

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.8249 of 2010

Date : 20.2.2018

Between :

B.v Ramana Murthy S/o suryanarayana
37 yrs R/o H No. 4-268
APHB Colony, Chivatam Post, Tanuku W G District and another

Petitioner

And

AP Transco
Rep by its CMD, Vidyut Soudha,
Hyderabad and others

Respondents

The Court made the following:



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ORAL ORDER:

Heard Sri G V Shivaji, learned counsel for petitioners and Sri M.Ravindra, learned standing counsel for respondents.

2. According to petitioners, first petitioner worked as contract labour from 1.7.1991 to 31.3.1998 and second petitioner worked as contract labour from 1.5.1996 to 10.10.2000 through M/s. Sailaja Engineering Construction, Narsapur. They were engaged for the works of construction of inner fencing wall for structural yard at sub-station, Mogaltur. In terms of scheme formulated by erstwhile A.P. State Electricity Board, petitioners submitted representations for absorbing them as contract labour. Petitioners earlier filed W.P Nos. 20539 of 2003 and 20465 of 2003 respectively, aggrieved by the memo issued by respondents rejecting their request. Petitioners placed reliance on certificate issued by M/s Sailaja Engineering Constructions in support of their contention that they worked as on cutoff date i.e., 18.5.1997 to acquire eligibility for consideration for absorption. These two writ petitions were considered along with two other writ petitions and disposed of by common order dated 29th September, 2004. The rejection order holding that they did not work as on 18.5.1997 was set aside. Further direction was issued for consideration of petitioners for appointment as LDCs. Aggrieved thereby, respondent management preferred W.A.Nos. 1606 and 1842 of 2004. The Division Bench while upholding the decision of learned single judge further observed that the order of the learned single Judge does not preclude the authorities from reconsidering the issue as to whether the respondents therein had in fact worked as contract labour with reference to the documents and further enquiry if any conducted by the authorities to reach at the object sought

to be achieved by B.P.Ms No. 36. Pursuant to the decision of the Division Bench, issue was considered and by order impugned, request of petitioners was rejected. Claim of petitioners was rejected holding that certificate of employment given by contractor by name G Suryanarayana was not counter signed by departmental Divisional Engineer. This rejection is under challenge in these writ petitions.

3. As seen from material on record, petitioners have placed reliance on service certificate issued by M/s. Sailaja Engineering Construction, Narsapur in proof of work rendered by them for the respective periods mentioned above. In addition to the service certificate issued by the contractor, petitioners also placed reliance on the statement prepared by the respondents and counter signed by the concerned Assistant Divisional Engineer evidencing work of petitioners on the crucial date to acquire eligibility for consideration for regularization.

4. By referring to these documents, learned counsel for petitioners contended that these documents would show that petitioners were working as on 18.5.1997. He would further submit that the direction of the Court was to verify whether petitioners have worked on 18.5.1997, whereas rejection order speaks of submission of certificate stated to have been issued by contractor Sri G Suryanarayana. This itself would clearly show non-application of mind by respondents.

5. There is no whisper in the counter affidavit as to how name of Sri G Suryanarayana was mentioned in the order impugned while rejecting claim of petitioners. What is reiterated in the counter affidavit is that petitioners did not work on the cut off date and that M/s. Sailaja Engineering Construction, Narsapur was actually awarded the contract in June, 1997, therefore question of petitioners being engaged by such

contractor prior to June 1997 did not arise. It was the categorical assertion in the earlier round of litigation and herein also that though written order awarding contract was later, in view of urgency contractor was asked to execute work and accordingly work was executed and while executing the work, petitioners were employed by the contractor. There is no whisper on the said contention of the petitioners.

6. As rightly contended by the learned counsel for petitioners, the order impugned is liable to be set aside on the sole ground of non-application of mind to the issue involved more particularly when specific direction was issued in the earlier round of litigation by the learned single Judge followed by Division Bench. Hence, order impugned is set aside and matter is remitted to 4th respondent to examine whether petitioners were working on 18.5.1997 based on the certificate submitted by them as observed by the Division Bench in W A No. 1606 of 2004 and batch dated 24.11.2004. A decision shall be taken by duly considering material on record and in terms of the directions issued in the earlier round of litigation. It is also open to the petitioners to place any material in support of their claim. Material, if any, shall be placed before the competent authority within a period of two weeks from the date of receipt of copy of this order and within four weeks thereon 4th respondent shall take appropriate decision in the matter.

7. Accordingly, the writ petition is allowed. No costs. All pending miscellaneous petitions are closed.

P NAVEEN RAO,J

DATE:20.02.2018
TVK

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