

(1999) 07 AP CK 0013

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16523 of 1993

Pippalla Surya Bhagavan

APPELLANT

Vs

Member Secretary, APSEB, Hyderabad and others

RESPONDENT

Date of Decision : 16-07-1999

Acts Referred:

Citation : (1999) 4 ALD 422 : (1999) 4 ALT 357 : (1999) 4 ALT 257 : (1999) 2 APLJ 237 : (1999) 2 LLJ 1004

Hon'ble Judges : Bilal Nazki, J;B.S. Raikote, J;B. Subhashan Reddy, J

Bench : Full Bench

Advocate : Mr. S.R. Sanku, for the Appellant; Mr. R. Ramanujam, SC for APSEB, for the Respondent

Judgement

This Judgment has been overruled by : The Transmission Corporation of A.P. Ltd. and Others Vs. P. Surya Bhavagan, AIR 2003 SC 2182 : (2003) 4 JT 356 : (2003) 2 LLJ 843 : (2003) 4 SCALE 379 : (2003) SCC(L&S) 883 : (2003) AIRSCW 2616

B. Subhashan Reddy, J

1. The action of Andhra Pradesh State Electricity Board (hereinafter referred to as "APSEB") in not absorbing the petitioner to the post of Lower Division Clerk has led to this Full Bench reference. The matter was firstly dealt with by a learned single Judge, who, by his order dated 2-9-1994, referred the matter to the Division Bench in view of the view already taken regarding Memo No.OSD(P)/DM.I/ A3/1138/85-1, dated 26-8-1985 issued by APSEB.

2. Under the above Memo, APSEB had evolved a Scheme for absorbing the ex-casual labourers stipulating some conditions in the context of the post to be filled up. For such ex-casual labourers, who can only read and write, the requirement was 100 working days, for IX Class pass 90 working days, X Class pass 80 working days and ITI (Electrical Trade) Pass 60 working days. For this category of ex-casual labourers, there was no relaxation of working days. But, insofar as Graduates are concerned, they were made eligible for absorption in the post of

LDC/Revenue Gashier/Typist/Steno-Typist, who were otherwise eligible for holding the above posts, and there was an exemption for them for putting in specific number of working days. Even if such ex-casual labourers work for a day, they are eligible to hold the above posts, subject to holding the Degree qualification.

3. When a similar question arose in the case of Mohd. Farooq Saheed, who had put in a service of 15 days and sought for a direction for absorption in terms of the above Memo dated 26-8-1985, a learned single Judge has granted the order, but the same was reversed by a Division Bench in WA No.697 of 1992. The Division Bench had taken a view that educational qualification was not the criteria, but number of working days was the criteria. The said view was not acceptable to the learned single Judge, but in view of the Bench judgment, our Brother P. Venkatarama Reddi, J., referred the matter to the Division Bench and the Division Bench had inturn referred the same to a Full Bench by its order dated 26-2-1995.

4. Mr. S.R. Sanku, the learned Counsel appearing for the petitioner, contended that the view taken by the learned single Judge differing with the Division Bench is correct and that we should affirm the said view overruling the judgment dated 18-11-1993 rendered a Division Bench in WA No.697 of 1992. It is also argued by the learned Counsel that the scheme being a beneficial one, meant for ex-casual labourers, should be construed liberally and even if any doubt arises, the benefit should be given to the petitioner and the like, and that APSEB itself had construed the Memo dated 26-8-1985 to mean that the candidates should be Graduates as on the date of consideration and not on the date of leaving the service.

5. Mr. R. Raniamyam, the learned Standing Counsel for APSEB, strenuously contended that such ex-casual labourers, who were Graduates while working as casual labourers but disengaged meanwhile were entitled to be considered in terms of the above Memo, and as the petitioner did not put-in the requisite number of working days, he was not eligible and as such, his case was rejected and that there is no illegality or infirmity in the said order. He has heavily relied upon the judgment of the Division Bench referred to above.

6. Firstly, it is apt to extract the Memo dated 26-8-1985, which falls for interpretation. The same reads as follows :

"Andhra Pradesh State Electricity Board Personnel Services, VidyutSoudha, Hyderabad-49

Memo No.OSD {P)/DM.I/A3/I 138/85-1 Dt. 26-8-1985

Sub : Bsst - APSE Board - Considering the cases of eligible ex-casual labourers against vacant posts in the filed offices - Orders - Issued -Regarding.

Ref: I. Bd's Memo NoJJP/DM(IR)PO-2, 1/944/80-83, dated 6-1-1983.

2. BPMsNo.650, dated 26-7-1983.
3. Bd's Memo No. OSD (P)/DM.I/ A3/220/84-1, dated 18-3-1985.
4. Bd's Memo No.OSD (P)/DM.i/ A3/I207/84-1,dated 13-2-1985.
5. Bd's Memo No.OSD(PI/DM.I/ A3/1207/84-2, dated 25-3-185.
6. Bd's Memo No.OSD(P)/DM.I/ A3/1207/84-4, dated 4-6-1985.
7. Bd's Memo No.OSD(P)/DM.I/ A3/911/84-2, dated 2-7-1985.
8. Bd's Memo No.OSD(P)/DM.I/ A3/98 8/84-2, dated 13-9-1984.

In the Board's memo first cited, orders were issued for engagement of 3650 casual labourers in various circles. In the reference 2nd cited orders, were also issued for absorption of the above causal "labourer identified in terms of the orders contained in the reference 1st cited against regular vacant posts. It has been represented by the Unions that inasmuch as most of the casual labourers engaged in the terms of Board's memo 1st cited, were already appointed against regular vacant posts and that several posts are being sanctioned by the Board from time to time for operation and maintenance works in the Operation Circles the cases of Ex-Casual Labourers against such vacant posts may be considered.

(2) The Andhra Pradesh State Electricity Board after careful consideration issued the following order:

(i) The vacant LDCs/Revenue Cashiers and Typists/Steno Typists in the office staff establishment and the vacant Helper/Watchman posts in the Operation & Maintenance/ Construction staff establishments required as per the norms in the operation circles shall be filled in by considering the suitable and eligible candidates from among the Ex-casual labourers after exhausting the existing casual labourers, if any, on one time basis.

(ii) Ex-casual labourers who have worked number of days as shown below shall be considered for appointment to the operation & Maintenance and Construction Establishment posts.

Qualification of Ex-casual labour Minimum No. of days one should have worked

- (a) Read and Write 100 days
- (b) 9th Class passed 90 days
- (c) 10th Class passed 80 days
- (d) 1TI (Electrical Trade) 60 days

The Ex-casual labourers who have worked for less number of days than those indicated above and who do not possess the qualifications indicated above need not be considered for appointment.

(iii) In the case of Graduates and those possessing equivalent or higher

qualifications amongst Ex-casual labourers, it is hereby ordered that they may be appointed as labourers. It is hereby ordered that they may be appointed against the LDC/Revenue Cashier/Typist/Steno Typist posts in the Operation Circles as and when those posts regardless of total number of days they worked as Casual labourers.

(iv) The vacant posts in the above categories which are required to be filled up as per the norms only shall be filled in.

(3) Division may be taken as unit for considering the eligible and suitable Ex-casual labourers indicated in para 2(ii) above while filling up of vacant Helper/ Watchman posts in the respective divisions, as Divisional Engineer/ Executive Engineer is the appointing authority. In respect of the LDC/Revenue Cashier/ Typist/Steno-Typist posts, circle may be taken as unit for considering the cases of eligible casual labourers in the respective Operation Circles, as Superintending Engineer is the appointing authority.

(4) The respective Divisional Engineers shall scrutinise the lists of the eligible candidates from among the Ex-casual labourers and satisfy themselves personally regarding the such of the candidates. The Divisional Engineers shall display the list of such casual labourers on the notice board and a final list may be prepared after scrutinising representations, if any, received in this regard. All the Chief Engineers/ Zones and Superintending Engineers/ Operation Circles shall furnish the final lists of such Casual labourers to the Board in the proforma appended and obtain approval from the Board before issuing appointment orders. The Divisional Engineers are personally responsible for the correctness of the lists.

(5) In the case of Ex-casual labour who possess Degree or higher qualifications, Superintending Engineers, may prepare the lists and get them verified by concerned Chief Engineer (Zonal or Functional). The Superintending Engineers will issue appointment orders to the posts of LDC/Typist/Steno-Typist after verification of the list by Chief Engineer. Superintending Engineers will be responsible for the correctness of the lists of Graduate Ex-casual labour. Superintending Engineers and Divisional Engineers are informed that serious action will be taken against the concerned, if any irregularities are observed in the lists.

(6) After considering the cases of eligible Ex-casual labourers for appointment to the vacant posts of LDC/Revenue Cashier/Typist/Steno-Typist, the remaining vacancies, if any, to be filled-up as per the norms in the respective operation circles shall be filled in by direct recruitment duly following the instructions issued in Board's Memo No.OSD(P)/DM.1/1698-08/84, dated 9-2-1985.

(7) While filling up of above vacant posts the Superintending Engineers/ Divisional Engineers, shall follow the rules of reservation.

(8) Report of appointments made in a month be sent by 5th of the month in the

following proforma.

S. No.	Category	No. of ex-labour to be considered	No. verified	No. appointed	Progressive Total Balance
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Note : The figures in Col.3 will not undergo any change.

B. V. Rama Rao Member Secretary"

The Division Bench in WA No.697 of 1992, accepting the arguments advanced " on behalf of APSEB interpreted the above Memo holding "we are satisfied that the graduation, by itself, should not have been considered as reason for directing absorption of the petitioner in terms of memo dated 26-8-1985. A person who is not able to read or write, but had worked for hundred days was entitled for absorption. It was specifically mentioned in the memo that the categories of the persons who had worked for lesser days than specified could not have been entitled for absorption. Subsequent acquisition of other qualifications were apparently not a ground to make them qualified for the benefit of absorption in terms of Memo dated 26-8-1985." With respect to the learned Division Bench, we cannot accept the said finding. The Division Bench has only read sub-clause (ii) of Clause 2 of the Memo ignoring sub-clause (iii) thereof, which is already extracted above. The proper construction, which may be made, is that if the ex-casual labourer was not a Graduate as on the date of notification (memo), then necessarily he has to put in the working days of 100, 90, 80 and 60 respectively for the respective categories of posts for absorption in the Operation and Maintenance and Construction establishments. A worker in construction establishment is not required to hold any qualification and it is sufficient, if he is able to read and write. But, having regard to the requirement of education, in the context of the post to be held, the requirement of number of working days is reduced and coming to Graduates, they are entitled to be absorbed as LDC/ Revenue Cashier/Typist/ Steno-Typist in the operation circles and this is a separate class by itself not requiring specific number of working days, and it is sufficient if the candidate is an ex-casual labourer and had worked for one day. There cannot be any distinction regarding the date of acquisition of educational qualification of Graduation. Nothing can be read into Memo requiring, on the date of the ex-casual labourer leaving the services, he ought to be a Graduate and that acquisition of Graduation subsequently is a disqualification. For such a construction, there is neither intelligible differentia nor nexus. The nexus is that as on the date of applying the scheme for appointment to the post of LDC and the equivalent posts mentioned above, the ex-casual labourer regardless of number of working days, should have been a Graduate. This is the proper construction which has to be given.

7. For interpretation or construction of a statute, order or scheme, the reasons for enacting the same is the safest guide. In the instant case, the reason for framing the Scheme in the Memo dated 26-8-1985 was to accommodate the casual labour, who had worked earlier, but were disengaged for want of

vacancies. As the vacancies arose, while accommodating the existing casual labour, which, of course, should be given the priority, after exhausting the existing casual labour, the next preference is given to ex-casual labour and not to freshers. Thus, the scheme is to rehabilitate the ex-casual labour, subject to acquisition of qualifications. Insofar as mandays are concerned, they cannot be acquired, as they are to be reckoned having regard to the actual working days put in by the ex-casual labour. But, this requirement is in contra distinction to the educational qualification, which ex-casual labour can acquire after he is laid off from the work. It is too much to read into the scheme that the ex-casual labour, who is laid off from work, should not educate himself and in the process becomes eligible to hold the post. In fact, such an endeavour on the part of the ex-casual labour has to be appreciated and encouraged. The setting and pattern giving priority to educational qualification in the context of the post held, is easily discernible from the scheme, i.e., lower the qualification-higher the working days and higher the qualification-lower the working days. Even if any doubt arises in the words employed in the scheme regarding the date of acquisition of educational qualification, having regard to the benevolent purpose of the scheme in accommodating the ex-casual labour, it becomes necessary for this Court to interpret in a manner which furthers the object of the Scheme and we do so. Admittedly, the petitioner had worked as casual labourer from 1-5-1976 to 30-6-1976 for 47 days and had acquired B.A. degree in the year 1982. In this view of the matter, in our considered opinion, the judgment of the Division Bench, cannot be taken as laying down the law correctly.

8. In the circumstances, we hold that the petitioner was eligible to be considered for the post of LDC/Revenue Cashier and the respondents (corresponding authorities after the bifurcation of APSEB) are directed to appoint the petitioner in one of the posts of LDCs or Revenue Cashiers. This exercise shall be made within a period of one month from the date of receipt of a copy of this order.

9. Accordingly, the reference is answered and the writ petition is allowed. No costs.