

(1967) 02 KAR CK 0024

In the Karnataka High Court

Case No : Writ Petition No's. 202 to 204 of 1965

Narasimhamurthi M.C. and Others

APPELLANT

Vs

Director of Collegiate Education and Others

RESPONDENT

Date of Decision : 08-02-1967

Acts Referred:

Constitution of India, 1950 — Article 226

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 — Section 4 (1), 4 (2), 7

Citation : (1967) 2 LLJ 606 : (1967) 1 MysLJ 612

Hon'ble Judges : M. Sadasivayya, J;Chandrashekhar, J

Bench : Division Bench

Judgement

Sadasivayya, J.—The petitioners in these three writ petitions had been appointed purely on a temporary basis, as second division clerks and were employed in the first grade college at Kolar. Exhibit A, dated December 26, 1962, in each of these cases, is the order of appointment pertaining to the respective petitioner. In the last paragraph of Ex. A, it is categorically stated that the appointment is purely on a temporary basis and is liable to be terminated without notice. Subsequently by the order as per Ex. B, dated January 5, 1965, the services of these petitioners were terminated with immediate effect.

2. It would appear from the facts set out in the affidavits annexed to these three writ petitions that consequent upon the appointment of certain persons whose names had been registered at the Regional Employment Exchange at Bangalore, the services of these three petitioners who had been appointed purely on a temporary basis, were terminated as mentioned in Ex. B. The petitioners, being aggrieved at the termination of their services, have filed these three writ petitions under Art. 226 of the Constitution praying for a writ of certiorari quashing the order of termination as per Ex. B and the issue of a writ of mandamus to the Director of Collegiate Education in Mysore, requiring him to appoint the petitioners to the cadre of the second division clerks with continuity of service as from the date of Ex. B. It may be stated that it is only in writ

petition No. 204 of 1965 that the two appointees have been impleaded as additional respondents; in the remaining two petitions, the appointees in consequence of whose appointment the temporary services of the petitioners were terminated, have not been impleaded as parties (to the writ petitions).

3. We have heard, at considerable length, the arguments of Sri Jagannath Shetty, the learned advocate for the petitioners, and of the Special High Court Government Pleader who has appeared on behalf of the Director of Collegiate Education in Mysore who is a respondent in all these three writ petitions. For the reasons which will be presently stated, we are satisfied that the petitioners cannot succeed in these writ petitions.

4. The main contention urged by Sri Jagannath Shetty is that the vacancies of second division clerks in the first-grade college at Kolar had not been notified to the employment exchange at Oorgaum, Kolar Gold Fields. It is contended by him that the requirement of Sub-section (1) of S. 4 of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (hereinafter referred to as the Act), has not been complied with and that, therefore, the filling up of the vacancies of second division clerks in the first-grade college at Kolar by the appointment of the additional respondents in Writ Petition No. 204 of 1965 and of the other persons mentioned in the two other writ petitions, are all invalid. It is further contended by him that if the said vacancies had been properly notified as required under Sub-section (1) of S.4 of the Act, there was a chance for the petitioners to have registered themselves at the Oorgaum exchange for being appointed to those vacancies. It is urged by him that non-compliance with the mandatory provisions of Sub-section (1) of S. 4 of the Act has the effect of rendering the said appointments invalid and that, therefore, the petitioners are entitled to the reliefs prayed for by them. As against this contention on behalf of the petitioners, it is urged by the learned Special High Court Government Pleader that though the language of Sub-section (1) of S. 4 of the Act may be mandatory, the compulsion therein is really in regard to the notifying by the employer of the vacancy to the employment exchange and that any non-compliance with Sub-section (1) of S. 4, through resulting in liability to punishment under S. 7 of the Act, has not the effect of rendering any appointment made (in contravention of that sub-section) invalid under the law.

5. (Without prejudice to the above stand taken by him, it is stated by the Special High Court Government Pleader that the practice that is being hitherto followed is to notify all such vacancies to the Regional Employment Exchange at Bangalore, as the office of respondent 2 is located at Bangalore. He also states that if the Court finds that such vacancies have got to be notified to the local employment exchanges, such a procedure would be followed hereafter.)

6. Sub-section (1) of S. 4 of the Act is as follows :

"4. Notification of vacancies to employment exchange. - (1) After the commencement of this Act in any State of 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 may be prescribed.

7. Rules have been framed under the Act (hereinafter referred to as the rules). Clause (5) of rule 2 reads as follows :

"Definitions. - In these rules, unless the context otherwise requires, -

* * *

(5) "local employment exchange" means that employment exchange (other than the Central Employment Exchange) notified in the official gazette, by the State Government or the Administration of a Union Territory as having jurisdiction over the area in which the establishment concerned is situate or over specified classes or categories of establishments of vacancies."

8. Clause (e) of S. 2 of the Act defines "establishment" as follows :

"2. Definitions. - In this Act, unless the context otherwise requires, -

* * *

(e) "establishment" means -

(a) any office or

(b) any place where any industry, trade, business or occupation is carried on;

* * *"

9. The office of the first-grade college at Kolar, falls within (a) of the definition of "establishment." The vacancies arising in that establishment, namely, the office of the first-grade college, Kolar, had to be notified, in accordance with Sub-section (1) of S. 4 of the Act, to such employment exchanges as may be prescribed. Having regard to the definition of "local employment exchange" under Clause (5) of rule 2, the employment exchange at Oorgaum, Kolar Gold Fields, would be the local employment exchange in relation to the office of the first grade college, Kolar. It is, therefore, clear that there was the statutory compulsion for those vacancies being notified to the employment exchange at Oorgaum, Kolar Gold Fields. The question which now arises for determination is as to whether the appointments made to those vacancies would be rendered invalid by reason of the said vacancies not having been notified to the employment exchange at Oorgaum, Kolar Gold Fields.

10. In support of his contention, Sri Jagannath Shetty has relied on a decision of the King's Bench Division in *Anderson, Ltd. v. Daniel* (1924) 1 K.B. 138. That was a matter arising under the law of contracts. There was a contravention of the requirements of certain statutory provisions, namely, of Sub-section (1) of S. 1 of the Fertilizers and Feeding Stuffs Act, 1906. The statute had provided penalty for breaches of its provisions. The Court considered the question as to whether

the penalty that was provided against the doing of an act was only for the purposes of protection of the revenue or whether the penalty was provided wholly for the protection of the public. It was held that as the object of the statute (under consideration in that case) in requiring the vendor to give the statutory invoice and imposing on him the penalty in the event of his default was to protect the purchasers of fertilizers, the effect of non-compliance with the requirement was not merely to render the vendor to penalty but also to make the sale illegal and preclude the vendor from suing for the price. This conclusion was reached by the Court on a construction of the particular provisions of that statute. In a later decision in *Marles v. Philip Trant & Sons* (1953) 1 All E.R. 645 reference was made to the earlier decision in *Anderson, Ltd. v. Daniel* (1924) 1 K.B. 138 (vide supra) and the same was also explained. A distinction seems to have been made in the later case of *Marles v. Philip Trant & Sons* (1953) 1 All E.R. 645 (vide supra) between a contract which was void ab initio and a contract which was affected by the fact that one of the parties thereto had acted in contravention of the requirements of law. This later case was also taken up in appeal and the decision of the Court of Appeal is to be found (1953) 1 All E.R. 651. These decisions deal with the question as to how and to what extent the rights of parties to a contract are affected, when one of the contracting parties, while entering into the contract, contravened the provisions of some Act and which contravention entails penalty under that Act. But we do not understand those decisions as laying down that every such contravention necessarily results in rendering the contract ab initio void. What consequences follow from any such contravention, will have to be determined from a construction of all the relevant provisions of the Act concerned. The mere fact that a penalty is imposed by a statute upon any person who does a particular act, may or may not imply a prohibition of that act. As stated in Para. 245 at p. 141 of Halsbury's Laws of England (3rd Edn., Vol. 8) it is a question of construction in each case whether the legislature intended to prohibit the doing of the act altogether, to merely to make the person who did it liable to pay the penalty. In the present case, we are not concerned with the effect of such a contravention on the rights of parties to a contract. The question here is whether having regard to the provisions of the Act, the appointments made by respondent 2 are rendered invalid because of non-compliance with Sub-section (1) of S. 4 of the Act. In this connexion, the observations made by the Supreme Court at p. 851 of *Banwarilal Agarwalla Vs. The State of Bihar and Others*, would be useful. They are as follows :

"As has been recognized again and again by the Courts, no general rule can be laid down for deciding whether any particular provision in a statute is mandatory, meaning thereby that non-observance thereof involves the consequence of invalidity or only directory, i.e., a direction the non-observance of which does not entail the consequence of invalidity, whatever other consequences may occur. But in each case the Court has to decide the legislative intent. Did the legislature intend in making the statutory provisions that non-observance of this would entail invalidity or did it not ? To decide this we have to consider not only the

actual words used but the scheme of the statute, the intended benefit to public of what is enjoined by the provisions and the material danger to the public by the contravention of the same."

11. As has been set out in the preamble of the Act, it is to provide for the compulsory notification of vacancies to employment exchanges, that this Act has been enacted. The object is to compel employers to notify vacancies in their establishments, to the concerned employment exchanges. The object of the Act is not to prohibit the appointments being made by employers, to fill up vacancies occurring in their establishments. Sub-section (4) of S. 4 of the Act is as follows :

"4. Notification of vacancies to employment exchanges. -

* * *

(4) Nothing in Sub-secs. (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."

12. The above sub-section makes it clear that there is no obligation upon any employer to recruit persons through the employment exchange to fill vacancies occurring in his establishments, merely because the vacancies have been notified under Sub-secs. (1) and (2). There is no provision in the Act for rendering invalid any appointment made by the employer, when he makes those appointments without complying with the requirements of Sub-secs. (1) and (2) of S. 4. It is true that S. 7 provides for the imposition of penalty on an employer who fails to notify the employment exchange as required by Sub-section (1) or (2) of S. 4. But that, by itself, cannot have the effect of rendering invalid any appointment made by the employer without complying with the requirements of Sub-section (1) or (2) of S. 4 of the Act. If it was the intendment of the Act that any appointments made by the employer without complying with the requirements of Sub-secs. (1) and (2) of S. 4 should be rendered invalid, it is reasonable to expect that specific provision would have been made for that purpose in the Act. In the absence of any such provision and on a consideration of the scheme of the Act and the object which it is intended to serve, we are satisfied that there is no strength in the contention that the appointments made by the employer will be rendered invalid, merely by reason of his not complying with the requirements of Sub-secs. (1) and (2) of S. 4 of the Act. Therefore, this contention fails.

13. It is not disputed that the petitioners in all these cases have been appointed purely on a temporary basis and subject to the condition that their appointments are liable to be terminated without any notice. Such being the conditions of their appointment, they cannot justly complain about the termination of their appointments. It is not anybody's case that the termination of the appointments of the petitioners is either mala fide or is by way of punishment. In these circumstances, that the vacancies to which appointments have been made by respondent 2 had not been notified to the employment exchange at Oorgaum, is

not a ground for the petitioners to contend that their appointments should not have been terminated.

14. Before concluding, we wish to point out that the prevailing practice of notifying the vacancies only to the Regional Employment Exchange at Bangalore and not to the local employment exchanges having jurisdiction over the area in which the concerned establishment (where the vacancies occur) is situated, is not in accordance with the requirements of the Act. Strictly speaking, the vacancies ought to be notified to those local employment exchanges having jurisdiction over the area where the office in which the vacancies occur is situated. The mere fact that the head of the department who makes the appointment has his headquarters at Bangalore would not be an excuse for not notifying the local employment exchanges concerned of such vacancies. However, the Special Government Pleader has stated that the correct procedure will be followed hereafter.

15. In the result, all these three writ petitions fail and they are dismissed. We make no order as to costs.