

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION No.6379 of 2005

Date:19.07.2017

Between:

T. Rakesh Kumar

...Petitioner.

AND

The Chairman,
AP Genco, Vidyut Soudha,
Hyderabad and others.

...Respondents.

The Court made the following :



THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY**WRIT PETITION No.6379 of 2005****ORDER:**

This Writ Petition is filed to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the impugned action of the respondents in issuing the impugned proceedings vide Lr.No.CEE/O&M/KTPS/V/PO/Adm/W.P.22618/99 /D.No.408/2000, dated 12-1-2000 as highly illegal, arbitrary and violative of Article 14 of the Constitution of India.

2. The case of the petitioner herein is that he passed ITI in the Trade of Fitter with 523 marks out of 700. He has undergone Apprenticeship Training in KTPS, Paloncha from 14-11-1995 to 13-11-1996 apart from that he worked as a contract labour. The respondents have issued notification, dated 02-02-1999, notifying 222 posts of Junior Plant Attendants (JPA) in various Trades i.e., Electrician/Wireman – 107 posts, Turner/Fitter/Welder – 100 posts and Mechanic & Electronics – 15 posts. The petitioner is eligible for appointment as a Fitter. The petitioner applied for the post of Fitter, in which, the respondents issued Call Letter vide letter No.CEE/O&M/KTPS/V-Stage/PO/Adm/F.33/D.No.3848/99, dated 25-10-1999 and the petitioner was interviewed on 17-11-1999. The petitioner filed W.P.No.22618 of 1999 seeking preferential treatment in view of the Judgment of Hon'ble Supreme Court and the same was disposed of on 18-11-1999, directing the respondents to consider the case of the petitioner for appointment to the post of JPA on preferential basis. The petitioner was under hope that he will be getting employment in view of the merit marks added with the Apprenticeship Training Preference, but he was shocked to receive the

impugned proceedings issued by the second respondent vide proceedings Lr.No.CEE/O&M/KTPS/V/PO/Adm/W.P.No.22618/99/D.No.408/2000, dated 12-1-2000, wherein it was stated that the petitioner has failed to secure equal or more number of marks than the candidates selected for appointment to the post of JPA for which the petitioner has applied.

3. That the respondents have selected nearly 34 candidates in various trades and appointed five candidates in the Trade of Fitter and two candidates in the Trade of Welder, who secured less marks than the petitioner. The petitioner also came to know that, subsequently the respondents have also resorted to appoint 84 candidates in various posts of JPA in pursuance of the very same notification during that time also, the petitioner was not taken into consideration and suppressing the above facts and issuing the impugned proceedings vide Lr.No.CEE/O&M/KTPS/V/PO/Adm/W.P.No.22618/99/D.No. 408/2000, dated 12-01-2000, is nothing but flouting the orders in earlier W.P.No.22618 of 1999. As the petitioner was given liberty, he filed the present writ petition challenging the proceedings in Lr.No.CEE/O&M/KTPS/V/PO/Adm/ W.P.No.22618/ /D.No.408/2000, dated 12-01-2000.

4. Counter affidavit is filed by the second respondent.

5. It is stated in the counter affidavit that in pursuance of the notification, dated 02-02-1999, 5142 applications were received for the post of JPA and the interviews were conducted on 05-11-1999 to 25-11-1999 including the petitioner on 17-11-1999 on 09:30 A.M., by the Selection Committee constituted for the post of JPA in the Fitter Trade with call letter No.3848. The petitioner as an 'OC' candidate had secured a total marks of 70.24 in the interview and marks of the

last candidate, who got appointment to the said post in the Fitter Trade and in OC community was 80.81. While so, the management has considered the request made by one of recognized unions in the respondent-corporation for awarding weightage marks between 30% to 40% depending upon their work experience in respect of 112 Contract Labours worked under direct control of field official. Accordingly, orders were issued in Memo.No.JS(P)/DS(P)AS(Per.I)/100-A1/99, dated 06-10-1999. Aggrieved by the same, some of the candidates have filed W.P.No.23439 of 1999 & batch before this Court. An interim order dated 23-11-1999 was granted in WPMP No.29418 of 1999 in W.P.No.23439 of 1999 and the selections and appointments were made pursuant to the notification dated 02-02-1999, subject to further orders.

7. It is stated that as per the interim direction in WPMP No.29148 of 1999 in W.P.No.23439 of 1999, 217 candidates were appointed to the post of Junior Plant Attendants, wherein including 34 candidates have been granted the weightage marks as per Memo No.JS(P)/DS(P)/AS(Per.I)/100-A1/1999, dated 06-10-1999. In pursuance of the orders passed vide order dated 18-11-1999 in earlier W.P.No.22618 of 1999, speaking orders were issued to the petitioner vide proceedings Lr.No.CEE/O&M/KTPS-V/PO-Adm/W.P.No.22618/99/D.No.408/2000, dated 12-01-2000, informing the that his case was examined and found that he has failed to secure equal or more number of marks than the candidates selected for appointment to the post of JPA. The said speaking orders became final. W.P.No.23439 of 1999 & batch was disposed of by a common order dated 06-10-2000, by quashing the memo 06-10-1999, restricting the weightage at 10%. In view of the directions of this Court in W.P.No.23439 of 1999 & batch, the respondents appointed

24 (Twenty Four) eligible candidates to the post of JPA vide memo No.GM(A)/DS(P)/AS/100-A/1999, dated 13-12-2000 and certain candidates have filed batch of Contempt Cases in C.C.No.110 of 2001 & batch alleging that the respondent-Corporation appointed 7 (seven) Sub-Engineers and 24 JPAs in violation of the orders, dated 06-09-2000, passed in W.P.No.23439 of 1999 and the same were disposed of by a common order passed in C.C.No.110 of 2001 & batch, which reads as follows:-

“As most of the contract labour, who are not the petitioners in the earlier Writ Petitions, have now approached this Court by way of filing Contempt Cases and much water has flown from the date of judgment i.e., 06-09-2000. I feel that no purpose will be served in directing the respondent Corporation to issue a fresh notification and invite applications afresh. Hence, I would like to limit the consideration for the persons who are working as contract labour and approached this Court by way of filing Writ Petitions and the contract labour who have now approached this court by filling contempt Cases only. The respondent corporation shall consider the claims of all these individuals by process of selection and after preparing the merit list, appointments may be made duly observing the rule of reservation in favour of the reserved categories. It is further clarified that the consideration is limited to the contract labour who worked or are working in KTPS only and their age has to be reckoned from the date of their first engagement.”

8. It is stated that the petitioner herein had filed W.P.No.2840 of 2002 before this Court challenging the action of the respondents in selecting the candidates with less number of marks than the petitioner for the post of JPA in pursuance of the notification, dated 02-02-1999, in the guise of Memo dated 06-10-1999 and further action in not considering the petitioner herein for the said post in spite of his merit marks by not applying the Judgment of this Court reported in 2000 (6) ALD 56 (i.e.,) (W.P.No.23439 of 1999 & batch, dated 06-09-2000). The same was disposed of by a common order dated 11-04-2002 in W.P.No.494 of 2002 & batch and certain

candidates in W.P.No.494 of 2002 & batch have filed W.A.No.971 of 2003 challenging the said order dated 11-04-2002 and the same was dismissed on 14-07-2003. It is submitted that the petitioner filed Contempt Case vide C.C.No.321 of 2004 in W.P.No.22618 of 1999 for violations of the orders passed in W.P.No.22618 of 1999, which was also closed by order dated 24-04-2002. It is stated that the petitioner suppressed the fact of filing W.P.No.2840 of 2002 and on that ground itself, the writ petition is liable to be dismissed.

9. The learned counsel for the petitioner submitted that the petitioner obtained 523 marks out of 700 marks in ITI Fitter Grade, but the respondents appointed the persons who secured lesser marks and though the petitioner filed W.P.No.22618 of 1999 and there was a direction to the respondents to consider the petitioner for appointment to the post of Junior Plant Attendant on preferential basis, the respondents have rejected the case of the petitioner vide impugned proceedings **Lr.No.CEE/O&M/KTPS/V/PO/Adm/W.P.No.22618/99/D.No.408/2000**, dated 12-1-2000, which is illegal and erroneous. He submits that memo dated 06-10-1999 was issued and subsequent notification dated 02-02-1999 and the same cannot be applied to the present notification. Even challenging the memo dated 06-10-1999, W.P.No.23439 of 1999 was filed, in which the weightage was reduced to 10% in respect of the contract labours, the respondents have made appointments in 2003, without mentioning the marks and in those selections also, the petitioner's case was not considered.

10. On the other hand, Sri G. Vidya Sagar, learned Senior Counsel appearing for the respondents submits that in the notification dated 02-02-1999 itself, there was an indication that interviews will be

conducted, the petitioner participated in the interview, in which 90% marks obtained from ITI and 10% marks were taken into consideration, and the petitioner did not get equal or more marks than the persons selected as stated in the counter. Though the memo dated 06-10-1999 was issued, the weightage marks were reduced to 10%. He further submits that the writ petition is also liable to be dismissed for suppression of facts about the filing of Writ Petition No.2840 of 2002, by the petitioner. Learned senior counsel relied on a decision of Hon'ble Supreme Court in reported in **K.D. SHARMA vs. STEEL AUTHORITY OF INDIA LIMITED AND OHTERS**¹.

11. In view of the directions in W.P.No.23439 of 1999 and directions in C.C.No.110 of 2009, appointments were made regarding contract labours. In fact, he submits that though notification dated 02-02-1999 was issued for filling up of 225 of posts of JPA, in fact 314 candidates were appointed in excess of the notified vacancies, because of orders in W.P.No.23439 of 1999 and orders in C.C.No.110 of 2001 & batch. He submits that the petitioner has not made the persons, who were less meritorious than the petitioner, as parties to the writ petition and unless their appointments are set aside, the petitioner cannot be accommodated as such, the petition is liable to be dismissed for non impleadment of the affected parties.

12. It is seen that the petitioners filed W.P.No.2840 of 2002 with the following prayer:-

“Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein in the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the impugned action of the respondents in selecting the candidates with less number of marks than the petitioner for the post of Junior Plant Attendant in

¹ (2008) 12 Supreme Court Cases 481

pursuance of the notification dated 22.99 in the guise of Memo dated 6.10.99 and further action in not considering the petitioner herein for the said post in spite of his merit marks by not applying the judgments of the Hon'ble Court reported in 2000 (6) ALT 50, dated 6-9-2000 just on the ground that the petitioners had not approached this Hon'ble Court as highly illegal and arbitrary and consequently direct the respondents to consider the petitioner also to the post of JPA as per the judgment of this Hon'ble Court made in W.P.No.23439 of 1999 and batch dated 06-09-2000."

13. Now the grievance of the writ petitioner is that less meritorious candidates were given appointments as mentioned in Paragraph No.8 of W.P.No.2840 of 2002 to the post of Fitter, though the petitioner secured high marks. The grievance in the present writ petition is almost same as in W.P.No.2840 of 2002 and in the second part of the prayer, he is seeking for direction for applying judgments in W.P.No.23439 of 1999, dated 06-09-2000. The said writ petition was dismissed on merits along with the batch of writ petitions by order dated 11-04-2002.

14. Admittedly, the filing of the W.P.No.2840 of 2002 is suppressed by the petitioner and the writ petition is liable to be dismissed on the ground of suppression of facts. In **K.D. SHARMA vs. STEEL AUTHORITY OF INDIA LIMITED AND OTHERS¹**, the Apex Court held as follows:-

"The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to pick and chose" these facts he likes to disclose and to suppress (Keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all

the facts having a bearing on the relief sought without any qualification. This is because “the court knows law but not facts”.

If the primary object as highlighted in Kensington Income Tax Commrs. is kept in mind, an applicant who does not come with candid facts and “clean breast” cannot hold a writ of the court with “soiled hands”. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material fact fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the Court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.”

15. One more aspect is that the impugned orders are passed in the year 2002, though the learned counsel argued that the said impugned order served only in pursuance of the orders in the Contempt Case, after filing C.C.No.321 of 2004, but in the writ petition, there is no mention about the same and in view of the same, the writ petition is liable to be dismissed not only on the ground of suppression of facts, but on the ground of laches. In fact the petitioner is aware of the orders dated 11-4-2002 in W.P.No.23439 of 1999 that is the reason, he has filed W.P.No.2840 of 2002, which was also dismissed.

16. In view of the same, the learned Senior Counsel stated that appointments were made in pursuance of the directions in W.P.No.23439 of 1999 and C.C.No.110 of 2000, wherein directing the respondents to limit the recruitment to the petitioner therein and the present petitioner sought the same relief in W.P.No.2840 of 2002 that was negated by this Court, which became final. Though the petitioner mentioned the names of the candidates, who were selected having less marks than the petitioner and the names have been referred in the body of the writ petition and in the counter affidavit,

they are not made parties in the writ petition. In view of the facts and circumstances, the other contentions of the petitioner need not be gone into.

17. Accordingly, the writ petition is dismissed. No costs.

18. As sequel, miscellaneous petitions, if any, pending in this writ petition, shall stand dismissed.

JUSTICE A. RAJASHEKER REDDY

Date:19.07.2017

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