

A.P. STATE ELECTRICITY BOARD AND ORS.

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v.

J. VENKATESHWARA RAO AND ORS.

NOVEMBER 20, 2002

[M.B. SHAH, B.P. SINGH AND H.K. SEMA, JJ.]

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Service Law:

Appointments—Memorandum issued by the employer/Board—Provision for regular appointments of eligible Ex-casual Labourers—Denial of appointment—Writ Petitions—High Court directed to consider the appointment of eligible Ex-casual Labourers—Some of the Ex-casual Labourers were denied appointment pursuant to the another memorandum which provides for only 50% reservation of vacancies to Ex-casual Labourers—Reservation—Challenge of—Single Judge of the High Court directed the employer/Board to reconsider the appointment in the light of earlier memorandum and reservation of vacancies should not be taken into consideration—Affirmed by the Division Bench—On appeal, Held: Right of appointment of Ex-casual Labourers accrued under the earlier memorandum, and later memorandum curtailing their right cannot be enforced when the matter had attained finality by the order of High Court—Direction for calculating number of vacancies and filling the same—Issued.

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Appellant-State Electricity Board issued a memorandum dated 26.8.1985 providing for appointment of suitable and eligible Ex-casual Labourers against the posts of L.D.Cs. etc. on one time basis. Since some of the eligible candidates were denied appointment in pursuance of the memorandum, they filed a writ petition before the High Court. Single Judge of the High Court directed the appellant-Board to consider the appointment of suitable eligible ex-casual Labourers in the light of the memorandum. In the meanwhile, Appellant-Board issued another memorandum dated 18.5.1997 providing for reservation in appointment to Ex-casual Labourers to the extent of only 50% of the vacancies and made appointments. Some of the candidates could not rank high enough in merit, thus not selected for appointment. They filed a writ petition challenging the issuance of subsequent memorandum providing for reservation in the vacancies. Single Judge of the High Court directed the

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A appellants-Board to consider the cases of Ex-casual Labourers in accordance with memorandum dated 26.8.1985 disregarding memorandum dated 18.5.1997 providing a quota of 50%. Division Bench affirmed the decision. Hence this appeal by the State Electricity Board.

Disposing of the appeal, the Court

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HELD: 1.1. A right of appointment accrued to the Ex-casual Labourers under the memorandum dated 26.8.1985, and therefore, their cases for appointment have to be considered in accordance with that memorandum, particularly when such a right was declared by the High Court while allowing the first Writ Petition filed by the respondents. The later memorandum curtailing their right of appointment limiting it to 50% of the vacancies cannot be enforced as against them, particularly so when the matter had attained finality by an order of the High Court. [258-B-D]

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1.2. The plea that the respondents did not turn up for selection and, therefore, they were not appointed cannot be entertained because such a plea was not taken by the appellants-Board when the first Writ Petition was disposed of. [258-E]

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2.1. It is clarified that only the cases of eligible Ex-casual Labourers, have to be considered in the light of the norms and guidelines laid down in the memorandum dated 26.08.1985, for appointment against the vacancies that existed then and were within the contemplation of the said memorandum. [259-B-C]

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2.2. In calculating the number of vacancies which have already been filled up in accordance with the memorandum dated 26.08.1985, the appellants are entitled to count the vacancies filled up by appointment of the eligible Ex-casual Labourers earlier as claimed by them and subsequently by the Selection Committee constituted under memorandum dated 18.05.1997. The remaining vacancies, if any, shall be filled up within a period of six months from the date of this order by appointing eligible Ex-casual Labourers, if any. [259-C-D]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7491 of 2002.

From the Judgment and Order dated 20.8.1999 of the Andhra Pradesh High Court in W.A. No. 1183 of 1999.

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P.P. Rao, Rakesh K. Sharma, Ashok Grover, Ms. Arupama Grover and Rakesh K. Sharma for the Appellants. A

G. Ramakrishna Prasad, Mohd. Wasay Khan, K.C. Sudarshan, Jayanth Muth Raj, Mrs. D. Bharati Reddy, D. Mahesh Babu, G.Narasimhulu, Sadasiva Reddy, Mrs. K. Sarada Devi, Mrs. S. Usha Reddy and P.S. Narasimhulu, for M/s. P.S.N. & Co. for the Respondents. B

The Judgment of the Court was delivered by

B.P. SINGH, J. Special Leave granted.

The appellants herein namely, the A.P. State Electricity Board and its officers are aggrieved by the judgment and order of the High Court of Judicature of Andhra Pradesh at Hyderabad dated 20.08.1999 in Writ Appeal No.1183 of 1999. whereby the appeal preferred by them against the judgment and order of the learned Single Judge dated 01.07.1999 was dismissed. As a result, the appellants have been directed to consider the cases of the respondents herein for appointment in the light of the memorandum dated 26.08.1985 issued by the appellant Board, which provided for appointment of Ex-casual Labourers, who were found suitable and eligible, against vacant posts. On their being found suitable and eligible in accordance with the norms. C D

A few facts not in dispute may be noticed at the threshold. The respondents are the Ex-casual Labourers, who were engaged in the different circles of the A.P. State Electricity Board and had rendered service in the post. The appellant Board by its memorandum dated 26.08.1985 took a decision that the vacant posts of L.D.Cs/. Revenue Cashiers and Typists Steno- Typists in the Office Staff establishments and the vacant Helper Watchmen posts in the Operation & Maintenance Construction Staff establishments as per the norms of the Operation Circle shall be filled in by considering the suitable and eligible candidates from among the Ex-causal Labourers after exhausting the existing Causal Labourers, if any, on one time basis. It was provided that the Ex-causal Labourers must have worked for atleast the number of days as specified in the memorandum. After considering the cases of eligible Ex-causal labourers for appointment to the aforesaid vacant posts, the remaining vacancies could be filled up as per the norms in the respective Operation Circle. E F G

The respondents were aggrieved by the fact that in terms of the memorandum aforesaid they were neither considered nor appointed against H

A the vacant posts that existed, for which they were suitable and eligible. They, therefore, filed a Writ Petition before the High Court being Writ Petition No.407 of 1996 which came to be disposed of by an order of 29.03.1996 wherein it was conceded by the counsel appearing on behalf of the appellants Board that the Writ Petition was covered by the order of the Court passed in Writ Petition No. 13560 of 1993 dated 07.10.1993 which had been followed by the Court in a number of matters. Accordingly, the Writ Petition preferred by the respondents was also disposed of in the same terms directing the respondents therein to consider the cases of the writ petitioners for regular appointment to the aforesaid post in accordance with the memorandum dated 26.08.1985, if they were found eligible.

C After the Judgment was pronounced another memorandum dated 18.05.1997 was issued by the appellants Board. It appears that pursuant to discussions with the recognized Unions certain decisions were taken for filling up 50% of the existing vacancies in the specified initial recruitment cadres by Ex-causal Labourers who had obtained Court's Order. From the record proceedings it appears that it was decided to consider the cases of Ex-casual Labourers covered by Court Orders to fill up 50% of the vacancies. It was, accordingly, decided that the Ex-casual Labourers who were already interviewed, but failed in the test, be given a second chance in view of the Order passed by the High Court for appointment against 50% of the existing vacancies in accordance with the guidelines contained in the memorandum dated 26.08.1985 read with memorandum dated 14.09.1993. A Selection Committee was nominated for the said purpose.

F The respondents herein again moved the High Court with a grievance that in view of the judgment and order dated 29.03.1996 they were interviewed, but had not been absorbed in service. In the aforesaid Writ Petition the appellants Board took the stand that pursuant to the order of the Court, a Selection Committee had been constituted on 17.07.1997 which conducted the interview on 08.12.1997. In view of the memorandum dated 18.05.1997 the Ex-causal Labourers could be absorbed only against 50% of the existing vacancies in the initial recruitment categories. Since the names of the respondents were not high up in the selection list against the 50% quota, they could not be appointed and Ex-causal Labourers with higher merit were selected for appointment.

H Before the High Court the respondents submitted that in view of the earlier judgment of the High Court dated 29.03.1996. their cases had to be

considered for appointment on the basis of the norms laid down in the first memorandum of 26.08.1985 which did not prescribe any quota for the Ex-causal Labourers. On the contrary, it provided that the vacancies should be filled up first by the existing Causal Labourers, thereafter by the Ex-causal Labourers. Only thereafter the vacancies, if any, could be filled up in accordance with the rules. The respondents, therefore, had a right of being considered in terms of the memorandum of 26.08.1985. It was declared by the High Court in the first Writ Petition, and therefore, the Board was not justified in issuing a fresh memorandum subsequently, affecting adversely the right of the Ex-causal workers.

A learned single judge of the High Court by judgment and order dated 01.07.1999 upheld the contention of the respondents holding that the relevant date with reference to which the claim of the respondents had to be examined was the date on which the respondents acquired the right to be considered, namely 26.08.1985, and not the date of the subsequent memorandum of 18.05.1997. In fact the judgment in the Writ Petition was delivered on 29.03.1996 i.e. much before the issuance of the second memorandum on 18.05.1997. The contention urged on behalf of the appellants that the respondents, did not turn up to seek absorption was also rejected holding that writ was issued in the earlier Writ Petition on 29.03.1996 which obliged the appellants to carry out the direction, which they failed to do. It was only after issuance of a second memorandum curtailing the rights of the Ex-causal Labourers that a committee was constituted and the respondents were considered for appointment only against 50% of the existing vacancies. In this view of the matter the Writ Petition was allowed and a direction was issued to the respondents to consider the cases of the writ petitioners for absorption in terms of memorandum dated 26.08.1985 without taking into account the restrictions imposed in memorandum dated 18.05.1997 providing quota of 50% therein.

Aggrieved by the judgment and order of the learned single Judge the appellants preferred a Writ Appeal which was dismissed by the impugned judgment and order on 20.08.1989. The Appellant Bench held that the rights of the respondents matured for consideration in 1985 which had been denied to them for almost 11 years compelling the respondents to approach the High Court by way of Writ Petition which was also allowed. In view of the judgment and order of the High Court in the earlier Writ Petition the appellants were required to consider the cases of the respondents in terms of the memorandum dated 26.08.1985 wherein there was no reservation of 50%. The appellants

A could not by their own conduct take away the basis of the judgment by issuance of a memo to deny the right acquired by the respondents under the judgment, which had attained finality between the parties *inter se*. Moreover, the cases of the respondents had to be considered on the date when they acquired the right, and not on any subsequent date. In view of these findings the Writ Appeal was dismissed against which the appellants have approached this Court by filing a Special Leave Petition.

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C We find no error in the reasoning of the High Court. It must be held that the right of appointment accrued to the Ex-casual Labourers under the memorandum dated 26.8.1985, and therefore their cases for appointment have to be considered in accordance with that memorandum, particularly when such a right was declared by the High Court while allowing the first Writ Petition filed by the respondents. The later memorandum curtailing their right of appointment limiting it to 50% of the vacancies cannot be enforced as against them, particularly so when the matter had attained finality by an order of the High Court.

D It was sought to be urged before us on behalf of the appellants that after the issuance of the first memorandum dated 26.8.1985 the vacancies were sought to be filled up and by the year 1991 a large number of Ex-casual Labourers were actually appointed. Unfortunately, the respondents herein did not turn up for selection and therefore they were not appointed. This submission cannot be entertained by us at this stage because it does not appear that when the first Writ Petition was filed and disposed of, such a plea was taken by the appellant Board. The question being a pure question of fact, we refuse to entertain the same at this stage.

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F However, learned counsel for the appellant Board is right in submitting that the Board's memorandum of 26.08.1985, conceived as a one time measure, envisaged the appointment of existing Ex-casual Labourers who were found suitable and eligible for appointment against the vacancies then existing. The Board's proceedings of 26.08.1985 do not contemplate automatic appointment against vacancies arising in future years without any time limit. Even if we accept this submission urged on behalf of the appellant Board, it would only amount to this that the Ex-casual Labourers who existed on 26.8.1985 have to be considered for appointment against the vacancies that existed on 26.08.1985 in accordance with guidelines provided in the aforesaid memorandum. Vacancies that may have arisen subsequently do not come within the scope of the memorandum of 26.08.1985. Such being the legal position the only relief that the appellant Board can claim from this Court is

a clarification that the cases of eligible Ex-casual Labourers as on 26.8.1985 have to be considered for appointment against the vacant posts that existed on the date of the issuance of the memorandum dated 26.08.1985 in accordance with the norms and guidelines therein contained. A

We, accordingly, dispose of this appeal upholding the directions contained in the impugned judgment and order with the clarification that only the cases of eligible Ex-casual Labourers have to be considered in the light of the norms and guidelines laid down in the memorandum dated 26.08.1985, for appointment against the vacancies that existed then and were within the contemplation of the memorandum dated 26.08.1985. In calculating the number of vacancies which have already been filled up in accordance with the memorandum dated 26.08.1985, the appellants are entitled to count the vacancies filled up by appointment of the eligible Ex-casual Labourers earlier as claimed by them and subsequently by the Selection Committee constituted under memorandum dated 18.05.1997. The remaining vacancies, if any, shall be filled up within a period of six months from the date of this order by appointing eligible ex-casual labourers, if any. There will be no order as to costs. B C D

S.K.S.

Appeal disposed of.