

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.3881 of 2007

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, by the petitioner is filed to direct the 1st respondent to absorb the petitioner in vacant sanctioned post of Driver or Cleaner.

2. I have heard the submissions of *Sri S Ravindranath*, learned counsel appearing for the petitioner, and of *Sri M. Ravindra*, learned Standing Counsel appearing for the respondents. I have perused the material record.

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

The petitioner is working as a Contract Labour driver in the organization of the respondents from 01.07.1999 till the date of filing of the writ petition. He is driving a jeep bearing registration No. AP 31 C 1079 of the respondents and he is discharging his duties under the exclusive control of the 3rd respondent, Superintending Engineer (Detection of Pilferage Energy Section), Visakhapatnam. He was initially paid Rs.2,500/- per month. However, as on the date of the filing of the writ petition, he is getting Rs.3,654/- per month. Besides the said wage, he is also being paid Travelling Allowance whenever he is going out of Vizianagaram, on official duty. He holds a valid driving licence. He passed 10th class and belongs to BC 'D' community. The Divisional Engineer concerned sent a monthly return to the 3rd respondent, Superintendent Engineer, showing that one post of Jeep Driver is vacant and it carries a salary of more than Rs.12,000/- per month. The petitioner is eligible to be appointed to the said post, as he is working as a contract labour driver in the very same sanctioned post since 1999. There are also two posts of Cleaner in Bobbili and one at Nellimerla town. The said posts are also vacant. The petitioner can be considered for appointment to

any one of the said posts considering his long length of unblemished service. The petitioner also submitted an application to the 4th respondent, Divisional Engineer, for consideration of his case to the post of Junior Lineman or Driver and the same was forwarded, on 18.07.2006, by the 3rd respondent to the 4th respondent and the said request is pending consideration with the said respondent. The petitioner also made a representation for enhancement of his wage and his request was granted and his wage was enhanced from Rs.3,020/- to Rs.3,654/- with effect from 01.04.2006. The cases of similarly placed employees are directed to be considered by the respondents for appointment to the suitable post. The petitioner is also seeking similar directions in the present writ petition.

4. The case of the respondents, as stated in the counter of the 3rd respondent, in brief, is this:

Due to non-availability of departmental driver and to avoid inconvenience to the department's works, it was proposed to engage private driver on contract basis. Accordingly, duly following department's Rules, agreement was awarded to the petitioner to supply one Driver to the department for driving the vehicle of the Department. Instead of supplying a driver, the petitioner/contractor himself used to drive the vehicle as he possessed valid driving licence. Payments were made to him as per the Rules in vogue. The Supreme Court considered the scope of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970, and a notification issued there under by the Government prohibiting employment in any category or categories of employment in any industrial establishment and held that the principal employer cannot be required to order absorption of the Contract Labour working in the concerned establishment. Therefore, the concept of automatic absorption of the Contract Labour is impermissible. In AP Transco, and erstwhile APSEB, Civil & Electrical works and maintenance

works were being entrusted on contract basis under unit rate duly calling for Open/ Limited Tenders and such works were being awarded to lowest tenderer by not exceeding the approved schedule of rates. The Transco is under an obligation to arrange payment for the quantum of work done and there is no connection with the contract labour. It is a clear stipulation in the agreement conditions. Further, the works will be awarded to different contractors from time to time on competitive rates accepted as per rules. There is no scope to continue the same contractors. The writ petition is devoid of merit and is liable to be dismissed.

5. Learned counsel for the petitioner and the learned Standing Counsel for the APEPDCL made submissions in line with the contentions of the parties, which are stated supra, in detail.

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

7. It is admitted that due to non availability of the driver of the Department, the respondents were required to engage the services of a Driver to drive the vehicle of the Department to avoid inconvenience to the Department's works. Therefore, the contract agreement was awarded to the petitioner to supply one Driver. Instead of supplying a Driver, the petitioner himself, who is a contractor, drove the vehicle of the Department as he held a valid driving licence. It is also admitted that he was being paid consolidated salary and his salary was increased from time to time. Now, the petitioner seeks his absorption into a regular sanctioned post of a Driver. He alternatively seeks appointment to any post of 'cleaner', which is vacant. According to him, post of Cleaner is vacant at Bobbili and Nellimerla offices. He further submits that his case may be considered on par with other contract

workers whose cases were considered by the respondents, pursuant to the orders of this Court.

8. However, the learned Standing Counsel for the Corporation would submit that the petitioner is a contractor and that his services were engaged by means of an agreement entered into with the respondents for supply of a Driver and that instead of supplying a Driver, he himself worked as a Driver on the jeep of the respondents and that he being a contractor, an outsourced employee, he is not entitled to be absorbed into any post much less, the post of a Driver in view of the procedures to be followed for recruitment and the ratio in a decision of the Supreme Court. He would also submit that at present, the vehicle is delivered to the Stores Department and the vehicle is not with the respondents and, therefore, there is no need to engage the services of a Driver.

9. In reply, learned counsel for the petitioner brings to the notice of the Court the order of this Court in W.P.No.8975 of 2005, the copy of which was filed along with the material papers. The said writ petition was filed by the petitioners therein seeking a direction to the respondents to consider the cases of the petitioners for absorption or appointment as LMD drivers in view of their length of service in operation circle of APEPDCL. During the pendency of the said writ petition, a request was made to consider the case of the petitioners therein in terms of the judgment, dated 22.06.2004, of this Court in Writ Appeal No.181 of 2001. This Court, having considered that the issue raised by the petitioners in the said writ petition is covered by the judgment in the writ appeal, disposed of the said writ petition in terms of the judgment of this Court in the Writ Appeal. A perusal of the copy of the judgment in Writ Appeal No.181 of 2001 would show that the facts of the cited case are as follows: 'The writ petitioners, who were working as drivers on contract basis for the last 10 years, claimed that they are entitled to be

appointed as Junior Lineman since they fulfilled the criteria laid down in various proceedings including B.P.Ms.No.36, dated 18.05.1997. Later, the petitioners therein filed a miscellaneous petition seeking direction to the 1st respondent in the said writ petition, that is, APSEB, requesting to absorb them as Drivers on regular basis in the APSEB. The Board contended that there are no vacancies to the post of Driver in the organization and stated that as the absorption of the petitioners will not fall under the category of B.P.Ms.No.36, they are being continued without absorbing them in the regular posts of drivers.' In the stated factual backdrop, this Court held that it finds no reason to grant the relief sought for by the writ petitioners therein and disposed of the appeal directing the appellants to consider the cases of the respondents-writ petitioners for absorption whenever regular vacancies arise, if they are otherwise eligible.

10. In view of the facts, which are taken cognizance and the admitted facts that the petitioner's services were engaged as contract labour Driver and as his absorption into the regular post is impermissible, it follows that he is not entitled to the relief sought for in the writ petition.

11. In the result, the writ petition is dismissed giving liberty to the petitioner to submit a representation to the respondents to consider his case for absorption whenever regular vacancies arise, if he is otherwise eligible for such absorption or to consider his case for appointment in any suitable post, as per recruitment procedure, in case he is willing to opt and participate in such recruitment procedure and qualifies for appointment. It is needless to state that the respondents shall deal with the either the representation or the application for appointment, if any, submitted by the petitioner, in strict accordance with the procedure and as per his eligibility.

Pending miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

25th April, 2017
RAR

M. SEETHARAMA MURTI, J

