

(2000) 09 AP CK 0061

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 23439, 25016, 25749, 25784, 25837, 25894, 26058, 26085, 26731, 26882, 27046 of 1999, 1161, 1250, 1874, 1875, 1953, 2602, 2713, 3552, 3755, 4298, 4556, 4557, 4620, 4621, 4713, 4985, 7713, 9472 and 11315 of 2000

Sri Vankam Vasu

APPELLANT

Vs

The A.P. Genco and Others

RESPONDENT

Date of Decision : 06-09-2000

Acts Referred:

Citation : (2000) 6 ALD 56 : (2000) 87 FLR 842 : (2001) 1 LLJ 213

Hon'ble Judges : B.S.A. Swamy, J

Bench : Single Bench

Advocate : G.V. Shivaji, for the Appellant; K. Sesharajyam, SC for A.P.Genco, for the Respondent

Final Decision : Allowed

Judgement

B.S.A. Swamy, J.—The respondent-Corporation had issued two notifications; firstly R.O. No.363 of 1998 published in Hindu dated 2-1-1999 for filling up the 60 posts of Sub Engineers (S.E) at Kothagudem Thermal Plant (KTPS) limits apart from other vancancies that are sought to be filled up in various circles and another Notification No.CEE/O&M/ KTPS/V/F.NO.33/D.No. 503/99 dated 2-2-1999 for filling up 222 posts of Junior Plant Attendants (JPA) by direct recruitment while 30-1-1999 was the last date for receipt of the applications from the eligible candidates for filling up the posts of Sub Engineers and 26-2-1999 was the last date for filling up the posts of Junior Plant Attendants. As far as Sub Engineers are concerned, they must hold a Diploma in concerned Subject under clause 2 of the notification. The selection shall be on the basis of performance in the written test and oral interview. Only those candidates, who qualify in the written examination by being ranked high, community wise will be called for interview in the ratio of 1:2 and Rule of Reservation is applicable for appointment in these posts. As far as Junior Plant Attendants are concerned, one must hold an I.T.I. certificate in the concerned Trade and the selection shall be on the basis of the

marks obtained by him in the certified course and viva in all 100. The marks secured by the candidate in the I.T.I. examination will be evaluated at 90 marks by down grading the marks obtained by them for 100 marks and 10 marks for interview. In all 100 marks. For those posts also Rule of Reservation is applicable. After the last date for receiving the applications was over, the respondent-Corporation issued Memo No.JS/DS(P)/AS (Per-I)100-A1/99 dated 6-10-1999 giving weightage of marks to the contract labour, who worked under a contractor at the work site during the construction of two units of 250 MWs., each at KTPS-V stage and who continued, according to the respondents, in O & M Circle of KTPS-V stage under the control of Officers of the Corporation. The weightage sought to be given as here under:

a) Three years and more: 40 marks; b) Between 2 to 3 years: 35 marks; c) Between 1 to 2 years: 30 marks;

Sub Engineers: The above marks will be added to the marks obtained in the process of selection. Junior Plant Attendants: The above marks will be added to the marks obtained as per the procedure in the reference second cited.

2. Questioning this Memo, most of the petitioners in this batch of writ petitions, who worked as contract Labour under various contractors not only during the construction of the Vth stage Project but also some of them working as on today under the contractors for maintenance and operation works, filed these writ petitions, while some petitioners filed the writ petitions questioning the validity of the Memo No. JS/DS(P)/AS (per-I)/100-A1/99 dated 6-10-1999 by contending that the impugned Memo is intended to absorb the members of a particular Trade Union " Telugu Nadu Karmika Sangham" on various grounds and some others filed the writ petitions for extension of the benefit to them also. The petitioners before this Court can be categorised into three categories. 1) Apprentices, 2) Employees working in prohibited categories of employment as per G.O.Ms.No. 41, Labour, Employment, Training and Factories (Lab-II) Department dated 23-9-1996 and 3) Contract Labour. As far as the Apprentices are concerned, they are not really affected by the impugned Memo and the ends of justice will be served by directing the respondent-Corporation to adhere to the judgment of the Supreme Court in U.P.STATE ROAD TRANSPORT CORPORATION v. U.P.PARIVAHAN N.S.B.SANGH 1 and give preference to them while making appointments by direct recruitment if the other things are being equal between them and the others. As far as the employees working in prohibited categories of employment are concerned, the Government issued G.O.Ms.No.41 dated 23-9-1996 prohibiting engagement of contract labour in A.P.State Electricity Board (BOARD) in whose shoes the present respondent-Corporation stepped into after bifurcation of the Board into two Corporations. Thereafter, when those employees staked their claim for absorption into the service of the Corporation, their cases were rejected by taking the stand that they were not employed in the prohibited categories of employment.

Both the learned counsel admitted that several writ petitions were filed

questioning the orders of the respondent-Corporation and this Court having considered their cases and having seen that sufficient material was placed before the Court, held that the ends of justice will be met by setting aside the orders of rejection and directed the petitioners to approach the respondent-Corporation with documentary evidence to show that they were engaged in any of the prohibited categories of employment as on 23-9-1996 and the respondents are directed to consider the claims of those individuals afresh strictly in accordance with the B.P. (P & G - Per) Ms.No. 272 dated 31-12-1997. The directions given by this Court in that batch of writ petitions will enure to the benefit of the petitioners who are claiming regularisation on the ground that they are working in the prohibited categories of employment. It is also made clear that the impugned Memo dated 6-10-1999 will not come in their way for regularisation of their services as per B.P. (P&G-per) Ms.No.272.

3. Coming to the contract labour, as far as the case of the respondent-Corporation is concerned, the employees of the Corporation entered into an agreement with the Trade Union called "Telugu Nadu Karmika Sangham", who espoused the cause of 112 workers, who, according to the respondents, were initially engaged by the contractors during the construction of V stage project at KTPS and who are directly working under the Officers of the Corporation during the construction work and who are continuing to assist the Officers of the Corporation in O & M Circle, by working as Typists, Attendants, Assistants, drivers etc., even after the construction work was over and the benefit was not extended to the other contract labour as they were not working directly under the control of the Officers of the Corporation more so continuously. This submission cannot be given any credence for the simple reason that The Contract Labour (Regulation and Abolition) Act, 1970 (hereafter referred to as "the Act") came into force in 1970. Under this Act the contract labour cannot be engaged in any works of perennial nature and the engagement of the contract labour is permissible only in case of temporary and urgent works. Even then, for not only safeguarding their interests but also to prevent the exploitation of the contract labour either by the contractor or by the principal employer, the Act prescribed a detailed procedure for engagement of contract labour. u/s 7 of the Act the principal employer has to register its name with the Registering Officer in the prescribed manner for registration of the establishment and a duty is cast on the principal employer to see that all welfare legislations intended to protect the interests of the working class are implemented by the contractor through whom they will engage the Contract Labour. u/s 12 of the Act the principal employer can engage the contract labour through a contractor, who obtained a licence as required u/s 12 of the Act. But admittedly neither the Board registered its name as a Principal employer with the Registration Officer as required u/s 7 of the Act nor it is the case of the respondent-Corporation that the contractors to whom the work is being entrusted are licensed contractors u/s 12 of the Act. At the same time, the petitioners counsel produced a letter of the Chief Engineer, Incharge of Vijayawada Thermal Plant vide letter No.CEE/O&M/VTPS/EP7FM/F. /D.No.784/97

dated 6-5-1997. It is useful to extract the same.

" Further to the oral representation of the contractors made to the Chief Engineer/Electricity/O&M/VTPS/ requesting to communicate in writing that the Department will look after the problems that may arise during the operation of the contract, without the labour licence, it is hereby communicated that, the problems arising for not obtaining the labour licence will be taken care of by the A.P.S.E.Board. Hence you are requested to enter into agreement for the work awarded to you for the year 1997-98, duly fulfilling all other formalities such as payment of Insurance for the Labourers etc., as per the terms and conditions of the Agreement."

From this it is evident that the Board has taken a stand that the contractors to whom it was entrusting the works need not obtain licence as required under the Act and if any problem arises for not obtaining the licence, the Board will take care of the situation. By giving such an assurance, he directed the contractors to enter into agreements for the year 1997-98. The learned counsel for the respondents lays very much stress by stating that this letter was written by the Chief Engineer not concerned with the Project and the agreement relates to the year 1997-98. But at the same time, she fails to produce any evidence to show that the licence was obtained by the contractors to whom it was entrusting the work. From this it is evident that the beneficial legislation intended to safeguard the interest of the gullible workers was thrown in the dust bin by an instrumentality of the State. Further, it is seen from the B.P. (P&G per) Ms.No. 36 dated 18-5-1997 and B.P. (P&G - per) Ms.No.272 dated 31-12-1997 that 50% of the existing vacancies as on that date, were reserved by the Board for the ex-casual labour, contract labour and village electricity workers. Under the caption " Eligibility " sub-clause (c) deals with the contract labour.

The learned counsel for the respondents fairly conceded that this Court has already ruled that the cases of the contract labour working under various contractors for absorption cannot be rejected by the Board on the ground that they were not working under the licensed contractors. In other words, both under the orders of the Corporation referred to supra as well as the orders of this Court, the respondent-Corporation is bound to consider the claims of the contract labour for absorption by following are the uniform procedure. Hence, there is no substance in the contention raised by the Corporation that they are willing to consider the claims of only 112 contract labour, who were initially engaged by the contractor and continued to work under the Officers of the Corporation. Accordingly, this contention is rejected. Accordingly the action of the respondent-Corporation in giving weightage in the process of selection for appointment to only the contract labour working in O & M circle as on today cannot be countenanced as it offends Article 14 of the Constitution of India.

4. Coming to the award of weightage marks that is sought to be given to the contract labour working in O & M circle from the Memorandum of Settlement entered into between the parties on 24-2-1995 and 25-2-1999, it is seen that

the request of the union for absorption was rejected outright on the ground that they were not engaged in any of the 33 prohibited categories of employment, but at the same time, the Board agreed to consider the request of the Union for giving weightage of marks at the time of the selection. Under clause (2) of the Memorandum of Settlement the Union demanded that 50 marks should be given as weightage for the applicants, who applied for the posts of Sub Engineers and Junior Plant Attendants in response to the notification dated 2-1-1999 and 2-2-1999 respectively. The Board agreed to give weightage for the experience in the form of certain marks legally permissible. The Board further agreed that number of marks and the modalities for giving weightage would be worked out separately. Under clause (5), with regard to the demand of absorption of remaining 70 candidates, who have not responded to the notifications referred above for absorption, the Board agreed that their request would be examined whenever fresh recruitment takes place. I have seen the note file commenced on 1-5-1999 for giving weightage of marks for work experience. It is true that the Union demanded 50 marks as weightage but in the note file proposals were mooted for giving weightage as here under:

Three years and more: 25 marks Two years to three years: 20 marks One to two years: 15 marks The Joint Secretary revised weightage of marks as here under by his note order dated 1-10-1999. Three years and more: 40 Two years to three years: 35 marks One to two years: 30 marks

The CMD in para-70 of the note file observed as under:

"In view of the valuable services rendered by the casual labour during the project construction work, the award of weightage of marks as proposed by the Joint Secretary may please be accepted."

If this weightage is given for the contract labour, who responded to the notification, the marks to be awarded in the process of selection, cross far beyond the maximum marks prescribed for making the selections for the purposes of appointment, which is not permissible in law. Secondly, the Apex Court and this Court commend the practice of giving a little weightage for the experience of the employees working in the organisation previously to a limited extent over and above the fresh candidates, who responded to the notification for the first time during the selection process, but the award of marks that were given by the respondent-Corporation is unheard of. Practically, they have given 50% of marks as weightage to an employee, who has put in three years of service, and if such an employee gets good number of marks in written test, the total marks secured by him would be more than the maximum marks of 100 thereby belittled the chances of the meritorious candidates, who appeared for the test by direct recruitment, to get the employment. In fact the learned counsel appearing for the contesting respondents also is not able to cite any precedence wherein the Courts upheld giving weightage of marks to such a high extent. Any weightage of marks to be given is intended to give little edge to the experienced workmen when all other things are equal between them and the

freshers but not to confer undue favour to regularise their services through back door having rejected the demand of the Union, that they cannot be absorbed on regular basis. I have gone through the entire note file. I did not find any reasons more so cogent reasons for giving such a high marks as weightage. Hence, I have no other option except to hold that the Memo No.JS/DS(P)/AS(Per-I)/699-A1/99-1 dated 6-10-1999 as arbitrary and result of non-application of mind by the Officers concerned.

Accordingly the impugned Memo is quashed.

During the course of arguments it came to light that from the category of contract labour about 34 Junior Plant Attendants and 10 Sub Engineers were appointed by giving weightage and appointments cannot be sustained in law.

In the light of the view taken on both the contentions raised by the Corporation, I am inclined to direct the respondent-Corporation to consider the cases of all the contract labour both working under the contractors as well as sub-contractor for giving weightage of marks in the process of selection and any weightage to be given shall not exceed 10% of the total marks.

5. For the foregoing discussion, I direct the respondent-Corporation to reconsider the filling up of the above posts i.e. 10 posts of Sub Engineers and 34 posts of Junior Plant attendants duly taking into consideration the claims of all the persons appointed and also the contract labour that worked or working under contractors or sub-contractors, who responded to the notifications referred supra, as the provisions of the Act are also applicable to the contract labour employed by the said contractors, afresh and fill up the posts by giving weightage if the Board so wishes. If any weightage has to be given for this contract labour, it shall not exceed 10% of the total marks prescribed for selection. To put it aptly, the respondent-Corporation can proportionately reduce the marks obtained by the candidates in the qualifying examination by 80 marks, 10 marks for viva-voce and 10 marks for weightage depending upon the length of service.

6. It is needless to observe that the Rule of Reservation and the Roaster has to be scrupulously adhered to while filling up the posts. If any of the contract labour gets more marks than the candidates that were selected by direct recruitment, the Corporation is directed to consider their cases sympathetically as the process of selection is now limited to about 60 (i.e. persons selected and the persons applied but not selected).

7. During the course of arguments it came to light that again at the instance of some other Trade Union, a Committee was constituted in Memo No. GM (A) / DS(P)AS(P)/86-A1/2000-2 dated 20-5-2000 to submit a report for absorption and utilisation of the remaining 64 labour, according to them, who were working in O and M circle. In the light of the view taken by me, with regard to the action of the respondent-Corporation in limiting the process of giving weightage for absorption to the contract labour working in O and M Circle is violative of Article

14 of the Constitution of India, any exercise for absorption or utilisation of the contract labour that worked or working shall be uniform and they shall formulate the scheme in such a manner to cover all the contract labour working under other contractors or under sub-contractors or under Officers of the Corporation but not limiting the process only to the contract labour, who according to them are working in O and M circle. It is needless to observe that any claim for appointment by the petitioners is subject to proof of their engagement either by the contractor or the sub-contractor and their eligibility as well as conduct. If any selections are made pursuant to the said Memo dated 20-5-2000 they shall not be given effect to.

The process of selection to the post of Sub Engineers and Junior Plant Attendants shall be completed for the posts that have to be vacated by the persons appointed, within three months from the date of receipt of a copy of this order.

8. It also came to light that after the construction work is over in KTPS V project, some of the petitioners are working with the contractors in maintenance and operations. If the term of the contract expires and if the Corporation wants to entrust the work to new contractor, it shall be made a condition precedent that he shall employ the contract labour, who are working with the previous contractor as on today. If any worker comes to adverse notice of the Corporation official, he shall not claim any benefit under any of the orders of this Court.

9. Status quo shall be maintained with regard to the persons appointed as well the persons, who are working under various contractors.

10. The writ petitions are allowed to the extent indicated above. No costs.