

THE HON'BLE SMT JUSTICE K. VIJAYA LAKSHMI

WRIT PETITION NO. 4728 OF 2002

ORDER:

This Writ Petition is filed questioning the Office Order No.P/MM/4/1/01/5609 dated 26.11.2001 and consequently seeking to suspend Memo.No.MMr/KK5/1/001/554 dated 13.2.2002 and a direction was sought to appoint the petitioner as a General Mazdoor (underground) Category-I at KK.5 Kalyankhani, Adilabad district.

Brief facts of the case, so far as relevant, according to the writ petitioner are that the petitioner was appointed as a Badli Coal Filler of Mandamarri area on category-I wages from 3.4.1997. He was transferred and posted to the Mines on 5.7.1998. He is entitled for regularization of services as General Mazdoor. The Badlis employed in mines are engaged either on time rated jobs or on piece rated jobs and they would be confirmed either on time rated jobs or as Coal Fillers. He received the impugned order dated 26.11.2001 stating that his post was converted as a Coal Filler from Badli worker on Category-I from 1.7.2001. After issuing the impugned order dated 26.11.2001, the respondent issued a Circular dated 17.12.2001 for employees working in surface departments to continue in service as Badli workers on Category-I wages for another two years. Ignoring the same, memo dated 13.2.2002

was issued posting the petitioner as a Coal Filler, which is illegal.

Counter affidavit has been filed on behalf of the respondents stating that the petitioner is questioning his appointment as Coal Filler from Badli Filler. In view of satisfactory completion of the required musters, he was regularized as Coal Filler. At times when the petitioner was a Badli, he was also given some time rated jobs. The term "Badli" means a "Substitute" who has to work in place of a permanent workman. On satisfactory completion of the required musters, he will be regularized as Coal Filler. The petitioner was working as a Badli Filler and as and when there was a vacancy, he was asked to work in a time rated job on category-I wages and this does not mean that there is a permanent vacancy and he should be given or regularized in that time rated job. The terms and conditions of the appointment order of the petitioner shows that he should work in underground mine and his placement is also transferable. As the petitioner was working as a Badli Coal Filler, his regularization as Coal Filler is perfectly in order. It is in the case of those workers who are old and infirm and unable to work due to some or other physical ailments and basing on their representations, they are asked to work as General

Mazdoors whereby they get reduced earnings and it is not open for the petitioner who is perfectly competent to work as a Coal Filler to ask for a lighter job, which is not available in the respondent Company. The petitioner who has received training in the Mines Vocational Training Centre and has been declared fit to work as a Coal Filler has to work as a Coal Filler in which post he has been rightly regularized.

This Writ Petition was admitted on 15.4.2002.

Subsequent to the filing of the Writ Petition, WPMP.No.24556 of 2002 was filed seeking a direction to the respondents to dispose of the representation dated 3.9.2002 filed by the petitioner. On 8.10.2002, WPMP was ordered granting interim direction to the respondents to dispose of the representation dated 3.9.2002 within four weeks from the date of receipt of a copy of the said order and to extend the benefit covered under Circular dated 17.12.2001 issued by the 1st respondent.

Pursuant to the said interim direction dated 8.10.2002, the representation of the petitioner was disposed of on 5.11.2002 rejecting the request of the petitioner stating that the said Circular is applicable only to those Badlis who are working in surface departments/open cast projects for a long time. It is also stated in the said rejection order that the

petitioner has been appointed in under ground mines and working as a Badli and hence, the said Circular is not applicable to the petitioner.

Seeking suspension of the said rejection order dated 5.11.2002, the petitioner filed WPMP.No.568 of 2003.

As seen from the counter affidavit, the petitioner is a Badli Coal Filler and is fit to work as a Coal Filler in the underground mines. The object of the Company is extraction of Coal and such extraction is done by Coal Fillers and if the Coal Fillers are asked to do other jobs than that of Coal Filling, its production will be greatly affected. Apart from that, the petitioner has also received training in the Mines Vocational Training Centre and has been declared fit to work as a Coal Filler, in which post, he has been rightly regularized.

The order passed by the respondent on 5.11.2002 pursuant to the interim direction of this Court also categorically states that the Circular dated 17.12.2001 does not apply to the petitioner and that the Circular is applicable only to those Badlis who are working in surface departments/open cast projects for a long time and the petitioner was appointed in underground mines and working as a Badli.

When the matter came up for hearing today, Sri J.Sreenivasa Rao, learned Standing Counsel, produced xerox

copy of the Fax message dated 25.1.2018 of the General Manager, Mandamari Area.

As seen from the FAX message, the petitioner was served with a charge memo dated 4.2.2003 for his habitual absence. Enquiry was conducted and the charge was held proved. At that stage, the petitioner filed WP.No.6228 of 2003 seeking to set aside the charge memo dated 4.2.2003. The said Writ Petition was disposed of on 9.4.2003 permitting the petitioner to submit necessary explanation to the said charge memo. Meanwhile, he was transferred to Bhupalpalli Area on 7.5.20204. Subsequently, he was removed from the rolls in June, 2011 while working at KTK.I Incline, BHPL Area on disciplinary grounds.

In view of the facts and circumstances referred to above, the cause in the Writ Petition does not survive and accordingly, this Writ Petition is dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

K.VI JAYA LAKSHMI ,J

Date: 31.1.2018

KPM