

APHC010309192008



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3504]

FRIDAY ,THE TWENTIETH DAY OF JUNE
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

WRIT PETITION NO: 22675/2008

Between:

The Chairman/Managing Director and Others

...PETITIONER(S)

AND

B. Veera Krishna and Others

...RESPONDENT(S)

Counsel for the Petitioner(S):

1.Nagaraju Naguru,Standing Counsel For APGENCO

Counsel for the Respondent(S):

1.GP FOR LABOUR

2.PRAKASH BUDDARAPU

The Court made the following:

APHC010426952017



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FRIDAY ,THE TWENTIETH DAY OF JUNE
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THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

WRIT PETITION NO: 8617/2017

Between:

B.Veera Krishna,

...PETITIONER

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.PRAKASH BUDDARAPU

Counsel for the Respondent(S):

1.Nagaraju Naguru,Standing Counsel For APGENCO

2.GP FOR LABOUR (AP)

The Court made the following:

HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM
WRIT PETITIONs Nos.22675 of 2008 and 8617 of 2017

Common Order:

W.P.No.22675 of 2008 has been filed by the A.P.Power Generation Corporation (herein after for the sake of brevity referred to as 'APGENCO'), being aggrieved by the Award dated 31.01.2008 made in I.D.No.90 of 2005 passed by the Industrial Tribunal-cum-Labour Court, Guntur / 2nd Respondent (in short 'Tribunal') and seeking quashing of the same. The said I.D. was filed by the 1st Respondent / Workman, which was published in the A.P.Gazette in G.O.Rt.No.522, dated 12.03.2008, where under Industrial Tribunal-cum-Labour Court, passed an Award in I.D.No.90 of 2005, directing the APGENCO to employ the petitioner as and when they make regular appointment in their Organization by relaxing age and academic qualifications.

2. Whereas, W.P.No.8617 of 2017 was filed by the petitioner/Workman before this Hon'ble Court, seeking direction against the APGENCO Authorities to implement the Award dated 31.01.2008 made in I.D.No.90 of 2005 passed by the Tribunal, which was also published in the A.P Gazette in G.O.Rt.No.522,dated 12.03.2008, and to declare the G.O.No.697 of 2002, dated 03.02.2003 issued by the APGENCO as void ab initio and consequential direction to absorb the petitioner with effect from 06.12.1996 into the APGENCO.

3. For the sake of better understanding, the parties i.e., petitioner in W.P.No.8617 of 2017 & respondent in W.P.No.22675 of 2008 and the petitioner in W.P.No.22675 of 2008 & respondent in W.P.No.8617 of 2017 herein after referred to as 'Workman' and 'APGENCO' respectively.

4. In the above two Writ Petitions, subject matter revolves around one Award dated 31.01.2008 made in I.D.No.90 of 2005 passed by the Tribunal, published in the A.P Gazette in G.O.Rt.No.522,dated 12.03.2008.

5. Whereas, the APGENCO had sought to quash the Award dated 31.01.2008 and conversely, the Workman is urging to implement the very same Award under challenge. There being a commonality of facts and law concerning these Writ Petitions, and also taking into consideration of submissions by the respective Counsels, this Court ventures to pass Common Order in the above Writ Petitions.

6. Heard Sri Nagaraju Naguru, learned Standing counsel for the APGENCO as well as Sri Prakash Buddarapu, learned counsel for the Workman, at length.

Brief case of the Workman:

7. The claim of the Workman in the I.D. is that he worked as a Helper in the Coal Handling plant as Coal Breaker under the control of Chief

Engineer, Dr.NTTPS, Ibrahimpatnam, running under APGENCO through a contractor by the name of Balaji Constructions as on 23.09.1996.

8. It is also averred in Claim Petition in the I.D. that the Government of Andhra Pradesh by exercising the powers conferred under Sub-Section (1) of Section 10 of the Contract Labour (regulation and Abolition) Act, 1970 issued G.O.Ms.No.41, dated 23.09.1996, whereby employment of contract labour in 33 categories of employment specified therein was prohibited/abolished in the erstwhile Andhra Pradesh State Electricity Board (APSEB).

9. Subsequently, APSEB was divided into APGENCO (which is entrusted with the activity of power generation) and APTRANSCO (empowered to Transmission, Distribution, Supply of Electricity). In Nutshell, APGENCO is the instrumentality of State Government which is amenable to Article 12 of the Constitution of India.

10. In consonance with the above stated G.O., the erstwhile Andhra Pradesh State Electricity Board formulated guidelines in B.P.(P& AG Per.) Ms.No.37, dated 18.05.1997 in respect of appointment of Contract Labour engaged against the said 33 prohibited/abolished categories of employment in A.P State Electricity Board by prescribing the appointment procedure. Later on, another B.P.(P& G Per.) Ms.No.260 dated 19.12.1997 was issued specifically for absorption of the Contract Labour

engaged against the above said 33 prohibited/abolished categories, which are mentioned in the G.O.Ms.No.41, dated 23.09.1996. Subsequently, another B.P.(P&G Per.) Ms.No.272, dated 31.12.1997 was also issued.

11. It is the further case of the Workman that inspite of having pre-requisites, he was not absorbed into service by the APGENCO, as such, the Workman along with the similarly placed persons instituted W.P.No.679 of 1999 before the erstwhile High Court of Andhra Pradesh arraying the APGECO Authorities as the respondents. Whereunder, the Hon'ble High Court, directed the APGENCO authorities to consider the case of the Workman for absorption and as the same was not fructified.

12. Later on, the case of the Workman for absorption was rejected by the APGENCO Authorities. At last, the Workman filed another Writ Petition vide W.P.No.23031 of 2000 before the High Court of A.P. at Hyderabad. The Hon'ble High Court disposed of the same on 14.08.2003 by clubbing with other batch of cases in W.P.No.13936 of 1999, with a direction to the Workman, to approach the Tribunal for his absorption and further the concerned Tribunal was directed to dispose of such dispute raised by the Workman.

13. Hence, the Workman approached the Tribunal by filing Industrial Dispute and sought for absorption into the APGENCO Establishment with all consequential benefits. Thus, the I.D. was emanated.

Counter Averments of the APGENCO:

14. Conversely, APGENCO filed its counter *inter alia* contending that the deployment of the Workman and others through contractor was on their own accord and it was not requisitioned by the APGENCO. It was pleaded that there was no Master and Servant relationship between the Workmen and APGENCO.

15. It is further version of the APGENCO that, the workman was not on rolls as on the requisite date and did not fulfil the conditions prescribed in B.P.Ms.No.37, dated 18.05.1997 and B.P.Ms.No.272, dated 31.12.1997. Therefore, the Workman is not eligible for absorption. It is also contended that the Workman is not entitled for absorption in view of decision held in ***Steel Authority of India Ltd. Vs. National Union of Waterfront Workers***¹. Accordingly, the claim filed by the workman has been resisted.

Summary of the Industrial Dispute:

16. In I.D.No.90 of 2005 proceedings, the Workman got examined himself as W.W.1 and marked Ex.W1 to Ex.W10. He also got examined

¹(2001) 7 SCC 1

the Manager of the contractor as W.W.2 in support of his case. On behalf of the APGENCO, M.W.1 was examined, but no documents were marked by them. Basing upon the above contentions, the Industrial Tribunal cum Labour Court framed the following Issues which are:

- i. Whether the Workman/petitioner worked in any one of the 33 abolished categories as contract labour as on 23.09.1996?
- ii. To what relief?

17. The Tribunal had gone through the evidence of W.W.1(Workman), who during his evidence, reiterated the assertions made in the claim petition. It had also gone through the evidence of W.W.2(Manager of Contractor), who engaged the workman in the APGENCO and his evidence on record was that, the Workman had been employed as a Contract Labour in APGENCO Establishment as on 23.09.1996. The Tribunal further examined the documentary evidence marked on behalf of the Workman i.e., Ex.W.1 to Ex.W.10. It had also taken into consideration of the sole witness evidence of APGENCO, however, no documentary evidence was submitted by them to substantiate their version.

18. The Tribunal had also observed that the said witness on behalf of the APGENCO did not answer in concrete manner, and he deposed that, he has no knowledge as to whether the workman was employed in the prohibited/abolished category, and further pleaded unawareness to the case asserted in the claim petition as well as the documentary evidences submitted by the W.W.1 and W.W.2. In a Nutshell, the Tribunal observed

that, M.W.1 pleaded unawareness and has no knowledge about every aspect. It had finally come to the opinion that M.W.1 failed to substantiate the APGENCO's version.

19. The Tribunal adjudicated the claim and counter averments and after considering the evidence on record, came to specific finding that the Workman worked in the APGENCO establishment as on 23.09.1996 in Coal Breaking prohibited/abolished category as a Coal Breaker and also observed that Workman is entitled for absorption. However, the Tribunal relying upon the dictum of ***Steel Authority of India*** (supra) passed the Award and the relevant portion of the same is read as under:

“.....In the result, petition is allowed. The Rejection order passed by the respondent is set aside. Respondents are directed to employ the petitioner as and when they make regular appointments in their organisation by relaxing age and academic qualifications etc. Award is passed accordingly.”

20. Thus, the said Award has been challenged by the APGENCO through W.P.No.22675 of 2008, seeking to set aside, wherein, this Court granted interim orders against the I.D. Award. And the Workman was under the mistaken impression that the Award passed by the Tribunal had attained finality, but it was not being implemented by the APGENCO. On such premise, Workman filed W.P.No.8617 of 2017 before this Court, seeking implementation of the Industrial Award and his absorption.

Submissions advanced by the respective Counsels:

21. The learned Standing Counsel appearing for the APGENCO at the outset, raised the point about the maintainability of very Industrial Dispute before the Tribunal. It was contended that the Contract Labour / Workman directly filed the dispute, under Section 2-A (2) of the Industrial Disputes Act, 1947 for absorption, without approaching the Government under Section 10(1)(c) of the Industrial Disputes Act, 1947 and therefore the dispute is not valid. Hence, very proceedings are liable to be set aside. He further contended that although Workman did not fulfil the conditions laid down in the G.O.Ms.No.41, dated 23.09.1996, the Tribunal had erroneously passed the Award infavour of the Workman. Hence, Award is not valid.

22. Conversely, the learned counsel for the Workman submits that the Tribunal ought to have extended the automatic absorption to Workmen with all consequential benefits from the year 1996 onwards. The learned counsel for the Workman has not stretched his submissions in respect of remaining aspects.

Analysis:

23. In the light of above rival submissions, this Court is formulating the following issues for consideration in the present lis:

- (i) Whether the initiation of Industrial Dispute U/s 2A (2) of the Industrial Disputes Act, 1947 directly by the Contract Workman Labour before the Tribunal without reference by the Government under Section 10-1 (c) of the Industrial Disputes Act, 1947 is maintainable or not?
- (ii) Whether the Award passed by the Industrial Tribunal-cum-Labour Court is liable to be interfered or not?
- (iii) Whether the workman is entitled for automatic absorption into the APGENCO Establishment or not?

Issue (i):-

24. Apparently, the Workman along with the similarly placed persons filed Writ Petition No.13936 of 1999 & batch, before the High Court of A.P at Hyderabad, whereunder, they challenged the rejection of absorption orders passed against them by the APGENCO. The High Court by clubbing together the similar cases, and also by relying on the Judgment of Apex Court in ***Steel Authority of India Limited*** case referred to supra, passed the common orders, permitting the Workman and others to raise an Industrial Dispute before the Tribunal about their claim and also further directed the concerned Tribunal to dispose of the same as early as possible.

25. Accordingly, the Workman rightly approached the Tribunal in terms of specific orders of the High Court only. In this context, it is apt to note that, the State of Andhra Pradesh also brought an amendment *vide* A.P

Act (32 of 87), Section 2 (27.07.1987) to the Section 2A of the Industrial Disputes Act, 1947 and Sub-Section (2), which is extracted hereunder:

“(2) Notwithstanding anything in S.10, any such workman as in specified in Sub-sec.(1) may, make an application in the prescribed manner direct to the Labour Court for adjudication of the dispute referred to therein; and on receipt of such application, the Labour Court shall have jurisdiction to adjudicate upon any matter in the dispute, as if it were a dispute referred to or pending before it, in accordance with the provisions of this, Act; and accordingly all the provisions of shall apply in relation to such dispute as they apply in relation to any other industrial dispute.”

26. Thus, in view of A.P.State Amendment, which states that notwithstanding anything contained in Section 10 of the Industrial Disputes Act, 1947, any Workman may directly make an application to the Tribunal for adjudication of the dispute .

27. Infact, in the instant case, while deciding the preliminary issue, the Tribunal by its Order dated 30.03.2007, held that the petition filed by the workman is treated as reference under Section 10-1 (c) of the Industrial Disputes Act, 1947.

28. In this context, it is appropriate to refer the dictum of unified High Court at Hyderabad in ***P.S Ramakrishna & Others Vs Member Secretary, Andhra Pradesh Power Generation Corporation Ltd²*** which

²2004(2) Labour Law Notes, 227

dealt the very same issue and arrived its unequivocal findings in the following manner:

“.....19. The Legislature, the Executive and the judiciary are the three organs of the State. The Act empowers the appropriate Government to refer a dispute to the Tribunal But, it cannot be said that Courts are not empowered to refer a dispute for adjudication of the Industrial Tribunal as the act of the Court is also the act of the State.

20. Further S.2A (2) has been inserted by the State of Andhra Pradesh, stating that notwithstanding anything contained in S.10 of the Act, any workman may make an application directly to the Labour Court for adjudication of the dispute Therefore, there is yet another reason where the Industrial Tribunal or the Labour Court cannot refuse to entertain the industrial dispute raised by the petitioner as laid down by the Supreme Court in the judgment cited supra, which is binding on the Labour Courts or the Tribunals as the case may be.

21. Hence, the Labour Court/Industrial Tribunal as the case may be, is bound to entertain the dispute raised by the petitioners pursuant to the orders of this Court, treating it as a reference made under S.10(1) of the Act.....”

29. Therefore, in view of the above reasons the filing of the I.D directly by the Workman before the Tribunal is rightly maintainable.

Issue (ii):

30. Coming to the second issue, the central point in the Workman case rests on G.O.Ms.No.41 dated 23.09.1996 issued by the Government of A.P. The said G.O. issued by the Government of A.P. by exercising its

power under Sub-section (1) of Section 10 of Contract Labour (Regulation and Abolition) Act, 1970, so as to benefit the Contract Labour and prohibit the employment of Contract Labour in 33 categories in the A.P State Electricity Board. The said categories are as follows:-

1. Hospital Workers.
2. Coal Plant Operations.
3. Soot blowing Operations.
4. Ash Plant Operations.
5. Breaking of Coal.
6. Boulders of Grid.
7. Coal feeding to units through reclamation grids of conveyor.
8. Crusher House Operations.
9. Grid Jam Cleaning at Wagon tripler and Coal Plant.
10. AI Feeder Operations.
11. Hydrogen Plant Operations.
12. Water Boys.
13. Auxillary A.C. Plants.
14. Jam Removers.
15. Mixing of Chemicals.
16. Collection of Samples.
17. Stacker.
18. Reclaimers.

19. Sweeper.
20. Sanitary Mazdoors.
21. Scavengers.
22. Pump House Operations.
23. Electricians.
24. Coal Mill.
25. Burner Floor.
26. Raw Water Pump Operations.
27. Water Treatment.
28. Dust Electro Static Operations
29. Otis Elevator Plant Maintenance.
30. Instruments.
31. Helpers.
32. Pulverising Mills.
33. Lab Assistants.

31. By relying upon the above said G.O. as well as its consequential guidelines framed thereon to absorb the Contract Labours into the Establishment, the workman, by stating his suitability, sought for absorption into the APGENCO Establishment. The workman initially approached the Hon'ble High Court, by challenging the rejection of absorption orders into APGENCO. Whereunder, this Court did not exercise its powers vested under Article 226 of the Constitution of India,

but however, directed the workman to approach the Tribunal. Thereupon, the Workman rightly instituted Industrial Dispute before the Tribunal long back.

32. The Workman also placed his evidence as well as documentary proofs to substantiate his assertions. Similarly, the APGENCO resisted the said claim of the workman. But the Tribunal by pursuing the respective pleadings, depositions (W.W.1, W.W.2 pertaining to the Workman as well as M.W.1 pertaining to APGENCO) as well as the documentary evidence i.e., G.O.Ms.No.41, dated 23.09.1996 issued by the Government of Andhra Pradesh (Ex.W.1), B.P.Ms.No.37 dated 18.05.1997 and B.P.Ms.No.272 dated 31.12.1997 (Ex.W-2) and (Ex.W-3) respectively, Service Certificates(Ex.W.4 and Ex.W.5), Attendance Register (Ex.W.6), Copy of Wage Register (Ex.W.7), Application for issuing Gate passes of the APGENCO establishment (Ex.W.8), Copy of order in W.P.No.13936 of 1999(Ex.W.9) which was initially filed by the Workman and others, before the High Court of A.P challenging the inaction of APGENCO in absorbing the workman, where under, the Workman was directed to approach the Tribunal for redressal of his grievance after taking into consideration the fact that the APGENCO, did not submit any documentary proofs to demolish the version of the Workman. Authorization letter given to S.A.Gani (Ex.W.10).

33. In light of the above voluminous record, the Tribunal by exercising its exclusive domain, determined the issues, which predominantly involved highly disputed questions of facts. The reasons arrived by the Tribunal were based upon a comprehensive appreciation of oral as well as documentary evidence available on record.

34. Infact, the APGENCO merely raised the self-same issues without demonstrating that findings of fact arrived by the Tribunal suffer from inherent flaws or amount to grave error of law. In view of above aspects and taking into consideration of the exclusive domain of the Tribunal, this Court do not find any legal infirmity or illegality in passing of the Award. More so, as stated supra the APGENCO has failed to substantiate its assertions in the present lis.

35. The Tribunal consciously by following the case of the **Steel Authority of India Ltd.** (referred above) in its true letter and spirit decision only, had passed the Award in the instant case, the relevant portion of which reads as under:

“.....In the result, petition is allowed. The Rejection order passed by the respondent is set aside. Respondents are directed to employ the petitioner as and when they make regular appointments in their organisation by relaxing age and academic qualifications etc. Award is passed accordingly”

36. Therefore, in the considered opinion of this court, the Tribunal within the touchstone of Constitutional Court mandate made in the case of ***Steel Authority of India***(referred supra), arrived at plausible and reasonable findings pertaining to the disputed questions of facts in the lis.

Issue 3:

37. In ***Steel Authority of India Ltd and Others Vs National Union Waterfront Workers and Others*** (referred to above), a Five Judge Bench of the Hon'ble Supreme Court while dealing with the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 along with its object and intendment, by scanning the relevant facets of the Contract Labour aspects, overruled the dictum held in ***Air India Statutory Corporation Vs United Labour Union***³ and in unequivocal words arrived its findings. For the sake of comprehensive view, the relevant paras 125 & 126 read as under:

"....125. The upshot of the above discussion is outlined thus:

(1)(a)

(b)

(2)(a)

(b)

(3)

(4)

(5) On issuance of prohibition notification under Section 10(1) of the

³(1997) 9 SCC 377

CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.....”

38. By a plain reading of the above paras of the Constitutional Mandate, it is clear that the mere issuance of prohibition notification by the appropriate Government under Sub-Section (1) of Section 10 of Contract Labour (Regulation and Abolition) Act, 1970, prohibiting the employment of Contract Labour in any establishment, does not by itself entitle the contract labour to automatic absorption. In other words, a mere issuance of prohibition notification by the State Government by

itself, will not confer the absolute rights in favour of the Contract Labour / Workman for his absorption into the APGENCO Establishment. However, in the event that the APGENCO desires to employ regular Workmen, preference shall be given to the erstwhile contract Labour / Workman, if they are otherwise found suitable. In such case, the APGENCO is empowered to relax the conditions relating to maximum age and academic qualifications, while ensuring that the technical qualifications remain unchanged.

39. In the light of above ratio-decedendi laid down in ***Steel Authority of India*** (supra), the orders passed by the Tribunal is valid, reasonable and apt. Therefore, the question of automatic absorption as pleaded by the Workman is not entitled in view of the facts and circumstances involved in the *lis*.

40. The learned counsel for the Workman placed reliance upon the Order dated 31.01.2017 of the Hon'ble Supreme Court in Civil Appeal No.9793 of 2010 and orders dated 24.02.2022 in Writ Appeal No.1269 of 2017 of Division Bench of this Court, in an attempt to persuade this court. However, after perusing the said orders, this Court finds that, the facts and circumstances of those cases are distinguishable from the present case. In both the above mentioned cases, the Tribunal passed the Industrial Awards, directing the absorption of the Workmen therein into the Establishments. Whereas, in the instant case, the Tribunal directed

the APGENCO to employ the Workman, as and when, regular appointments are made in the organisation by, relaxing age and academic qualifications etc., but did not order for automatic absorption. In this regard, this Court places reliance upon the observation made by a Five Judge Constitution Bench in ***Steel Authority of India's*** case (supra), which is extracted as under:-

“.....126. We have used the expression "industrial adjudicator" by design as determination of the questions aforementioned requires enquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases the appropriate authority to go into those issues will be the Industrial Tribunal / Court whose determination will be amenable to judicial review.....”

Conclusion:-

41. Having regard to the facts and circumstances involved in the lis and also taking into consideration the Constitutional Mandate laid down by the five Judge Bench in ***Steel Authority of India Ltd.***(supra),this Court is inclined to pass the following order:-

- (i) Writ Petition No.22675 of 2008 filed by APGENCO is dismissed.
- (ii) Writ Petition No.8617 of 2017 filed by Workman is partly allowed by confirming the award dated 31.01.2008, made in I.D.No.90 of 2005 by the Tribunal, published in A.P.Gazette in G.O.Rt.No.522 dated 12.03.2008 to the extent of setting aside the rejection

orders passed by the APGENCO and directing the APGENCO Authorities to employ the Workman, as and when, they make regular appointment in APGENCO by relaxing the age and academic qualifications only.

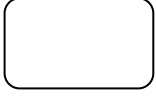
- (iii) In view of the considerable efflux of time since the institution of I.D. in the year 2005, and also taking into consideration of Constitutional ethos, this Court expects that, APGENCO initiates expeditious and effective steps towards the implementation of the award dated 31.01.2008 passed by the Tribunal in its true letter and spirit.

No costs. As a sequel, all pending applications shall stand closed.

MAHESWARA RAO KUNCHEAM, J

Date:20.06.2025

Rns



HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

WRIT PETITIONs Nos.22675 of 2008 and 8617 of 2017

Date:20.06.2025

Rns