

(2008) 03 AP CK 0027

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4617 of 2008

A.P. Power Generating Employees Union and Others

APPELLANT

Vs

A.P. Power Generation Corporation Ltd. and Another

RESPONDENT

Date of Decision : 07-03-2008

Acts Referred:

Citation : (2008) 4 ALD 687

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Chandraiah Sunkara, for the Appellant; K. Chidambaram, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The 1st petitioner is an employees Union and the petitioners 2 to 12 are the members of 1st petitioner and employees of A.P. Power Generating Corporation Ltd., the 1st respondent. They worked as contract labour, under a Labour Contractor, who was awarded the same contract by the then A.P. Electricity Board. In terms of various orders passed by the Government of A.P. and the then Board, the petitioners were absorbed as Mazdoors, in the year 1996. Subsequently, they were appointed by transfer, as Lower Division Clerks, in the year 2001.

2. Petitioners made a representation to the respondents, stating that at the initial stage itself, i.e. in the year 1996, they were entitled to be absorbed or appointed as Lower Division Clerks, since they possessed the requisite qualifications, and that their appointment as LDCs, made in the year 2001, be treated with retrospective effect from 6.12.1996. Through proceedings, dated 22.4.2006, the 2nd respondent rejected the representation of the petitioners, by stating certain reasons. Petitioners assail the said proceedings, and seek a declaration to the effect that they are entitled to be treated as LDCs, with effect from 6.12.1996. According to them, the contract labourers, that were working as on the date of abolition of 33 categories in the Board, vide orders in G.O.Ms. No. 41, dated

23.9.1996, are entitled to be appointed against the posts, viz; Mazdoor, JPA, Lineman, etc, depending upon the qualifications held by them.

3. Sri Chandraiah Sunkara, learned Counsel for the petitioners, submits that the Board issued B.P.Ms. No. 326, dated 14.3.1998, creating posts of different categories, for the purpose of appointing the contract labour in the abolished categories, and it was clearly provided that the appointments shall be made on the basis of the qualifications held by the incumbents, than on the nature of the duties discharged by them, as contract labour. He contends that the view taken by the 2nd respondent, through the impugned proceedings, is contrary to the very scheme of regularization of contract labour, and the law laid down by the courts, in this regard.

4. Sri K. Chidambaram, learned Standing Counsel for the respondents, on the other hand, submits that the writ petition is not maintainable, on the ground of laches, estoppel, acquiescence, and non-existence of cause of action. He contends that regularization of contract labour was undertaken, against the vacancies earmarked therefor, and unless it is established that any person, who was inferior in rank, experience, qualifications, etc, to the petitioners, was appointed as LDC, the petitioners cannot have any genuine grievance. He contends that both, when they were absorbed as contract labour in the year 1996, and appointed by transfer as LDCs in the year 2001, the petitioners did not raise any objection, and thereby, they are estopped from claiming the present relief.

5. The Board used to have its own skilled staff, who are ready to discharge multifarious functions. Either as an economy measure, or on account of restrictions imposed by the Government, some of the works were being executed, by engaging contract labour, supplied by the labour contractors. No difficulty as such had arisen, as regards the assignment of contracts for major works. Over a period, even small works, such as for laying distribution lines up to a small distance, involving expenditure of few thousands, were also entrusted to contractors.

6. The turning point had come, when the government of A.P. in the Labour Employment Training and Factories Department, issued G.O.Ms. No. 41, dated 23.9.1996, abolishing 33 categories of posts in the Board. This was followed by orders from the Government, in the Energy Department as well as the Board, providing for absorption of contract labour. It almost became a windfall to labour contractors, contract labour; if not for some in the Board itself. The experience shows that about 10 to 12 persons said to have been engaged by a labour contractor, who was entrusted with the work of the value of about Rs. 20,000/- and of duration of one week, came to be absorbed in one capacity, or the other. Appointment of employees, on the basis of selection, or through the regular channel of recruitment, for thousands of posts virtually ceased, ever since then. Interpretations on the G.Os. went on changing, with the views of the incumbents, and the uncertainty has also resulted in the judgments and orders

from the court, in some cases lacking unanimity.

7. The petitioners are said to have been engaged as contract labour. Up to 1998, the absorption used to be, against 50% of the vacancies earmarked for direct recruitment, in certain categories. On 14.3.1998, the Board issued B.P.Ms. No. 326, dated 14.3.1998, creating 490 posts of JPA and 2,983 posts of Mazdoors, in various Power Generating Stations. Clause (5) thereof, provided that candidates possessing SSC/SSLC, ITI, or higher qualifications, or Vocational Course in Electrical Trade at Intermediate level, are eligible to be absorbed as JPAs, and others as Mazdoors. Petitioners were absorbed as Mazdoors, with effect from 6.12.1996. Subsequently, they were appointed as LDCs, in the year 2001, on transfer. Basically, the clauses contained in the orders issued subsequent to their initial appointment, do not apply to the petitioners.

8. Further, mere possession of qualifications prescribed for a post, by itself, cannot be a basis for appointment of the individual, against that post. It would depend upon the fulfillment of other eligibility criteria and availability of vacancies. The petitioners are not able to demonstrate that there were any vacancies of JPAs, or of Junior Assistants, in the year 1996, against which they could have been absorbed, or that they fulfilled the qualifications, for that post. Another aspect of the matter is that B.P.Ms. No. 326, dated 14.3.1998, did not create any post of LDC. At any rate, the petitioners did not feel any grievance, either when they were absorbed as Mazdoors, or when they were appointed as LDCs on transfer.

9. Learned Counsel for the petitioner places reliance upon a Memo, dated 22.3.2005, wherein the Managing Director of the 1st respondent, directed that a Mazdoor, who held ITI qualification, must be appointed as JPA notionally, with effect from the date of appointment of Mazdoor. Neither any provision of law, nor any clause in any G.O. was mentioned, in support of such a decision. It was not even indicated that there existed a clear vacancy of JPA, when the incumbent was absorbed as Mazdoor and that he fulfilled other qualifications. The order is as laconic as it could be. It is but natural that the orders passed in this manner, would create the basis for initiation of litigation by others. At any rate, the circumstances, under which the memo came to be issued, are not before this Court, and no principle can be discerned from it.

10. Viewed from any angle, this Court does not find any basis to grant the relief claimed by the petitioners. The writ petition is, accordingly, dismissed. There shall be no order as to costs.