

(2014) 11 AHC CK 0234
In the Allahabad High Court
Case No : Writ A No. 42092 of 2011

Ashok Kumar Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1)
Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 — Section 4, 4(1), 7
Regional Rural Banks Act, 1976 — Section 17, 29

Citation : (2014) 11 ADJ 126 : (2014) 107 ALR 866 : (2014) 6 AWC 6039 :
(2015) 1 ESC 416 : (2015) 145 FLR 177 : (2014) 4 UPLBEC 3162

Hon'ble Judges : Suneet Kumar, J

Bench : Single Bench

Advocate : Siddharth Khare, Advocate for the Appellant; P.K. Singhal, S.C. and Sanjeev Singh, Advocate for the Respondent

Judgement

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Suneet Kumar, J.—Prathama Bank Moradabad is a regional rural bank governed by the provisions of Regional Rural Bank Act 1976 (hereinafter referred to as the "bank"). The petitioners belong to Other Backward Class (O.B.C.) category, are high school pass, the petitioners are not enrolled in the Employment Exchange. The respondent-bank to fill up Group "C" post invited names of candidates registered with the employment exchanges. Ministry of Finance (Department of Financial Services) vide notification dated 13.07.2010 provided that post of Group "C" shall be filled in the bank after making reference to the Employment Exchange, Sainik Board or other agencies catering to the welfare of scheduled castes, scheduled tribes, physically challenged persons or other category of persons as recognized by the Central Government or the State Government having jurisdiction over the Regional Rural Bank filling the posts.

2. Petitioners have approached the Court seeking the following reliefs:

"(i) a writ, order or direction of a suitable nature declaring Rule 10 and paragraph no. 1(d) of part III of Regional Rural Banks (Appointment and Promotion of Officers and Employees) Rules 2010 as ultravires the Constitution of India as far as it relates to the appointment in the respondent bank.

(ii) a writ, order or direction in the nature of mandamus commanding the respondents to advertise the Group "C" posts in the daily news papers and only then proceed to fill up the vacancies.

(iii) a writ, order or direction of a suitable nature commanding the respondents to relax the upper age limit from 28 to 30 years of General Category."

3. The contention of learned counsel for the petitioners is, by inviting names only from the Employment Exchange and not from the open market by advertisement is violative of Articles 14 and 16 of the Constitution of India, thus rule 10 is ultravires of Article 16 as it deprives other similarly situated persons from applying for the post, thus, the action of the bank in not advertising the post is violative of the principles of the equality in employment as enshrined under Article 16.

4. In support of his submission, learned counsel for the petitioners has relied upon State of Orissa and Another Vs. Mamata Mohanty, .

5. Sri Sanjeev Singh, learned counsel for the respondent-bank, submits that the bank is bound by the provisions of Regional Rural Banks (Appointment and Promotion of Officers and Employees) Rule, 2010 notified by Ministry of Finance (Department of Financial Services) on 13.07.2010, under Section 29 of the Regional Rural Bank Act 1976 read with Section 17 thereof. Rule 10 clearly provides Group "C" post shall be filled up by the bank after making reference to the Employment Exchange, thus the bank has not committed any illegality or irregularity in filling up the post from the candidates exclusively sponsored by the Employment Exchange and other Boards, further, there is no provision for inviting applications from open market by advertising the vacancy.

6. Rival submissions fall for consideration.

7. In Mamata Mohanty (supra) one of the question before the Hon"ble Supreme Court was, as to whether, a person can be appointed without following procedure known in law, as the vacancy of the post was never advertised nor was the name of the eligible candidates requisitioned from the Employment Exchange. The Court referring to earlier judgments was of the view that even if the names of candidates are requisitioned from the Employment Exchange, in addition thereto, it is mandatory on the part of the employer to invite applications from all the eligible candidates from the open market by advertising the vacancies in newspaper having wide circulation. Para no. 35, 36 and 37 are as follows:

"35. At one time this Court had been of the view that calling the names from Employment Exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that some

appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from Employment Exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in Radio and Television as merely calling the names from the Employment Exchange does not meet the requirement of the said Article of the Constitution. (Vide: Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, ; State of Haryana and others Vs. Piara Singh and others etc. etc., ; Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, ; Arun Tewari and Others Vs. Zila Mansavi Shikshak Sangh and Others, ; Binod Kumar Gupta and Others Vs. Ram Ashray Mahoto and Others, ; National Fertilizers Ltd. and Others Vs. Somvir Singh, ; Telecom District Manager and Others Vs. Keshab Deb, ; State of Bihar Vs. Upendra Narayan Singh and Others, ; and State of Madhya Pradesh & Anr. v. Mohd. Ibrahim, (2009) 15 SCC 214).

36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the Employment Exchange or putting a note on the Notice Board etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance of the said Constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit.

37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. (vide: Upen Chandra Gogoi Vs. State of Assam and Others, ; Mangal Prasad Tamoli (Dead) by Lrs. Vs. Narvedshwar Mishra (Dead) by Lrs. and Others, ; and Ritesh Tewari and Another Vs. State of U.P. and Others, ."

8. Learned counsel for the respondent-bank has relied upon Arun Tewari and

Others Vs. Zila Mansavi Shikshak Sangh and Others, , wherein, the Court had approved the provision of the rule for inviting applications only from the Employment Exchange. Paragraphs no. 19 and 20 are as follows:

"19. The next contention relates to inviting applications from Employment Exchanges instead of by advertisement. This procedure has been resorted to looking to the requirement of a time-bound scheme. The original applicants contended that if the posts had been advertised, many others like them could have applied. The original applicants who so complain, however, do not possess the requisite qualifications for the post. As far as we can see from the record, nobody who had the requisite qualifications, has complained that he was prevented from applying because advertisement was not issued. What is more important, in the special circumstances requiring a speedier process of selection and appointment, applications were invited through employment exchanges for 1993 only. In this context, the special procedure adopted is not unfair. The State has relied upon the case of Union of India (UOI) and Others Vs. N. Hargopal and Others, , where Government instruction enjoining that the filed of choice should, in the first instance, be restricted to candidates sponsored the first instance, be restricted to candidates sponsored by the Employment Exchanges, was upheld as not offending Article 14 and 16 of the Constitution. In the case of Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, . this Court approved of recruitment through employment Exchanges as a method of preventing malpractices. But in the subsequent and more recent case of Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, . this Court has distinguished Union of India V. Hargopal (supra) on the basis of special facts of that case. It was observed that the better course for the State would be to invite applications from employment exchanges as well as to advertise and also give wide publicity through TV, Radio etc. The Court had to consider whether persons who had applied directly and not through employment exchange should be considered. The Court upheld their claim for consideration.

20. There are different methods of inviting applications. The method adopted in the exigencies of the situation in the present case not be labelled as unfair, particularly when, at the relevant time, the two earlier decisions of this Court were in vogue."

9. The issue as to whether for employment in public services, whether the department can restrict the candidates sponsored through the employment exchange for selection, was also considered by the Hon''ble Supreme Court in Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, . The said decision was rendered by the Hon''ble Supreme Court of India bearing in mind the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, particularly, Section 4(1) of the said Act. In the said decision, the Hon''ble Supreme Court (Three Judge Bench), in Paragraph 6, held thus:-

"6.....Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates."

10. Again the said issue came up for consideration before the Hon''ble Supreme Court in the decision reported in Suresh Kumar and Others Vs. State of Haryana and Others, . in respect of recruitment of 1600 Police Constables in the State of Haryana. In the said case, selection of candidates made were not disturbed till the new process was over as directed by the Hon''ble Supreme Court and it was held that no advertisement to the newspaper nor employment exchange was intimated for filling up of the vacancies and further selection was ordered to be conducted by issuing re-advertisement calling for application to fill up those vacancies.

11. It is also relevant, at this juncture, to note that the Three Judge Bench of the Hon''ble Supreme Court, in the decision reported in Renu and Others Vs. District and Sessions Judge, Tis Hazari and Another, ., reiterated the above said proposition of law and gave a direction to all the High Courts to comply with the purport of Articles 14 and 16 of the Constitution of India while filling up of any vacant post either in the High Court or in the Subordinate Courts throughout India. In the said decision, the Hon''ble Supreme Court held that post shall be filled up by issuing the advertisement in atleast two newspapers and one of which must be in vernacular language having wide circulation in the respective State, apart from calling for a list from the local employment exchange and any vacancy filled up without advertising as prescribed, shall be void ab-initio and would remain unenforceable and inexecutable except the appointment on compassionate grounds, as per the Rules applicable.

12. Applying the law on the facts of the case at hand, the Ministry of Finance notified the 2010 Rules on 13.07.2010 under the 1976 Act. Rule 10 provides for recruitment for the post of Group "C" which is as follows:

10. Recruitment to the posts of Group "C".-

The posts of Group "C" employee shall be filled in by the Regional Rural Bank after making a reference to the Employment Exchange, Sainik Board or other agencies catering to the welfare of Scheduled castes, scheduled tribes, physically challenged persons or other category of persons as are recognized by the Central Government or the State Government having jurisdiction over the Regional Rural

Bank filling the posts.

13. Part III of the Rule provides the mode of appointment to Group "C" post by 100% direct recruitment and the minimum qualification is 10th standard pass or equivalent. The selection is on the basis of interview, the age prescribed is 18 years to 28 years providing relaxation in case of candidates belonging S.C., S.T. and Other Backward Class (O.B.C.) category.

14. The contention of learned counsel for the petitioners is that they were not aware that the respondent-bank is filling up the vacancies of Group "C" post as there was no advertisement, thus depriving the petitioners their valuable right as conferred under Article 16 of the Constitution, respondent-bank has taken a plea that they have strictly complied with rule 10 of the Rules of 2010 by inviting the names of eligible persons who were registered with the Employment Exchange, further, the bank is going to fill up 99 posts in the near future after inviting names only from the Employment Exchange.

15. The contention of learned counsel for the respondent-bank cannot be accepted as the bank has to comply with the constitutional mandate enshrined under Article 14 and 16 of the Constitution which is mandatory in public employment, failing which such appointments would be bad in law.

16. The submission on behalf of the respondents that Rule/Order/Notifications have been complied with is preposterous for the simple reason that such Rule/Order/Notification being violative of constitutional mandate is to be ignored in terms of the judgment of the Supreme Court rendered in Ram Ganesh Tripathi and others Vs. State of U.P. and others, .

17. A bare perusal of rule 10, it is evident that the rule requires that the post shall be filled by the bank after making reference to the Employment Exchange, Sainik Board or other agencies, but the rule nowhere states that the applications of candidates cannot be entertained from the open market, equal opportunity in employment as enshrined under Article 16 which mandates wide publicity.

18. In order to uphold the vires of rule 10, apart from making reference to Employment Exchange, Sainik Board or other agencies, bank will also have to advertise the vacancies in two leading widely circulated newspapers (one in vernacular language)/electronic media inviting applications from open market falling within the jurisdiction over the Rural Regional Bank to fill the post.

19. The main object of Art. 16 of the Constitution is to create a constitutional right to equality of opportunity and employment in public offices. The appointment to any post under the State can only be made after making a proper advertisement inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who applied in response to the advertisement made Union Public Service Commission

Vs. Girish Jayanti Lal Vaghela and Others, .. An appointment made in violation of Articles 14 and 16 of the Constitution of India would be void. It would be a nullity. Secretary, State of Karnataka and Others Vs. Umadevi and Others, .

20. The right guaranteed by Art. 16(1) includes-

(a) The right to make an application for any post under the Krishan Chander Nayar Vs. The Chairman, Central Tractor Organisation and Others, .

(b) Art. 16(1) further guarantees a right to be considered on the merits for the post for which an application has been made; but not the right to be appointed Pitta Naveen Kumar and Others Vs. Raja Narasaiah Zangiti and Others, .,

21. Public employment is a facet of right to equality envisaged under Art. 16 of the Constitution.

22. This guarantee is violated where the Government imposes an arbitrary ban upon the appointment or re-appointment of a particular individual, in the sense that even though he applies for a post, his application will not be considered on the merits, and as such has no relation to his suitability for the appointment to that post. Krishan Chander Nayar Vs. The Chairman, Central Tractor Organisation and Others, .

23. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, provides for compulsory notification of vacancies to employment exchanges. Sub-clause (1) of Section 4 is as follows:

"After the commencement of this Act in any State or area thereof, the employer in every establishment in public sector in that State or area shall, before filling up any vacancy in any employment in that establishment notify that vacancy to such Employment Exchange as may be prescribed."

24. Section 7 provides for penalties, if any employer fails to notify to the Employment Exchange prescribed for the purpose any vacancy in contravention of sub-section (1) or sub-section (2) of section 4, he shall be punishable for the first offence with fine which may extend to five hundred rupees.

25. Full Bench judgment of this Court in Kumari Radha Raizada Vs. Committee of Management, Vidyawati Darbari Girls Inter College and Others, ., held that the publication for any vacancy on the notice board is no advertisement in the eyes of law. For appointment against substantive vacancy, advertisement of vacancy in two newspaper is mandatory and in absence of such advertisement the appointment would be per se illegal.

26. For the reasons stated hereinabove, the vires of rule 10 and paragraph no. 1(d) of part III of Regional Rural Banks (Appointment and Promotion of Officers and Employees) Rules 2010 is declared intravires of the Constitution of India. The mode of calling applications as prescribed under rule 10 would mandatorily include inviting candidates from the open market by advertising in two widely circulated newspapers (one in vernacular language) over which the Regional

Rural Bank have to fill up the vacancies including posting the advertisement on the official website.

27. In future vacancy, all Regional Rural Banks shall invite applications for posts as mentioned herein above.

28. Copy of the order shall be sent to Ministry of Finance (Department of Financial Services) New Delhi by the Registry for information/circulation and compliance.

29. Subject to the above, the writ petition is allowed.