

THE HON'BLE SMT.JUSTICE V. SUJATHA

Writ Petition No.1044 of 2023

ORDER:

This writ petition came to be filed under Article 226 of the Constitution of India, seeking the following relief:

“to issue an appropriate order, writ or direction more particularly one in the nature of Writ of Mandamus declaring the inaction on the part of the Respondents 1 to 4 to prevent the 5th respondent and its Management from recruiting ineligible and unqualified persons in the vacancies created by retiring of certain existing permanent employees under the guise of “Parampara-II Scheme” in the 5th respondent establishment, by adopting unlawful, illegal, unfair, corrupt and backdoor methods and in violation of the wage settlements dt.07.01.2019 with regard to the regularization of Casual, Badili and Contract Workmen and the recruitment process undertaken by the 5th respondent under “Parampara-II Scheme”, without following due process of law as illegal, irregular, arbitrary and violative of the provisions of the Settled Principles of Law and also offends Articles 14, 19 & 21 of the Constitution of India apart from violation of mandatory provisions of the Industrial Disputes Act, the Contract Labour (Regulation and Abolition) Act, 1970 and the provisions of Trade Unions Act, 1926 and consequently direct the respondent no.5 to regularize the employment of the contract and other workers seniority-wise who are already working in the 5th respondent...”

2. The present writ petition is filed challenging the inaction on the part of the respondents 1 to 4 in preventing

the 5th respondent and its management from recruiting ineligible and unqualified persons in various vacancies created by retirement of existing permanent employees under “Parampara-II Scheme” in the 5th respondent establishment by adopting unlawful, illegal, unfair, corrupt and backdoor methods.

3. The petitioner has also sought for an interim direction to direct the respondents 1 to 4 to monitor the recruitment process in the 5th respondent establishment and to ensure that the 5th respondent does not make appointments under the “Parampara-II Scheme” by duly considering the representation of the petitioner’s union dated 06.07.2022.

4. When the writ petition came up for admission, learned Standing Counsel appearing for the respondents referred the cases of [2001 (1) SCC 298], [2003 (8) SCC 639], [AIR 2005 SC 3202] & [AIR 2003 SC 1764]

5. In the counter affidavit filed by learned Government Pleader for the 3rd respondent, he states as follows:

“2. In the present case, the management of private establishment, i.e. 5th respondent has prerogative to recruit employees basing on the business requirement. The instant respondent cannot interfere in recruitment of the employees by the managements of private sector. The instant respondent is responsible to implement the statutory provisions of the Labour Laws.

3. It is submitted that, the instant writ petition is not maintainable as it does not seek to challenge or question any action of the official respondents herein. Instead, seeks to implement recruitment scheme under taken by the 5th respondent management which is a private entity under Article 226 of the Constitution of India. It is submitted that the same is impermissible in a writ petition.

4. The averment that the respondent Nos.5 to 8 in collusion with the respondent Nos.2 to 4 and the 9th respondent have not been conducting elections in spite of the challenge made by the petitioner union vide its letter dated 28.12.2019 is denied. The elections between the trade unions or verification of the majority union under the code of discipline in an industry is also not statutory. The instant respondent can proceed to conduct the verification of the majority union under code of discipline only, when the unions

and the managements come forward with a mutual understanding in a peaceful atmosphere. Further, the elections/verification of majority union under code of discipline in the respondent No.5 company has not conducted due to filing of writ petition No.3838 of 2020 by the 9th respondent's union before the hon'ble high court of A.P., Amaravati and the said writ petition has been withdrawn by the said 9th respondent's union on 08.02.2023.

5. There is no such provision under Trade Union Act, 1926 to constitute an adhoc committee with the existing unions after the expiry of the tenure of recognition of majority union.

6.

7. It is submitted during the joint meeting held on 17.10.2020 in the presence of the respondent no. 3 and 4, between the representatives of the respondent no.5 and the representatives of the petitioner's union, the both parties agreed on the following issues:

1. The management already submitted the total contract workmen seniority list.

2. The management agreed to allow the relaxation of age from below 50 to below 53 years (3 Years) as on date of agreement i.e, 07.01.2019 and this will be for the wage settlement dated:07.01.2019 only.

3. *For this batch recruitment, training period would be one year and this will be applicable for this batch only.*

4. *The women workers who are in seniority list shall be considered for general shifts only.*

5. *Core Activity - The AP Productivity council will submit the report by 3 week of November. The Management will go through the report and submit their proposals by 1" week of December.*

6. *Badili workmen who have got selected for vacant position will continue to work in the same position as core area employee and the vacant position will be filled by another badili workmen on seniority basis.*

7. *Badili issue will be discussed in 2 days before the Commissioner of Labour.*

8. *Security -The issue of 49 security guards who are doing the job other than security will be discussed before the Commissioner of Labour within two days.*

The said minutes do not come under the ambit of an agreement under section 12(3) of the Industrial Disputes Act, 1947. The instant respondent can only initiate action against the management in case of violations of the terms of agreement under section 12(3) of the Industrial Disputes Act, 1947. It is necessary to submit that there is no reference or discussion about the "Parampara Scheme" in the said joint meeting.

8. It is submitted that based on the representation of the petitioner's union, the respondent no. 3 and 4 called for joint meetings and tried to settle the matter amicably but the respondent no. 6 to 8 have not attended the joint meetings but submitted written replies. The respondent no.3 did not take up any action against the respondent no. 5 to 8, in terms of Industrial Disputes Act as the recruitment process does not come under violation of any statute, as the management of private sector has the prerogative to recruit employees based on their business requirement."

Further, requested to dismiss the writ petition.

6. On a perusal of the facts of the case, it is admittedly a fact that it is a dispute between the workers union and the management and the fact also remains that the representations made by the petitioner are already considered during a joint meeting held on 17.10.2020 in the

presence of the respondent No.3 and 4, and as well as the representatives of the respondent No.5 and the representatives of the petitioner union, wherein, they have agreed for certain issues as stated in the counter filed by the respondents. However, as the dispute is purely between the workers' union and the management, it is a question of enquiry so as to establish the fact whether the Parampara Scheme has been properly implemented by the respondents or not. As the above said enquiry would be feasible only if an Industrial Dispute is raised, this Court feels it appropriate to dismiss the writ petition with a liberty to the petitioners to raise an Industrial Dispute.

7. Accordingly, this writ petition is dismissed. There shall be no order as to costs.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

SMT JUSTICE V. SUJATHA

12.07.2023

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305

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(Dismissed)

Writ Petition No.1044 of 2023

Date: 12.07.2023

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