HONOURABLE THE CHIEF JUSTICE

SRI THOTTATHIL B. RADHAKRISHNAN

AND

HONURABLE SRI JUSTICE V. RAMASUBRAMANIAN

WRIT PETITION Nos.20840, 20843, 21182, 21255, 21682, 25656, 25689, 25706, 25710, 26241, 26248, 26699, 26739, 27567, 27594, 27671, 28200, 28431, 28674, 28978, 29512, 29598, 29599, 29676, 29681, 29685, 29687, 29696, 29772, 30441, 30526, 31400, 31557, 31567, 31689, 31953, 31961, 32433, 32773, 32866, 32935, 32996, 33072, 33686, 34261, 34273, 34275, 34296, 34456, 34528, 34715, 34812, 34930, 35006, 35023, 35024, 35030, 35043, 35053, 35076, 35079, 35080, 35081, 35798, 35801, 35812, 36096, 36450, 36479, 36512, 36800, 36989, 37095, 37967, 39555, 39558, 39584, 39596, 39619, 39662, 39761, 39860, 40107, 40506, 40570, 40575, 40679, 40709, 40723, 40904, 40977, 41349, 41350, 41371, 41377, 41402, 41405, 41408, 41437, 41440, 41559, 41582, 41647, 41721, 41722, 41737, 41846, 41882, 42030, 42801, 42802, 42954, 43031, 43036, 43092, 43120, 43148, 43622, 43631, 43635, 43714, 43811, 43828, 43854, 43900, 43950, 43954, 44060, 44062, 44213, 44355, 44436, 44738, 44746 & 45041 OF 2017, 118, 562, 648, 831, 937, 1085, 1123, 1147, 1151, 1208, 3546, 3727, 3749, 3768, 4510, 4532 & 4680 OF 2018, (SR) No.6120 OF 2018, 8209, 11589, 11592, 12420, 12450, 12797, 12956, 12962, 12977, 13078, 13673, 13974, 14269, 14270, 15860, 16992 AND 17091 OF 2018

COMMON ORDER:- *(Per Hon'ble Sri Justice V. Ramasubramanian)*

Persons who were employed either as Unskilled Labourers or as Contract Labourers or as Security Guards or as Bill Collectors or as Computer Operators etc., in the Telangana Power Generation Corporation Limited and the Transmission Corporation of Telangana Limited, which later got unbundled into 4 different Distribution Companies, have come up with the above Writ Petitions, seeking redressal of various grievances, all of which, in whatever form they have been made, would lead to the absorption/regularization of the services of the petitioners as regular employees of these Corporation/Companies.

2. Actually all these Writ Petitions on hand were the by-products of a Public Interest Litigation filed in W.P. (PIL) No.149 of 2017, wherein the decisions taken by the Corporation/Distribution Companies for regularization of the services of the outsourced persons came under challenge before this Hon'ble Court. The Public Interest Litigation was admitted and an interim order was granted on 02.08.2017 suspending the process of absorption. It was claimed by the Corporation/Distribution Companies that the decisions impugned in the Public Interest Litigation were intended to benefit about 23,000 employees identified by the Transmission Corporation of Telangana.

3. However, after this Court put on hold, the process of regularization/absorption of the services of the outsourced employees, a series of Writ Petitions came to be filed by two different sets of persons, viz., (1) those whose likelihood of absorption was thwarted by the Public Interest Litigation and (2) those who were not likely to be absorbed on the ground that they did not come within the parameters of the scheme for absorption/ regularization. When these Writ Petitions on hand came up before different learned Judges, it was found that the prayers made in these Writ Petitions either ran contrary to the prayers made in the Public Interest Litigation or ran in tandem with the prayer made in the Public Interest Litigation. Therefore, the learned Judges before whom the present batch of Writ Petitions came up at different points of time, directed these Writ Petitions to be tagged along with the Public Interest Litigation.

4. But this Bench segregated the present batch of Writ Petitions from the Public Interest Litigation, as the fate of these Writ Petitions depended upon the fate of the Public interest Litigation. Thereafter we heard W.P. (PIL) No.149 of 2017 along with a Writ Petition in W.P.No.20544 of 2017 and by a Judgment, dated 18.09.2018, we dismissed the Public Interest Litigation as well as the other Writ Petition. Therefore, the impediment for the absorption of candidates who are identified as the beneficiaries of the decisions impugned in the Public Interest Litigation, got removed and hence we took the present batch of Writ Petitions for disposal after the disposal of the PIL.

5. The cases in this batch fall under the following categories:-

(i) Those where the petitioners claim that they fulfill the conditions prescribed in the absorption scheme floated by the Power Utility Corporations pursuant to a settlement entered into with the Federation of Trade Unions, first under Section 18(1) and later under Section 12(3) of the Industrial Disputes Act, 1947;

(ii) Cases of persons, who were not working on the cut off date namely 04.12.2016 prescribed in the scheme, but who claim that they were employed before the cut off date continuously for a long period of time;

(iii) Cases of persons, who claim to be continuously engaged either through contractors or through outsourcing agencies for a long period of time, but from whom and in respect of whom contribution towards the Employment Provident Fund was not deducted and paid, on account of which they are sought to be excluded from the benefit of the scheme; and

(iv) Cases of persons, who were engaged by the civil contractors to whom the task of putting up constructions was entrusted and who are not covered by the scheme.

6. In order to understand the scope of the disputes arising in these cases, a brief prelude may be necessary. It is as follows:-

(i) The Andhra Pradesh State Electricity Board was established in the year 1955 under the provisions of the Electricity Supply Act, 1948, for the purpose of generating and distributing electricity in the State of Andhra Pradesh.

(ii) After the Government of India liberalized the policy of Regulation of Power Sector, the State of Andhra Pradesh enacted the Andhra Pradesh Electricity Reforms Act, 1998, for the purposes of constituting an Electricity Regulatory Commission, restricting the electricity industry and rationalising the generation, transmission, distribution and supply of electricity and creating avenues for the participation of private sector in the industry etc.. In terms of the provisions of the State Act, two Corporations viz., APGENCO and APTRANSCO came to be established w.e.f. 01.02.1999.

(iii) On and from 01.04.2000, the Transmission Corporation of Andhra Pradesh Limited got unbundled into five entities namely, 1) APTRANSCO, 2) A.P. Eastern Power Distribution Company Limited,

3) A.P. Southern Power Distribution Company Limited, 4) A.P. Central Power Distribution Company Limited, and 5) A.P. Northern Power Distribution Company Limited.

(iv) After the bifurcation of the State under the A.P. Reorganization Act, 2014 and the creation of the State of Telangana w.e.f. 02.06.2014, two Companies and one Corporation came into existence in the State of Telangana. They are the Transmission Corporation of Telangana Limited, Northern Power Distribution Company of Telangana Limited and Southern Power Distribution Company of Telangana Limited.

(v) The Corporation and the two Companies were engaging the services of workers through Outsourcing Agencies which gave rise to a lot of complaints of middlemen exploiting the workers.

(vi) Therefore, the cause of these workmen was taken up by '14' Trade Unions operating in the Power Sector of the State. These '14' Trade Unions formed a Federation known as the Telangana Electricity Trade Unions Front in September, 2015. This Federation issued a notice containing a charter of demands. They also issued a strike notice, after which a settlement was reached between the Federation and the Management under Section 18(1) of the Industrial Disputes Act, 1947. Under the settlement, it was agreed that the outsourced workmen employed in the Corporation and the Companies will be absorbed in a phased manner as against the existing vacancies.

(vii) For the purpose of implementing the settlement reached, the Transmission Corporation of Telangana issued proceedings in

T.O.O.Rt.No.247, dated 02.06.2017, constituting a Committee for verifying and scrutinizing the claims of outsourced employees for absorption. Similarly, the Southern and Northern Power Distribution Companies also issued proceedings S.P.O.O.Rt. No.510, dated 01.06.2017, and N.O.O.Rt.No.358, dated 01.06.2017, respectively, constituting committees for verifying the claims of outsourced employees for absorption.

(viii) The Telangana State Power Generation Corporation Limited also issued guidelines, dated 29.07.2017. All these orders and guidelines stipulated certain conditions including a cut-off date on which the employees should be in the rolls of the Companies/ Corporation to be eligible for the absorption.

(ix) Persons who satisfied the criteria laid down in these guidelines/orders as well as the persons who do not satisfy the criteria fully or partially have come up with the present batch of Writ Petitions, which we have already categorized into '4' types.

7. From the narration of the background facts indicated above, it will be clear that the petitioners in the batch of cases on hand want absorption either on the ground that they fulfill all the essential conditions or on the ground that some of those conditions cannot be applied to them. This is the reason why we have categorized the cases on hand into '4' types, in one of the previous paragraphs.

8. Insofar as the first category of cases is concerned, the exercise of verifying the credentials of the individuals with regard to the fulfillment of the conditions and the issuance of the orders of

absorption are not concluded. The whole exercise was put on hold on account of an interim order passed in the PIL. The PIL has been dismissed by this Bench last week. Therefore, the cases of persons, who claim to fulfill all the conditions prescribed under the scheme, can be disposed of with necessary directions.

9. As regards persons who were not working on the cut-off date namely 04.12.2016, they cannot claim the benefit of the scheme floated pursuant to the settlement under the Industrial Disputes Act, 1947. If they have rights conferred upon them by labour welfare statutes and if they are entitled to regularization or absorption, otherwise than in accordance with the current scheme, the appropriate course of action open to them is to approach the competent court. They made do so accordingly.

10. The next category of cases is that of persons, who claim to be continuously engaged, but in respect of whom contributions towards EPF was neither deducted nor paid by the Corporation. The claim of the petitioners in these cases is that the Corporation took a stand that these employees were not covered by the Employee's Provident Fund and Miscellaneous Provisions Act, 1951 and that therefore, the petitioners cannot be faulted for non-payment of contributions. But admittedly, persons falling under this category are not covered by the scheme. As we have stated earlier, the scheme was floated pursuant to a settlement under the Industrial Disputes Act, 1947. Therefore, all those persons who claim similar benefits though not under the same scheme, but under any other statutory provisions should approach the

appropriate court for appropriate relief and they cannot come directly to the Writ Court to settle their disputed questions of fact.

11. The cases of those who were engaged by the civil contractors for construction purposes, may not come within the purview of either the scheme or the settlement. Persons engaged by civil contractors for putting up constructions for the establishment of the power plants, may not really have a right on par with those engaged in the services of the Corporation. Therefore, no relief can be granted to them.

12. Therefore in fine, all the Writ Petitions are disposed of to the following effect:

(i) persons who claim that they fulfill the criteria laid down in the guide-lines/orders issued by the Corporation/Companies, may approach the Committee and satisfy the Committee that they are covered by the Scheme and that they fulfill the eligibility criteria. The Committee may look into the same and take a decision within 12 weeks;

(ii) persons who were not in employment on the cut-off date viz., 04.12.2016 cannot either seek the benefit of the scheme or challenge the scheme. The scheme prescribing a cut-off date is a product of a settlement reached under the Industrial Disputes Act, 1947. The settlement was under Section 12 (3) of the Act. Therefore, one of the conditions prescribed in the scheme viz., the cut-off date, cannot be challenged. Hence, the challenge to the prescription of a cut-off date contained in the scheme is rejected. However, these persons are given liberty to go before the Labour Court or any other appropriate Forum prescribed by any Special Enactments, if they have a right of absorption or regularisation conferred by such Special Enactments;

(iii) persons who are out of the scheme on account of non-payment of contribution to the Employees Provident Fund, cannot also seek the benefit of the Scheme solely on the ground that the fault lay with the Distribution Companies. If these persons have any right conferred by any special enactment for regularization and/or absorption, they are given liberty to move the Fora prescribed under those enactments;

(iv) the claims of those engaged by the Civil Contractors for construction purposes are rejected.

13. The Writ Petitions are disposed of accordingly. However, there shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petitions, stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

V. RAMASUBRAMANIAN, J

October 03, 2018.
KSN/KTL/SMR/Mgr