

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.9254 OF 2019

ORDER

This Writ Petition is filed seeking the following relief:

“.....to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the impugned action of the respondents in not considering the petitioner for absorption, in spite of petitioner fulfilling the conditions laid down in the guidelines issued *vide* T.G.O.O.No. 98/CGM(HR)/2017, dated 01.06.2017, while absorbing similarly situated candidates *vide* proceedings in T.G.O.O.No. 217/CGM(HR)/2017, dated 29.07.2017, as highly, illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India, consequently direct the respondents to absorb the petitioner on par with all those absorbed *vide* T.G.O.O.No. 217/CGM(HR)/2017, dated 29.07.2017 with all consequential benefits as per directions issued by Division Bench in W.P.No. 25656/2017 and Batch *vide* order dated 03.10.2018, in the interest of justice and pass such order or orders as this Hon'ble Court deems fit, just and proper in the circumstances of the case.”

Heard Sri G.V.Shivaji, learned counsel appearing for the petitioner and Smt.A.Deepthi, learned Standing Counsel appearing for the respondent-Corporation.

The petitioner in this writ petition is claiming to be working in Kothagudem Thermal Power Station as semiskilled contract worker on outsourcing basis from 1st April, 2014 to till date and Employees Provident Fund (EPF) number was also allotted to him, and deductions were also made from his pay. In pursuance of the settlement arrived at

between the trade union and the Telangana State Power Generation Corporation (for short 'the Corporation') under Section 12(1) of the Industrial Disputes Act, 1947, the Corporation agreed to absorb/regularize the outsourced personnel, who were working as on 4.12.2016, and issued guidelines vide T.G.O.O.No.98/CGM(HR)/2017 dated 01.06.2017. When the case of some of the unskilled labour was not considered for absorption/regularization in terms of the above said guidelines, they filed W.P.No.20840 of 2018 and batch, and a Division Bench of this court, by common order dated, 03.10.2018, directed the respondents herein to undertake the process of absorption by considering the eligible candidates, who were working as on 4.12.2016 and complying with other conditions of EPF deductions.

The grievance of the petitioner is that though he is working as on the cut-off date i.e., 4.12.2016, and fulfill the eligibility criterion as per the guidelines of the Corporation dated 01.06.2017, his case has not been considered for absorption/regularization, and that similarly situated persons were absorbed *vide* T.G.O.O.217/CGM(HR)/2017, dated 29.07.2017. Hence, the petitioner seeks a direction to the respondent-Corporation to consider his case for absorption/regularization in terms of the guidelines issued by

the Corporation dated 01.06.2017 and the judgment of the Division Bench of this Court, referred to above, and also on par with those employees regularized *vide* proceedings dated 29.07.2017.

Sri G.Vidya Sagar, learned Senior Counsel, appearing for Smt.A.Deepthi, learned Standing counsel for the respondent–Corporation, on instructions, would submit that if the petitioner fulfils the eligibility criteria, the Committee constituted in that behalf, would examine his case and take appropriate decision.

A Division Bench of this Court by its orders in W.P.No.20840 of 2018 and batch, dated 03.10.2018, while considering the very same issue, disposed of the writ petition, with the following directions:

“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 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 regularization 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.”

This Court, having considered the facts and circumstances of the case and the submissions of the learned counsel, and the above directions of the Division Bench, without expressing any opinion on merits, dispose of the writ petition at the stage of admission, directing the petitioner to make a representation to the Committee constituted for implementation of the scheme for absorption/regularization in terms of the guidelines issued by Telangana State Power Generation Corporation, represented by its Chairman and Managing Director *vide* T.G.O.O.No.98/CHM(HR)/2017 dated 01.06.2017, staking his claim along with necessary documents to demonstrate that he is working as on the cut-off date i.e., 04.12.2016 and fulfill the eligibility criteria, within a period of two weeks from the date of receipt of a copy of this

order; and upon receipt of such representation, the Committee may look into the same and take a decision within a period of twelve weeks thereafter, as per the above directions of the Division Bench. No costs.

Miscellaneous petitions, pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

26th April, 2019

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