

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

Writ Appeal Nos.511, 526 and 768 of 2016

Common Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

These three appeals are preferred against the interlocutory order passed in WVMP No. 1269 of 2016 in WPMP No. 2550 of 2016 in W.P. No. 2012 of 2016 and batch dated 20.6.2016. The appellants herein filed these Writ Petitions seeking a writ of mandamus to declare the action of the Telangana Southern Power Distribution Company Ltd, in not providing weightage marks to in-service experienced candidates, working as Diploma Operators on contract basis, for the posts of Sub-Engineer (Electrical) in the notification dated 8.1.2016, as provided in the earlier notifications issued in 2012 which was confirmed in W.P. No. 11545 of 2012 and batch dated 9.12.2013 and upheld in W.A. No.110 of 2014 and batch dated 3.6.2014, as arbitrary and illegal.

An interim order was, initially, passed in these Writ petitions on 29.1.2016 granting stay of further process of recruitment for a period of three weeks and was extended thereafter. The said interim order was modified, by the order under appeal dated 20.6.2016, the time prescribed for submission of applications was extended till 30.6.2016, and the Telangana State Southern Power Distribution Company Ltd was permitted to proceed with the recruitment process and issue orders of appointment. The Learned Single Judge directed that the appointees should be notified of the pendency of matters, and their appointment being subjected to further orders in the Writ Petitions. Aggrieved thereby, the petitioners in the Writ Petitions have preferred these three appeals and, by the order dated 13.7.2016, interim directions were

issued to the respondents to provide 20% weightage marks to the appellants who were stated to be in-service candidates.

A notification was issued on 8.1.2016 inviting applications for filling up 153 vacant posts of Sub-Engineers (Electrical) by direct recruitment on a regular basis. The educational qualifications prescribed, for being considered for appointment to the post of Sub-Engineer, was that the applicants must possess a Diploma in Electrical Engineering or a Diploma in Electrical and Electronics Engineering or any other equivalent qualification recognized by the Board/Government. While the minimum age was prescribed as 18 years, the maximum age was stipulated as 44 years as on 1.1.2016. Recruitment was to be made by way of a written examination for 100 marks consisting of 100 multiple choice questions, each question carrying one mark. Section A was to consist of 80 questions on core technical subjects, and Section B was to consist of 20 questions on General Knowledge, English Language, Proficiency, Numerical Ability, Computer Awareness and Telangana Culture. The duration of the written examination was for two hours. Selection of candidates for appointment was to be made 100% on the basis of the written examination; and only those candidates, who qualified in the written examination by being ranked high, community-wise, were to be called for verification of the original Certificates. In all, 13704 candidates are said to have applied for the posts of Sub-Engineers, and 9963 of these applicants (including the writ appellant-petitioners) appeared in the written examination held on 6.11.2016. However, in view of the interim order dated 13.7.2016, the respondent-Corporation has not proceeded with the selection process.

As noted hereinabove the claim of the appellant-writ petitioners, in these Writ Appeals, is that weightage should be given for the service

rendered by them as contract employees. The Southern Power Distribution Company Ltd is said to be entrusting operations and maintenance, of its various sub-stations, to experienced contractors ever since 1998. All these appellant-writ petitioners are employed by the contractors, in the various sub-stations, and not by the respondent-Corporation. The appellant-writ petitioners are, admittedly, employees of the contractor, and it is not even their case that they were directly employed by the respondent-Corporation. It is only in terms of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (for short 'the Act'), is the respondent-Corporation their principal employer.

Reliance is placed, on behalf of the appellants, on a settlement entered into between the erstwhile A.P. Transco and the Union on 18.12.2010. The said settlement stipulated the mode and manner of filling-up various categories of posts, including that of Sub-Engineers, with the existing contract labour working in the A.P. Transco and the four Discoms. The settlement required vacancies to be filled up after obtaining necessary approval of the Government of Andhra Pradesh; and for modalities to be worked out to give suitable weightage upto a maximum of 45% marks to contract labour already working in the utilities. Pursuant to the said settlement, notifications were issued on 14.12.2011, 20.1.2012 and 31.1.2012 inviting applications for the post of Sub-Engineers. A maximum of 55 marks was prescribed for the written examination, and 45 marks were earmarked for services rendered as contract workers.

The validity of the notifications dated 14.12.2011, 20.01.2012 and 31.01.2012 were subjected to challenge in W.P. No. 3753 of 2012 and batch. A learned Single Judge, by his order dated 9.12.2013, reduced the weightage marks from 45% to 20%, and further stipulated

that, from out of this 20% marks, two marks shall be awarded for each completed year of service and the experience must be in the relevant job, for instance if a candidate has put in service on contract basis as a Sub-Engineer, or in any other equivalent post, he shall then be entitled to be awarded weightage marks for the selection to the relevant post.

Aggrieved thereby, Writ Appeals were preferred, and a Division Bench of this Court, in its order in W.A. No. 110 of 2014 and batch dated 3.6.2014, upheld restriction of weightage marks for service candidates upto 20% as directed by the learned Single Judge, but directed that the contract labour, who were otherwise eligible to apply, should be awarded two marks for each completed block of six months of service subject to a maximum of 20%. This condition was modified by the Division Bench, by its order dated 25.7.2014 and, instead of two marks for each completed block of six months, one mark was directed to be awarded for each completed block of six months, subject to a maximum of 20%.

As noted hereinabove the notification, impugned in W.P.No.3753 of 2012 and batch, itself prescribed weightage of 45 marks to be provided for contract workers, which was reduced, both by the learned Single Judge and by the Division Bench, to 20%. Unlike in those cases, the present notification dated 8.1.2016 does not prescribe any weightage to be granted for the service rendered by contract workers. The question whether, even in the absence of weightage marks being prescribed in the notification, for the services rendered by contract workers, this Court would issue a mandamus directing the respondents to provide weightage marks in the written examination, necessitates examination in the Writ Petitions.

While Sri C. Prabhakar, learned counsel for the appellant-writ petitioners, would place reliance on the judgment of the Supreme Court

in **Sachivalaya Dainik Vetan Bhogi Karmachari Union, Jaipur vs. State of Rajasthan & Others**¹, to submit that the Supreme Court had observed that the members of the Union were entitled to some weightage for the past service rendered by them, the fact remains that, in the aforesaid judgment, the Supreme Court had left the quantum or measure of such weightage to be decided by the State in accordance with a rationale policy, and had not stipulated any weightage of marks to be given to the members of the Union therein.

Even if the settlement dated 18.12.2010 is held applicable (as it also appears to refer to the four Discoms), the question which would necessitate examination in the Writ Petitions is whether the appellant-writ petitioners, all of whom are working as Diploma Operators, hold posts equivalent to that of Sub-Engineer for, even in terms of the order of the learned Single Judge in W.P. No. 3753 of 2012 and batch dated 9.12.2013 which was affirmed in W.A.No.110 of 2014 and batch, it is only for the service rendered as Sub-Engineers can weightage of marks be given for recruitment to the post of Sub-Engineer. It would be wholly inappropriate for us, in appeals preferred against the interlocutory order passed in the Writ Petitions, to examine these contentions, as the main Writ Petitions are still pending on the file of the learned Single Judge. The appellants-writ petitioners have also participated in the written examination held on 06.11.2016, and their interests have been adequately safeguarded by the order under appeal dated 20.06.2016, whereby the respondent-Corporation has been directed to notify the appointees of the pendency of the Writ Petitions, and that their appointment would be subject to further orders in the Writ Petitions.

The interim orders passed on 13.7.2016 stand vacated, and the Writ Appeals are disposed of directing the respondent-Corporation to

¹ (2017) 11 SCC 421

notify each and every candidate, selected for appointment, that their appointment as Sub-Engineers would be subject to the result of W.P. No. 2012 of 2016 and batch. It is made clear that we have not examined the contentions urged before us on merits, since the Writ Petitions are still pending adjudication before the learned Single Judge who shall, when the matters are taken up for hearing, decide the Writ Petitions on its merits, uninfluenced by any observations made in this order.

The Writ Appeals are, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

7th March, 2018

Pnb



**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**



Writ Appeal Nos.511, 526 and 768 of 2016

Date: 7.3.2018

pnb

