

(2021) 08 CHH CK 0050
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 1614 Of 2011

Shriram

APPELLANT

Vs

Surguja Kshetriya Gramin Bank

RESPONDENT

Date of Decision : 13-08-2021

Acts Referred:

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 — Section 4, 4(1), 4(2), 4(4)

Citation : (2021) 08 CHH CK 0050

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Waquar Naiyar, Sandeep Singh, Raj Shengale, N. Naha Roy

Final Decision : Allowed

Judgement

1. This writ petition has been preferred against the illegal and arbitrary action of the respondent No. 1 Bank whereby the Bank has decided to recruit

messengers on permanent basis only by calling the names from District Employment Exchange, Ambikapur.

2. Mr. Waquar Naiyer, learned counsel for the petitioner, would submit that respondent No. 1 Bank has decided to recruit persons on the post of

Messenger only by calling their names from the District Employment Exchange and no advertisement has been issued inviting applications for the said

post, which is absolutely illegal and bad in law.

3. Mr. Raj Shengale, learned counsel for the respondents, would support the action of the Bank.

4. At this stage, learned counsel for the parties would submit that the issue raised in this writ petition is covered by the decision rendered by this Court

in Ajanti Ekka v. Chhattisgarh Rajya Gramin Bank & Ors. WPS No. 1619 of 2011

decided on 15/01/2019.

5. I have heard learned counsel for the parties at length and perused the records.

6. The Supreme Court in the matter of Union of India v. Pritilal Nanda 2010 AIR SCW 4643 has held that the object of the Employment

Exchanges (Compulsory Notification of Vacancies) Act, 1959 was not to restrict but to enlarge the field of choice. The Act was not to restrict or

bind an employer only to those persons who had been sponsored by the Employment Exchanges and held in paragraphs 15, 16, 17

and 18 as under :

15. In our opinion, there is no merit in the arguments of the learned Additional Solicitor General. In the first place, we consider it necessary to

observe that the condition embodied in the advertisement that the candidate should get his/her name sponsored by any special employment exchange

or any ordinary employment exchange cannot be equated with a mandatory provision incorporated in a statute, the violation of which may visit the

concerned person with penal consequence. The requirement of notifying the vacancies to the employment exchange is embodied in the

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (for short, 'the 1959 Act'), but there is nothing in the Act which obligates

the employer to appoint only those who are sponsored by the employment exchange. Section 4 of the 1959 Act, which provides for notification of

vacancies to employment exchanges reads as under:

4(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 establishments 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 of the employment exchanges and the

particulars of employments in which such vacancies have occurred or are about to occur shall be such as may be prescribed.

(4) Nothing in sub-sections (1) and (2) shall be deemed to impose any obligation upon any employer to recruit any person through the employment

exchanges to fill any vacancy merely because that vacancy has been notified under any of those sub-sections.

16. A reading of the plain language of Section 4 makes it clear that even though the employer is required to notify the vacancies to the employment

exchanges, it is not obliged to recruit only those who are sponsored by the employment exchanges. In *Union of India v. N. Hargopal* (1987) 3 SCC

308, this Court examined the scheme of the 1959 Act and observed:

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 under Section 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.

xxx xxx xxx xxx

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.

(emphasis supplied)

17. In *K.B.N. Visweshwara Rao's* case, a three-Judge Bench of this Court considered a similar question, referred to an earlier judgment in *Union of*

India v. N. Hargopal (supra) and observed:

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.

18. By applying the ratio of the above noted judgments to the case in hand, we hold that the concerned authorities of the South Eastern Railway committed grave illegality by denying appointment to the respondent only on the ground that she did not get her name sponsored by an employment exchange.â??

7. Reverting to the facts of the case in light of the aforesaid principle of law, it is quite vivid that the decision of respondent No. 1 Bank of making recruitment on the post of Messenger by calling the names from District Employment Exchange is contrary to the decision rendered by the Supreme Court in Pritilal Nanda (supra) as well as the decision rendered by this Court in Ajanti Ekka (supra). Therefore, the instant writ petition deserves to be allowed.

8. However, if the respondent No. 1 Bank has vacancies and would still like to make recruitment on those available vacancies now, they can do so by initiating a fresh process of advertisement but keeping in mind the ratio of the decision laid down by the Hon'ble Supreme Court that such consideration or participation cannot be restricted to names sponsored by Employment Exchanges alone.

9. Accordingly, the instant writ petition stands allowed to the extent indicated

hereinÂ?above. No cost(s).