

(1995) 11 RAJ CK 0038
In the Rajasthan High Court
Case No : C.W.P. No. 2264 of 1995

Dinesh Kumar Daddich and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-11-1995

Acts Referred:

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 — Section 4

Citation : (1997) 3 LLJ 449 : (1996) 2 RLW 393 : (1996) 2 WLC 549

Hon'ble Judges : R.S. Kejriwal, J

Bench : Single Bench

Advocate : Ajay Rastogi, for the Appellant; A.K. Bhandari, A.A.G. and R.K. Mathur, for the Respondent

Final Decision : Allowed

Judgement

R.S. Kejriwal, J.—Respondent No. 1, vide order dated September 1, 1993, after superseding the order dated January 29, 1990 directed that the procedure for appointment in all Government Offices/ Semi-Government Offices/ Establishments in Public Sector, which was prevalent before January 29, 1990 i.e. to invite list of candidates for selection, will continue to apply. The said order will not apply for the appointments to be made by the Rajasthan Public Service Commission or for which examinations are held and to the promotions. Later on Respondent No. 2, vide its Notification dated May 11, 1995, invited list of candidates for appointment on the posts of Teacher Grade-II and Teacher Grade-III, from the concerned District Employment Exchanges/District Sainik Boards. The aforesaid two orders have been challenged by petitioners on the ground that they are contrary to the provisions of the Rajasthan Educational Subordinate Service Rules, 1971 (for short "the Rules"). The petitioners have prayed that respondents be directed to consider their candidature for appointment to the post of Teacher Grade-III, in pursuance to the advertisement published in the Rajasthan Patrika dated May 11, 1995, marked as Annexure-1.

2. In reply to the Writ Petition, the respondents have stated that the Parliament

has enacted the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (for short "the Act of 1959"). Section 4 of the Act of 1959 provides that after the commencement of the said 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 to such employment in that establishment, notify that vacancy to such employment exchanges as may be prescribed. Counsel for respondents further submits that the Central Government has made National Employment Service Manual, which provides that the existing vacancies should be cleared through Employment Exchanges. His submission is that the aforesaid orders were issued in pursuance of the policy framed by the Central Government as mentioned above as such are valid. In support of his arguments, counsel for the respondents relied on the judgments reported in Union of India (UOI) and Others Vs. N. Hargopal and Others, N. Haragopal Vs. T.T. Devasthanam and Others, Narasimhamurthi (M.C.) v. Director of Collegiate Education 1967 II LLJ 606 (Mys.), N. Haragopal v. Tirumala Tirupati Devasthanam and 1992 (3) SLR 647 G. Ramesh v. Deputy Director.

3. Counsel for the petitioners submits that Section 4 of the Act of 1959 speaks that the vacancies should be notified to the Employment Exchanges. It does not mean that the list of candidates be invited from the Employment Exchanges. His further submission is that the policy framed by the Central Government is not applicable in the present case and if the Central Government has framed any policy, the same is contrary to the Rules. He further submits that the case is squarely covered by the judgment of this Court in SB Civil Writ Petition No. 1668/1995 Jagdish v. State of Rajasthan connected writ petitions decided on July 18, 1995.

4. I have heard learned counsel for the parties and gone through the record of the case as well as the judgments cited by the learned counsel. Rule 16 of the Rules provides that the Commission or the Appointing Authority as the case may be, shall invite applications for direct recruitment by advertisement of the vacancies to be filled in the official Gazette or in such other manner as may be deemed fit. Rule 17 of the Rules provides the Form of Application. Rule 18 of the Rules provides for the Application Fee. Rule 19 of the Rules provides for Scrutiny of applications. Rule 20 of the Rules provides for Recommendations of the Commission or the Committee. Rule 22 of the Rules provides for selection of the candidates by the Appointing Authority according to the order of merit in which their names appear in the list prepared under Rule 20 of the Rules. Reading of these Rules together makes it clear that the appointing authority has to invite applications by advertisement which may be either in the official Gazette or in such manner as may be deemed fit. The Rules do not provide that the list of candidates should be invited from the Employment Exchange of the concerned District or the District Sainik Board. If the Central Government or the Rajasthan Government has framed any policy contrary to the Rules by inviting list of candidates from the Employment Exchanges, the same is contrary to the Rules. In view of this, the order dated September 1, 1993 of Respondent No. 1 marked

as Annexure -2, and the Notification dated May 11, 1995, marked as Annexure-1, notifying list to the District Employment Exchanges/District Sainik Boards, for appointment on the posts of Teacher Grade-II and Teacher Grade III for the year 1995-96, are quashed and set aside being contrary to the Rules. The judgments cited by counsel for the respondents are not applicable to the facts of present case. In the case reported in Union of India (UOI) and Others Vs. N. Hargopal and Others, the Apex Court has held that u/s 4 of the Act of 1959, the employers are not bound to appoint only the persons sponsored by the Employment Exchanges. They are only obliged to invite applications. The petitioners are eligible for the post of Teacher Grade-III. They cannot be deprived of their right of consideration for appointment on the said post on the basis of the Notification dated May 11, 1995, marked Annexure 1.

5. Consequently, I allow the Writ Petition, quash the Notification dated May 11, 1995 and the order dated September 1, 1993, and direct the respondents to invite applications from all the eligible candidates for appointment on the posts of Teacher Grade-II and Teacher Grade-III and then to fill up the vacancies in accordance with the Rules.

6. Parties are left to bear their own costs.