

(2001) 09 MAD CK 0069

In the Madras High Court

Case No : Writ Petition No. 7483 of 2000

PSG College of Arts and Science

APPELLANT

Vs

University Grants Commission and Two others

RESPONDENT

Date of Decision : 11-09-2001

Acts Referred:

Tamil Nadu Private Colleges (Regulation) Act, 1976 — Section 11, 14
Tamil Nadu Private Colleges (Regulation) Rules, 1976 — Rule 11(4)

Citation : (2001) 09 MAD CK 0069

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Advocate : Mr. R. Krishnamoorthy, for Mr. A. Jinasenan, for the Appellant; Mr. M. Vijayakumar, Additional Government Pleader (Edn.), for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner has filed this writ petition seeking to quash the paragraphs 2, 3(3) and 3(4) of the proceedings of the third respondent, dated

20.3.2000, and consequently direct the respondents to consider the grant of approval to the persons appointed by the petitioner.

2. The petitioner's college is a private aided college. In view of vacancies which had arisen for various posts, the petitioner-college decided to fill

up the same and the College Committee notified the vacancies to the Employment Exchange and simultaneously issued publications in newspapers

inviting applications for the various posts in the college. The College Committee had considered all the candidates who had applied in response to

the advertisements as well as who were sponsored by the Employment Exchange and selected required number of teachers. In the letter dated

8.3.2000, the petitioner had requested the 3rd respondent to approve the appointments of the selected candidates. By the impugned proceedings

dated 20.3.2000, the 3rd respondent asked the petitioner to furnish the Government Order, if any, issued pursuant to the judgment of the Apex

Court in Civil Appeal Nos.11646, 11724 of 1996. The 3rd respondent had also specifically-informed the petitioner that the selection of

candidates inviting applications by advertisements, without calling for the names of the candidates from the Employment Exchange cannot be approved.

3. It is also stated that the selection of lecturers should be (1) during the currency of the interim orders of the High Court passed in

W.M.P.No.24680 of 1999 in W.P.No.17042 of 1999, dated 1.2.2000, staying Annexure 11, Para 8 of G.O.Ms.No.III, Higher Education

Department, dated 24.3.99; (2) Communal rotation ought to have been followed; (3) the selection ought to have been made only from the list sent

by the Employment Exchange, and only after getting non-availability certificate from the Employment Exchange, the candidates who applied on the

basis of the advertisement made in the newspaper; and (4) the candidates should have obtained educational eligibility certificate from the

Bharathiyar University. It is further stated that in view of the pendency of Writ Petition No.17042 of 1999, the management, and the lecturer who

got appointment should give an undertaking in writing in the form enclosed.

4. The respondents filed a counter stating that as per the the regulations applicable to the private aided colleges, the petitioner-college ought to

have appointed the candidates sponsored only from the Employment Exchange. But, the petitioner had gone to the Press and selected the

candidates from the open market and so, the said appointments are illegal, and are in violation of the instructions issued in G.O.No.1138, Labour

and Employment Department dated 25.9.1978, and so the refusal to approve the appointments under the impugned order is legal and in

accordance with law.

5. It is not in dispute that the provisions under the Tamil Nadu Private Colleges (Regulation) Act, 1976 deal with the procedure to be followed for

making appointments in the colleges. According to Sec. 11 of the said Act, every private college not being minority college shall have a College

Committee. The said College Committee, under Sec. 14 of the said Act had an obligation to appoint teachers, and other staff of the private

college, fix their pay and allowances and define their duties and conditions of their services. The method of such appointments is contemplated

under Rule 11 (4) (i) and (ii) of the Rules. For better understanding of the said provision, the same is extracted hereunder;-

11. (4)(i).Promotions in respect of teaching staff shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal, and in respect of non-teaching staff promotions shall be made on seniority basis, provided other conditions regarding qualification are satisfied.

(ii) The committee shall fill up the posts by promotion or by direct recruitment. The committee shall, while making promotion, consider the claims of

all the qualified teachers in that college. If, however, none of the qualified teachers in the college is found suitable for promotion, the vacancy shall

be filled up by direct recruitment by calling for applications from qualified persons through the Press or by calling for a list of candidates from the

Employment Exchange by following the rule of reservation ordered by the Government from time to time for direct recruitment.

6. From the abovesaid provisions, it is clear that if none of the qualified teachers found available in the college for promotion, the vacancy can be

filled up by direct recruitment. For the said vacancy, the Committee can call for applications from the qualified persons through the press, or by

calling for a list of candidates from the Employment Exchange by following the Rule of Reservation ordered by the Government from time to time

for direct recruitment.

7. The said method of recruitment had been approved by the Apex Court in the decision in Excise Superintendent Malkapatnam, Krishna District,

A.P. Vs. K.B.N. Visweshwara Rao and Others, , holding as follows;-

6. Having regard to the respective contention, we are of the view that contention of the respondents is more acceptable which would be consistent

with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidate is unable to have the names

sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of

selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these

circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view

appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment

exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation,

as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the

newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins;

and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of

opportunity in the matter of employment would be available, to all eligible candidates.

8. Similarly, in the decision in *Arun Tewari v. Zila Hansavi Shikshak Sangh*, AIR 1998 S.C. 331, the Apex Court has held as follows:-

19. The next contention relates to inviting applications from Employment Exchanges instead of by advertisement. This procedure has been

resorted to looking to the requirements of a time-bound scheme. The original applicants contended that if the posts had been advertised, many

others like them could have applied. The original applicants, who so complain, however, do not possess the requisite qualifications for the post. As

far as we can see from the record, nobody who had the requisite qualifications, has complained that he was prevented from applying because

advertisement was not issued. What is more important, in the special circumstances requiring a speedier process of selection and appointment,

applications were invited through Employment Exchanges for 1993 only. In this context, the special procedure adopted is not unfair. The State has

relied upon the case of *Union of India v. N. Hargopal*, , where Government instruction enjoining that the field of choice should, in the first instance,

be restricted (o candidates sponsored by the Employment Exchanges, was upheld as not offending Articles 14 and 16 of the Constitution. In the

case of *Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others*, , this Court approved of recruitment

through Employment Exchanges as a method of preventing malpractices. But in the subsequent and more recent case of *Excise Superintendent*

Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, , this Court has distinguished Union of India (UOI) and Others

Vs. N. Hargopal and Others, on the basis of special facts of that case. It has observed that the better course for the State would be to invite

applications from Employment Exchanges as well as to advertise and also give wide publicity through TV, Radio etc. The Court had to consider

whether persons who had applied directly and not through Employment Exchange would be considered. This Court upheld their claim for

consideration.

20. There are different methods of inviting applications. The method adopted in the exigencies of the situation in the present case cannot be labelled

as unfair, particularly when, at the relevant time, the two earlier decisions of this Court were in vogue.

9. In the present case, the approval has been rejected mainly on the basis that the petitioner has not selected the candidates only from the list sent

by the Employment Exchange, and so it is contrary to the Tamil Nadu Private Colleges (Regulation) Act and the Rules. I am not able to understand

as to how the 3rd respondent has come to such conclusion. When the Rule extracted above, clearly contemplates the procedure, according to

which, the petitioner is entitled to call for applications through press from the open market also. In the present case, not only the Rule gives option

to the petitioner-college to call for such applications through the press, but also the procedure followed by the petitioner, in accordance with the

decisions of the Apex Court, and such a procedure cannot be held as unfair.

10. In view of the abovesaid reasons, the stand taken by the 3rd respondent that the selection made by the petitioner by calling for applications in

open market, which is contrary to the statute, cannot be sustained. Hence the impugned order is set aside and the matter is remitted to the 3rd

respondent, and the 3rd respondent is directed to consider the applications of the petitioner again and pass orders in accordance with law and on

the basis of the abovesaid principles laid down in this case.

11. With the above observations, this writ petition is allowed. No costs. W.M.P.No. 11056 of 2000 is closed.