

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

**WRIT PETITIONS NOS.17987, 19100, 20237 , 20726 and
20779 of 2008**

COMMON ORDER:

1. Since the issue raised in all these writ petitions is one and the same, all these writ petitions are heard together and are being disposed of by this common order.
2. The facts stated and the status of the parties arrayed in W.P.No.17987 of 2008, are being discussed hereinafter for the sake of convenience.
3. Heard Sri K. Pavan Kumar, learned Counsel for the petitioners and Sri Zakir Ali Danish, learned Standing Counsel for the respondents.
4. It is the case of the petitioners that they were appointed as contract labour through a contractor to execute the works in the respondent-organization and while they were working on contract basis with the respondents, the respondents issued BPMS No.36, dated 18.5.1997 wherein the respondents have taken a policy decision to fill up the left over vacancies of 50% by regularizing the services of contract labour. Accordingly, a notification was issued on 28.4.2001 to fill up the vacancies. Since the petitioners are eligible, they applied for the same with all necessary documents. The respondents called only the

candidates, whose services were found to be genuine, for interview, and accordingly, the petitioners appeared for interview on 30.11.2002. While the petitioners were anticipating appointment orders, the respondents issued proceedings vide notification dated 12.3.2003 to the effect that the candidates who appeared for interview on 30.11.2002 for filling up of vacant posts of contract labour were unsuccessful and the results of the interview are NIL and none of the candidates could be appointed. Challenging the said notification dated 12.3.2013, several writ petitions were filed before this Court viz., W.P.No.5158 of 2003 and batch. This Court vide order dated 28.10.2004 allowed the said batch of writ petitions directing the respondents to consider the case of the petitioners in accordance with BPMS No.36, dated 18.5.1997, within eight weeks from the date of receipt of a copy of that order, with the following observations:.

“To verify further genuineness of the certificates, it is always open for the officials of the respondents as to whether any such contract/agreement was entered into with the - contractor or not is only the criteria. But, earlier, the respondents have rejected the applications of such petitioners on the ground that the contractor has not produced any documentary evidence with regard to working of the contract labours such as pay rolls, G.P.F. rolls, attendant sheets, attendance register etc. Such contention has been rejected by this Court in W.P.No.17163 of 2002 and batch dated 24.12.2002 holding that for the fault of the contractor in not maintaining the said registers, the contract labour cannot be punished or found fault with. In the said

judgment, I have taken a view that such of those contract labours, who have produced the certificates issued by the contractors and countersigned by the respondents officials duly verifying the same with reference to the agreement under which the contract labour engaged as on 18.5.1997 are entitled to consideration even though the contractor has not produced the attendance register, pay rolls, G.P.F. rolls etc. Merely because the contractor has not produced the said registers, it cannot be said that some of the petitioners have not worked as contract labour. It is for the respondents-Board to verify the certificates produced by the petitioners with reference to the agreements awarded to the contractors, which were verified and countersigned by the officials of the respondents. Therefore, the action of the respondents in simply rejecting the cases of the petitioners based on the vigilance Inspector's report on the ground, that the contractor has not produced the aforesaid registers is unreasonable and unsustainable. Accordingly, the respondents are directed to verify the certificates issued by the contractor and countersigned by the officials of the respondents with reference to the agreements under which particular contract labours are engaged as on 18.5.1997 and consider their cases for appointment in accordance with B.P.Ms.No.36, dated 18.5.1997. The said judgment has become final, as the respondents-Corporation has not chosen to question the said judgment. Following the said judgment, this Court disposed of several writ petitions in terms thereof."

In pursuance of the above said order, the case of the petitioners again came to be considered by the respondents and the respondents have once again rejected the case of the petitioners on 31.12.2004 on the ground that some of the petitioners did not work as contract labour being Post Graduates, and that the contractors could not produce any

records for verification despite the respondents issued a letter to the concerned contractors through whom the petitioners were engaged. The petitioners submitted a detailed representation requesting the respondents to reconsider their applications in accordance with BP Ms.No.36. No action was taken by the respondents on the representation submitted by the petitioners. Several other persons, who made applications in pursuance of the notification issued by the respondents, filed W.P.No.2257 of 2007 and batch before this Court. When the said writ petitions were pending, the 1st respondent produced the order dated 16.3.2006 before this Court and stated that the petitioners' representations were considered, and as the contractors of the petitioners did not produce any records pertaining to the petitioners, the petitioners' applications were found 'not genuine', and according, their cases were rejected. On such submission being made, this Court disposed of W.P.No.2257 of 2005 and batch, with the following observations:

"The petitioners are at liberty to produce all the relevant material before the Chief General Manager of the respondent-organization on or before 24.2.2007 to substantiate their claim.

On receiving such material, the Chief General Manager is directed to reconsider the case of the petitioners in the light of the material to be produced by the petitioners and the record available with them and pass a speaking order as expeditiously as possible."

Thereafter, the petitioners submitted documents to the respondents on 27.8.2007 and as per the directions of the 1st respondent dated 23.8.2007 and thereafter, no orders were passed either selecting the petitioners or rejecting the case of the petitioners. In those set of circumstances, a contempt case i.e., C.C.No.64 of 2008 was filed by the petitioners and in the above said C.C., the respondents have produced order dated 18.2.2008 under which the case of the petitioners was rejected. Since the respondents have passed orders, the said contempt case was closed vide order dated 1.5.2008 giving liberty to the petitioners to challenge the said rejection order dated 18.2.2008. Hence, the petitioners filed the above writ petitions.

5. The main grievance of the petitioners is that the respondents issued orders dated 18.2.2008 refusing the case of the petitioners for appointment under BPMS No.36, dated 18.5.1997 by way of speaking order, without furnishing the enquiry report which was the basis for rejecting their cases.

6. The learned Counsel for the petitioners contended that the enquiry officer's report was not furnished to the petitioners and that the impugned rejection order passed on the ground that the certificates produced by the petitioners are not genuine, is totally incorrect and contrary to the findings given by this Court in W.P.No.5158 of 2003 and batch of cases vide order dated 28.10.2004, and the petitioner is entitled for appointment

in accordance with B.P.Ms.No.36 dated 18.5.1997 and therefore, the impugned order is liable to be set aside.

7. The learned Standing Counsel for the respondents contended that in pursuance of the directions of this Court vide order dated 28.10.2004 in W.P.No.5158 of 2003 and batch, the respondents have examined the case of the petitioners, and appointed enquiry officer, and that after conducting a detailed enquiry and after giving several opportunities to the petitioners the respondents have rejected the case of the petitioners and there was no illegality in the order impugned.

8. The learned Standing Counsel further contended that the similar issue fell for consideration in W.P.No.6498 of 2008 and this Court vide order dated 1.7.2008 dismissed the said writ petition, and the said matter was carried in appeal viz., W.A.No.958 of 2008 and the Hon'ble Division Bench of this Court dismissed the said appeal vide judgment dated 6.9.2008 confirming the order dated 1.7.2008 in W.P.No.6498 of 2008.

9. This Court has considered the submissions made by the parties and perused the material available on record.

10. Perusal of the impugned rejection order dated 18.2.2008 would disclose that the respondents have appointed enquiry officer to enquire into the genuineness of the service certificate and other certificates produced by the petitioners, and that the

contractors, through whom the petitioners were engaged, were also intimated to produce all the records. Further, it discloses that after conducting a detailed enquiry, the enquiry officer submitted his report stating that the service certificates produced by the petitioners were found 'not genuine', basing on which, the case of the petitioners was rejected. It has been stated in the proceedings impugned that the enquiry officer examined the contractors, who issued service certificates in favour of the petitioners inter alia with reference to the existence of the petitioners on the rolls of establishment of the contractors and the nature of the work extracted by them in order to trace the truth in the genuineness of the service certificate produced by the petitioners and that the departmental officials who worked during the related period were also examined and their statements were also recorded in order to get established the truthfulness of the certificates, and that during the enquiry the assertion of the petitioners about the service certificates in their favour was materially answered against them with supportable points. Accordingly, the enquiry officer in his findings held that the service certificates produced by the candidates are found not genuine. Accordingly, the case of the petitioners was rejected on the ground that the service certificates produced by the petitioners are not genuine as per the enquiry officer's report.

11. The contention of the learned Counsel for the petitioners that enquiry report should be furnished to the petitioner and thereafter only, the respondents should have taken an action, is far fetched argument and unreasonable, and it would amount to unreasonable extension of principles of natural justice. The enquiry officer's report is to be furnished in case of regular departmental proceedings. It is not a case of disciplinary enquiry. In order to ascertain as to the genuineness of the service certificates of the petitioners, the enquiry was conducted and in the enquiry, the petitioners also participated. After conducting a detailed enquiry and after verifying all the records and examining the officers concerned, the enquiry officer came to conclusion that the service certificates produced by the petitioners were not genuine. This Court does not find any grounds to interfere with the impugned orders and therefore, the writ petitions are liable to be dismissed.

12. Accordingly, the Writ Petitions are dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated:11th October, 2018.

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HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI



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11/10/2018

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