

(2002) 08 AP CK 0016
Andhra Pradesh High Court
Case No: WA No. 206 of 2000

Andhra Pradesh Power Diploma
Engineers Association and
Others

APPELLANT

Vs

Superintending Engineer,
Operation, APSEB and Others

RESPONDENT

Date of Decision: Aug. 1, 2002

Acts Referred:

- Andhra Pradesh Contract Labour (Regulation and Abolition) Rules, 1971 - Rule 25
- Constitution of India, 1950 - Article 226

Citation: (2002) 6 ALD 371 : (2002) 95 FLR 1064 : (2003) 1 LLJ 229

Hon'ble Judges: S.R. Nayak, J; Dalava Subrahmanyam, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

S.R. Nayak, J.

This writ appeal is directed against the order of the learned single Judge dated 18.1.2000 in W.P. No. 766 of 1999.

2. The appellant is the Andhra Pradesh Power Diploma Engineers Association represented by its Secretary. In the above writ petition, a writ of mandamus was sought to the Andhra Pradesh State Electricity Board, 6th respondent, to regularise the services of the members of the petitioner-Union engaged as contract labour (Technical Assistants) in Transmission and Distribution wing. The allegation in the writ petition is that the contract labour was engaged in violation of provisions of Sections 7 and 12 of the Contract Labour (Regulation and Abolition) Act (for short "the Act"). The writ petition was opposed by the Board by filing counter-affidavit.

3. Learned single Judge held that since from the pleadings of the parties the disputed questions of fact arise for resolution, such disputed questions of fact could

be resolved by raising an industrial dispute relating to absorption and regularisation of the services of members of the petitioner-Union, before the jurisdictional Industrial Court. Therefore, the learned single Judge without granting any relief to the petitioner-Union disposed of the writ petition, however, reserving liberty to the petitioner-Union either to raise industrial dispute before the jurisdictional Industrial Court or to make a representation to the concerned authorities under the Act.

4. We have heard Sri G. Mukund Reddy, learned Counsel for the appellant-petitioner and Sri. S. Ravindranath learned Standing Counsel for the Board. At the time of hearing, Sri Mukand Reddy, learned Counsel for the appellant, on instructions from the appellant, restricted the relief to issuance of a direction to the Management of the Board to discharge obligation caste on it under Clause (v) of Rule 25 of the A.P. Contract Labour (Regulation and Abolition) Rules, 1971 (for short "the Rules") and reserving liberty to pursue other remedies sought in this writ petition before appropriate for a Clause (v) of Rule 25 of the Rules reads as follows:

"(v) (a) in case where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work.

Provided that in the case of any disagreement with regard to the type of work, the same shall be decided by the Commissioner of Labour, Andhra Pradesh, whose decision shall be final.

(b) in other cases the wage rates, holidays, hours of work and conditions of service of the workmen of the contractor shall be such as may be prescribed in this behalf by the Commissioner of Labour, Andhra Pradesh, Hyderabad.

Explanation :--While determining the wage rates, holidays, hours of work and other conditions of service under Sub-clause (b) of Clause (v) above, the Commissioner of Labour, Andhra Pradesh, Hyderabad, shall have due regard to the wage rates, holidays, hours of work and other conditions of service obtaining in similar employments."

5. It is the claim of the petitioner-Union that the members of the petitioner-Union, who are appointed on contract basis in the sanctioned posts of Sub-Engineers, have been performing the same and similar kind of work as Sub-Engineers directly employed by the Board and, therefore, they are entitled to the same wage rates, holidays, hours of work and other conditions of service admissible to directly employed Sub-Engineers. Of course, though the prayer is restricted for issuance of directions to the Board to discharge the duty under Clause (v) of Rule 25 of the Rules, we do not find any factual matrix in the pleadings of the petitioner-Union in the affidavit filed in support of the writ petition in that regard. However, learned

Standing Counsel Sri S. Ravindranath for the Board submitted that there is a dispute between the Management of the Board and the petitioner-Union with regard to the question whether the contract labour, who have been appointed on contract basis to perform the duties of Sub-Engineers, have been performing similar or same kind of work as the Sub-Engineers directly employed by the Board and, therefore, without resolving such factual controversy, no mandamus would lie to the Board to perform the obligation cast on the employer under Clause (v) of Rule 25 of the Rules.

6. The proviso to Clause (v)(a) of Rule 25 of the Rules provides that in the case of disagreement with regard of type of work between the employer and employee, the same shall be decided by the Chief Commissioner of Labour (Central). It is stated that in the State of Andhra Pradesh, the Commissioner of Labour is the prescribed authority to discharge the powers and functions of the Chief Commissioner of Labour (Central). In that view of the matter, it is appropriate that the petitioner-Union should move the Commissioner of Labour, Andhra Pradesh to resolve the disagreement between the Management of the Board and the petitioner-Union in the first instance before seeking judicial review of the claim.

7. Although, in the present writ appeal, the learned Counsel for the appellant-petitioner-Union restricted the relief to issuance of direction to the Management Board to implement the obligation flowing from Clause (v) of Rule 25 of the Rules, it should not be understood that the Union has given up its right to move the Industrial Tribunal as regards regularisation or absorption of their services in the Board. The right to move the Industrial Tribunal for the above relief is reserved to the petitioner-Union or to enforce the right, if any, by virtue of notification issued u/s 10 of the Act by resorting to judicial review under Article 226 of Constitution in an independent writ petition.

8. In the result, we dismiss this writ appeal reserving liberty to the appellant-petitioner-Union to move the Commissioner of Labour under proviso to Clause (v) (a) of Rule 25 of the Rules for appropriate relief. 10 (ten) days time is granted to the appellant-Union to make necessary application to the Commissioner of Labour. If such an application is filed within the stipulated time, the Commissioner of Labour. Government of Andhra Pradesh is directed to adjudicate upon the disagreement existing between the Board and the petitioner-Union and pass appropriate order, not being influenced in any way by any of the observations made by the learned single Judge in the order, on its own merit and on the basis of evidence that may be adduced before him within a period of six weeks from the date of submission of application by the petitioner/ appellant-Union. There shall be no order as to costs.