

(2008) 04 MAD CK 0122

In the Madras High Court

Case No : Writ Petition No. 33647 of 2007 and Suo Motu Writ Petition No. 32836 of 2007

R. Amirthaveni

APPELLANT

Vs

The District Employment Exchange Officer and The Hon'ble
District Judge
The Registrar General, High Court Vs
The State of Tamilnadu

RESPONDENT

Date of Decision : 29-04-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(3), 16(4), 226
Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 — Section 2,
3, 4, 4(1), 4(2)
Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 10A

Citation : (2008) 3 LW 884 : (2008) 5 MLJ 1252

Hon'ble Judges : S.J. Mukhopadhaya, J;M. Venugopal, J

Bench : Division Bench

Advocate : R. Muthukumarasamy for O.A. Dinesh Kumar, for the Appellant; Raja Kalifullah, Govt. Pleader assisted by D. Srinivasan, A.G.P., for the Respondent

Judgement

S.J. Mukhopadhaya, J.—In both these Writ Petitions, as common question of law is involved, they were heard together and disposed of by this common order.

2. The Principal District and Sessions Judge of Thiruvallur, with a view to take steps to fill up different ministerial posts, such as Examiner of Copies, Reader, Copyist, Senior Bailiff, Office Assistant, Masalchi, Watchman, Xerox Operator, Driver, etc., took steps and called for the names from the District Employment Office of Thiruvallur. In spite of different requests, including oral request, only some names were forwarded in piecemeal and not for all the posts. The aforesaid matter was referred to by the Principal District and Sessions Judge, Thiruvallur, to this Court, vide D. No. 3296/A/2007, dated 31.8.2007 / 03.9.2007. Similar problem having been faced, the Principal District and Sessions Judge, Madurai, vide his D. No. 12393, dated 20.9.2007, referred the matter to this Court in its administrative side and pointed out the vacancy position. It is informed that for

the post of Steno-Typist, the Employment Exchange was requested to send the list of candidates and the District Employment Office, Madurai, has addressed all the Employment Offices in Tamil Nadu, requesting them to send the list available and the willing candidates in the ratio of 1:1 by letter dated 10.8.2007, but in the absence of any candidate, no name has been recommended.

3. As pursuant to G.O.Ms. No. 65, Labour and Employment (N2) Department, dated 30.3.2007, the names can be recommended only in the ratio of 1:1, but under the Rules, the post be filled up on the basis of the merit and under Rule 10-A(a) of the Tamil Nadu State and Subordinate Services Rules, generally no advertisement can be published, facing difficulty, the Chief Justice of the High Court, suo motu referred the matter for determination of the issue under Article 226 of the Constitution of India, registered as Suo Motu W.P. No. 32836 of 2007.

4. The petitioner-R.Amirthaveni has preferred the other Writ Petition in W.P. No. 33647 of 2007 and she claims to be the senior most registrant in the local Employment Exchange, Dharmapuri. It appears that the names of number of persons, were forwarded, but she was not selected for appointment in the District Court, Dharmapuri. It is in the aforesaid background, prayer has been made to consider only her case pursuant to G.O.Ms. No. 65, dated 30.3.2007 issued from Labour Employment (N2) Department and no other person.

5. According to the learned Senior Counsel appearing for the High Court, the State Government cannot restrict the name of one person against one vacancy. Otherwise, it will amount to compelling the appointing authority to appoint the recommended person without assessing the merit. It was further submitted that if the selection is made pursuant to G.O.Ms. No. 65, dated 30.3.2007 issued from Labour and Employment (N.2) Department, read with Rule 10-A(a) of the Tamil Nadu State and Subordinate Services Rules, it will not only violate Rule 10-A(b) of the said Rules, but also Articles 14 and 16 of the Constitution of India. According to him, the selection should not be restricted among unemployed persons, as employed persons have also a right to apply for selection against another post, if permission is granted by its employer and restricting the selection only amongst the unemployed persons, will violate Articles 14 and 16 of the Constitution of India. Further, according to him, an employer cannot be restricted from selecting only the candidates recommended by Employment Exchange, but can also make selection out of persons who may apply pursuant to advertisement in the newspapers. According to him, in the absence of any advertisement, if an employer is forced to select only from those whose names have been empanelled in the Employment Exchange, such action will be arbitrary and discriminatory and shall be against the constitutional provisions.

6. On the other hand, according to the learned Counsel appearing for the State, restriction of selection from those enrolled in the Employment Exchange, will not vitiate the selection, nor violates Articles 14 and 16 of the Constitution of India and the State Government has jurisdiction to issue such direction under the Employment Exchanges (Compulsory Notifications of Vacancies), Act, 1959

(hereinafter referred to as "the Employment Exchanges Act") and may also frame independent Rule under proviso to Article 309 of the Constitution of India.

7. Both the learned Counsel appearing for the parties relied on the provisions of the Employment Exchanges Act, 1959, Rule 10-A of the Tamil Nadu State and Subordinate Services Rules and the decisions of High Courts and the Supreme Court.

8. We have heard the learned Counsel appearing for the parties and noticed the rival contentions and also gone through the relevant Act, Rules and the decisions of the Supreme Court.

9. In these Writ Petitions, the following questions arise for determination:

(i) Whether it is possible to make any selection on merits, if the name of only one person is forwarded by the Employment Exchange against one vacancy, and the same will amount to compelling the appointing authority to adjudge the merit of only one person?

(ii) Whether G.O.Ms. No. 65, Labour and Employment (N2) Department, dated 30.3.2007, read with Rule 10-A(a) of the Tamil Nadu State and Subordinate Services Rules, is violative of Rule 10-A(b) of the said Rules and Articles 14 and 16 of the Constitution of India?

(iii) Whether calling for the names only from local District Employment Exchange excluding those enrolled in other District Employment Exchanges, is violative of Articles 14 and 16 of the Constitution of India?

(iv) Whether Articles 14 and 16 of the Constitution of India envisage employment only to unemployed persons or the employed persons are also entitled for protection under Articles 14 and 16 of the Constitution of India for getting any other employment in the State ?

(v) Whether those who have not enrolled with the Employment Exchange stands excluded from consideration of their case for appointment, if the names are only called for from the Employment Exchange and no advertisement is issued?

(vi) What is the ground in giving preference to those enrolled earlier over those enrolled later in the matter of appointment if the date of enrollment has no nexus with the date of passing the minimum requisite qualification or age ?

10. For proper appreciation of the case and determination of the issues, it is necessary to notice and discuss certain provisions as referred to hereunder.

Section 2(i) of the Employment Exchanges Act defines "unskilled office work" and quoted hereunder:

"unskilled office work" means work done in an establishment by any of the following categories of employees, namely:

(1) daftri ;

- (2) jemadar, orderly and peon;
- (3) dusting man or farash;
- (4) bundle or record lifter;
- (5) process server;
- (6) watchman;
- (7) sweeper;
- (8) any other employee doing any routine or unskilled work which the Central Government may, by notification in the Official Gazette, declare to be unskilled office work.

Under Section 3, the Employment Exchanges Act will not apply to certain vacancies including the following:

(1) ...

...

(c) in any employment the total duration of which is less than three months;

(d) in any employment to do unskilled office work;

...

(2) Unless the Central Government otherwise directs by notification in the Official Gazette in this behalf this Act shall not also apply in relation to --

(a) vacancies which are proposed to be filled through promotion or by absorption of surplus staff of any branch or department of the same establishment or on the result of any examination conducted or interview held by, or on the recommendation of, any independent agency, such as the Union or a State Public Service Commission and the like;

However, for the vacancies to which the provisions of the Employment Exchanges Act are applicable, it is mandated to follow the procedure u/s 4 and quoted hereunder:

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 may 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 any employment in that establishment, notify that vacancy to such

employment exchanges as may be prescribed, 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 employment 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.

11. From the aforesaid provisions, it will be evident that the Employment Exchanges Act is not applicable for the following vacancies:

(1) daftri ;

(ii) jemadar, orderly and peon;

(iii) dusting man or farash;

(iv) bundle or record lifter;

(v) process server;

(vi) watchman;

(vii) sweeper;

(viii) any other employee doing any routine or unskilled work which the Central Government may, by notification in the Official Gazette, declare to be unskilled office work.

Further, it would be evident from the aforesaid provisions that though for other vacancies, the names are to be called for from the Employment Exchange, Section 4 of the Employment Exchanges Act, does not impose any obligation upon the employer to recruit any person through the Employment Exchange to fill any vacancy merely because that vacancy has been notified through Employment Exchange. The essence of such provision is that the employer has option also to call for applications through open advertisement published in the newspapers and on assessment of merit and selection, may appoint most suitable persons including those whose names have not been recommended by the Employment Exchange.

12. Rule 10-A(a) of the Tamil Nadu State and Subordinate Services Rules, relates to "recruitment to posts which are outside the purview of the Tamil Nadu Public Service Commission". Under Sub-Rule (a) of Rule 10-A, while it is prescribed to make recruitment only by calling for the names of eligible candidates from the Employment Exchange, it is only in case of non-availability of candidates from the Employment Exchange, the appointing authority has been allowed to

advertise the posts in prominent daily newspapers. Under Sub-Rule (b) of Rule 10-A, the selection is to be made on the basis of merit. Rule 10-A(a) and (b) are quoted hereunder:

Rule 10-A: Recruitment to posts, which are outside the purview of the Tamil Nadu Public Service Commission:

(a) Where the posts are outside the purview of the Tamil Nadu Public Service Commission, recruitment shall be made only by calling for names of eligible candidates from the Employment Exchange. In respect of specialized posts for which candidates are not available with the Employment Exchange, the appointing authority shall get a certificate a non-availability from the Employment Exchange, and call for applications from eligible candidates by advertising the posts in prominent daily newspapers giving the number of vacancies and indicating the qualifications, etc.:

Provided that this sub-rule shall not apply in the case of appointments of dependents of Government Servants who die in harness, or the Government Servants who retire from service on medical invalidation before attaining the age of fifty years.

(b) The candidates to be appointed shall be selected on the basis of merit by the appointing authority, or by an officer designated by the appointing authority or by a Committee of Officers not exceeding three duly constituted by the appointing authority, subject to the rule of reservation of posts wherever applicable after subjecting the candidates to an oral interview and, if necessary, a short written test which can be evaluated in a short time.

13. Section 4 of the Employment Exchanges Act, 1959 fell for consideration before High Courts and the Supreme Court from time to time.

In the case of Union of India (UOI) and Others Vs. N. Hargopal and Others, , having noticed the aforesaid provision--Section 4, the Supreme Court held as follows:

4. It is evident that there is no provision in the Act which obliges an employer to make appointments through the agency of the Employment Exchanges. Far from it. Section 4(4) of the Act, on the other hand, makes it explicitly clear that the employer is under no obligation to recruit any person through the Employment Exchanges to fill in a vacancy merely because that vacancy has been notified u/s 4(1) or Section 4(2). In the face of Section 4(4), we consider it utterly futile for the learned Additional Solicitor General to argue that the Act imposes any obligation on the employers apart from notifying the vacancies to the Employment Exchanges....

6. It is, therefore, clear that the object of the Act is not to restrict, but to enlarge the field of choice so that the employer may choose the best and the most efficient and to provide an opportunity to the worker to have his claim for appointment considered without the worker having to knock at every door for

employment. We are, therefore, firmly of the view that the Act does not oblige any employer to employ those persons only who have been sponsored by the Employment Exchanges.

8. It is clear that it is the desire of the Government of India that all government departments, government organisations and statutory bodies should adhere to the rule that not merely vacancies should be notified to the Employment Exchanges, but the vacancies should also be filled by candidates sponsored by the Employment Exchanges. It was only when no suitable candidates were available, that other sources of recruitment were to be considered. While the government is at perfect liberty to issue instructions to its own departments and organisations provided the instructions do not contravene any constitutional provision or any statute, these instructions cannot bind other bodies which are created by statute and which function under the authority of statute. In the absence of any statutory prescription the statutory authority may however adopt and follow such instructions if it thinks fit. Otherwise, the government may not compel statutory bodies to make appointments of persons from among candidates sponsored by Employment Exchanges only. The question, of course, does not arise in the case of private employers which cannot be so compelled by any instructions issued by the Government.

9. The further question is whether the instructions issued by the government that in the case of government departments the field of choice should, in the first instance, be restricted to candidates sponsored by the Employment Exchanges offend Articles 14 and 16 of the Constitution. Shri P.Parmeshwara Rao, learned Counsel appearing for some of the respondents strenuously urged that such a restriction would offend the equality clauses of the Constitution, namely Articles 14 and 16. He urged that when Parliament had gone into the question and decided that there should be no compulsion in the matter of appointment by way of restriction of the field of choice, it was not open to the government to impose such compulsion. He argued that it would be unreasonable to restrict the field of choice to those sponsored by the Employment Exchanges. In a country so vast as India, in a country where there was so much poverty, illiteracy and ignorance, it was not right that employment opportunities should necessarily be channelled through the Employment Exchanges when it is not shown that the network of Employment Exchanges is so wide, that it reaches all the corners of this vast country. He argued that it is futile to expect that persons living in distant places could get themselves registered with Employment Exchanges situated far away. The submission of Shri Parmeshwara Rao is indeed appealing and attractive. Nonetheless, we are afraid we cannot uphold it. The object of recruitment to any service or post is to secure the most suitable person who answers the demands of the requirements of the job. In the case of public employment, it is necessary to eliminate arbitrariness and favouritism and introduce uniformity of standards and orderliness in the matter of employment. There has to be an element of procedural fairness in recruitment. If a public employer chooses to receive applications for employment where and when he pleases, and chooses to make

appointments as he likes, a grave element of arbitrariness is certainly introduced. This must necessarily be avoided if Articles 14 and 16 have to be given any meaning. We, therefore, consider that insistence on recruitment through Employment Exchanges advances rather than restricts the rights guaranteed by Articles 14 and 16 of the Constitution. The submission that Employment Exchanges do not reach everywhere applies equally to whatever method of advertising vacancies is adopted. Advertisement in the daily press, for example, is also equally ineffective as it does not reach everyone desiring employment. In the absence of a better method of recruitment, we think that any restriction that employment in government departments should be through the medium of employment exchanges does not offend Articles 14 and 16 of the Constitution. With this modification of the judgment of the High Court, the appeals and special leave petitions are disposed of. No orders are necessary in the writ petition.

Subsequently, in the case of the Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, , the question of equality of opportunity in the matter of employment fell for consideration before the Supreme Court, which noticed the earlier decision in the case of N.Hargopal (supra), and the Supreme Court observed as follows:

6. Having regard to the respective contentions, 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 candidates are 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 are 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.

In the case of Arun Tewari and Others Vs. Zila Mansavi Shikshak Sangh and Others, , it came to the notice of the Supreme Court that the names were called for from the Employment Exchange, but no advertisement was issued. Referring the decision in the cases of Hargopal (supra) and K.B.N.Visweshwara Rao

(supra), the Supreme Court observed as follows:

21. 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.

The recruitment through Employment Exchange without advertisement was upheld by the Supreme Court in that case.

Recently, similar issue relating to employment in consonance with Articles 14 and 16 of the Constitution of India, fell for consideration before the Supreme Court in the case of Union Public Service Commission Vs. Girish Jayanti Lal Vaghela and Others, , wherein, the Supreme Court held as follows:

12. Article 16 which finds place in Part III of the Constitution relating to fundamental rights provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The main object of Article 16 is to create a constitutional right to equality of opportunity and employment in public offices. The words "employment or appointment" cover not merely the initial appointment but also other attributes of service like promotion and age of superannuation, etc. The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution.

In the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , a Constitution Bench of the Supreme Court, while considering the relevant provisions relating to employment, held as follows:

6. The power of a State as an employer is more limited than that of a private employer inasmuch as it is subjected to constitutional limitations and cannot be exercised arbitrarily (see Basu's Shorter Constitution of India). Article 309 of the Constitution gives the Government the power to frame rules for the purpose of laying down the conditions of service and recruitment of persons to be appointed to public services and posts in connection with the affairs of the Union or any of the States. That article contemplates the drawing up of a procedure and rules to

regulate the recruitment and regulate the service conditions of appointees appointed to public posts. It is well acknowledged that because of this, the entire process of recruitment for services is controlled by detailed procedures which specify the necessary qualifications, the mode of appointment, etc. If rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules. The State is meant to be a model employer. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 was enacted to ensure equal opportunity for employment seekers. Though this Act may not oblige an employer to employ only those persons who have been sponsored by employment exchanges, it places an obligation on the employer to notify the vacancies that may arise in the various departments and for filling up of those vacancies, based on a procedure. Normally, statutory rules are framed under the authority of law governing employment. It is recognised that no government order, notification or circular can be substituted for the statutory rules framed under the authority of law. This is because, following any other course could be disastrous inasmuch as it will deprive the security of tenure and the right of equality conferred on civil servants under the constitutional scheme. It may even amount to negating the accepted service jurisprudence. Therefore, when statutory rules are framed under Article 309 of the Constitution which are exhaustive, the only fair means to adopt is to make appointments based on the rules so framed.

Subsequently, in the case of Principal, Mehar Chand Polytechnic, Jalandhar City and Another Vs. Anu Lumba and Others, , the Supreme Court held as follows:

17. Parliament for giving effect to the provisions of Article 16 of the Constitution enacted the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959. The statutes and the statutory rules framed by the Union of India and other States also invariably require issuance of public notices so as to enable all eligible candidates to file applications thereof. The Constitution and/or statutes or statutory rules do not make any distinction between post and posts. The recruitment process for all posts is the same.

In Arun Kumar Nayak Vs. Union of India (UOI) and Others, , it came to the notice of the Supreme Court that among the candidates who submitted application forms on being sponsored by the Employment Exchange, except one, others found disqualified on the ground that they did not produce all the necessary documents and only one candidate who produced all the relevant documents, was found eligible, and was considered and selected and the Supreme Court held that there was no element of selection and the process of selection was a mockery. The Supreme Court in that case further held that the decision in Arun Tewari (supra) is based on the facts of that case and no law was laid down therein and in K.B.N.Visweshara Rao (supra), the three-Judge Bench of the Supreme Court has laid down the law and that is still holding the field.

Apart from the aforesaid decisions, it is better to refer some of the decisions of the High Courts which relate to Section 4 of the Employment Exchanges Act,

1959.

In *State of Tamil Nadu, etc. and 93 Ors. v. Tamil Nadu Recognised Private Schools Managers' Assn., etc.* reported in 1995 WL.R. 499, it fell for consideration before this Court, whether the State Government can issue a direction to the private educational institutions, whether of minority institutions or otherwise, receiving aid from the State to make recruitment to the post of Teachers only from among the candidates sponsored by the Employment Exchange and this Court held in favour of the State.

Though the present case does not relate to appointment in the private institutions, but a reference was made by the counsel for the State, as the direction of the State Government to make appointment only from among the candidates sponsored by the Employment Exchange, was upheld in that case.

Similar matter fell for consideration before a Full Bench of the Calcutta High Court in the case of *Rabindra Nath Mahata Vs. State of West Bengal and Others*, . The Full Bench of the Calcutta High Court held that persons whose names were not sponsored by the Employment Exchange, have a right to participate as candidates in the selection process initiated by a school governed by the Management of Recognized Non-Government Institutions (Aided and Unaided) Rules, 1969 (framed under the West Bengal Board of Secondary Education Act, 1963) for recruiting and selecting persons for appointment as members of the non-teaching staff.

Before a Full Bench of this Court in the case of *Sivakumari, R. v. Ramanathapuram Mavatta Payirchipetra Edainilai Asiriyargal Sangam* reported in 2007 (5) CTC 561 , the right of candidates who have got appointment in private aided school to be sponsored by the Employment Exchange to the Government post, fell for consideration. In the said case, the Full Bench, while holding that the Employment Exchange cannot act as the only source of recruitment, further held that the recruitment to Government post was to be made by adopting procedures such as, (i) by notifying through Employment Exchanges, (ii) issuing publications in newspapers having wide circulation, inviting applications, (iii) displaying Notification in notice boards of respective offices or making announcements in media and the Full Bench held that right to employment to a public services is valuable right and the Constitution guarantees equality of opportunity in matters relating to employment or appointment to any office under the State. No discrimination can be made between persons already in employment and persons who are not in employment except by the law enacted by Parliament or State under Article 16 (3) or 16(4) of the Constitution. Thereby, the Full Bench held that persons already in employment can also apply.

14. So far as calling for the names only from local District Employment Exchange is concerned, similar issue fell for consideration before a Constitution Bench of the Supreme Court in the case of *Minor P. Rajendran Vs. State of Madras and Others*, . In the said case, the Supreme Court held as follows:

11. ...It is true that Article 14 does not forbid classification, but the classification has to be justified on the basis of the nexus between the classification and the object to be achieved, even assuming that territorial classification may be a reasonable classification....

13. ...We may add that we do not mean to say that territorial classification is always bad under all circumstances. But there is no doubt that districtwise classification which is being justified on a territorial basis in these cases is violative of Article 14, for no justification worth the name in support of the classification has been made out....

15. From the aforesaid finding, it would be evident that in appropriate cases, if proper justification is made and nexus with the object to be achieved is brought on record, calling for the names from the local Employment Exchange to fill up the posts, will not render it illegal, till it is shown violative of Articles 14 and 16 of the Constitution of India.

16. In one of the present cases, namely in W.P. No. 33647 of 2007, prayer was made by the petitioner to make selection pursuant to G.O.Ms. No. 65, dated 30.3.2007, issued from Labour and Employment (N.2) Department of the State, which reads as follows:

Abstract

Employment Exchanges - Filling up of Vacancies - Fixation of ratio for sponsoring candidates from the Employment Exchanges - Orders issued.

----- G.O.
(Ms). No. 65 Labour and Employment (N2) Dated: 30.03.2007 Department
Read: 1. G.O.Ms. No. 201, Labour and Employment Department, dated
28.09.1993. 2. G.O.Ms. No. 180, Labour and Employment Department, dated
13.09.1995. 3. G.O.Ms. No. 152, Labour and Employment Department, dated
17.11.1998. 4. G.O.(4D). No. 1, Labour and Employment Department, dated
13.01.1999. 5. G.O.(4D). No. 2, Labour and Employment Department, dated
16.02.1999. 6. G.O.(2D). No. 21, Labour and Employment Department, dated
20.09.2001. Read Also: 7. G.O.(Ms). No. 6, Labour and Employment
Department, dated 01.02.2002. 8. From the Special Commissioner and
Commissioner of Employment and Training, Letter No. Pa.Pa.1/58384/2006,
dated 18.01.2007.

----- Order:

In order to avoid delays and to bring objectivity and transparency, the Government have reviewed the existing provisions for fixation of ratio for sponsoring of candidates to employers, from the Employment Exchange.

2. In supersession of the Government Orders read above and all other orders and instructions issued on the subject, the Government, after careful consideration issue orders as follows:

(i) for filling up of any vacancy in any employment in Government Departments, Local Bodies (Urban and Rural), Co-operative institutions, Public Sector Undertakings, all Government aided Educational institutions and Government aided Engineering Colleges and Polytechnics etc., Employment Exchanges shall sponsor candidates to the employers in the ratio of 1:1 (one : one) as per seniority of registrants, who are in the live register.

(ii) for all other private organizations and institutions etc., for filling up of vacancies through Employment Exchanges, which needs selection as per merit, the Employment Exchanges shall sponsor candidates to the employers in the ratio of 1:15 (one : fifteen) from the registrants who are in the live register.

3. The Special Commissioner and Commissioner of Employment and Training is requested to issue necessary instructions, to display the contents of this order in the Notice Boards of all Employment Exchanges for information of the registrants and the public.

(BY ORDER OF THE GOVERNOR) L.K.TRIPATHY CHIEF SECRETARY TO GOVERNMENT

17. On the other hand, in the analogous case, in Suo Motu W.P. No. 32836 of 2007, it was argued by the learned Senior Counsel appearing for the High Court that the appointment of only one person recommended against one vacancy, will amount to compelling the appointing authority to appoint the person concerned and it will frustrate the selection. The aforesaid G.O.Ms. No. 65, dated 30.3.2007 was attacked on the ground of violation of Articles 14 and 16 of the Constitution of India. While the decisions as referred to above were relied upon, attention was also drawn on the decision of the Supreme Court in the case of Arun Kumar Nayak (supra). In the said case, as noticed above, as only one candidate was found to be eligible, the Supreme Court held that there was no element of selection and the process of selection was a mockery.

18. It may be in the aforesaid background that after the hearing of the present cases were concluded, the cases were again brought in the list at the instance of the counsel for the State, who brought on record G.O.Ms. No. 18, dated 25.2.2008, issued from Labour and Employment (N.2) Department, published during the pendency of the cases and by the said G.O. dated 25.2.2008, the earlier G.O.Ms. No. 65, dated 30.3.2007 issued from Labour and Employment Department and the other instructions on that issue, were superseded. G.O.Ms. No. 18, dated 25.2.2008 issued from Labour and Employment (N.2) Department, is extracted hereunder:

ABSTRACT

Employment Exchanges - Filling up of Vacancies - Fixation of ratio 1:5 for sponsoring candidates from the Employment Exchanges - Orders issued.

----- G.O.
(Ms). No. 18 Labour and Employment (N2) Dated: 25.2.2008 Department

Read: 1. G.O.Ms. No. 201, Labour and Employment Department, dated 28.09.1993. 2. G.O.Ms. No. 180, Labour and Employment Department, dated 13.09.1995. 3. G.O.Ms. No. 152, Labour and Employment Department, dated 17.11.1998. 4. G.O.(4D). No. 1, Labour and Employment Department, dated 13.01.1999. 5. G.O.(4D). No. 2, Labour and Employment Department, dated 16.02.1999. 6. G.O.(2D). No. 21, Labour and Employment Department, dated 20.09.2001. 7. G.O.(Ms). No. 6, Labour and Employment Department, dated 01.02.2002. 8. G.O.Ms. No. 65, Labour and Employment Department, dated 30.3.2007. 9. Government Letter No. 2167/N2/2007-2, L & E dated 25.04.2007. 10. G.O.Ms. No. 86, Labour and Employment Department, dated 12.5.2007.

----- Order:

In order to have uniformity in the fixation of ratio for sponsoring the candidates and to ensure expeditious filling up of vacancies, the Government have reviewed the existing Government Orders & guidelines regarding fixation of ratio for sponsoring the candidates from the Employment Exchanges to fill up the vacancies for various categories of posts.

2. In supersession of the Government orders & guidelines read above and all other instructions issued on the subject, the Government, after careful consideration issue order as follows:

For filling up of all categories of posts coming under the purview of Government Departments, Local Bodies (Urban and Rural), Cooperative institutions, Public Sector Undertakings, all Government aided Education institutions and Government aided Engineering Colleges and Polytechnics, all other private organizations and institutions etc. Employment Exchanges shall sponsor candidates in the ratio of 1:5.

3. The Special Commissioner and Commissioner of Employment and Training is requested to issue necessary instructions, to display the contents of this order in the Notice Boards of all Employment Exchanges for information of the registrants and the public.

(BY ORDER OF THE GOVERNOR) L.K.TRIPATHY CHIEF SECRETARY TO GOVERNMENT

19. From the aforesaid recent G.O.Ms. No. 18, Labour and Employment (N.2) Department, dated 25.2.2008, the following facts emerge:

(i) The aforesaid guideline is issued to all Government Departments, Local Bodies (Urban and Rural), Co-operative Institutions, Public Sector Undertakings, all Government aided Educational Institutions and Government aided Engineering Colleges and Polytechnics, all other private organisations and institutions, etc., but the said order is not applicable either to the High Court or any of the District Courts or Courts subordinate to the High Court, which are not Government Departments or Local Bodies or Undertakings of the State.

(ii) For the Government Departments and others, as referred to therein, the Employment Exchanges are required to sponsor candidates in the ratio of 1:5, i.e. five names of persons against one vacancy.

20. From the discussions as made above, the Government Orders issued from time to time, the Employment Exchanges Act and the decisions as referred to above, we hold as follows:

(i) The Employment Exchanges Act is not applicable for the following vacancies:

(a) daftari;

(b) jemadar, orderly and peon;

(c) dusting man or farash;

(d) bundle or record lifter;

(e) process server;

(f) watchman;

(g) sweeper;

(h) any other employee doing any routine or unskilled work which the Central Government may, by notification in the Official Gazette, declare to be unskilled office work.

(ii) An employer is not bound to appoint only persons sponsored by the Employment Exchange. The essence of Section 4 of the Employment Exchanges Act is that the employer has option to call for application through open advertisement published in the newspapers and on merit and selection, may appoint best of the persons including those whose names have not been recommended by the Employment Exchange.

(iii) The employer is only obliged to notify the vacancies.

(iv) It should be mandatory for the requisitioning authority/establishment to intimate the Employment Exchange and the Employment Exchange should sponsor the names of the candidates to the requisitioning Departments for selection strictly in accordance with the seniority and reservation, as per the requisition. In addition, 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 candidates who have applied. A regular employment under the State cannot be made without advertisement, which may include in some cases inviting applications from the Employment Exchange.

(v) Restricting selection only to the candidates sponsored by the Employment Exchange is not proper and such procedure will not subserve fair play.

(vi) In case the selection is made to a post/vacancy of a District cadre, calling for the names from the concerned local Employment Exchange, it will not ipso facto violate Articles 14 and 16 of the Constitution of India, till it is proved and in appropriate cases, the employer may justify such employment by showing its nexus with the object to achieve.

But in case any post/vacancy is of State level/cadre, the names cannot be called for from one particular District Employment Exchange, which otherwise will violate Articles 14 and 16 of the Constitution of India. In such a case, apart from calling for the names from the Employment Exchanges, the names should be called for by publication in the newspapers having wider circulation and through other sources.

(vii) G.O.Ms. No. 18, Labour and Employment (N.2) Department, dated 25.2.2008, issued by the State Government is applicable to all Government Departments, Local Bodies (Urban and Rural), Co-operative Institutions, Public Sector Undertakings, all Government aided Educational Institutions and Government aided Engineering Colleges and Polytechnics, all other private organisations and institutions etc., but the said order is not applicable to the High Court or any of the District Courts or Courts subordinate to the High Court, which are not Government Departments or Local Bodies or Undertakings of the State.

(viii) G.O.Ms. No. 18, Labour and Employment (N.2) Department, dated 25.2.2008 to call for the names to fill up the vacancies sponsored by the Employment Exchange in the ratio of 1:5, is not violative of Articles 14 and 16 of the Constitution of India.

(ix) Rule 10-A(a) of the Tamil Nadu State and Subordinate Services Rules, if limited for selection from among the persons recommended by the Employment Exchange, may not violate of Articles 14 and 16 of the Constitution of India, in view of G.O.Ms. No. 18, Labour and Employment (N.2) Department, dated 25.2.2008. But in case of large number of employment on regular basis within the State/cadre, it will violate the Supreme Court's observation made in the case of K.B.N.Visweshwara Rao (supra).

So far as G.O.Ms. No. 65, Labour and Employment (N.2) Department, dated 30.3.2007 is concerned, as consideration of one name against one vacancy will amount to "no selection" in the eye of law, the said G.O. being violative of Articles 14 and 16 of the Constitution of India, was rightly recalled by the State. No person can claim appointment on the basis of the earlier G.O.Ms. No. 65, even if the names were called for prior to 25.2.2008, but selection has not yet been made.

But in the light of the decision of the Supreme Court in the case of K.B.N.Visweshwara Rao (supra), the appropriate Department/Undertaking/Establishment should call for the names for publication in newspapers having wider circulation, if more number of vacancies are to be filled up at a time.

If the number of vacancies is so less that it is not possible to go for a wide selection process, the names can be called for only from the Employment Exchange at the ratio laid down by the State, not less than 1:5.

21. In view of the fact that G.O.Ms. No. 65, Labour and Employment (N.2) Department, dated 30.3.2007 stands superseded by G.O.Ms. No. 18, Labour and Employment (N.2) Department, dated 25.2.2008 and in view of our finding that G.O.Ms. No. 18, dated 25.2.2008, is not applicable for the posts/vacancies in the High Court or the District Courts or any other Court subordinate to the High Court, no relief can be granted to the petitioner in W.P. No. 33647 of 2007 for sponsoring her name for appointment to any post in the Court.

22. So far as Suo Motu W.P. No. 32836 of 2007 is concerned, in view of our findings, the concerned Principal District and Sessions Judges, the Registrar General of the High Court, etc., whoever is the appointing authority for ministerial employees of the Courts, of which a reference is given in the Letter of the Principal District and Sessions Judge, Thiruvallur in D. No. 3296/A/2007, dated 31.8.2007 / 3.9.2007 and the Letter of the Principal District Judge, Madurai in D. No. 12393, dated 20.9.2007, in question, are allowed to proceed in accordance with law and guidelines as has been or may be issued by the High Court. They may call for the names from the Employment Exchanges at any ratio they think it proper, but not less than 1:5 ratio and in case of regular appointment or more number of vacancies, it should also issue advertisement in the newspapers. As and when such names are called for from one or other District Employment Exchange, the concerned Officer of the Employment Exchange will forward the list of eligible candidates, if available in their list, immediately. In case of absence of the names of the eligible candidates, they will communicate it to the concerned authority of the Court, immediately, failing which, the matter may be treated to be violation of the direction of the Court, which may be brought to the notice of the Court.

23. W.P. No. 33647 of 2007 is dismissed and Suo Motu W.P. No. 32836 of 2007 stands disposed of with the aforesaid observations and directions. But there shall be no order as to costs.