

(2002) 04 MP CK 0080

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1016 of 1998

Anil Kumar Mishra

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 30-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2002) 3 MPLJ 517

Hon'ble Judges : Bhawani Singh, C.J.;Ajit Singh, J

Bench : Division Bench

Advocate : S. Nagu, for the Appellant; Indira Nair for Respondents 1 to 3 R.K. Gupta, for Respondent 4, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, C.J.—This writ petition under Articles 226/227 of Constitution of India is directed against order of Central Administrative Tribunal, Bench Jabalpur (CAT hereafter) dated February 25, 1998 passed in O.A. No. 737 of 1996.

2. With a view to fill up 13 posts of Chargeman Gr. II (Technical/Chemist/Electrical/Electronics), Union of India sent requisition to Employment Exchange, specifying qualifications of candidates to be sponsored for consideration. Requisition dated 1-11-1995 is to Employment Exchange, Jabalpur to sponsor candidates immediately, pursuant to which eight candidates were sponsored on 1-12-1995. Thereafter, by second communication, names of three more candidates are sent on 14-12-1995 followed by third list dated 15-1-1996 sponsoring one more candidate. Another communication is sent to Employment Exchange, Katni which sponsors six candidates on 28-2-1996. By communication dated 4-3-1996, two more candidates are sent by Employment Exchange, Jabalpur. It seems, total number of candidates considered by Selection Committee is 26 including the four departmental candidates. Selection list is prepared sequel to which Petitioner had been appointed amongst others. He joined on 2-4-1996. This selection was challenged by Respondent 4 Ashish

Bhargava whose name has been sponsored by Employment Exchange, Jabalpur, through the second communication. The impugned order dated 25-2-1998 holds that Petitioner (Anil Kumar Mishra) is over age on 4-3-1996, therefore, selection has been set aside. Dissatisfied with this finding, the present petition has been filed.

3. Shri S. Nagu, Learned Counsel for Petitioner contends that date of birth of Petitioner is 25-12-1970. He reaches age of 25 year on 24-12-1995. Requisition for sponsoring candidates for appointment on 11 vacancies was sent to Employment Exchange on 1-11-1995. Eight names were sent by Employment Exchange on 1-12-1995, the name of Petitioner finds mention in this list.

Therefore, Learned Counsel contends that Respondents having received the candidature of Petitioner before reaching the age of 25 year, cannot hold him over age. Therefore, holding Petitioner over age is clearly unsustainable. Further, even if the Respondents called for more names from Employment Exchanges, that would not damage the cause of Petitioner. Attention is drawn to Note 13 of SRO of 1989 which reads as under:

Counsel for parties submit that first part of SRO 13 of 1989 above quoted has no application to this case since it pertains to candidates whose applications are received directly and it is the latter part of the SRO which is applicable in this case. It is this on which parties have disagreement. Shri Nagu contends that each case has to be considered separately with reference to the date when the name of candidate is sent by the Employment Exchange. Where Employment Exchange(s) sponsored candidates on different dates, all can not be considered together for purposes of determining the age limit. Reliance on decisions of Apex Court in A.P. Public Service Commission, Hyderabad and Another Vs. B. Sarat Chandra and Others, Bhupinderpal Singh and Others Vs. State of Punjab and Others, and Sachida Nand Singh and Another Vs. State of Bihar and Another, is placed bringing home the point that age cannot be fixed on circumstances of fluctuating nature and process of selection starts from advertisement and ends when selection is made. For determination of eligibility and suitability for recruitment, relevant criteria is the start of selection process, meaning thereby when advertisement inviting candidates to apply for consideration is set in motion. Further, the rules require interpretation which avoids mischief rather than create or perpetuate the same.

4. Shri R.K. Gupta, Learned Counsel for Respondent 4 Ashish Bhargava submits that in the first requisition, no last date is mentioned and second requisition would demonstrate that cut-off date would be 4-3-1996. Thus counted, Petitioner Anil Kumar Mishra is over age on this date. Reference is made to Supreme Court decisions in Dr. Ami Lal Bhat Vs. State of Rajasthan and others, and Dr. M.V. Nair Vs. Union of India (UOI) and Others,

5. Smt. Indira Nair, learned Senior Counsel submits that Anil Kumar Mishra (petitioner) was considered for selection on the basis that his name was received

from Employment Exchange before he crossed 25 years of age. CAT holds that requisition dated 1-11-1995 to Employment Exchange, Jabalpur does not mention last date but mentions that the list be forwarded immediately. The Employment Exchange sent the first list vide letter dated 1-12-1995, followed by other lists, the last being 4-3-1996. The selection committee did not reject these candidates and one of the candidates sponsored pursuant to the last requisition of 4-3-1996 topped and was selected. For all practical purposes, the last date for sponsoring the names had been extended upto 4-3-1996 since all candidates sponsored by Employment Exchanges before this date were considered. Obviously, on 4-3-1996, Anil Kumar Mishra was overage, therefore, he could not have been selected.

6. Giving careful consideration to the question advanced by Learned Counsel for respective parties, we proceed to decide the same. Requisition dated 1-11-1995 calls upon Employment Exchange, Jabalpur to forward names of candidates immediately. It also mentions that in case suitable candidates are not available, non-availability certificate may be sent within 15 days. This means, the Employment Exchange, Jabalpur was required to send the names of candidates within 15 days. It sent the name of Anil Kumar Mishra within 15 days, namely on 1-12-1995. At this stage, he had not become overage since he would be so on 24-12-1995. Despite this kind of requisition, why the Respondents sought more names from the Employment Exchange, Jabalpur and Katni is not understandable. But we propose to examine the case of Anil Kumar Mishra in the context of SRO 13 of 1989, reproduced above.

7. SRO 13 of 1989 clearly stipulates that each case is to be examined for determination of age. Each case has reference to Employment Exchange(s). Therefore, in the event of Employment Exchange(s) sending different lists at different times, each case has to be examined when it is received by the Respondents, otherwise serious consequence would follow, for example, a candidate within age at the stage when his name is sponsored by Employment Exchange may become over age at a later stage when Employment Exchange(s) sponsors more candidates. This may happen to candidates who may be thrown out of consideration simply on the basis of becoming overage though their names happened to be sent by Employment Exchange(s) when they were not overage. Consequently, we are of firm opinion that in the context of the first requisition, Anil Kumar Mishra was not overage and he cannot be held having become over age by fixing the cut-off date 4-3-1996. Even otherwise, process of selection starts from 1-12-1995 when Employment Exchange sends the list of names of candidates and it is not affected by later communications for sponsoring more candidates. Therefore, the view taken by CAT on this question is clearly unsustainable, consequently it is set aside.

No other point was urged.

8. As a result, writ petition is allowed to the extent aforesaid, leaving parties to bear their own costs.