

(1994) 09 MAD CK 0071

In the Madras High Court

Case No : Writ Petition No. 9414 of 1994

V. Sathiyathan

APPELLANT

Vs

Director of Approved Section and Vigilance Service, Madras
and Another

RESPONDENT

Date of Decision : 17-09-1994

Acts Referred:

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 — Section 2, 3, 4

Citation : (1995) 1 MLJ 215

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

Bench : Single Bench

Judgement

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 had 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, Co-op. Institutes 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.

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Further the Director of Approved Schools and Vigilance Service (now redesignated as Social Defense) 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."

2. 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, Sec. 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 Office Work. The term unskilled Officer Work is defined in Sec. 2, Sub-clause (2) of the Act which excludes Jmadar, 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 direction 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 Sec. 3 of the Act. Sec. 3 of the Act reads as follows :

Sec. 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 under Sec. 2(2)(i) of the Act and reads as follows :

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

1. daftari;

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 un-skilled 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 v. Hargopal*, 1987 I CLR 385, while considering the object of 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, Sec. 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 Sec. 4(1) or Sec. 4(2). In the face of Sec. 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."

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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 exchanges."

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 filed 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 statute 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 Sec. 3 of the Act. The said Government Order, so far as it relates to the unskilled workers 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.