
(1999) 03 MP CK 0012

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4092 of 1997

Shrawan Kumar and Others

APPELLANT

Vs

South Eastern Coal Fields Ltd. and Others

RESPONDENT

Date of Decision : 22-03-1999

Acts Referred:

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

Citation : (2000) ILR (MP) 1066 : (1999) 2 MPLJ 636

Hon'ble Judges : D.M. Dharmadhikari, J

Bench : Single Bench

Advocate : A.G. Dhande, for the Appellant; N.S. Kale and Grishm Jain for Respondent Nos. 1 to 3 and Vivek Awasthy, Dy. Govt. Advocate, for the Respondent

Judgement

D.M. Dharmadhikari, J.

The petitioners are all citizens of India. They are duly qualified and possess diploma in Mining and Mining Surveying from the Board of Technical Education, Maharashtra. The petitioners have passed Gas Testing Certificate Examination from the Director General of Mines Safety, Dhanbad and completed apprenticeship training as Post Diploma Practical Training for a period of one year. The petitioners also possess Overman's Competency granted by Director General of Mines Safety, Dhanbad. They are desirous of employment to the post of Mining Sardar/Overman in the collieries under the respondent-South Eastern Coalfields Limited ("SECL" for short) having its head office at Bilaspur.

The petitioner's case is that they are entitled to be considered for appointments in the service of the SECL on the basis of their seniority as trained apprentices, having completed the course of apprenticeship in accordance with the provisions of The Apprentices Act, 1961.

The petitioners in this petition complain that the respondents as employers are

completely ignoring the right of the petitioners to an equal opportunity of employment. The employer is not maintaining any seniority list of apprentice trainees. They are paying no regard to the directions of the Apex Court in the case of Uttar Pradesh State Road Transport Corporation and another Vs. Uttar Pradesh Parivahan Nigam Shishukhs Berozgar Sangh and others, as followed and clarified in Excise Superintendent v. K. B. N. Visweswara Rao AIR 1996 SCW 3979.

On behalf of the petitioners, Shri A. G. Dhande, learned counsel appearing for them, submits that merely on the ground that the petitioners are not permanent residents of State of M. P. and have not been registered or sponsored by the local Employment Exchange, the employer is not considering their cases for employment and has adopted a policy of preferring the locally sponsored candidates by the Employment Exchange. It is argued that the provisions of The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 do not make it obligatory for any employer to employ only those persons who have been sponsored by Employment Exchange. Restricting the employment to sponsored candidates of Employment Exchange is violative of right of equality to employment guaranteed by Articles 14 and 16 of the Constitution of India. Reliance is placed on Union of India (UOI) and Others Vs. N. Hargopal and Others, as followed and explained in K. B. N. Visweswara Rao (supra). The petitioners pray for a direction to be issued to the respondents representing the employer in the management of SECL to maintain a year-wise seniority list of Trained Apprentices and consider the petitioners for employment on the basis thereof.

The respondents (Nos. 1 to 3) representing the employer in SECL have stated that so far as apprentice trainees are concerned, those who are trained in SECL are preferred to those who are trained elsewhere. It has been specifically averred in paragraph 5 of the return that "the local residents in accordance with the instructions of the State Government were being preferred".

In the course of hearing it was stated on behalf of the employer that they are maintaining a register of apprentice trainees. The counsel for the employer was directed to take instructions and publish the names of the trainees so maintained in the register. Since that direction made to the employer was not carried out, this Court on 5-3-1998 passed an order restraining the respondents from making further appointments until publication of a properly prepared seniority list of apprentice trainees and exhibiting the same on the notice board for the knowledge of all concerned. Since this Court was insistent on finding as to what actual policy of recruitment is being followed by the SECL, on 4-5-1998 this Court directed the employer to place on record the details of its policy and proposals, if any, in the matter of future employment. In the additional return submitted by the respondents it has been disclosed that for selecting suitable candidates it has appointed a selection committee consisting of the following members :

- (i) An Officer in the rank of Chief Mining Engineer/General Manager, who is appointed as Chairman of the Selection Board by the competent Authority.
- (ii) A representative of General Manager (Finance).
- (iii) General Manager (Welfare & Recruitment), SECL, Bilaspur.
- (iv) A representative of Collector, Bilaspur
- (v) Divisional Employment Officer, Bilaspur
- (vi) Liaison Officer for SC/ST Cell of SECL, Bilaspur.
- (vii) The Recruitment Officer of SECL, Bilaspur - Member Secretary of the Selection Committee.

With regard to the procedure followed for recruitment, it has been explained that a requisition is sent to Employment Exchanges situated in the Coalfields areas of SECL for sponsoring names for the purpose of selection. The requirements insisted upon are - qualification with holding of Mining Sardar/Overman Certificate of Competency issued by the DGMS, Dhanbad along with valid Gas Testing Certificate issued by DGMS, and valid First Aid Certificate issued by St. John Ambulance Association. It has been further disclosed that the other requirement insisted upon is that the candidate should be a domicile of Madhya Pradesh. In the additional return submitted on 4-5-1998 it has been specifically disclosed as under :

"The insistence of domicile certificate is in accordance with the instructions of the State Government. The representative of the. State Government strictly enforces this requirement of domicile at the time of interview."

It is also made clear that interview call letters were not sent to the petitioners as their names were not sponsored by the Employment Exchange.

This Court, in the course of hearing, prima facie was of the opinion that insistence on domicile certificate of State of M. P. cannot be a valid requirement for recruitment. The employer showed its helplessness in the matter stating that the local government officials whose representatives are on the selection board insist on giving preference to the candidates domiciled in the State of M. P. The employer thereafter made an application on 23-6-1998 (I. A. No. 1878/W/98) praying for joining the State of M. P. as an additional party to the petition. Despite opposition to this application by the petitioners, this Court allowed joinder of the State of M. P. as a party. The State of M.P., on being made a party, filed a return as respondent No. 4. On behalf of the State reliance is placed on a circular containing instructions (Annexure R-4/1) Providing that in recruitment to government service due attention be paid to the requirement of giving priority and preference to local residents of Madhya Pradesh. The term "local residents of Madhya Pradesh" has been defined in another circular (Annexure-R-4/2) to include persons born to the parents domiciled in State of M.P. and candidates whose one of the parents is in employment in Government service (State or

Central) in the State of Madhya Pradesh. Other candidates who had a minimum three years" education in State of M.P. or have passed any of the examinations from the educational institutions in Madhya Pradesh have also been treated to be the domiciles of Madhya Pradesh.

After the interim order was passed by this Court, putting some restraint on appointments in the SECL, M.P. Koyla Mazdoor Sabha, one of the registered trade unions, jointly with one of the local apprentice trainee, has sought intervention in this petition to oppose the petition.

This Court has heard Shri A. G. Dhande, counsel for the petitioner, Shri N. S. Kale, Senior counsel with Shri Grishm Jain for the employer and Shri Vivek Awasthy, Deputy Government Advocate for the State. For the interveners, Shri R. K. Gupta, Advocate submitted and insisted on the urgency of taking an early decision in the matter so that the chances of employment of all eligible candidates are not put in jeopardy.

On the stand taken in the pleadings of the parties, two main controversial issues need decision by this Court. Firstly, it is to be considered whether insistence on registration and sponsoring by the local employment exchange is in accordance with law? The second question is whether on the instructions of the State Government insistence on residence or domicile in the State of M.P. can be laid down as one of the essential requirements for employment under SECL.

After hearing the counsel for the parties and on going through the decisions of the Apex Court cited at the Bar, this Court is of the considered opinion that on both the issues the stand of the respondents deserves to be rejected. The scope and object of the Employment Exchange (Compulsory Notification of vacancies) Act, 1959 came up for consideration of the Supreme Court in the case of Union of India (UOI) and Others Vs. N. Hargopal and Others, . On critically examining the provisions of the Act of 1959 and particularly Section 4(4) of the said Act, it has been held that the Act does not oblige any employer to employ those persons only who have been sponsored by Employment Exchanges. In examining the object of the Act, it has been observed by the Court thus :

"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. Therefore, the Act does not oblige any employer to employ those persons only who have been sponsored by the employment exchanges.

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), it cannot be said that the Act imposes any obligation

on the employers apart from notifying the vacancies to the employment exchanges."

It is thus clear from the provisions of the Act of 1959 as explained by the Supreme Court that the respondents as employer cannot restrict consideration of only such candidates for employment who are registered and sponsored by the employment exchanges locally or outside. It is incumbent on the employer to consider all eligible candidates in accordance with its policy of recruitment irrespective of fact whether they are registered in any of the employment exchanges and sponsored or not. This position is amply clarified by the Supreme Court in its subsequent decision in *Excise Superintendent v. K. B. N. Visweswara Rao* AIR 1996 SCW 3979. In the latter case, the Supreme Court has insisted that apart from notifying vacancies from employment exchanges, wide publicity has to be given to the vacancies through the press and other media like radio, T. V. and employment bulletin so as to afford full and equal opportunity in the matter of employment to all eligible candidates in accordance with the mandate contained in Articles 14 and 16 of the Constitution of India.

So far as the insistence on the other requirement of domicile or residence of State of Madhya Pradesh is concerned, the employer has expressed its helplessness because of the policy of the State Government which it tries to enforce through its members on the selection board. This Court has gone through the two circulars annexed with the return of the State. Those circulars are applicable only to employment in the State Services and can have no application to the recruitments to SECL which does not provide any government employment. It is not for this Court to express any final opinion on the validity of those government circulars. There is no manner of doubt that there can be no insistence on requirement of domicile or residence in a State only by a circular or instruction and such recruitment policy based on residence requirement offends Article 16(2) of the Constitution of India. Article 16(2) forbids discrimination in the matter of public employment in government service including services under the "State" as defined by Article 12, amongst others, only on the ground of place of birth or residence of any citizen. Clause (3) of Article 16 permits such discrimination based on requirement as to residence within a particular State only by a law made by the Parliament for the purpose. The case of *A. V. S. Narasimha Rao and Others Vs. The State of Andhra Pradesh and Another*, is the authoritative pronouncement on it. In the case of *A. V.S. Narasimha Rao*, even a provision in a law prescribing residential qualification in a particular part of the State has been held to be unconstitutional and it has been held that such law may provide residential qualification within a particular State but not in any particular part of the State. In the case of *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, , which was in relation to the admissions to medical colleges, the Supreme Court disapproved the Policy adopted by some of the States to give preference to "sons of the soil" based on domicile or residence requirement for employment or appointment. The Supreme Court did not take the matter further to pronounce any definite opinion saying that in case of

admission to medical institutions it was not called upon to give any final opinion, but did observe that such "sons of the soil" policy prima facie would be constitutionally impermissible.

In the instant case as well, the State Government in insisting on the SECL to follow the instructions and guidelines laid down by the State for State Services and give preference to domiciles or residents of State of M.P. is in fact carrying out a hidden policy of preferring residents of M.P. for employment in SECL which has to be held to be impermissible by the Constitution. The secret policy has been brought to light in this petition. It is not possible for this Court to allow the SECL to take shelter of the State Government and to continue with such policy of recruitment based on residence requirement which is undoubtedly unconstitutional. The Constitution has kept a national perspective in providing fundamental right of equality in the matter of employment. Any policy of recruitment which has no national perspective but promotes employment opportunities only to the residents of a State is violation of the Constitution.

The last question raised on behalf of the petitioner also needs some discussion and decision. The learned counsel for the petitioners submits that the SECL is giving absolutely no regard to the petitioners who are fully qualified and are trained apprentices. It is submitted that the directions of the Supreme Court in the case of Uttar Pradesh State Road Transport Corporation and another Vs. Uttar Pradesh Parivahan Nigam Shishukhs Berozgar Sangh and others, , are being contumaciously disregarded by the management of SECL. In the case of U. P. State Road Transport Corporation (supra), the Supreme Court had occasion to examine the object and intent of the Apprentices Act, 1961. The Supreme Court has duly taken note of Section 22 of the said Act of 1961 that it is not obligatory on the part of the employer to offer any employment to any apprentice, nor there is any corresponding obligation on the part of the apprentice to accept an employment under the employer with whom he had taken apprenticeship training. The Supreme Court, however, held that in order that the nation gets the benefit of time, money and energy spent on the trainees they should be preferred over non- trained direct recruits. It is thus for giving full effect to the provisions of the Act of 1961 that the Supreme Court laid down the guidelines with directions to the concerned employer to maintain a seniority list of trained apprentices and give them preference on the basis of that list. The relevant part of the directions and guidelines contained in the Supreme Court judgment in the U.P.S.R.T.C. case (supra) are under :

"The aforesaid being the position, it would not be just and proper to go merely by what has been stated in Section 22(1) of the Act, or for that matter, the model contract form. What is indeed required is to see that the Nation gets the benefit of time, money and energy spent on the trainees, which would be so when they are employed in preference to non-trained direct recruits. This would also meet the legitimate expectations of the trainees.

In the background of what has been noted above, we state that the following

would be kept in mind while dealing with the claim of trainees to get employment after successful completion of their training :-

(1) Other things being equal, a trained apprentice should be given preference over direct recruits.

(2) For this, a trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in *Union of India (UOI) and Others Vs. N. Hargopal and Others*, , would permit this.

(3) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the concerned service rule. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.

(4) The concerned training institute would maintain a list of the persons trained year-wise. The person trained earlier would be treated as senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior."

Having thus examined the legal position, the petitioners can be granted only such directions against the employer as would enable them to get due opportunity of employment as envisaged by Articles 14 and 16 of the Constitution of India and the provisions of the two enactments i.e. the Acts of 1959 and 1961.

In the result, this Court allows the petition by making the following directions:

(i) The employer S.E.C.L. represented by respondents shall maintain a year-wise seniority list of trained apprentices and consider them for employment with other eligible candidates applying for the vacancies with due regard to seniority of the trained apprentices as per the year-wise seniority list maintained :

(ii) It is further directed that in making selections and recruitment to the available vacancies as notified to the employment exchange and publicised in press and media, the respondents representing the employer, SECL, shall not insist on the candidates to produce domicile certificates of the State of M.P. nor insist on candidates for registration and sponsorship by any employment exchange, local or otherwise :

(iii) Any infraction or disregard to the above directions would be held contemptuous and it would be open to the petitioners to bring to the notice of this Court by separate petition any violation of the above directions and legal provisions mentioned above :

(iv) Petitioner's claim for opportunity of employment should now be considered and a final decision in the matter be taken and conveyed to them within a reasonable period of three months from the date of receipt of copy of this order.

In the circumstances, however, there shall be no order as to costs of this petition.