

(1994) 09 MAD CK 0022
In the Madras High Court

V. Sathiyathan

APPELLANT

Vs

Director of Approved Section and Vigilance Service and
Another

RESPONDENT

Date of Decision : 17-09-1994

Acts Referred:

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 — Section 3

Citation : (1995) 1 MLJ 215

Hon'ble Judges : S.M. Ali Mohammed, J; S.M. Ali Mohamed, J

Bench : Division Bench

Judgement

S.M. Ali Mohammed, J.—By consent of both parties the main writ petition itself is taken up for final hearing.

2. The petitioner herein was employed as a peon in the establishment of the second respondent Juvenile Guidance Bureau, Egmore, Madras-

600008. He retired from service on 30.6.1994. After his retirement the petitioner applied to the second respondent on 25.2.1994 for the

appointment of his son to the peon's post, on compassionate grounds. It is the case of the petitioner that no orders have been passed by the

second respondent. Aggrieved by the same, the petitioner has approached this Court for a writ of mandamus or any other writ order or direction in

the nature of a writ directing the respondents herein to consider the representation dated 25.2.1994 to the second respondent for selection of his

son for the post of peon in the second respondent's Office -Juvenile Guidance Bureau, Madras. A counter-affidavit has been filed on behalf of the

respondents wherein it is stated as follows:

It is submitted that the Government in their order Ms. No. 1138, Labour and Employment, dated 26.9.1978 in para 5(i) to (v) ordered as follows:

(i) All the Industries, Institutions, Universities, Colleges, Schools, Hostels, Orphanages, Co-op. Societies which receive financial assistance by way

of grant or loan or material assistance etc., from this Government or State quasi Government Institutions, statutory Corporations, Public Sector

undertakings, Autonomous Boards, Coop. Institutions should recruit its personnel only through Employment Exchanges by way of notifying the

vacancies to the concerned employment exchange in the manner and forms prescribed under the Employment Exchange (Compulsory Notification

of Vacancies) Rules, 1960 and resort to any other form of recruitment like advertisement in dailies etc., only after obtaining a non-availability

certificate from the concerned employment exchange, or obtaining the prior sanction of Government through the financial institutions of Government

Department in the Administrative departments of the Secretariat in consultation with the Labour and Employment Department in the Government.

Further the Director of Approved Schools and Vigilance Service (now redesignated as Social Defence) i.e. the 1st respondent have issued

instructions to all Heads of Private Institutions including Juvenile Guidance Bureau, Madras to follow the Instructions given in the above said

Government Order scrupulously in letter No. 13326/81/B1 dated 24.6.1981.

It is contended by the learned Counsel for the petitioner that the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959

(hereinafter referred to as the Act) will not get attracted to unskilled office worker. Thus, Section 3 of the Act excludes certain vacancies from the

purview of the Act and in particular the learned Counsel contended that the Act shall not apply to vacancies in relation to any employment to do

unskilled Officer Work. The term unskilled Office Work is defined in Section 2, Sub-clause 2(1) of the Act which excludes Jemadar, Orderly and

Peon. Therefore, it is contended that since the Act itself excludes unskilled office Workers such as Jemadar, Orderly and Peon, there is no

obligation on the part of second respondent to appoint peons only after the list is sponsored by the Employment Exchange.

3. On the other hand, the learned Government Advocate submitted that as the second respondent/Juvenile Guidance Bureau is receiving aid from

the Government, it is bound by the directions of the Government and if it fails to implement the directions as per G.O.Ms. No. 1138, Labour and

Employment Department, dated 26.9.1978 the aid will be stopped by the Government. Therefore it is bound to follow the above said G.O.

4. There is force in the contention of the learned Counsel for the petitioner that unskilled Office Workers such as Jemadar, Orderly and Peons

have been specifically excluded by Section 3 of the Act. Section 3 of the Act reads as follows:

Section 3: Act not to apply in relation to certain vacancies: (1) This Act shall not apply in relation to vacancies,

(a) in any employment in agriculture (including horticulture) in any establishment in private sector other than employment as agricultural or farm

machinery operatives:

(b) in any employment in domestic service:

(c) in any employment the total duration of which is less than three months:

(d) in any employment to do unskilled Office Work.

(e) in any employment connected with the staff of Parliament.

"Unskilled Office Worker" is defined u/s 2(2)(i) of the Act and reads as follows:

1. "Unskilled Office Work" means work done in an establishment by any of the following categories of employees namely:

1. dafiri;

2. jemadar, orderly and peon;

3. dusting man or farash;

4. bundle or record lifter;

5. process server;

6. watchman;

7. sweeper;

8. any other employee doing any routine or unskilled work which the Central Government may, by notification in the Official Gazette, declare to be

unskilled Office Work.

5. From a reading of the above definition, it is clear that unskilled office workers, such as jemadar, orderly and peons do not come under the

purview of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959.

6. The Supreme Court in Union of India (UOI) and Others Vs. N. Hargopal and

Others, , while considering the object of the Employment

Exchanges (Compulsory Notification of Vacancies) Act, 1959 observed that the main object of that Act was to notify the vacancies to which the

Act applies and observed as follows:

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 u/s 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.

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 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 ex-changes.

It is further observed as follows:

It is clear that it is the desire of the Government of India that Government Departments, Government organisations and statutory bodies should

adhere to the rule that not merely vacancies should be notified to the employment exchanges, but the vacancies should also be filled by candidates

sponsored by the employment exchanges. It was only when no suitable candidates were available, then other sources of recruitment were to be

considered. While the Government is at perfect liberty to issue instructions to its own departments and organisations provided the instructions do

not contravene any constitutional provision or any statute, these instructions cannot bind other bodies which are created by statute and which

function under the authority of statute. In the absence of any statutory prescription in the statutory authority may however adopt and follow such

instructions if it thinks fit. Otherwise, the Government may not compel statutory bodies to make appointments of persons from among candidates

sponsored by employment exchanges only.

7. In the instant case, as the second respondent Juvenile Guidance Bureau is receiving aid from the State Government the Government is at perfect

liberty to issue instructions to its own departments and organisations receiving aid from the Government provided the instructions do not

contravene any provisions of the Constitution or any statute. Therefore the G.O Ms. No. 1138, Labour and Employment Department, dated

26.9.1978 in so far as the unskilled office workers are concerned are excluded from the purview of the Act by Section 3 of the Act. The said

Government Order, so far it relates to the unskilled workers are concerned, is not in accordance with the Employment Exchanges (Compulsory

Notification of Vacancies) Act and to that extent not binding and the second respondent is free to recruit and give employment to relations of

retired employees not sponsored by the Employment Exchanges.

8. In view of the above, the second respondent is directed to consider the application of the petitioner dated 25.2.1994 on merits in accordance

with law within one month from the date of receipt of the order.

9. With the above observations, this writ petition is ordered. No costs.