

HON'BLE SRI JUSTICE P.NAVEEN RAO

**WRIT PETITION NO.16210 OF 2010
AND
CONTEMPT CASE NO.1691 OF 2010**

Date: 21.11.2017

WP No.16210 of 2010:

Between:

Palla Srirama Sanjeevi Rao S/o Venkata Chella Rao,
Aged about 34 years, Shift Operator, 33/11 KV
Kotananduru Sub-Station, APEPDCL, R/o.D.No.3-11,
Kotananduru, East Godavari District and others.

.... Petitioners

AND

The A.P.Eastern Power Distribution Company Limited
(APEPDCL), Visakhapatnam, rep.by its Chairman and
Managing Director and another.

.... Respondents



The Court made the following:

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COMMON ORDER:

When these matters were called in the forenoon session, request was made for adjournment. Having regard to the claim made by the petitioners in the orders passed by the respondents, request for adjournment was not granted and at request matters were passed over to take up in the afternoon session. In the afternoon session, when the cases are called, there is no representation for the petitioners.

2. Heard learned counsel representing Andhra Pradesh Eastern Power Distribution Company Limited (APEPDCL).

3. The A.P.Eastern Power Distribution Company Limited issued recruitment notification on 08.06.2006 and amended notification was issued on 20.10.2006 notifying the vacancies of Contract Junior Linemen. The notification prescribed possession of qualifications and method of selection. Two clauses which are relevant for consideration are; (1) Para-6 (iv) (c), which reads, if more than one contract labour apply for the post, the contract labour with earlier date of birth will be given preference for selections; and (2) para- 6(iv) (d), which reads, if there are any fresh candidates, who applied for the post, the marks obtained in the qualifying examination will be the criteria for selection.

4. Various clauses of recruitment notification were challenged before this Court in batch of writ petitions. Writ petitions were disposed of by giving several directions by the learned single

Judge. Aggrieved by the said directions, Management of Electricity Distribution/Operation/Generation Companies filed Writ Appeals. The Division Bench of this Court modified the directions issued and also disposed of the writ appeals after taking note of the undertaking given on behalf of the appellants. This writ petition is filed contending that petitioners are similarly situated and they are also entitled to the benefit extended by the Division Bench.

5. This Court by order dated 09.07.2010 directed consideration of the case of petitioners for appointment as Contract Junior Lineman in terms of the judgment in W.A.No.1434 of 2008 and batch dated 10.11.2009, if the petitioners are otherwise eligible as per law within a period of four weeks.

6. Alleging violation of the said directions, petitioners filed C.C.No.1691 of 2010.

7. One of the conditions, which was extensively debated before this Court in the earlier round of litigation, was the clause dealing with preference based on the date of birth of the contract labour [clause 6 (iv)(i)]. Learned single Judge did not concur with the employers' view in giving such preference and directed to assign weightage of marks. Division Bench also held para-6 (iv) (c) should not be applied.

8. In the counter-affidavit filed by the respondents, it is categorically asserted that in the Operation Circle, Rajahmundry, where petitioners raised the issue of giving priority basis on the date of birth for the Contract Junior Linemen, application of clause 6 (iv) (c) did not arise as there was no requirement to apply the

clause as no two candidates with same date of birth is applied. Thus, insofar as the Operation Circle of Rajahmundry is concerned, para-6 (iv) (c) recruitment notification has no application. It is further contended that petitioners who were engaged as Shift Operators only after the recruitment process in pursuant to the notification issued in June, 2006 and, therefore, they were not the persons who were already working as contract labour to grant any preference to them, even according to the clause 6 (iv) (c). According to the respondents, petitioners were treated as fresh candidates and their eligibility was assessed based on the performance in qualifying examination and in the selections finalized, no candidate who secured less marks than the petitioners in the respective social categories to which they belong were appointed. In paragraph-5 of the counter-affidavit, the cut-off marks secured, candidates selected in various social categories and marks secured by the petitioners were tabulated. It is, thus, contended that petitioners have not come up for selection.

9. Learned standing counsel further contended, by relying on the averments in the counter-affidavits filed in the writ petition as well as in the contempt case, that the eligibility of the petitioners was considered after interim orders of the Court and having found that petitioners did not secure the requisite merit for selection, they were not selected and, therefore, directions of this Court are not violated.

10. The stand of the respondents in the counter-affidavits filed in the writ petition as well as in the contempt is not denied.

11. In view of the assertion of the respondents that petitioners were not existing contract labour as on the date of notification and they were engaged as Shift Operators on contract basis after initiation of the recruitment process during the year 2006, the clause 6 (iv) (d) is attracted. The tabulated statement in paragraph-5 of the counter-affidavit would disclose that none of the petitioners secured same marks or more than the marks secured by the last selected candidate in the respective social groups as per the conditions of recruitment. Thus, petitioners have not come up for selection. It is further seen from the averments in the counter affidavit that there was no other candidate having same date of birth or earlier date of birth vis-à-vis their eligibility and, therefore, the clause 6 (iv) (c) is not attracted. Be that as it may, since petitioners were treated as fresh candidates, their selection is governed by clause 6 (iv) (d) and since they did not secure the required merit for consideration, invocation of clause 6 (iv) (c) is not attracted and, therefore, petitioners cannot rely upon the decision rendered by the Division Bench to claim employment without regard to their merit as required in accordance with the recruitment notification.

12. The prayer sought in the writ petition was to direct the respondents to consider the candidature of petitioners to appoint as Junior Linemen by taking into their services as Contract Labour in view of the undertaking given by the respondents before the Division Bench of this Court. As already noticed above, this Court directed consideration in terms of the Division Bench directions and petitioners were considered and as they did not secure

relevant merit, they were not selected. Thus, no relief as sought for can be granted in the writ petition. Writ petition is liable to be dismissed and is accordingly dismissed.

13. Since the direction of this Court was to consider in accordance with the directions of Division Bench of this Court in Writ Appeal No.1434 of 2008 and batch, dated 10.11.2009 and such consideration was given and in the recruitment process as petitioners did not secure the merit required, they were not selected and, therefore, it cannot be said that respondents have violated the directions of this Court warranting initiation of proceedings under the Contempt of Courts Act. Contempt Case is accordingly closed.

Miscellaneous petitions if any pending in the above cases shall stand closed. There shall be no order as to costs.

Date : 21.11.2017
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JUSTICE P.NAVEEN RAO

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