

(2014) 06 MAD CK 0224

In the Madras High Court

Case No : Writ Appeal No. 1027 of 2013 and M.P. No. 1 of 2013

The Commissioner

APPELLANT

Vs

K.P. Jaganathan

RESPONDENT

Date of Decision : 09-06-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

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

Citation : (2014) 3 LLN 435

Hon'ble Judges : N. Paul Vasantha Kumar, J; Meenakshi Sundaram Sathyanarayanan, J

Bench : Division Bench

Judgement

N. Paul Vasanthakumar, J.—This Writ Appeal is filed against the Order made in W.P. No. 26162 of 2010, dated 2.8.2012, wherein the Respondent has prayed for a Writ of Declaration, declaring that the recruitment/selection process initiated by the Fourth Appellant in the year 2010 to fill up 25 vacancies of Village Assistant by seeking sponsorship of names from the office of the Third Respondent alone, pursuant to G.O.Ms. No. 429, Revenue Department, dated 8.8.2007, without making wide publicity by way of advertisement in dailies, notice board, internet, etc. by inviting Application from all eligible persons of general public to participate and secure public employment, is illegal, Arbitrary, unconstitutional, and violative of Article 14 of the Constitution of India. The case of the Respondent before the learned Single Judge was that he had studied up to 10th standard and belong to Scheduled Caste community and registered his name in the District Employment Office, Cuddalore in the year 1985, which was also renewed and his name is in the live register and he is one among the unemployed youth waiting for suitable employment in any one of the department in Government/Quasi-Government or Local Bodies. The Respondent name was sponsored by the 3rd Appellant for the post of Village Assistant in the year 2007. He along with 320 persons appeared for interview before the office of the 4th

Appellant on 27.4.2007, however, he was not selected. The reason for non-selection was not informed to the Respondent. According to the Respondent, even though 40 vacancies were available, only 8 persons were given appointment due to extraneous reasons.

2. Further case of the Respondent is that in the year 2010, 25 vacancies were available for the post of Village Assistant under the jurisdiction of the 4th Appellant and a list was sought for from the Employment Office of the 3rd Appellant. The said recruitment process initiated by the 4th Appellant was challenged by the Respondent by filing Writ Petition in W.P. No. 26162 of 2010 to declare that the recruitment/selection process initiated by the 4th Appellant in the year 2010 by seeking sponsorship of names from the office of the 3rd Appellant alone without making wide publicity by way of Advertisement in dailies, Notice Board, Internet, etc. is unconstitutional, arbitrary and violative of Article 14 of the Constitution of India.

3. The said Writ Petition was resisted by the Appellants by contending that as per G.O.Ms. No. 65, Labour and Employment Department, dated 30.3.2007, for filling up of any vacancy in any employment in Government Department, Local Bodies (Urban and Rural), Co-operative Institutions, Public Sector Undertakings, all Government Aided Educational Institutions and Government Aided Engineering Colleges and Polytechnics, etc., a list of candidates shall be called for in the ratio of 1 : 1 based on employment seniority whose names are in the live register and in respect of certain post ratio 1 : 5 was ordered to be followed and the said procedure is being followed in terms of Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 and there is no illegality in the procedure being followed.

4. The learned Single Judge allowed the Writ Petition by following the various decisions of the Hon''ble Supreme Court and having aggrieved, the Appellants have filed this Writ Appeal.

5. Heard Mr. V. Subbiah, learned Special Government Pleader appearing for the Appellants.

6. The issue as to whether for employment in public services, whether the department can restrict the candidates sponsored through the Employment Exchange for selection, was also considered by the Hon''ble Supreme Court in the decision reported in Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, . The said decision was rendered by the Hon''ble Supreme Court of India bearing in mind the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, particularly, Section 4(1) of the said Act. In the said decision, the Hon''ble Supreme Court (Three Judge Bench), in Paragraph 6, held thus:

"6. 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."

7. Again the said issue came up for consideration before the Hon"ble Supreme Court in the decision reported in Suresh Kumar and Others Vs. State of Haryana and Others, , in respect of recruitment of 1600 Police Constables in the State of Haryana. In the said case, selection of candidates made were not disturbed till the new process was over as directed by the Hon"ble Supreme Court and it was held that no advertisement to the newspaper nor Employment Exchange was intimated for filling up of the vacancies and further selection was ordered to be conducted by issuing re-advertisement calling for Application to fill up those vacancies.

8. In the decision reported in State of Orissa and Another Vs. Mamata Mohanty, , the same issue came up for consideration and in Paragraphs 35 & 36, it was held thus:

"35. At one time this Court had been of the view that calling the names from Employment Exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, it came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a Notice published in the appropriate manner calling for Applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from Employment Exchange, in addition thereto it is mandatory on the part of the employer to invite Applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in radio and television as merely calling the names from the Employment Exchange does not meet the requirement of the said Article of the Constitution. (Vide Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, ; State of Haryana v. Piara Singh, AIR 1992 SC 2130; Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, Arun Tewari v. Zila Mansavi Shikshak Singh, AIR

1996 SC 331; Binod Kumar Gupta and Others Vs. Ram Ashray Mahoto and Others, ; National Fertilizers Ltd. and Others Vs. Somvir Singh, ; Telecom District Manager and Others Vs. Keshab Deb, ; State of Bihar Vs. Upendra Narayan Singh and Others, ; and State of M.P. v. Mohd. Abraham, 2009 (15) SCC 214.

36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting Applications from all eligible candidates. If any appointment is made by merely inviting names from the Employment Exchange or putting a note on the Notice Board, etc. that will not meet the requirement of Articles 14 & 16 of the Constitution. Such a course violates the mandates of Articles 14 & 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open Advertisement as to enable all eligible persons to compete on merit."

9. This Court, in the decision reported in P.M. Malathi v. State of Tamil Nadu, 2012 (3) MLJ 669, held that any Rule of the State Government restricting the right of consideration of the eligible candidates for public appointment is unconstitutional as it is violative of Articles 14 & 16 of the Constitution of India.

10. The learned Single Judge has followed the above said decisions and held that selecting persons in public employment, on the basis of the List of Candidates sponsored by the Employment Exchange alone, is in violation of Articles 14 & 16 of the Constitution of India, as it denies opportunity to all the eligible persons to participate in selection in public employment.

11. The learned Special Government Pleader argued to set aside the Order of the learned Single Judge by contending that the Appellants have followed the procedure by inviting a list from the Employment Exchange in terms of Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 and the said procedure is being followed for all these years and the learned Single Judge was not right in allowing the Writ Petition filed by the Respondent.

12. It is pertinent to note that no contra decision rendered by the Hon"ble Supreme Court was cited by the learned Special Government Pleader to set aside the Order of the learned Single Judge.

13. It is also relevant, at this juncture, to note that the Three Judge Bench of the Hon"ble Supreme Court, in the decision reported in Renu and Others Vs. District and Sessions Judge, Tis Hazari and Another, , reiterated the above said proposition of law and gave a direction to all the High Courts to comply with the purport of Articles 14 & 16 of the Constitution of India while filling up of any vacant post either in the High Court or in the Subordinate Courts throughout the India. In the said decision, the Hon"ble Supreme Court held that "post shall be filled up by issuing the Advertisement in atleast two Newspapers and one of

which must be in vernacular language having wide circulation in the respective State, apart from calling for a list from the local Employment Exchange and any vacancy filled up without advertising as prescribed, shall be void ab-initio and would remain unenforceable and inexecutable except the appointment on compassionate grounds, as per the Rules applicable".

14. Therefore, no error could be found from the Order of the learned Single Judge. The learned Single Judge was also right in giving further direction to communicate the copy of the Order to the Chief Secretary to the Government of Tamil Nadu for strict compliance to see that all public posts in future are filled up, as per the law declared by the Hon"ble Supreme Court.

15. During the course of argument, the learned Special Government Pleader has drawn the attention of this Court that out of 25 vacancies, for which selection was held in the year 2010, only 8 persons were selected. Of which, 6 persons alone joined and from among 6 persons, one person died and the remaining 5 persons viz., Rajavel, Ramalingam, Chinnathurai, Marimuthu and Kolanji are in service for the past four years. Considering the submissions of the learned Special Government Pleader and also the fact that the Respondent has not chosen to implead the said five persons, who are now serving, as party-Respondents in the Writ Petition as well as in the Writ Appeal, we hold that their continuance, need not be disturbed by virtue of the Order passed in this Writ Appeal. In the result, the Writ Appeal is dismissed with a further direction to the Government of Tamil Nadu to follow this Judgment while filling up of all public posts in future as directed above to comply with Articles 14 & 16 of the Constitution of India. No costs. Consequently, M.P. No. 1 of 2013 is closed.

Registry is directed to forward the copy of this Judgment forthwith to the Chief Secretary to the Government of Tamil Nadu, who in turn directed to circulate the copy of this Judgment to all the Secretaries of various departments, for strict compliance.