

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.12747 of 2012

ORDER:

In this writ petition, under Article 226 of the Constitution of India, the petitioners are assailing the action of the Andhra Pradesh Power Generation Corporation Limited (APGENCO) in denying them service benefits with effect from 06.12.1996 and the pecuniary benefits with effect from 09.12.1997, as contemplated in B.P.Ms.No.326, dated 14.03.1998, and in computing their services only from their respective dates of absorption in APGENCO as Junior Plant Attendants.

2. I have heard the submissions of Sri G. V. Shivaji, learned counsel appearing for the petitioners, and of Ms. K. Aruna, learned Standing Counsel for APGENCO representing the respondents. I have perused the material record.

3. From the pleadings and submissions, the following facts, which are necessary for consideration, are noticeable.

The petitioners worked as contract labourers in the erstwhile Vijayawada Thermal Power Station from 1989 till their respective dates of regular absorptions in service. While so, the Government issued notification under Section 10 of the Contract Labour, (Regulation of Prohibition) Act, 1970, *vide* G.O.Ms.41, dated 23.09.1996, prohibiting engagement of contract labour in various locations of work. As per the guidelines evolved in this regard, employees, who were engaged in the prohibited category and who were on the rolls as on the date of the notification, are entitled to be considered for absorption. Thereafter, BPMS.No.326, dated 14.03.1998, was issued whereby the contract labour engaged in the abolished categories were to be absorbed into service with effect from 06.12.1996, and were to be given pecuniary

benefits with effect from 09.12.1997. Though the petitioners have been working in prohibited categories, the authorities of the respondent Corporation refused to consider their cases. Therefore, the petitioners approached this Court by filing a writ petition. The said writ petition was disposed of directing the respondents to consider the petitioners cases for absorption as per the scheme. However, *vide* proceedings, dated 25.03.1999, of the 3rd respondent, the petitioners' cases for absorption were rejected on simple reason that the petitioners worked as leave reserves. Therefore, the petitioners again filed WP.No.6478 of 1999 questioning the afore-said rejection orders, dated 25.03.1999. By orders, dated 09.10.2000, this Court allowed the said Writ Petition, following the order made in a writ petition (WP.No.6667 of 1999) of similar nature, and directed the respondents to consider the cases of the petitioners for absorption without reference to their status as leave reserves. The respondents have not implemented the said orders of this Court. Therefore, the petitioners filed contempt case in CC.No.465 of 2001. Upon serious view taken by this Court, 1st respondent ultimately issued a memo, dated 13.02.2002, absorbing the petitioners 1,5,6,7, 9 to 18 as Mazdoors and petitioners 2,3,4 and 8 as Junior Plant Attendants (JPA) in view of their possessing the required trade qualification from the Industrial Training Institute. However, there was no post of Mazdoor in the cadre strength; and, therefore, all the petitioners were converted as JPAs on 10.12.2007. Thereafter, while other petitioners remained as JPAs, petitioners 1,2,3,4,8, 9 & 10 were promoted in the year 2010, as Plant Attendants; the petitioner no.18 was appointed by transfer as LDC. Thus, the petitioners came to be absorbed *vide* memo dated 13.02.2002. However, the petitioners were denied service benefits from 06.12.1996 and monetary benefits from 09.12.1997 as contemplated under BPMs.No.326 though such benefit was extended to their

contemporaries who were similarly situated but were absorbed into service without objection in the first instance.

4. In the above stated backdrop, the petitioners' grievance is that they should not have been denied the same benefits, which were extended to their contemporaries, because the delay in regard to their absorption in service was on account of the obstinate attitude of the erstwhile Board and its successor APGENCO.

4.1 In this regard, the further submissions of the petitioners are that despite their eligibility, they were denied absorption at the first instance only on account of the obstinate attitude adopted by the erstwhile Board and its successor APGENCO and that the petitioners were un-necessarily driven to file a writ petition before this Court and also a contempt petition later for non implementation of the orders of this Court and that only after this Court took a serious view of the matter in the contempt case, the petitioners were finally absorbed in service and that in that view of the matter, the petitioners shall not be denied the benefit of service as well as monetary benefits due to them under the said BPMs.No.326.

5. Learned counsel for the petitioners also contended that as per BPMS.No.326, the petitioners are entitled to the service as well as pecuniary benefits from 06.12.1996 and 09.12.1997 respectively and that they cannot be denied the same because of the inaction or lapses initially of the Board and thereafter of the APGENCO and that denial of the said benefits to the petitioners for no fault of theirs would amount to permitting the respondent authorities to take advantage of their own lapses. He stated that some of the contemporaries of the petitioners, who were similarly placed and who were denied service benefits as contemplated under BPMs.No.326, filed writ petitions viz., W.PNos.2179 of 2006 and 12062 of 2007 (hereinafter referred to,

for brevity, as, 'two earlier writ petitions') before this Court and that this Court disposed of the said writ petitions on 19.11.2010 and 23.07.2015 and directed the respondents to extend the benefits of the said BPMS to the petitioners therein notwithstanding their absorption in service under subsequent memos. Copies of the orders in the said two writ petitions are placed on record.

6. However, learned standing counsel appearing for APGENCO strongly opposed for granting the reliefs to the writ petitioners firstly by submitting that the cases of the petitioners in these writ petitions are not akin to the cases of the petitioners in the afore-stated two earlier writ petitions; and, secondly on the ground of lapses on the part of the petitioners in approaching this Court and seeking the relief. She emphasized that the petitioners, who were granted reliefs by this Court in the afore-stated two earlier writ petitions, promptly approached this Court for the reliefs, which were granted to them, but, in this case, the petitioners who were absorbed, on 13.02.2002, approached this Court after lapse of nearly one decade. In support of her contentions, she placed reliance on the decision of the Supreme Court in *Regional Manager APSRTC v. N. Satyanarayana and others* [(2008) 1 SCC 210]. The factual matrix of this cited case and the ratio are as follows: - 'Respondents therein were appointed as Conductors with effect from 31.10.1986 on daily wage basis. Their services were regularized in a phased manner as and when sanctioned vacancies arose. Since sanctioned vacancies arose and the respondents had completed 240 days of service, in terms of policy decision, their services were regularized w.e.f.1.8.1987. After passage of more than a decade, respondents filed the writ petition seeking regularization of services from the date of initial appointment with all consequential benefits. A single Judge, by an order, dated 18.08.2004, allowed the said writ petition, along with other cases, purportedly following

the decision of the Supreme Court in Divisional Manager, APSRTC v. P. Lakshmoji Rao [(2004) 2 SCC 433]. Writ Appeals were dismissed by a Division Bench. Therefore, the Corporation filed the Civil Appeals before the Supreme Court. The Supreme Court held that the orders assailed in the appeals before the Supreme Court were not sustainable because the writ petitions were filed after a long lapse of time, that is, in the year 1999 though the regularization was done with effect from 01.08.1987 and as there was no explanation offered for the delayed approach and hence, the writ petitions should have been dismissed on the ground of delay and laches and that the single Judge and Division Bench lost sight of the said fact and misread the judgment of the Supreme Court in Lakshmoji Rao's case.' She further placed reliance on an (unreported) order, dated 07.02.2006, of this Court in WP.No.8389 of 2002. In the said writ petition, it was *inter alia* contended that the petitioners therein, who obtained the qualification of ITI after completing 8th class, are similarly situated to persons, who had passed X Class and had obtained ITI qualification, and therefore their services should have been regularized, along with them, with effect from 06.12.1996. On consideration of the facts that the writ petition has been filed in 2002, that is, more than 5 years after the SSLC/ SSC/ 10th class ITI qualified candidates were appointed as JPAs and nearly a year and a half after the petitioners were regularized as JPAs *vide* proceedings, dated 01.12.2000, this Court held that the petitioners shall be denied arrears of differential wages in view of the delay in approaching the Court and that such a course would meet the ends of justice. Accordingly, this Court directed the respondents in that writ petition to regularize the services of the petitioners therein as JPAs with effect from 06.12.1996 holding *inter alia* that the petitioners are not entitled for payment of arrears of differential wages and that they should be entitled for notional increments and consequential fitment in the appropriate pay scales. Be that as it may.

7. In the present case, the petitioners' contemporaries, who were absorbed in service in the first instance and those who were later absorbed as per the orders of this Court in the afore-stated two earlier writ petitions, were extended the benefits of the scheme. The petitioners are not claiming benefits merely because some of their contemporaries approached this Court and obtained favourable orders. Their claims are mainly based on BPMs.No.326, dated 14.03.1998, which was in force not only as on the dates of their absorptions but also on the date of institution of the writ petition though the said proceedings were said to have been later withdrawn in February, 2013. Since a scheme is envisaged for the benefit of all similarly placed persons, the benefit of the scheme, as long as it is in place, shall be extended by the authority to all beneficiaries irrespective of the beneficiaries making a claim. Therefore, having driven the petitioners herein to pursue remedies before this Court, the respondents cannot claim to deny the benefits of the scheme to the petitioners on the ground of delay in seeking the benefits under the scheme. Further, had the erstwhile Board and its successor APGENCO, without adopting recalcitrant attitude, considered the cases of the petitioners, who were admittedly found eligible for absorption, at the first instance, without making the petitioners approach this Court by filing writ petitions and contempt case, the petitioners would have been enjoying the benefits of the BPMsNo.326 by now in the same manner as their contemporaries. Viewed thus, this Court finds that delay will not defeat the justice and on the other hand, extending the benefit of the scheme would remedy the injustice. Hence, this Court holds that the petitioners' cases deserve appropriate consideration.

8. Before parting, there is one more aspect to be considered. Learned Standing Counsel would submit that some of the contemporaries of the petitioners were already promoted to higher positions and that the seniority was settled and that if the petitioners are now granted the reliefs, as being

sought for, many complications would arise and that the settled seniority would be disturbed and several other employees would be affected.

9. Having regard to the said aspect of the matter, the petitioners herein have undertaken, through their learned counsel and through additional affidavit filed by one of the petitioners, that the petitioners would forego their seniority with effect from 06.12.1996 and would not claim any notional seniority. In that view of the matter, learned counsel for the petitioners submits that the petitioners may be allowed the benefit of regular service with effect from 06.12.1996 for the purpose of retiral benefits as well as fixation of pension without any claim for notional seniority and the petitioners may also be allowed pecuniary benefits with effect from 09.12.1997, as allowed to other contract labourers under the scheme *vide* BPMs.No.326, dated 14.03.1998.

10. On the above analysis of the facts and submissions and on recording the undertakings given by the petitioners that they would forego seniority with effect from 06.12.1996 and would not claim notional seniority, the Writ Petition is allowed directing the respondents to regularize the services of the petitioners with effect from 06.12.1996 and count the services of the petitioners on regular basis with effect from 06.12.1996 for the purpose of retiral benefits and purposes of pension only and to further allow pecuniary benefits to the petitioners with effect from 09.12.1997, as were allowed to other contract labourers as per the scheme *vide* BPMs.No.326.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

16.07.2018

Vjl