

(1998) 09 KAR CK 0022
In the Karnataka High Court
Case No : Writ Petition No. 27992 of 1998

Shidramappa Harihar

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 25-09-1998

Acts Referred:

Constitution of India, 1950 — Article 307

Citation : (1999) 5 KarLJ 677

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Sri M.B. Chandrachooda, for the Appellant; Sri R.I. D'Sa, Government Advocate, for the Respondent

Judgement

1. Heard Mr. M.B. Chandrachooda, learned Counsel for the petitioner and Mr. R.I. D'Sa, learned Government Advocate for the respondents.

2. The present writ petition has been filed by the petitioner for directions upon the 2nd respondent to consider his application, which has been forwarded from the Employment Exchange Office, Raichur, for selection of High School Teachers Recruitment 1997-98, Gulbarga Division.

3. The petitioner is an aspirant for appointment to the post of High School Teacher Grade-II in Gulbarga Division. For appointment to the said post, the Deputy Director of Public Instructions has published a notification dated 31-10-1997 in the Karnataka Gazette, condition No.

(1) whereof is relevant for the present purpose which reads thus.--

4. The aforesaid condition clearly shows that every candidate who is eligible for appointment to the post in question must have registered his name in the Employment Exchange of the respective Division and the application should be filed only with the Employment Exchange, which in turn will forward the same to the appointing authority.

5. According to the petitioner, the respondent-authorities without considering his marks, which is of 73.8%, and other material aspects as per the notification, has selected less meritorious candidates on the ground that at the material time the petitioner had registered his name in the Employment Exchanges both at Raichur and Bijapur. His grievance is that though he has cancelled registration at Bijapur Employment Exchange but still the respondent-authorities have not considered his claim for being appointed as teacher.

6. In my opinion, notwithstanding any rules framed by the State Government either under any statutory provision or under the proviso to Article 307 of the Constitution of India, the aforesaid condition of registration with Employment Exchange cannot be held as constitutionally permissible in view of the law laid down by the Supreme Court in the case of Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, . At para 6 of the said judgment it has been held thus.--

"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 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 the 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".

7. Therefore, no appointment can be made by restricting the receiving of the applications only through Employment Exchange. In addition to calling for applications through Employment Exchanges, it is incumbent upon the concerned department or undertaking or establishment to call for the names of the eligible candidates by publication in the newspaper having wider circulation, radio, television, employment news bulletin, etc.

8. Mr. D'Sa, learned Government, Advocate, who is being assisted by Mr. Ashok Naik, learned H.C.G.P., who was directed to seek instructions keeping in view the law laid down by the Supreme Court in Excise Superintendent's case, supra,

admits that in view of the law laid down by the Supreme Court, rules of recruitment in public posts have to be amended and will be appropriately amended so as not to restrict receiving of the applications through the Employment Exchange only.

9. So far as the present case is concerned, on seeking instructions, he informs the Court that the application of the petitioner will be considered for appointment to the desired post keeping in view his eligibility and merit.

10. Accordingly, the writ petition is allowed with a specific direction to the respondent-State Government that till the procedure for inviting applications through public media as laid down by the Supreme Court in Excise Superintendent's case, supra, is adopted, no selection process should be initiated, continued or completed.

11. Let a copy of this order be made available to Mr. R.I. D'Sa, learned Government Advocate.