetera. He was nominated as member of the Steering Committee to oversee implementation of E.R.P., in AP TRANSCO. The petitioner was also the Techno-Functional Consultant for all State Power Distribution Companies. While the matter stood thus, the 1st respondent-Company, with a view to absorb petitioner's services on permanent basis to stabilize the various I.T., initiatives and to strengthen the I.T., Wing, addressed a letter, dated 04.06.2007, to SCCL requesting to give willingness to absorb his services into APCPDCL. Accordingly, his parent organization/ SCCL gave willingness *vide* their letter, dated 12.07.2007. Thereafter, the Board of the 1st respondent-Company *vide* resolution No.26, resolved to absorb the services of the petitioner into the post of General Manager (IT). Pursuant to the said resolution, the 2nd respondent, who is the Managing Director of the 1st respondent-Company, issued orders, dated 30.7.2007, absorbing the petitioner as a General Manager (IT) of the 1st respondent-Company with immediate effect and on the same day, that is, 30.07.2007, the petitioner gave acceptance and became the employee of the 1st respondent-Company. Consequently, the existing lien of service of the petitioner in SCCL, was cancelled. The 3rd respondent, that is, the Director (HR & Comml.), APCPDCL, passed orders, dated 10.08.2007, which are impugned in the writ petition, canceling the orders of absorption, dated 30.07.2007, with immediate effect.

However, in the said orders, it was further stated that the petitioner shall continue to work on deputation. Aggrieved thereby, the petitioner filed this writ petition. Be it noted that the petitioner is continuing in the services of APCPDCL, pursuant to the interim suspension orders granted by this Court, on 21.08.2007, in WPMP No.26226 of 2007.

4. In this setting of background facts, the case of the petitioner and the submissions made on his behalf are as follows:

The impugned order, dated 10.08.2007, is contrary to law, illegal, arbitrary and against the principles of natural justice. Before passing the said impugned orders, the petitioner was not given any notice and no explanation was called for. No reasons are assigned for canceling the earlier order of absorption. The respondent authorities have no jurisdiction to pass the impugned order. Once the service of any person is absorbed into the 1st respondent-Company, such service shall be dealt with only as per the provisions of the Conduct, Discipline and Appeal Rules of the said Company. The respondents have not followed any such procedure. The 1st respondent-Company after obtaining willingness from the parent organization of the petitioner, that is, SCCL, absorbed his services into their company, i.e., APCPDCL, and as a consequence, his lien over his post in the parent organization came to an end. However, the impugned order mandates that the petitioner shall be continued on deputation. The 1st respondent-Company, in view of the petitioner's qualifications, knowledge and experience, took the services of the petitioner on deputation on their own from SCCL, and thereafter absorbed his services on their satisfaction and out of necessity. Under such circumstances, the respondents are not justified in canceling the orders of absorption. The absorption of the petitioner into the 1st respondent-Company is as per the decision taken by the Board; and, the Board has not taken any decision to cancel his absorption. The impugned order is without

jurisdiction and arbitrary and the same is liable to be set aside. Hence, the writ petition may be allowed.

5. The respondents while not disputing the chronological events and facts would only say in their counter that the orders cancelling the absorption and directing that the petitioner shall continue on deputation were issued for administrative reasons.

6. I have given earnest consideration to the facts and submissions.

7. The undisputed facts are as follows:

The APCPDCL, vide its letter No.CGM (HRD)/ DS (Per)/ As (Per)/ Po-B/ D.No.1225/ 04, dated 29.09.2004, has informed the SCCL that APCPDCL is keen on strengthening the existing IT set up by inducting personnel with "Hands on experience" in IT system implementation. Accordingly, a request was made to spare the services of the petitioner, Project Manager (IT), SCCL on deputation basis for an initial period of two years for utilization of his services as General Manager (IT) on usual terms of deputation applicable to the employees of Government of AP undertakings. The SCCL, vide its letter in Ref. No.CRP/ PER/ C/ 26/ 4472, dated 23.10.2004, has placed the services of the petitioner at the disposal of APCPDCL on deputation for a period of two years for appointment as General Manager (IT) and accordingly, he was relieved of his duties in SCCL, on 23.10.2004, and he assumed charge as General Manager (IT) in APCPDCL with effect from 25.10.2004 FN on deputation basis. His deputation with APCPDCL was extended for a further period of two years with effect from 25.10.2006, that is, up to 24.10.2008. The APCPDCL, vide its letter dated, 04.06.2007, informed the SCCL that the services of the petitioner are required on a continual basis for stabilizing the various IT initiatives in future, instead of drafting his services on deputation and proposed to absorb his services in APCPDCL on a permanent basis to strengthen the IT wing for delivering services effectively and sought for the concurrence of SCCL. The

Chairman & Managing Director, SCCL, vide Ref. No.CRP/ PER/ C/ 13/ 1515, dated 12.07.2007, has informed that they have no objection for permanent absorption of the services of the petitioner in APCPDCL and requested to issue necessary orders from their end. Accordingly, as per the resolution No.26 of the APCPDCL Board, orders were issued, vide C.O.O (CGM-Comml) Ms.No.275, dated 30.07.2007, permanently absorbing the services of the petitioner from SCCL, into APCPDCL with effect from the date of his acceptance of the terms and conditions given in the above said C.O.O. The petitioner, vide his letter, dated 30.07.2007, has given his acceptance for the terms and conditions in the C.O.O. (CGM-Comml) Ms.No.275, dated 30.07.2007, and submitted for duty as General Manager (IT), APCPDCL on that day, i.e., 30.07.2007 AN. Therefore, his services are permanently absorbed in APCPDCL with effect from 30.07.2007 AN as GM (IT). While so, by order, dated 10.08.2007, impugned in the writ petition, the 3rd respondent, Director of APCPDCL, issued orders canceling the orders of absorption, dated 30.07.2007, with immediate effect. In the said orders, it is stated that the petitioner shall continue to work on deputation in accordance with the usual terms and conditions contained in the letter No. CGM (HRD)/ DS (Per)/ As (Per)/ Po-B/ D.No.1225/ 04, dated 29.09.2004.

8. Thus, the APDPDCL first made a request to spare the services of the petitioner, Project Manager (IT), SCCL, on deputation basis initially for a period of two years. The SCCL agreed for the same. Thereafter, he was relieved of his duties in SCCL, on 23.10.2004, and he assumed charge as General Manager (IT) in APCPDCL with effect from 25.10.2004 FN on deputation basis. The deputation was extended. Later, the APCPDCL made a proposal to SCCL to absorb the services of the petitioner in APCPDCL to strengthen the IT wing and for delivering the services effectively. The SCCL expressed no objection for permanent absorption of the services of the petitioner in APCPDCL and later the petitioner was absorbed permanently into the services of APCPDCL and gave his acceptance letter for the terms and conditions of absorption and

joined duty as General Manager (IT), APCPDCL on 30.07.2007 AN. Indeed, the absorption of the services of the petitioner into the post of General manager (IT) of APCPDCL is by virtue of the resolution of the Board of APCPDCL. In the circumstances, the impugned orders, which were issued without any orders from the Board, by the Director, i.e., the 3rd respondent, cancelling the orders of absorption without any reasons much less valid reasons do not stand the test of scrutiny. Under facts and in law, on the absorption of the services of the petitioner and his appointment on permanent basis as General Manager (IT), APCPDCL, his lien on his post in SCCL came to an end and he no longer remained on the rolls of SCCL. In fact, consequent on the absorption of the petitioner into the services of APCPDCL from 30.07.2007, the name of the petitioner is removed from the rolls of SCCL with effect from 30.07.2007, as per the Office Memo, dated 16.10.2007 issued by the Additional GM (Personnel)/ EE of SCCL. Further, the respondents failed to plead and establish any reasons much less valid reasons in support of their action in cancelling the absorption of the petitioner.

9. On the above analysis, this Court finds that the order impugned in the writ petition being illegal, arbitrary and contrary to law and principles of natural justice is liable to be set aside.

10. In the result, the Writ Petition is allowed, as prayed for.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, in this writ petition shall stand closed.

28th April, 2017
RAR

M. SEETHARAMA MURTI, J