

(2003) 03 MAD CK 0126

In the Madras High Court

Case No : Writ Petition No. 18197 of 1997

K. Varadharajan

APPELLANT

Vs

The Director of Higher Secondary School Education, The
District Educational Officer, The Joint Director, The
Professional and Executive Employment Exchange, S.M.S.
Higher Secondary School and P.L. Valliammai

RESPONDENT

Date of Decision : 31-03-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 19, 20

Citation : (2003) 03 MAD CK 0126

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

**Advocate : V. Kathiravan, for the Appellant; Rathina Ashokan, for RR 4 and 5,
for the Respondent**

Final Decision : Allowed

Judgement

E. Padmanabhan, J.—The writ petitioner has prayed for the issue of a writ of mandamus directing the respondents 1 to 4 to appoint the petitioner as Post Graduate Assistant (Economics) Teacher in the fourth respondent school by following due process of law or by calling for names of persons registered with the third respondent Exchange by following employment Exchange seniority.

2. The writ petitioner, a post graduate in Economics and duly qualified for appointment to the post of P.G. Assistant in Economics. The petitioner registered himself with the third respondent Employment Exchange on 12.10.1993 and his registration Number being 14726/93. It is claimed that his name has not been sponsored for any post so far.

3. During June 1997 a vacancy arose in the fourth respondent school. The petitioner was appointed in a temporary vacancy in the fourth respondent school on a consolidated pay of Rs.600/= per month. Thereafter the 4th respondent with the approval of the second respondent initiated action for filling up the

vacant post. On the request made by the 4th respondent, the third respondent sent a list of candidates for being called for interview to fill up the vacancy. The petitioner's name was not sponsored by the 3rd respondent employment exchange. The said vacancy in the school is open to all category and it is not reserved for any one much less, for woman. The 3rd respondent has sponsored a number of candidates and the 5th respondent whose name placed at the end of the list forwarded by the 3rd respondent has been selected and appointed. The petitioner who has registered himself earlier in point of time, but he has not been sponsored, nor been called for, nor considered at all.

4. The vacancy has not been reserved for woman. The omission on the part of the employment exchange to sponsor the name of the petitioner is arbitrary and this has resulted in deprivation of the petitioner's valuable right guaranteed by Art. 14 and 16 in that because of the improper mode of selection the petitioner has even been denied of consideration and appointment of the 5th respondent is discriminatory. The petitioner has been denied of valuable opportunity of being considered along with others. This is discriminatory. Hence, the present writ petition. Though the petitioner has prayed for a mandamus, the counsel for the petitioner, when came to know that the 5th respondent has been appointed prayed that this court may issue appropriate writ to quash the order of appointment of the 5th respondent and also issue consequential directions.

5. According to the third respondent being an employment exchange it has to sponsor the eligible candidates to the prospective employers as per the requirement and as per the guidelines issued by the Government. The 4th respondent has requested the 3rd respondent to sponsor candidates for appointment of a Teacher in Post Graduate (Economics). It is claimed that the 4th respondent requested the third respondent to sponsor suitable women candidates only. Accordingly the third respondent has sent a list of 20 women candidates including the 5th respondent. It is the specific stand of the third respondent that the 4th respondent school required the third respondent to sponsor only women candidates for the said post. Therefore according to the third respondent the petitioner was not sponsored and his name has not been included in the list sponsored by the third respondent employment exchange.

6. It is admitted that the petitioner is a member of the Most Backward Class and registered himself with the employment exchange on 28.2.1985 with his master's degree and his Bachelor of Education on 12.10.1993 with the Professional and Executive Employment Office, Chennai-4. It is also stated that the registration of the petitioner bears No.14726/93. It is incorrect to contend that the petitioner was not sponsored for any post. The petitioner was sponsored for the post of Team Member to the Special Secretary to Government, Agricultural Department, Secretariat, Chennai-9, but he was not selected for appointment.

7. As regards the claim of the petitioner that he was appointed on a consolidated salary, the third respondent has stated that the third respondent has not

nominated the petitioner and he is not in a position to offer any remarks. Further, in 1997, the 4th respondent school has not notified any vacancy. The third respondent has sent a list of 20 women candidates belonging to Sivaganga District in the order Card No.F0382 of 1997. It is claimed that the sponsoring of candidates of Sivaganga District is in order and according to departmental instructions issued by State Government in Employment Exchange Circular Memo NO.19/85.

8. It is pointed out that in respect of vacancies in private aided educational institutions it is only the candidates who belong to the District, where the school is located, will be sponsored. It is further claimed that vacancy has been reserved for woman and since the petitioner belong to Pudukottai District he was not considered for nomination for making appointment to the aforesaid post. It is stated that ratio of 1:20 for nomination has been adopted in terms of the Government Notification. The third respondent is only a sponsoring agency and it has no say with respect to selection, appointment or reservation of the posts. The third respondent prayed for dismissal of the writ petition.

9. The 4th respondent school filed a separate counter admitting that the vacancy arose in January 1997 for the post of Post Graduate Assistant in Economics in the 4th respondent school. The petitioner, it is admitted was appointed temporarily on a consolidated pay of Rs.600/= from and out of the management funds. It was only ad hoc, till a regular candidate is selected and appointed. The 4th respondent has no authority to appoint any candidate permanently without following the procedure prescribed and without calling for candidates from the employment exchange as well as without prior permission of the educational authorities.

10. The second respondent granted permission to appoint a Post Graduate Assistant (Economics) on a permanent basis and the 4th respondent called upon the third respondent to sponsor candidates from the employment exchange. The said vacancy is open to all and the 4th respondent has called for the candidates as open to all from the third respondent. It is incorrect to state that the 4th respondent has stated the post is reserved for women nor it has called for women candidates alone. The 4th respondent has only stated that the vacancy is open to all, but also added that the third respondent may send suitable women candidates as well. The third respondent sponsored candidates, who hail from Sivaganga District within a radius of about 20 kilometers from the Keelasevalpatti Village. All the candidates so sponsored by the employment exchange are women candidates. The petitioner has no authority, right or fundamental right to get appointment in the 4th respondent school and there is no violation of Art. 14, 19 and 20 of The Constitution. The petitioner not being a candidate sponsored by the employment exchange cannot claim employment as a matter or right.

11. The 4th respondent school is an aided school and it is bound to follow the procedure prescribed for recruitment and appointment and it has secured

approval from the educational authorities for filling up the permanent post. It is contended that the prescribed procedure has been followed and the third respondent sponsored 20 candidates and the 5th respondent has been selected and appointed out of the candidates sponsored by the third respondent employment exchange. There is no irregularity or illegality in appointing the 5th respondent.

12. Though the 5th respondent has entered appearance through Mr. Rathina Ashokan. The fifth respondent has not chosen to file a separate counter.

13. In this writ petition, the following points arise for consideration:-

(A) Whether the 4th respondent school requested the third respondent - Employment Exchange to sponsor women candidates alone?

(B) Whether the failure to sponsor the writ petitioner by the third respondent is arbitrary, illegal and violative of Art. 14 and 16 of The Constitution and consequent discriminatory or arbitrary ?

(C) Whether appointment of the 5th respondent and approval of said appointment in the 4th respondent school in the post of P.G. Assistant is liable to be interfered?

(D) Whether the third respondent has acted illegally in sponsoring women candidates alone and that too hailing from Sivaganga District in which District the 4th respondent school is located?

(E) Whether the 4th Respondent school is amenable to writ jurisdiction?

14. Taking up the last contention there is no dispute that the 4th respondent school is receiving hundred percent grant and therefore it is amenable to writ jurisdiction. 4th respondent school is governed by the Tamil Nadu Private Schools (Regulations) Act and Rules and hence the writ petition is maintainable. The last point is answered in favour of the writ petitioner and against the respondents.

15. Taking up the first point for consideration, it is the specific case of the 4th respondent school that it has nowhere stated that the post is reserved for woman, but has made it clear that the post is open to all while adding that suitable women candidates may also be sponsored. Though the third respondent has taken the stand that the 4th respondent requested the third respondent to sponsor women candidates alone, this court called upon the 4th Respondent to furnish the letter and produce the file. Yet the third respondent has not produced the same. There is no reason at all to reject or disbelieve the statement or the stand taken by the 4th respondent, which has requested the third respondent to sponsor candidates. It is clear that the vacancy of P.G. Assistant is open to all and therefore both men and women who have registered themselves, with the third Respondent employment exchange are entitled to be sponsored as per the seniority list maintained by the third respondent employment exchange. The contention to the contra advanced by the third respondent cannot be sustained.

16. The failure on the part of the third respondent to sponsor the name of the petitioner who has registered himself, long prior to the 5th respondent as well as other candidates sponsored is arbitrary, violative of Art. 14 and 16 of The Constitution. The third respondent is a State Level Employment Exchange maintaining seniority of candidates who have registered themselves with the third respondent exchange for Executive Employment. That being so it is rather extraordinary for the third respondent to contend that it has to sponsor the candidates, who belong to the District in which the school has been located. This contention cannot be sustained. The third respondent exchange is meant for the entire state in respect of Executive Employment and whenever vacancy arises and whenever it is approached, it has to sponsor candidates irrespective of whether he or she belong to the same District in which the employer school is located or has office.

17. There cannot be any restriction with respect to the area to which the candidate who has registered himself with the employment exchange or place of both to be given preference but it has to be restricted or selected. Being a Central exchange for the entire state and registration with employment exchange being maintained as per the date of registration, the employment exchange should sponsor all the candidates eligible as per the seniority maintained by it but subject to reservation, if any. A direction to this effect has also been issued by the State Government in the recent Government Orders. The reliance placed upon the earlier G.O., though a copy has not been shown, assuming that such a Government Order exists, it cannot be a valid G.O., as it violates Art. 15 and 16.

18. The stand taken by the third respondent that candidates who hail from Sivaganga District alone are required to be sponsored cannot be sustained as it violative of Art. 15 and 16. It is not as if the third respondent is a District Level Employment Exchange, but it is a State Level Exchange with whom candidates with Post Graduate and Professional Qualification register themselves. Hence the action of the third respondent in sponsoring the candidates from the District of Sivaganga alone is illegal, violative of Art. 15 and 16, besides as it is discriminatory and it cannot be sustained. The contention advanced in this respect by the third respondent deserves to be rejected as discriminatory and violative of Art. 15 and 16 of The Constitution.

19. Sponsoring of women candidates alone cannot be sustained as the 4th respondent school has made it clear that the post is open to all and not reserved for woman. But the petitioner has not been sponsored for selection even though he is the senior most. Thus the petitioner has been deprived of a valuable right of taking part in the selection and being considered which right guaranteed by the Constitution and it has resulted in infringement of fundamental rights. All candidates possessing the prescribed qualification who have registered themselves with the employment exchange should have been sponsored as per the seniority list. Even assuming for the purpose of argument that for one vacancy 20 candidates have to be sponsored, the third respondent should have sponsored the candidates as

per the seniority list maintained by it and not at its whims and fancy by confining such selection to the particular District and that too for women candidates alone which is discriminatory.

20. In the circumstances the failure on the part of the third respondent to sponsor the petitioner is illegal, unconstitutional and arbitrary and resulted in infraction of valuable rights of the petitioner. Had the employment exchange sponsored the candidates as per the seniority list maintained by it, it may be that all the 20 women candidates whose names have been sponsored would not have been in the list of candidates as per the seniority list.

21. As the petitioner has been denied of valuable right or being considered for selection, this court has to necessarily intervene and hence the appointment made by the 4th respondent school appointing the 5th respondent cannot be sustained and it is liable to be quashed. All the points are answered in favour of the writ petitioner and against the respondents. The selection and appointment of 5th respondent is quashed as it is violative of Art. 14, 15 and 16 of The Constitution.

22. In the result, though a mandamus has been prayed for, this court at the oral request made by the counsel for the petitioner, quash the orders of selection and appointment made by the 4th respondent school appointing the 5th respondent as P.G. Assistant and consequently direct the third respondent to forthwith sponsor candidates as per the Employment Exchange seniority list and the 4th respondent shall select one of them and appoint one of those candidates sponsored by the employment exchange according to law and on merits.

23. The third respondent shall sponsor all eligible candidates to the 4th respondent school within Thirty days from the date of communication of this order as per the Employment Exchange seniority list, who are eligible and who possess eligible qualifications and the 4th Respondent school shall hold a fresh selection, select and appoint the suitable candidate on merits and according to law.

24. The writ petition is allowed with the above direction. The parties shall bear their respective costs.