

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.7910 OF 2010

Dated:31.10.2017

Between:

J. Nagaiah, S/o. Iladaiah,
Aged about 42 years, Occ: Operator,
(Contract Labour), 33 KV SLBC
Sub Station, G.V. Gudem,
R/o. Chintalabai Village,
Nalgonda Mandal and District

.. Petitioner

AND

The Government of Andhra Pradesh, rep., by its
Special Chief Secretary to Government,
Energy Department, A.P. Secretariat,
Hyderabad and others

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION No.7910 OF 2010****ORDER:**

Heard.

2. Petitioner was appointed as Contract Labour on 01.06.2001. While petitioner was working in the same capacity, recruitment notification was issued on 08.06.2006 to fill the posts of Junior Linemen on contract basis. On 20.10.2006 modified notification was issued. Petitioner participated in the selection process conducted pursuant to the said recruitment notifications. In the pole climbing test held on 05.06.2007, the petitioner did not participate on the ground that he met with an accident on 20.05.2007, while discharging his duties and sustained injuries due to electric shock.

3. Petitioner filed W.P.No.27850 of 2007 aggrieved by not subjecting him to pole climbing test for being considered to the posts notified on 08.06.2006 and 20.10.2006. Reliance was also placed on the letter written by the Executive Engineer to the Head Office seeking instructions about the persons who could not attend the pole climbing test due to injuries sustained by them while on duty.

4. In the counter affidavit, the claim of the petitioner was opposed on the ground that passing of pole climbing test is essential condition for recruitment to the post of Junior Lineman and as the petitioner did not clear the same, he was not considered

for employment. It was also categorically asserted that all the vacancies notified were filled up.

5. The Court observed as under:

“... A perusal of the notification dated 08.06.2006 discloses that, pass in Pole Climbing Test is an essential condition. In fact, that is the only physical test to be conducted, and the rest of the selection procedure was, verification of the record and experience. It may be true that the petitioner could not take part in the Pole Climbing Test, on account of the injuries sustained by him, at the relevant point of time. This Court would have considered the feasibility of directing the respondents to conduct fresh test for the petitioner, but for the fact that all the vacancies notified in the circle, were filled up. When the learned counsel for the petitioner pointed out that the future vacancies are also being filled up with the candidates already empanelled, in pursuance of the notification, dated 08.06.2006, learned Standing Counsel clarifies that the future vacancies would be filled only by inviting applications, and not from the remaining panel, prepared in pursuance of the notification dated 08.06.2006.”

6. Accordingly, the Writ Petition was disposed of by order dated 23.07.2008 directing the respondents that as and when respondents take up the recruitment to the posts of Junior Linemen, the case of the petitioner should be considered in accordance with the prescribed procedure. This order has become final.

7. While so, similarly situated person filed W.P.No.6220 of 2008. The said Writ Petition was disposed of by order dated 01.04.2008 directing the Superintending Engineer to arrange for a pole climbing test to the petitioner therein and in case he passes the same and possesses other qualifications, his case should be

considered for appointment against any existing vacancy of Junior Lineman. Aggrieved thereby, the then Superintending Engineer, APCPDCL, filed W.A.No.1361 of 2008 and the said Writ Appeal was disposed of by judgment dated 04.11.2008.

8. Paragraph No.8 of the said order reads as under:

“... The learned Single Judge has categorically stated in the order under challenge that the case of the petitioner shall be considered subject to pole climbing test either in the existing vacancies or in the vacancies which may arise in the immediate future. Therefore, the contention of the learned counsel for the Corporation that there are no existing vacancies has no merit. The case of the petitioner can be considered in the vacancies which may arise in the immediate future. There is no ambiguity in the order of the learned Single Judge. We do not find any merit in the appeal.”

9. Taking note of the order of this Court in W.P.No.6220 of 2008 and the Judgment of the Division Bench of this Court in W.A.No.1361 of 2008, petitioner submitted representation dated 28.01.2010 stating that there were changed circumstances and the directions issued in the above Writ Petition and the Writ Appeal should also be extended to him.

10. By order dated 17.06.2010 made in W.P.M.P.No.10165 of 2010, the Court directed the respondents to consider and pass orders on the representation submitted by the petitioner on 28.01.2010. It appears, during pendency of the Writ Petition, the respondents passed orders rejecting the request of the petitioner.

11. In the above facts, the issue for consideration is in a narrow compass. Can petitioner seek fresh consideration to posts notified on 08.06.2006 and modified on 20.10.2006.

12. In the selections conducted pursuant to the notifications issued on 08.06.2006 and 20.10.2006, petitioner was not selected. It was the case of petitioner that he could not participate in the pole climbing test as he was suffering from injuries just few days before the test was to be conducted. This was the issue agitated by the petitioner in W.P.No.27850 of 2007. This Court, having taken note of the contention of the petitioner and the stand of the respondents, did not grant the relief of subjecting the petitioner to pole climbing test and considering him to the vacancies notified on 08.06.2006 and 20.10.2006, but directed consideration of the claim of the petitioner for future vacancies as and when recruitment process is taken up. This decision has become final. Thus, merely because some other person prosecuted a similar litigation and directions were issued therein, cannot give rise to a fresh cause of action for the petitioner to claim consideration of his entitlement by subjecting him to pole climbing test, without considering the claims of all other eligible persons. Further, this Court directed consideration of the case of the petitioner only in a fresh recruitment process. As noted above by this Court in earlier Writ Petition filed by the petitioner, all the vacancies were filled up pursuant to the notifications dated 08.06.2006 and 20.10.2006. Thus, the petitioner cannot resurrect a cause on the issue already attained finality, by the order dated 23.07.2008 passed in

W.P.No.27850 of 2007. The relief sought is nothing but amounting to review the earlier decision. Therefore, the relief as sought by the petitioner cannot be granted.

13. Furthermore, once selections are already finalised, no direction to consider can be issued, more so to an individual case without following due process of selection and without considering all other eligible claimants. The direction sought by the petitioner would be amounting to consideration of his case to the exclusion of all others. Hence, no such direction can be granted.

14. Having regard to the fact that the issue of consideration, claiming appointment in pursuance of the notifications, dated 08.06.2006 and 20.10.2006, has attained finality in pursuance of the directions issued by this Court in W.P.No.27850 of 2007, petitioner is only entitled to consideration as and when fresh recruitment takes places. Further, as pursuant to a direction issued by this Court to consider the representation of the petitioner as stated by respondents an order was already passed, this Court is not inclined to keep the Writ Petition pending and grant the liberty to the petitioner to seek amendment to challenge the said order.

15. The Writ Petition is accordingly dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

P. NAVEEN RAO, J

Date:31.10.2017

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