

CASE NO.:
Appeal (civil) 5691 of 2001

PETITIONER:
The Transmission Corporation of A.P. Ltd. & Ors.

RESPONDENT:
P. Surya Bhavagan

DATE OF JUDGMENT: 29/04/2003

BENCH:
Doraiswamy Raju & Ashok Bhan.

JUDGMENT:

J U D G M E N T

BHAN, J.

This appeal is directed against the final order and judgment dated 17th July, 1999 in Writ Petition No. 16523 of 1993 by a Full Bench of the High Court of Andhra Pradesh wherein the High Court has held that the respondent-writ petitioner was eligible to be considered for the post of LDC/Revenue Cashier and a direction has been given to the appellant to appoint the respondent in one of the posts of LDC/ Revenue Cashier within a period of one month from the date of receipt of the copy of the order impugned therein.

Appellant, Transmission Corporation of Andhra Pradesh Limited (hereinafter referred to as 'the appellant') is the successor of erstwhile Andhra Pradesh State Electricity Board (for short 'the Board'). The Board entered into an agreement with the workers Union for absorption of ex-casual labourers against regular vacant posts arising from time to time for operation & Maintenance and Construction Establishments posts. Accordingly, the Board framed a scheme and issued the same by Office Memo No. OSD(P)/DA.I/A3/1138/85-1 dated 26.8.1985. Casual labourers were divided into two categories. In the first category the qualification and the minimum number of days for making them eligible for appointments were notified as under:

Qualification of ex-casual labourer	Minimum No. of days one should have worked
a) Read and Write	100 days
b) 8th Class passed	90 days
c) 10th Class passed	80 days
d) I.T.I. (Electrical Trade)	60 days

The second category was of those ex-casual labourers who were graduates or possessing equivalent or higher qualifications. They were to be absorbed against the vacant LDC/Revenue Cashier/Typists/Steno-Typist posts in the Operation Circle irrespective of the number of day's work put in by them.

In the first category the Division was taken as a unit for considering the eligible and suitable ex-casual labourers and the Divisional Engineer was made the appointing authority. In respect of the second category the Circle was taken as a unit for considering the eligible ex-casual labourers and the Superintending Engineer was named as the appointing authority. Division Engineer and the Superintending Engineer in their respective

Divisions/Circles were directed to scrutinize and verify the lists of eligible candidates amongst the ex-casual labourers and satisfy themselves personally regarding the number of days worked and the qualification possessed by each candidate. The list prepared of such casual labourers was required to be displayed on the notice board and the final list was to be prepared after scrutinizing the representations, if any, received in this regard. Thereafter, the final list was to be forwarded to the Board in the proforma appended for approval. Appointment orders were to be issued after taking approval from the Board.

The sole respondent, the ex-casual labourer, had worked with the Board on daily wage basis for a period of 47 days from 1.5.1976 to 30.6.1976. He was not a graduate at the time when he had worked as a casual labourer with the Board in the year 1976. He did his graduation in the year 1981-82. Since he was not a graduate at the time when he had worked as a casual labourer and he had also not intimated to the Board about his graduation, his name was considered in the first category and included in the comprehensive list prepared in the concerned Division. His name was not included in the final list as it was opined that the incumbent was a 'read and write' candidate and had not put in 100 days of work making him eligible for a 'read and write' candidate.

The concerned Divisional Engineer submitted the final list prepared by him to the Superintending Engineer who in turn submitted the same to the board. The final list was got published in the newspaper (Telgu daily). It was indicated that in case of any omission or discrimination in the list of ex-casual labourers published, the concerned may contact the Divisional Engineer with supporting evidence within 10 days. The concerned Divisional/Superintending Engineers were instructed to scrutinise the representations with reference to the claims of the application, if any, received after the publication of the lists and furnish the dates of the claim with their remarks to the Board. In case no representation was received the Superintending/Divisional Engineers were required to intimate the same to the board within 15 days after the stipulated period for receipt of the representations to enable to finalise the lists of eligible ex-casual labourers. No representation was received from the respondent.

The respondent in the month of October, 1993 filed the writ petition in the High Court seeking appointment in anyone of the appropriate vacant post of LDC/Revenue Cashier. It was alleged in the petition that his name was not included in the list of candidates published on 3rd January, 1989 for absorption in the regular services though he was eligible. It was stated that he had filed representations on 22.1.1990, 22.8.1990, 8.2.1991, 11.1992 and 18.3.1993 with copies to the Minister for Power and some other officials concerned, but, the same were not replied to by the Board. Another ground taken was that he had been discriminated against inasmuch as certain other ex-casual labourers who had worked for lesser number of days than him had been absorbed whereas the same was denied to him. Board in his counter affidavit denied the receipt of any representation from the respondent. None of them was on record. It was pleaded that respondent was not a degree holder at the time he had worked as casual labourer during the relevant period i.e. 1.5.76 to 30.6.76 and therefore not eligible to be considered in the second category. Acquisition of degree qualifications after leaving the service of Board could not make him eligible for the posts of LDC/Revenue Cashier in the second category. It was further stated that the name of the respondent was included in the comprehensive list prepared in the division for the employment in the first category since he was 'read and write' candidate. As he had not worked for 100 days as required for 'read and write' candidate, his name was not included in the final list submitted to the Board. Final list was published in the newspaper inviting objections/representations. Respondent did not file any representation in response to it which clearly indicates that the fact of his filing the representations was not factually correct and was an after thought to explain the delay in filing the writ petition.

When the writ petition came up for hearing, it was pointed out to the Bench, hearing the petition, that a Division Bench in an earlier case has taken the view that the ex-casual labourer was required to be a graduate during the time when he had worked as casual labourer and the subsequent acquisition of higher qualification would not make him eligible for the post of LDC/Revenue Cashier in the second category. The learned Single Judge, hearing the petition, did not accept this view and referred the matter to a Division Bench which in turn referred the same to the Full Bench for re-examining the point. The Full Bench by the impugned order took a view different than the earlier Division Bench and held:

"For interpretation or construction of a statute, order or scheme, the reasons for enacting the same is the safest guide. In the instant case, the reason for framing the Scheme, in the Memo dated 26.8.1995 was to accommodate the casual labour, who had worked earlier, but were disengaged for want of vacancies. As the vacancies arose, while accommodating the existing casual labour, which or course, should be given the priority, after exhausting the existing casual labour, the next preference is given to ex-casual labour and not to freshers. Thus, the scheme is to rehabilitate the ex-casual labour, subject to acquisition of qualifications. Insofar as mandays are concerned, they cannot be acquired, as they are to be reckoned having regard to the actual working days put in by the ex-casual labour. But this requirement is in contradiction to the educational qualification, which ex-casual labour can acquire after he is laid off from the work. It is too much to read into the scheme that the ex-casual labour who is laid off from work, should not educate himself and in the process becomes eligible to hold the post. In fact, such an endeavour on the part of the ex-casual labour has to be appreciated and encouraged. The setting and pattern giving priority to educational qualification in the context of the post held is easily discernible from the scheme i.e. lower the qualification-higher the working days and higher the qualification-lower the working days. Even if any doubt arises the words employed in the scheme regarding the date of acquisition or educational qualification, having regard to the benevolent purpose of the scheme in accommodating the ex-casual labour, it becomes necessary for this Court to interpret in a manner which furthers the object of the Scheme and we do so. Admittedly, the petitioner had worked as casual labourer from 1.5.1976 to 30.6.1976 for 47 days and had acquired B.A. degree in the year 1982. In this view of the matter, in our considered opinion, the judgment of the Division Bench, cannot be taken as laying down the law correctly."

Shri P.P. Rao learned senior advocate appearing for the appellant contended that the respondent was not eligible to enter service being overage. He was 35 years of age whereas the prescribed age was much less. That the respondent neither informed the appellant regarding the acquisition of higher qualification by him in the year 1982 nor did he file a representation within the stipulated time after the issuance of the final list,

and, therefore, under the circumstances the appellant was justified in not considering him in the category of graduates for giving appointment to the post of LDC/Revenue Cashier. Statement of fact made in the writ petition that he had filed representations between 1990 to 1993 was incorrect as none of them are borne on the record. It has been done to explain the delay in filing the writ petition which was otherwise much delayed. Lastly, it was contended that the ex-casual labourer should have been a graduate at the time when he had worked as a casual labourer and the subsequent acquisition of higher qualification would not make him eligible for the post of LDC/Revenue Cashier in the second category. Per contra, the counsel for the respondent contended that the first two points which would require finding on facts were not raised before the High Court and, therefore, the appellant is precluded from raising these points for the first time in this Court. Regarding the third point he reiterated the view expressed by the Full Bench in its judgment.

Question as to whether the respondent was overaged for entry into service was neither raised in the written statement nor was it argued before the High Court. Under the circumstances the appellant cannot be permitted to raise this point for the first time in this Court. The second point regarding the delay in filing the petition though was raised in the written statement, but, it seems the same was not pressed before the Bench at the time of arguments. It has not been stated in the grounds of appeal that this point was raised and argued before the Bench during the course of arguments and the Bench had failed to notice the same. In view of this we decline to go into this question as well.

A perusal of the scheme indicates that it was evolved to absorb suitable and eligible ex-casual labourer after adjusting the existing casual labourers to fill up the vacancies as a one time measure. While framing the scheme for absorption of ex-casual labourer the framers kept two things in mind, i.e., educational qualification and the number of day's work put in. Lower the qualification higher the number of working days and higher the qualification lower the number of working days. Both the educational qualification as well as the number of day's work put in are relatable to the individual workman at the time of leaving the service. Educational qualification was kept as a relevant factor while prescribing the number of day's work required to be put in by the ex-casual labourer for being considered for absorption in the service. If this be so, then the eligibility criteria of qualification as well the number of day's work put in would have to be determined relatable to the time the labourer left the service and not to any other date later. Subsequent acquisition/improvement in the qualification would not entitle the ex-casual labourer to obtain the job under the scheme.

Suitability has not been defined in the scheme. The criteria for determining the suitability has neither been explained nor elaborated in the scheme. The same has been left to be determined by the appointing authority at its discretion. The criteria for determining the eligibility has been laid down in terms of qualification of ex-casual labourer and the number of mandays put in by him. If the ex-casual labourer was not a graduate as on the date of leaving the service then necessarily he was required to put in mandays of 100, 90, 80 and 60 respectively for the respective categories of posts for absorption in the service. A labourer in the construction establishment was not required to have any qualification and it was sufficient, if he was able to 'read and write'. Such a candidate was required to put in 100 mandays of work. But having regard to the requirement of educational qualification in the context of the post to be held the requirement of number of working days is reduced and coming to the graduates they are entitled to be absorbed as LDC/Revenue Cashier, Typist/Steno-Typist in the operation circle irrespective of the number of days of work put in by them. In our view, the High Court was not right in observing that a distinction could not be made between the ex-casual labourers having the graduate degree as on the date of leaving the service

and those who acquired it after leaving the service. The pattern and purpose indicated in the scheme giving priority to educational qualification in the context of post offered and the number of day's work put in is easily discernible from the reading of the scheme as a whole. This pattern has been put in to accommodate ex-casual labourer having higher qualification though with less number of day's work put in. The educational qualification possessed by the workman during the period he had worked as ex-casual labourer would be the only qualification which would be relevant while giving appointment under the scheme. Subsequent acquisition of higher qualification would not entitle the ex-casual labourer to claim a higher post or in reduction of actual number of days of work required to be put in by him, as a casual labourer.

Thus the High Court was not right in holding that an ex-casual labourer who was not a graduate at the time when he left the service, on acquisition of degree and becoming a graduate subsequently would become eligible for the post of LDC/Revenue Cashier in the second category. Overall, reading of the scheme clearly indicates that the qualification has to be reckoned as on the date of leaving the service.

For the reasons stated above, the appeal is accepted the order of the High Court is set aside. There will be no order as to costs.