

(1991) 07 AP CK 0016
In the Andhra Pradesh High Court
Case No : Writ Petition No. 8685 of 1991

G. Trilochana Rao

APPELLANT

Vs

The Principal, A.P. Residential School for backward classes,
Srisailam project and Another

RESPONDENT

Date of Decision : 16-07-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (1991) 2 ALT 616 : (1991) 2 APLJ 454

Hon'ble Judges : Upendralal Waghray, J

Bench : Single Bench

Advocate : S. Suryaprakasa Rao, for the Appellant;

Final Decision : Dismissed

Judgement

Upendralal Waghray, J.—The petitioner herein seeks a direction to the 1st respondent to consider his case for appointment to the post of an Attender in A.P. Residential School for Backward Classes, Srisailam Project, Kurnool, for the interviews to be held without sponsoring his name by the Dist. Employment Exchange, Kurnool, the 2nd respondent. As several such writ petitions are being filed either by a single petitioner or a group of petitioners seeking similar direction against the authorities or Bodies which are a State or Instrumentality of a State within the meaning of Article 12 of the Constitution of India. I considered it appropriate to hear the counsel for the petitioner at some length.

2. According to the petitioner, as there are some vacancies in the said school, which is an instrumentality of the state, his case should be considered for appointment without insisting on his name being sponsored by the 2nd respondent. It is contended that the Employment Exchange Act does not apply to the post of an Attender, and, therefore, the insistence by the 1st respondent that it will recruit only from among those candidates who are sponsored by the Employment Exchange is illegal. In support of the contention, two decisions of learned single Judges of our court were cited viz., P. Yellaiah v. Contonment

Board, Secunderabad, (1989 (1) APLJ 210) and D. Venkata Rao v. Govt. Polytechnic, (1990 (3) ALT 380) . In both the said decisions a conclusion is reached that because the Employment Exchange Act does not apply to such posts the petitioners therein were entitled to the relief which is similar to one in this case though the employers were different but, nonetheless were a State within the meaning of Article 12 of the Constitution of India.

3. Any Instrumentality of a State will have to abide by the mandate of Articles 14 and 16 of our Constitution. It is open for them to make any Rules or lay down guidelines for recruitment provided they do not conflict with the aforesaid constitutional provisions. Recruitment by any such body has to be open to all. The fact that recruitment is to take place for specified vacancies must be sufficiently publicised with the relevant material like eligibility regarding qualifications, age and other matters and the last date for receipt of applications. For this purpose, it may not be possible for each authority to advertise in the newspapers as it may cast a heavy financial burden. But this will not relieve the authority from making appropriate publicity depending on the posts on each such occasion for example, by putting up notices on its own notice board and in addition, on the notice boards of the nearby Revenue office, courts and other offices where people often visit. This would ensure that the appointments to such posts are made after giving an opportunity to all and avoid making of any surreptitious appointments.

4. The next question is whether such an organisation will be justified in taking a policy decision that it will restrict its consideration to persons sponsored by the Employment Exchange. The Supreme Court had occasion to consider this question in the case reported in Union of India (UOI) and Others Vs. N. Hargopal and Others, (paragraphs 8 and 9). The ratio laid down by the Supreme Court is that, if such a policy is followed it cannot be said to be violative of Articles 14 and 16 merely because applications were not invited from general public. In that context, the question whether the provisions of the Employment Exchange Act apply to a particular post may not be relevant. Enforcement of the provisions of the Act is not sought in case of Attenders against the Organisation. But when the organisation itself has chosen to confine consideration to candidates sponsored by the Employment Exchange, it cannot be said to be illegal. This is as a substitute for inviting applications. The question is not whether the post is covered by the provisions of the Employment Exchange Act or the applicability of the Act but, whether the body which is State within the meaning of Article 12 is following the procedure consistent with the mandate of Articles 14 and 16. It is well known that we have a serious unemployment problem and the Employment Exchanges have been established in various areas to provide avenues for unemployed. The Act merely requires notification of vacancies and does not bar the employer from considering otherwise who have not been sponsored by the Employment Exchange. It is open to an employer which is a State to invite applications from the public even where notification of the vacancy is mandatory. So also, it may do in cases where notifying the Employment Exchange may not

be necessary. The live-registers of Employment Exchanges are swelling month by month. The decision to confine the recruitment to those sponsored by employment exchange even in cases of vacancies like Attenders may in a way hamper the rights of the Employer by restricting his field of choice but, at the same time, it is evident that persons only of that area where vacancies have arisen and who satisfy the qualifications and are on the waiting list since a long period will be sponsored and considered. Calling of applications from open market for such posts create their own difficulties. It is for the concerned authority to decide whether they wish to call candidates from open market or from employment exchange or from both sources for a selection by them. The direction sought for would confer a benefit on an individual without even ascertaining as to who are the others waiting in the employment exchange rolls and since what period. The question of applicability of the Employment Exchange Act to the post in such cases is not material.

5. The grant of relief to the petitioner would amount to conferring a boon on an individual and will be discriminatory against candidates who are waiting for employment since several years and others who are not aware of the vacancy and will be clearly arbitrary. It also compels the employer which is a state to consider the case of an individual without calling for applications from the open market because it has already decided not to do so and confine consideration to candidates sponsored by Employment Exchange.

6. Initially, I thought of referring the matter to a Bench in view of the two decisions referred to above. But, in view of the judgment of Supreme Court noticed earlier, which was not brought to the notice of the learned Judges who rendered the earlier judgment, I do not consider it necessary to refer this case to a Bench. One more important reason for this is the large number of cases of this nature being filed every day.

7. The relief sought for by the petitioner cannot be granted and accordingly the writ petition is dismissed.