

(1991) 07 GAU CK 0014
In the Gauhati High Court
Case No : Civil Rule No. 100 (MB) of 1990

Mehboob Rahman

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 04-07-1991

Acts Referred:

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 — Section 4, 4(1), 4(2), 4(4)

Citation : (1991) 2 GLR 482

Hon'ble Judges : S.N. Phukan, J;J. Sangma, J

Bench : Division Bench

Advocate : M.M. Ali, for the Appellant; Assistant A.G., for the Respondent

Final Decision : Allowed

Judgement

S.N. Phukan, J.—The Petitioner is a Graduate in Engineering and the Respondent No. 4 registered the name of the Petitioner Mehboob Rahman in the District Employment Exchange, Aizawl on 7th March/88 and issued registration card bearing No. 15/88, By letter dated 10th July, 1989 issued by the Under Secretary, Government of Mizoram, Labour and Employment Department, Vide Annexure-IV to the petition the Petitioner was informed that his registration in the District Employment Exchange, Aizawl, was cancelled vide No. A. 12021/7/86/EO(A)/3925 dated 19th May, 1988 by the Employment Officer, Aizawl, and as such his name could not be sponsored for any vacant post. The Petitioner was appointed on contract basis in the post of Assistant Engineer and the contract is going to expire On 24.7.91. A representation was made to his Excellency the Governor of Mizoram and the reply was sent by the Joint Secretary to the Government of Mizoram, Public Health Engineering Department, informing the father of the Petitioner that "unless the candidature of your son Shri Mehboob Rahman is sponsored by the local Employment Exchange, it is difficult to consider his case for regular appointment to the post of Assistant Engineer" vide Annexure-X to the writ petition.

2. Mr. M.M. Ali, learned Counsel for the Petitioner submits that the cancellation of the registration in the Employment Exchange is bad in law inasmuch as no opportunity for showing cause was given to the Petitioner and that apart in view of the Employment Service Manual the Petitioner is entitled to get himself registered as he possesses a residential certificate issued by the Deputy Commissioner, Aizawl on 10th April, 1989, vide Annexure IX-A.

3. Mr. M.M. Khan, learned Assistant Advocate General has submitted that the Petitioner is not entitled to get himself registered as he is not a resident of Aizawl and that apart only the dependants of Government servants of the state of Mizoram are allowed registration by the Employment Exchange. According to the learned, Advocate General, in the Government record the address of the Petitioner has been given as Silchar.

4. We quote below Section 4 of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, hereinafter referred to as the Act:

4. Notification of vacancies to employment exchanges-(1) 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 exchanges as any be prescribed.

(2) The appropriate Government may, by notification in the Official Gazette, require that from such date as may be specified in the notification, the employer in every establishment in private sector or every establishment pertaining to any class or category of establishment in private sector shall, before filling up any vacancy in an employment in that establishment, notify that vacancy to such employment exchanges as may be proscribed, and the employer shall thereupon comply with such requisition.

(3) The manner in which the vacancies referred to in Sub-section (1) or Sub-section (2) shall be notified to the employment exchanges and the particulars of employments in which such vacancies have occurred or are about to occur shall be such as may be prescribed.

(4) Nothing in Sub-section (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.

5. -Sub-section (4) of Section 4 of the Act is absolutely clear that there is no obligation on the part of the employer to recruit any person through, employment exchange to fill any vacancy merely because that vacancy has been, notified under any of these Sub-sections.

6. The learned Counsel for the Petitioner has produced before us Volume I of National Employment Service Manual published by the Central Institute for Research and Training in Employment Service, Directorate General of

Employment and Training, Ministry of Labour and Rehabilitation, Government of India, Para 7.4 Under Chapter VII of the said Manual runs as follows:

7.4 Applicants, unless specially exempted by the State Director or the Director General, shall be registered at the Employment Exchange in whose jurisdiction they normally reside.

7. Though the learned Assistant Advocate General has stated that in the official record the address of the Petitioner in shows as Silchar, but from the residential certificate granted by the Deputy Commissioner, Aizawl, we find that the Petitioner is residing at Aizawl Since 1983. In view of the above certificate the Petitioner is entitled to get himself registered in the Employment Exchange in terms of the above Para 7.4 of the aforesaid Manual, We, therefore, hold that the initial registration of the Petitioner was rightly done by the Employment Exchange.

8. We have already quoted the relevant portion of the letter of the Joint Secretary regarding sponsoring the name of the Petitioner by the employment Exchange. In view of the provisions contained in Sub-section (4) of Section 4 of the Act in question sponsoring by the Employment Exchange is not compulsory for giving employment and on that ground the Petitioner cannot be deprived from the post if he is otherwise qualified.

9. In view of what has been stated above the subsequent cancellation of the registration of the Petitioner is bad in law. That apart the cancellation was made without affording any reasonable opportunity and as such the said order is liable to be quashed which we hereby do.

10. In the result the petition is allowed and the rule is made absolute. We quash the order No. A 43011/1/86-L & E dated 10th July, 1989 issued by the Under Secretary, Government of Mizoram, Labour and Employment Department and direct the Respondents to re-register the name of the Petitioner in the District Employment Exchange at Aizawl. This shall be done within a period of 7 days from the date of receipt of this order and necessary registration card shall be furnished to the Petitioner. We make no order as to costs.