

(2008) 10 MAD CK 0058

In the Madras High Court

Case No : Writ Petition No's. 25092, 25093, 25094, 25095, 25096, 25097, 25098 and 25099 of 2008

V. Parameswaran

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 20-10-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16

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

Citation : (2008) 10 MAD CK 0058

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : D. Hari Paranthaman, for the Appellant; B. Renganayaki, GA, for the Respondent

Judgement

P. Jyothimani, J.—In W.P. No. 25092 of 2008, the petitioner seeks a Writ of Declaration declaring that the action of the respondents 1, 2,

4, 5 and 6 in terminating the petitioner services with effect from 16.5.08 and the action of the 3rd respondent in refusing to register the service

certificates in Employment Exchange for giving preference in appointment as illegal and consequently direct the respondents 1, 2, 4, 5 and 6 to

reinstate and absorb the petitioner as driver from the date of his original appointment.

2. Mr. E. Renganayaki, learned Counsel takes notice for the respondent.

3. It is seen from the records that a ban order was issued by the Government in G.O. Ms. No. 212, P&AR Department dated 29.11.2001 from

recruiting persons in various departments other than Teachers, Doctors and Police personnel. The first respondent through G.O. Ms. No. 49

P&AR Department, dated 14.05.2002 permitted the lower authorities to make appointment to look after the hospital services through outsourcing,

i.e. on contract basis. One Shiva Industrial Security Agency (Guj) Pvt. Ltd was appointed as a Contractor to supply Drivers/Sanitary

Workers/Hospital Workers to the Government Hospitals situated all over Tamilnadu. An agreement was entered into on 01.09.2004 for the

supply of Drivers/Sanitary Workers/Hospital Workers between the Director, Public Health and the said Contractor. The said Contractor issued an

advertisement in daily newspapers and called for applications for the post of Drivers/Sanitary Workers/Hospital Workers to serve in the hospitals

situated all over Tamilnadu. The Director of Public Health imposed a condition that persons to be supplied by the contractor must have the

educational, technical and other qualifications, experience and possession of valid driving licence etc. The said qualifications are the required

qualifications for appointment of regular/ permanent Drivers/Sanitary Workers/Hospital Workers for Government appointment.

4. According to the petitioners, they are having the required qualifications and they were appointed either as Drivers/Sanitary Workers/Hospital

Workers according to their qualifications. Their certificates were verified by the Contractor and appointment orders were also issued. Based on

the orders issued by the Contractor, the fourth respondent issued order appointing the petitioners either as Drivers/Sanitary Workers/Hospital

Workers in various Government Hospitals. Thereafter, an agreement was also entered into between the said Contractor and the Department

regarding the supply of Drivers/Sanitary Workers/Hospital Workers for one year from 01.09.2005 to 31.08.2006. The petitioners services were

continued.

5. According to the petitioners, after the change of ruling party in the State in May 2006, the present Government took a policy decision to do

away the contractual appointment which was introduced by the then Government through outsourcing. Therefore, the agreement with the

Contractor was not renewed after 31.08.2006. According to the petitioners, they have been permitted to work in their post, even after the expiry

of the agreement by the concerned medical officers. However, subsequently from 04.01.2008, they are not allowed to work. The Government

issued an order in Government Letter No. 18329/C2/2007-1 dated 24.05.2007, that the persons employed through outsourcing agency should be given preference and for that purpose, the experience certificate should be issued by the concerned medical officers and the employment officers were directed to register the experience of such candidates. The learned Counsel for the petitioners submits that since the petitioners served on contract basis through outsourcing method adopted by the Government and their services having been terminated after the said Government letter dated 24.05.2007, as and when future vacancy arises either in the cadre of Drivers/Sanitary Workers/Hospital Workers, which is coming within the purview of fourth respondent and having regard to the fact that the Government ordered to give preference, they are entitled to get preference in employment as and when vacancy arises.

6. (a) A similar issue arose before 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, in which 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 Union of India (UOI) and Others Vs. N. Hargopal and Others, and 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 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.

(b) 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 Union of India (UOI) and Others Vs. N. Hargopal and Others, and Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, , 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.

(c) 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

pecially 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.

(d) The said Judgment is followed in the Division Bench Judgment reported in 2008 (3) L.W. 884 [R. Amirthaveni and Anr. v. The District

Employment Exchange Officer and Ors. wherein in Para 20, it is held thus:

20....

(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 sub serve fair play.

7. In view of the stand of the Government that the petitioners will be given preference in the regular selection, these writ petitions are disposed of

giving direction to the fourth respondent to give preference to the petitioners based on their earlier engagement either as contract Drivers/Sanitary

Workers/Hospital Workers while appointing any fresh candidate. The fourth respondent is directed to consider the claim of the petitioners and if

they are found qualified, they should be given priority taking note of their experience. The learned Counsel for the petitioners submitted that there

are vacancies now available. Hence, petitioners are directed to submit their application before the fourth respondent along with the experience

certificate issued by the concerned medical officers to the fourth respondent, within a period of two weeks from the date of receipt of a copy of

this order. The fourth respondent is directed to consider their claims even if their names are not sponsored by the employment exchange. It is made

clear that since the petitioners are already engaged through outsourcing and performed the duties either as Drivers/Sanitary Workers/Hospital

Workers, further sponsorship through employment exchange is not required to be made in so far as the petitioners are concerned. No costs.