

(1986) 09 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9359 of 1981

D. Balasubrahmanyam and Others

APPELLANT

Vs

Singareni Collieries and Another

RESPONDENT

Date of Decision : 17-09-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1987) 2 LLJ 473

Hon'ble Judges : P.A. Chowdhary, J

Bench : Single Bench

Judgement

1. The second respondent, P. Kailasa Rao, had made an application to the 1st respondent, the Singareni Collieries Company Ltd., Kothagudem, for an appointment in the company. That application reads as follows :-

"Dear Sir,

With due respect, I approach your goodself for a suitable post in your esteemed concern.

I am a graduate Mechanical Engineer working in an open cast Mine for the last five years in the Eastern Coalfield Ltd., a subsidiary of Coal India Limited. At present, my designation is Engineer Excavation.

I attach herewith a Bio-data and the concerned certificates for your kind perusal. Hope that you will please consider my case sympathetically."

The second respondent's application for appointment did not specify any post nor was it a result of any advertisement or other publication made by the Singareni Collieries inviting applications for the filling up of any post. It is not known as to how the second respondent has come to know that the Singareni Collieries had a vacant post to be filled up by a person like him with his qualifications. However, the second respondent was called for interview on 22nd September, 1981 and he was interviewed by a Selection Committee consisting of

the General Manager and three others. The Selection Committee found the second respondent suitable for appointment to the post of Executive Engineer in the grade of Rs. 1100-50-1700. Accordingly, he was appointed by the Singareni Collieries on 22nd October, 1981 as Executive Engineer. The petitioners, who are 18 in number and who are all working as Assistant Engineers in Singareni Collieries and who are all engineering graduates directly recruited, have filed this writ petition on 11th December, 1981 challenging the appointment of the second respondent as Executive Engineer. In paragraph 4 of their affidavit filed in support of the writ petition, they have objected to the second respondent's appointment mainly on the ground that there was no advertisement in any local papers or any notice on the office of the company calling for applications from the deserving candidates for the post. They have further stated that there was no notified vacancy in the company for the above cadre and that, if there was any vacancy, the departmental candidates should be promoted before calling for applications for filling up of any post. It appears from the allegations in paragraph 4 that no rules are made by the Singareni Collieries laying down conditions of eligibility for direct recruitment of candidates from open market. The petitioners have also stated that the second respondent does not possess any extra qualifications or experience to justify his recruitment directly as Executive Engineer. Many of these allegations have been denied both by the Singareni Collieries and the second respondent. Particularly, the second respondent has relied upon his B.E. (Mech.) Degree and his past experience with Eastern Coal Fields Limited.

2. In the counter-affidavit filed by the Singareni Collieries, it was noted that the second respondent has been working for the past five years in the Open Cast Projects of Eastern Coal Fields Ltd., and looking after the maintenance and repairs of Heavy Earth Moving Machinery and was also responsible for planning and procurement of spares for the equipment. In the bio-data accompanying his application, the second respondent stated that, from 1st October, 1975 to 13th October, 1976 he worked for one year as a graduate apprentice in Indian Iron & Steel Co. Ltd., Burnpur, and that, from 13th October, 1976, he was working in the Eastern Coal Fields Ltd., looking after the maintenance and repairs of Heavy Earth Moving Machinery such as bulldozers, scrappers, H.M. Shovels, C.P.T. Compressor, wagon drills, Russian Drills etc. It was on that basis that the second respondent and the Singareni Collieries are supporting the appointment of the second respondent as the Executive Engineer of the Company.

3. If I were to decide whether the second respondent deserved to be appointed as an Executive Engineer more than the writ petitioners, I would have clearly expressed my inability to do so. If compelled to embark upon such an enquiry. I would have unhesitatingly taken the assistance of a competent technician to judge the rival claims. But that is not the scope and ambit of this writ petition. I am mainly concerned in this writ petition with the question whether the Singareni Collieries, which is substantially owned and wholly controlled by the governmental authority, has adopted a proper procedure in secretly receiving an

application from the second respondent for appointment and appointing him later. The fact that there are no rules prescribing standards of eligibility for direct recruitment is not denied by the respondents. In fact, direct recruitment is not one of the modes of recruitment to this post. The petitioners could then validly contend that the post can only be filled by promotion. It would, therefore, not be proper to say that the writ petitioners are not eligible to be considered for being appointed as Executive Engineers. After all, they have been the employees of the company for long and they are all engineering graduates. In the absence of any rules making the petitioners ineligible for applying to the post, the Singareni Collieries is relying upon the rules and the practice which it is following for recruitment by promotion. Such rules are clearly inapplicable for direct recruitment. The Singareni Collieries, therefore, cannot contend that the writ petitioners have not put in five years of service as Assistant Engineers, because that is not made the requirement of any valid rule. In the absence of such rules excluding the petitioners from the field of choice, the petitioners are entitled to be considered for appointment. In fact, it is argued that the rules do not provide for any direct recruitment as Executive Engineer and the method of recruitment is only by promotion. In such a case, the recruitment of the second respondent would be bad, for the reason that the petitioners were not given any notice of the recruitment. Even otherwise, public appointment should not be made in this hole and corner manner. In *N. Hara Gopal v. T. T. D. Tirupathi* 1986-II-LLJ-278, a Division Bench of this Court considered the question as to what would be the proper degree of recruitment publicity on public should give to the prospective appointees. In answering that question, Division Bench observed at p. 285 :

"This question is incapable of being answered in general and universal terms applicable to all situations. What can be said to be an adequate and proper method in one situation may not be considered as an adequate and proper method in another situation. But it can be said that where the public employer adopts secretive or arbitrary and irregular methods for inviting applications, an aggrieved job seeker can legitimately make a complaint to a Court of law under Articles 14 and 16".

In the above judgment it was also stressed that there should be a minimum of publicity given to the employer's proposal to fill up vacancies in public employment. The idea is to afford equal employment opportunities to all the eligible candidates and to eliminate charges of favouritism, nepotism and even corruption and the like. Those dangers are clearly inherent in any method of recruitment that follows no rule of law and embraces the rule of selection by secrecy and fortuity. But I must say that we have been somewhat over-looking the complexity and multitude of considerations that are involved in the application of rules of equal opportunities in public employment in a country like ours. Rules of equality like Rule of Law are easy of application only under certain economic conditions. Just as under conditions of constant scarcity rule of law cannot easily be applied it is equally difficult to apply rule of equal employment opportunities when employment avenues are few and job-seekers are a lot more.

Article 16 of our Constitution is therefore more complex and difficult of application when it is sought to be applied in a developing country like ours. The reasons are more economic than constitutional. Without the necessary support of economic conditions for wide scale employment, application of equality rule among a huge group of job-seekers is not easy. The rule of equal opportunities for employment is not easy to apply where number of job-seekers with approximately equal abilities and talents far exceeds the number of vacancies. The procedure of giving prior publicity to all these thousands of aspirants and then processing and considering all the applications received from them is too slow and cumbersome and wasteful a process. Even selection is not too easy. Some element of arbitrariness is bound to be present. The situation clearly calls for some degree of latitude being recognized by law in the selecting agency. But giving too much of a free hand to the appointing authorities can easily result in perpetuation of vile recruitment practices of corruption, favouritism and nepotism. Article 16 of the Constitution fulfils a vital role by recognizing the importance of employment for an individual in his daily life. But in its implementation and enforcement there are more than verbal problems involved. Of them maximization of gross national product is a prime consideration. Employment without increasing production is a self defeating process. In enforcing Article 16, Courts should not forget these objectives. While the first consideration emphasises the rights of the individual, the second consideration calls for the modification of the first consideration in the interest of maximizing our gross national product. In interpreting Article 16 of the Constitution it is my opinion that Courts should not omit or even subordinate from their consideration the importance of employment as a means of maximizing national product. Both the considerations are required to be taken note of. The employer who could be made civilly and criminally responsible for the maximization of product should not be tied down by too much of Court interference. If even the Courts should allow the executive play in its joints it is in this area of unspecified prohibition. In the name of Article 16, I am therefore not in favour of laying down totally abstract and impracticable rules that can impede the process of production but apply uniformly to all the appointments. There can be posts which are to be filled up only by considerations of personal confidence of the manager. There can be no meaning in applying rule of equality to such posts. There can also be posts which are so much specialized in nature that Article 16 can hardly have any practical application to the filling up of those posts. Article 16 applies best to a situation of undifferentiated mass recruitment. Higher the post and more differentiated are its functions and powers, the lesser is the scope of such posts being filled up by following the method of mass recruitment. For example, there may be no way of judging who is better among the two Professors of Economics to occupy the professional chair of Economics. At higher reaches of efficiency quantative determination of ability is not the proper mode. A person cannot claim to be appointed to be a Chief Secretary merely because he is the senior-most. Similarly there may be urgency involved in filling up of a post. It may not wait the delay involved in the lengthy process of leisurely selection by inviting

applications and their being considered. In such situations, the leisurely method of selection of Art. 16 may not be appropriately applied. Above all, we should remember that the Executive is held responsible for the welfare of the Nation. It should, therefore, have a large area of freedom in choosing its own officer that is competent to propose a policy and implement it. Of course, there is nothing in the nature of the job in this case nor there is any urgency of the situation that would justify the deviation of the normal rule of mass recruitment that Art. 16 embodies. The post is an ordinary post of an Executive Engineer. It does not specially call for any considerations of confidence or specialization. Considering the appointment of the second respondent from that angle, I hold that the company appointed the second respondent by following a totally unacceptable method of selection. Such a post ought to have been notified. But the vacancy was not notified at all. There are no rules that provided for direct recruitment. Selection of R-2 by that method is totally bad. The comparative merit of the second respondent was never ascertained. How the second respondent came to know of the existence of the vacancy was not known. The selection was wholly selective. In the above circumstances, it must be held that the method followed by the Management of Singareni Collieries in receiving an application from the 2nd respondent and considering the same is a clear act of favouritism. Considering the fact that they are dealing with public employment and not with a proprietary concern, it must be emphasized that the management should not have adopted those adhoc methods or recruitment.

4. For the reasons stated above, I set aside the appointment of the second respondent as Executive Engineer and direct the Singareni Collieries to advertise the post and fill it up by following the proper method of selection.

5. The writ petition is allowed to the extent indicated above. No costs.