

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 541 of 1987
T.A. No.

DATE OF DECISION 16. 9. 87

D. Krishna Menon Petitioner

M. M. Rama Rao Advocate for the Petitioner(s)

Versus

Chief Medical Officer, CGHS, Respondent

Hyderabad, Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. B. N. Talya Sinha, Vice Chairman

The Hon'ble Mr. D. Surya Rao, Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

—12 CAT/86—3-12-86—15,000

B.N.T
V.C

D.S.R
Member

Yes

KJ
21/9

DR
94/9

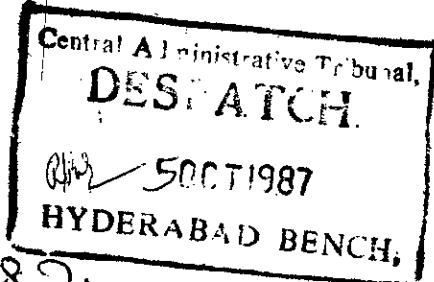
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IN THE CENTRAL ADMINISTRATIVE
TRIBUNAL : HYDERABAD.

THE HON'BLE MR.B.N.JAYA SIMHA (VC)

AND

THE HON'BLE MR.D.SURYA RAO: (M)



DATED: 16 - 9 - 87.

ORDER/JUDGMENT

O.A./~~.....~~ No. 541/87

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Dismissing with
Costs the Appellee

Costs the Appellee

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ORIGINAL APPLICATION NO. 541 of 1987.

(ORDERS OF THE TRIBUNAL)

In this application, the applicant who is seeking employment in the office of Chief Medical Officer, Central Government Health Scheme, Hyderabad-48, prays ~~for~~ for a direction to the Respondent to consider the applicant for appointment as sweeper, even though his name has not been sponsored by the Employment Exchange, to whom the Respondent has notified the vacancies. He also prays for a declaration that the action of the respondent refusing to consider the case of the applicant as arbitrary and illegal.

2. The facts of the case are that the applicant has passed ninth Class and has registered his name in the District Employment Exchange (Labour), Hyderabad and the Regn. No. is LS/1046/87 dated 9-2-1987 (for 'C' class jobs). There are vacancies in the post of sweepers in the respondent's office, viz., The Chief Medical Officer, Central Government Health Scheme, Bakaram, Hyderabad. The applicant submitted an application to the respondents for considering him for one

of the posts of sweepers. The Respondent's office informed the applicant that they are considering the candidates sponsored by the Employment Exchange only and the applicant's application sent directly could not be considered. The applicant contends that the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 does not apply to the vacancies of class IV posts, that is, posts of unskilled office work like sweeper etc. There is, therefore, no duty cast on the employer to entertain only the applications of the candidates sponsored by the Employment Exchange, to fill the class IV vacancies and reject any candidate who has not registered with the Employment Exchange or whose name has not been recommended by the Employment Exchange. There is no restriction under Rules to fill unskilled office work posts by candidates sponsored by the Employment Exchange only and the respondent is bound to consider the names of the applicant, who applied to the respondent direct.

3. After initial hearing for admitting the application, the applicant amended his prayer seeking a declaration that the Office Memorandum No. 71/40-DGS(appts.) dated 11th December, 1949 is arbitrary and illegal on the ground that the said O.M. has not been issued under any Statute. He said also contends that the O.M. refers to Central Public Employment Exchanges and since there is no Central existing Public Employment Exchange, the O.M. is arbitrary and illegal.

4. We have heard the Learned Counsel for the applicant and Sri G. Parameswara Rao for Sri K. Jagannadha Rao, Central Government Standing Counsel, for the Respondents.

5. Earlier, we had ~~disposed~~ ^{dismissed} similar applications filed by various applicants for considering by the appointing authorities their names/though not sponsored by the Employment Exchanges, vide our Order dated 20th May, 1987 in O.A. No. 13 of 1987 & batch cases, following the Judgment

of the Supreme Court in Union of India & Others

V. Haragopal & Others reported in AIR 1987 SC 1227.

As regards arguments now advanced by the Learned

Counsel for the applicant that the Circular refe-

red to above (O.M. dated 11-12-1949) mentions about

Central Public Employment Exchanges and there are

no Central Public Employment Exchanges now func-

tioning, it is seen from the report of the "Committee

on National Employment Service" ~~set up~~ issued in November,

1978 ~~in~~ by the Government of India, Ministry

of Labour, Directorate-General of Employment and

Training, in paragraphs 212 to 219 that on the

recommendation which was unanimously accepted in

the Labour Ministers' Conference of all States held

in November, 1955, the Employment Service Organisation

was made permanent and the day-to-day administrative

control of the Employment Exchanges was transferred

to the State Governments with effect from November 1,

1956, in order to ensure greater involvement of the

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State Governments in the various programmes of the Employment Service. The Employment Exchanges now functioning under the control of the State Governments are, therefore, successors to the Central Public Employment Exchanges. Hence, the contention that since the O.M. referred to Central Employment Exchanges, the State Employment Exchanges cannot be invoked by the Central Government Departments for recruitment, is not valid. The O.M. sought to be impugned by the applicant, namely, O.M. No. 11-12-1949 which has been reviewed from time to time and the O.M. dated 21-3-1964 issued subsequently was considered by the Supreme Court in U.O.I. & Others Vs. Haragopal and Others referred to above. In para 10 of the Judgment the Supreme Court had upheld the validity of these circulars.

6. The learned Counsel for the applicant relying on the observations of the Supreme Court in para 9 of its Judgment contends that the instructions issued by the Government are not statutory rules and, therefore, not enforceable. Paragraph 9 of the Judgment of the

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of the Supreme Court in Hargopal's case reads as follows:

" It is clear that it is the desire of the Government of India that all Government Departments, Government Organisation 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 the statutory authority may however adopt and follow such instructions if it thinks fit. Otherwise, Government may not compel statutory bodies to make appointments of persons from among candidates sponsored by employment exchanges only. The question, of course, does not arise in the case of private employers which cannot be so compelled by any instructions issued by the Government."

It will be clear from a reading of para 9 above cited that the Supreme Court has not laid down that the instructions/ notifications issued by Government insisting that its Departments/Organisations should fill vacancies by candidates sponsored by employment exchanges should be in the exercise of statutory power. It is only with

regard to 'other bodies', which are created by statute or which function under the authority of a statute that the Supreme Court held that ~~they~~ cannot be bound by the instructions. Such ⁷statutory authority may, however, in the absence of any statutory prescription, adopt and follow such instructions if it thinks fit. Otherwise, the Government cannot compel statutory bodies to make appointments only from persons sponsored by Employment Exchanges. We are, therefore, unable to agree with the contention of the learned counsel for the applicant that the Supreme Court had prescribed that Government's instructions directing its Departments/ Organisations to make recruitment only from among candidates sponsored by Employment Exchanges must be in the exercise of statutory power. It is to be further noted that the Supreme Court when considering the validity of the instructions had observed in para 10 of its Judgment that the instructions do not violate Articles 14 and 16 of the Constitution and are valid.

7. The further contention raised by the learned Counsel for the Applicant is that Section 3 of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959

specify the posts to which the provisions of the Act does not apply, that the post of 'Sweeper' comes within that category and, therefore, the Central Government cannot compel its Departments to recruit persons for these posts through Employment Exchanges only. This contention is also not valid. The Supreme Court in Hargopal's case referred to O.M.No.14024/2/77/ Estt.(D) dated April 12, 1977 which reiterated the earlier instructions regarding recruitment through Employment Exchanges for the posts in Central Government offices/establishments. The circular instructions lay down the procedure for filling up of vacancies against posts carrying basic salary of less than Rs. 500/- p.m., through Central Public Employment EXchanges. The contention of the applicant that the Judgment of the Supreme Court does not cover these posts is, in our opinion, not valid. It may be noted that while the Supreme Court had held that the Employment Exchanges (Compulsory Notification of vacancies) Act, 1959, relates to compulsory notification, and exempts posts mentioned in Section 3(1) of the Act for purposes of

notification has held that the Act does not deal with recruitment through Employment Exchanges. Notwithstanding this being so, the Supreme Court was of the view that the Government Notifications directing its Departments to recruit persons to fill the said posts only through the Employment Exchange are valid and not violative of Articles 14 and 16 of the Constitution. In fact, the Supreme Court had considered that the alternate method of recruitment to these posts by way of advertisement may not also be equally effective. The Learned Counsel for the Applicant has referred to a decision of the High Court of Andhra Pradesh dated 17-7-1987 in W.P.NO.9377 of 1987. It is seen that the Supreme Court's decision in the matter has not been referred to by the Hon'ble High Court in this Judgment. Further, the Writ Petition relates to a petitioner who sought employment in the Visakhapatnam Port Trust, which is a Statutory Body. The Judgment of the High Court does not disclose whether it was argued that the Port Trust had adopted the instructions similar to those issued by the Government of India ~~or not~~ in regard to

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recruitment through Employment Exchanges applicable to

when filling up a vaca

its own Departments. In any event, the said decision of the High Court is not applicable to the present case, wherein the applicant seeks employment in a Central Government Department.

8. In view of the above, we find no merits in the application and the application is accordingly dismissed. There will be no order as to costs.

B.N.Jayasimha

(B.N.JAYASIMHA)

VICE CHAIRMAN

D.Surya Rao

(D.SURYA RAO)

MEMBER (JUDL)

16th SEPTEMBER, 1987.

RSR/SQH

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