

**HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

Writ Petition No.25651 of 2007

**ORDER:**

In this writ petition filed under Article 226 of the Constitution of India the 8<sup>th</sup> writ petitioners seeking the following relief:

“It is therefore prayed that this Hon’ble Court may be pleased to issue an order, direction or a Writ more particularly a Writ of Mandamus declaring the action of the respondents in not regularising the services of the petitioners in the Unit of the 2<sup>nd</sup> respondent corporation or any other unit of the respondents in the State of Andhra Pradesh as illegal, arbitrary, and unconstitutional, consequently to direct the respondents to regularise, by absorbing, the services of the Petitioners into the 2<sup>nd</sup> respondent unit or in any units of the 1<sup>st</sup> respondent corporation with all benefits and pass such other order or orders as deemed fit and proper under the circumstances.”

2. The case of the petitioners briefly is that all the petitioners except the 8<sup>th</sup> petitioner possessed ITI certificate course in different trades and the 8<sup>th</sup> petitioner is an unskilled person. All of them were taken on contract labour by the 1<sup>st</sup> respondent from 10.10.1996 to 31.03.1998 in different categories of labour like electrical work, boilers maintenance etc. They were paid daily wages by the

respondents through the contractor to whom the respondents have outsourced.

(a) While so, Government of Andhra Pradesh have issued G.O.Ms.No.41, Labour, Employment Training & Factories (Lab.II) Department, dated 23.09.1996 prohibiting the employment of contract labour in 33 categories in Andhra Pradesh State Electricity Board mentioned in the said G.O. Despite the said G.O, the respondents have engaged the services of the petitioners and some others and continued their services uninterruptedly. Later on the representation of the contract labours, a notification was issued in the daily newspapers on 16.10.1997 calling for interviews to be held from 16.10.1997 to 18.10.1997 for regularization of their services basing on the past experience. All the petitioners and others attended the said interview. Services of the some of the employees were regularized and services of other employees were rejected by the respondent on the ground that their date of initial appointment was subsequent to the date of G.O.Ms.No.41, dated 23.09.1996. Questioning the said rejection and not regularizing their services, W.P.No.11363/1998 was filed by the Rayalaseema Thermal Power Project Staff and Workers' Union. The said W.P. was disposed of on 17.09.2004 permitting the petitioners to

make a comprehensive representation to the concerned authorities with a direction that the said authority shall entertain and consider the representation and pass appropriate orders as per law.

(b) Pursuant to the said direction the Union submitted a representation in the month of October, 2004 for regularization of the services. A list of 63 persons was enclosed to the said representation. Thereafter the 2<sup>nd</sup> respondent addressed 5 letters to several companies requesting them to absorb the members of the Union pursuant to the direction of the High Court. However, the companies have rejected the plea of the board.

(c) In the meanwhile, the Government of Andhra Pradesh proposed to construct RTPP Stage-II in the year 2004. The respondents promised all the petitioners and others that their services would be regularized as and when the work of Stage-II of RTPP was completed. However, the authorities kept the aspect of quantum of vacancies in the RTPP Unit-I and II as confidential though the generation of the power in the Unit-I has commenced prior to the filing of the present writ petition. In those circumstances, the Government, on the request of the Labour Union vide G.O.Rt.No.1525, Labour Employment Training and Factories (Lab.I)

Department, dated 08.08.2000, made a reference to the Industrial Tribunal under Section 10(1)(c) of the Industrial Disputes Act, 1947.

The reference point was as under:

“Whether the action of Chief Engineer, R.T.P.P. (Rayalaseema Thermal Power Project) Kalamalla, Cuddapah District in not regularising the services of the 30 Contract Labourers (As per Annexure) though they were engaged in prohibited categories notified in G.O.Ms.No.41 dt. 23.09-1996 is justified”? If not, to what relief they are entitled?”

(d) The Industrial Tribunal-cum-Labour Court, Anantapur served notice on both parties. The Chief Engineer (R.T.P.P.), Kallamalla Village, Cuddapah, who is 2<sup>nd</sup> respondent in the present writ petition, filed counter opposing the claim on the main contention that the respondent never issued any appointment order nor termination order to the contract labourers and there was no master and servant relationship between them. The petitioners therein worked under the contractors but not under the control of the respondent. It is further contended that in the light of G.O.Ms.No.41, dated 23.09.1996, prohibiting the engagement of contract labourers in 33 categories w.e.f. 23.09.1996, those contract labourers who were on the rolls as on 23.09.1996 alone were eligible to be considered for absorption and accordingly, the petitioners were called for interview

and they were not considered for absorption as they were not on rolls as on 23.09.1996. It was contended that the petitioners therein joined under contract on 10.11.1996 and the contractor entrusted them with the work of replacing of clamps connection, jumper castles etc. from 01.10.1996 to 31.03.1997. Hence, they were not eligible for any relief. However, the Tribunal considering the identity cards with interview call letters of the petitioners and also the tenure of work exceeding more than 240 days held that the petitioners worked under the respondent management in skilled and unskilled categories and they also completed more than 240 days. They were also covered under G.O.Ms.No.41. It was further observed that the G.O.Ms.No.41 does not specifically mention that it is either prospective or retrospective in operation except mentioning that the employment of contract labour in 33 categories in the A.P. State Electricity Board was prohibited. In that context, the Board's proceedings dated 31.12.1997 limiting the absorption to those persons who were on rolls as on the date of G.O. is repugnant to its earlier proceedings. The Tribunal has accordingly, partly allowed the I.D. and held that the petitioners are entitled for reinstatement into service as regular employees with continuity of service and attendant benefits but without backwages.

3. The submission of the present writ petitioners is that the award in I.D.No.218/2000 favoured 30 employees who are similarly placed with the petitioners herein. Those 30 persons were employed subsequent to G.O.Ms.No.41 dated 23.09.1996. The petitioners came to know that the respondents are contemplating to regularize the services of those 30 persons by relieving the petitioners, though the petitioners' stand on the same footing except the fact that they have not filed the I.D. No.218/2000.

Hence, the writ petition.

4. The respondents filed counter similar to one in I.D.No.218/2000.

5. Be that it may, when the matter came up for hearing, learned counsel for petitioners Sri S.S.Bhatt would submit that questioning the award in I.D.No.218/2000, the respondents filed W.P.No.21947/2005 and the same was dismissed by a learned single Judge by his order dated 16.03.2017 and the said Judgment was carried in appeal i.e., W.A.No.1269/2017 and the Division Bench of this High Court has dismissed the said appeal on 24.02.2022. Learned counsel placed the

copies of the orders in W.P.No.21947/2005 and W.A.No.1269/2017 and requested to allow the writ petition in view of the covered orders.

6. Learned counsel for the respondents sought to argue that the petitioners have not filed any I.D. and therefore, the order in I.D.No.218/2000 and subsequent orders in W.P.No.21947/2005 and W.A.No.1269/2017 will not enure to the benefit of the petitioners herein.

7. On a careful perusal of the above orders, I find no much force in the submission of the learned counsel for the respondents. The present petitioners and others were all appointed as contract labourers subsequent to G.O.Ms.No.41. Their eligibility for regularization was extensively dealt with and their case was allowed in I.D.No.218/2000 and the same was confirmed in W.P.No.21947/2005 and W.A.No.1269/2017. The aforesaid orders apply with all its force to the present petitioners also.

8. Therefore, in terms of the orders in I.D.No.218/2000, W.P.No.21947/2005 and W.A.No.1269/2017 and for the reasons mentioned therein, this Writ Petition is allowed and the petitioners herein are held to be entitled for reinstatement into service as regular

employees with continuity of service and attendant benefits, but without backwages. The respondent authorities shall take steps for placing the petitioners in suitable posts expeditiously but not later than six (6) weeks from the date of receipt of a copy of this order. No costs.

As a sequel, interlocutory applications pending, if any, shall stand closed.

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**U.DURGA PRASAD RAO, J**

08.11.2022  
KRK / MVA