

(1996) 04 KL CK 0005
In the High Court Of Kerala
Case No : W.A. No. 421 of 1996

James Jesudas

APPELLANT

Vs

Malabar Cements Ltd.

RESPONDENT

Date of Decision : 01-04-1996

Acts Referred:

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 — Section 4(1)

Citation : (1996) 3 ILR (Ker) 68 : (1999) 3 LLJ 14

Hon'ble Judges : K. Sreedharan, Acting C.J.; J.B. Koshy, J

Bench : Division Bench

Advocate : P. Santhalingam and Jeena Joseph, for the Appellant; P.K. Behanan, G.P., for the Respondent

Final Decision : Dismissed

Judgement

Koshy, J.—The appellant in this case filed the original petition for a declaration that he is entitled to be appointed to the post of Foreman (Electrical) in the first respondent company. He is a Diploma Holder in Electrical Engineering and is working as a Foreman in Chittur Sugars, Palghat District. First respondent company is a Public Sector undertaking of the Kerala Government. When a temporary post of Foreman arose, the first respondent company, by requisition dated May 28, 1994 made a requisition to the Employment Exchange to send a panel of candidates to be considered for the post of Foreman (Electrical). Being a public sector undertaking, under the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 (hereinafter referred to as the Act) it is mandatory for the company to notify the vacancies to the Employment Exchange before filling up any vacancies in any employment. Section 4(1) of the Act says 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."

At the time of original requisition the number of vacancies were two and subsequently it came down to one. This fact was also made known to the Employment Exchange. Employment Exchange sent only the name of the petitioner and also informed that as per the communal rotation the post should go to a Latin Catholic. Since the post was a temporary post, the first respondent company tried to get the services of the appellant/petitioner on deputation basis from the Chittur Cooperative Sugars as that company is also a public sector undertaking of the State. However, the Chittoor Cooperative Sugars did not respond to the letter. Since the first respondent company received only one candidate's name from the Employment Exchange, for getting better selection they decided to advertise in the newspapers. Petitioner/appellant as well as candidates applied as per the advertisement were called for interview, but petitioner did not turn up for interview. Another applicant who was found suitable was appointed as Foreman (Electrical) for six months. Subsequently he left from the service. Then the petitioner approached this Court for a declaration that since the petitioner's name was sponsored by the Employment Exchange his name only should be considered and he should be declared as entitled for appointment in the post of Foreman (Electrical). According to him, only candidates sponsored by the Employment Exchange, can be considered for the vacancies in view of the provisions of the Act. Therefore, according to the petitioner only the candidates recommended by the Employment Exchange should be appointed. Therefore, the questions to be considered in this writ appeal are whether first respondent is legally bound to appoint only the petitioner whose name was sponsored by the District Employment Officer, Palghat, to the post of Foreman (Electrical) and whether there is an obligation on the employer to the effect that recruitment of persons can be made only from persons sponsored by the Employment Exchange.

2. Learned Single Judge dismissed the Original Petition holding that employer is free to advertise the vacancies and consideration of other applications received is not prohibited and that the petitioner is not legally entitled to seek a writ of mandamus to appoint him because only his name was sponsored by the Employment Exchange.

3. Section 4(1) of the Act only imposes an obligation on the public sector undertakings, to notify the vacancies to Employment Exchange and there is no provision in the Act prohibiting the company in considering the names other than those names sponsored by the Employment Exchange. Section 4(4) clearly mentions that there is no obligation upon the employer to recruit a person through the Employment Exchange to fill a vacancy merely because that vacancy has been notified. The above Section states as follows :

"Nothing in Sub-sections (1) and (2) shall be deemed to impose any obligation upon any employer to recruit any person through the employment exchange to fill any vacancy merely because that vacancy has been notified under any of those sub-sections."

This Court has considered the scope of Section 4 of the Act in the decision in *Kuriakose v. Cochin Shipyard Ltd. and Ors.* 1985 KLT 789 wherein this Court on a consideration of the Act, object of which it is intended to serve and in the light of Sub-section (4) of Section 4, held that appointments made by the employer will not be rendered invalid merely by reason of the employer appointing a person who was not nominated by the Employment Exchange. There is no obligation imposed on the employer that he must recruit persons sponsored by Employment Exchange. The employer has to consider on merits all persons sponsored by the Employment Exchange and also other individual persons who directly sent their applications for appointment to the post notified by the employer. In fact by making public advertisement employer will get more candidates and can select better suited persons. If only one candidate is sponsored by the Employment Exchange the right of selection will be lost. Section 4(4) of the Act is very clear that merely because there is an obligation to notify the vacancies, the employer is not bound to recruit persons nominated by the Employment Exchange alone.

4. In this case first respondent company called the petitioner also for interview while calling others who applied for the post. Petitioner did not turn up for the interview. Without even going for interview when called for, petitioner has no right to get appointment in the company. There is no legal, fundamental or statutory right for the petitioner to get appointment in the first respondent company. He did not go for interview when he was called for the interview. Even if he has got any right, that right was forfeited. He is not entitled for a declaration that only persons nominated by the Employment Exchange can be considered for the post and vacancies cannot be filled up through public advertisement. Merely because vacancy has to be notified under the Act, it cannot be presumed that employer is bound to appoint only the persons sponsored by the Employment Exchange. In fact Section 4(4) of the Act clearly mentions that employer is free to recruit other persons also. In this case the name of the petitioner was also considered along with others who applied through public advertisement. But he did not appear for the interview. Therefore he did not get the appointment. In view of the above circumstances, we are of the opinion that learned Single Judge has correctly dismissed the original petition.

In the above circumstances, there is no merit in the writ appeal. It is accordingly dismissed. No costs.