
(2014) 08 CHH CK 0010
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 783 of 2010

Prakash Rao Gayakwad

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 05-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 08 CHH CK 0010

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Single Bench

Advocate : Vinod Deshmukh, Advocate for the Appellant; Bhaskar Payasi, Panel Lawyer, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Prashant Kumar Mishra, J.

Heard learned counsel for the parties.

1. The petitioner is working as Driver on daily wages basis in the office of the Commercial Tax Officer, Janjgir-Champa. The petitioner has assailed the legality and validity of the impugned recruitment process initiated by the Divisional Deputy Commissioner, Commercial Tax, Bilaspur Division - II vide Annexure - P/6 dated 15-1-2010 on the ground that the said recruitment is made by calling name from the Employment Exchange without issuing any public notice.

2. Learned counsel for the petitioner would submit that apart from non-adherence the publication mode, the impugned selection is also bad in law because the post of Driver in the establishment of Divisional Deputy Commissioner, Commercial Tax, Bilaspur, has been filled up pursuant to advertisement (Annexure - P/2) and the petitioner is working on the said post.

3. In so far as the attack in impugned advertisement on the ground that the subject post has already been filled up, suffice it would be to mention that the

respondents have clearly stated in the return that the order of regular appointment was never issued in favour of the petitioner and secondly the petitioner has also not filed any such document by which he was informed of his selection pursuant to the selection process initiated vide Annexure - P/2 or that he was offered appointment and was allowed to join as regular incumbent on the post of Driver. The petitioner has also not submitted any proof that at present he is working on the post of Driver in the office of the Commercial Tax Officer, Janjgir-Champa as a regular employee.

4. The legal position with regard to appointment through Employment Exchange without advertising the post is well settled.

5. The Supreme Court in *State of Orissa and Another Vs. Mamata Mohanty*, has clearly held that the course of inviting applications from the Employment Exchange for any appointment violates the mandates of Article 14 & 16 of the Constitution of India, as it deprives the candidates who are eligible for the post, from being considered. The observation made by the Supreme Court, reads as under :

36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the Employment Exchange or putting a note on the Notice Board etc. that will not meet the requirement of Articles 14 & 16 of the Constitution. Such a course violates the mandates of Articles 14 & 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance of the said Constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit.

6. This Court has also considered the issue in *Darbar Singh Porte and Another Vs. State of C.G. and Another*, and held as under :

8. Even if the names of the petitioners were called from the employment exchange, this does not suffice the requirement of provision of Constitutional scheme of employment, as there should be an open invitation to all the concerned. Registration of name in the employment exchange may be one of the eligibility criteria, but drawing names from the employment exchange does not meet with the requirement of Constitutional scheme of employment. Admittedly the recruitment of the petitioners was not made in accordance with any rules.

7. Considering the fact that the impugned selection/recruitment is made without issuing advertisement, the same is found to be in violation of Article 16 of the Constitution of India, as has been held by the Supreme Court in *Mamata Mohanty (supra)*.

8. Accordingly, the impugned selection/recruitment process initiated by the Divisional Deputy Commissioner, Commercial Tax, Bilaspur Division - II vide Annexure - P/6 dated 15-1-2010 is set aside. However, liberty is reserved in favour of the respondent authorities to initiate the process of recruitment afresh by issuing open advertisement.

9. Accordingly, the writ petition is disposed of. No order as to costs.