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Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 10/91

Date of Decision :

Feb. 1991

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B. Mahender

Petitioner.

Sri D.P. Kali

Advocate for the
petitioner (s)

Versus

The Admn. Officer, (CQA) Secunderabad)
and another

Respondent.

Mr. B. Bhaskara Rao, Addl. CGSC

Advocate for the
Respondent (s)

Mr. D. Pandu Ranga Reddy, Spl. Counsel
for State Govt.

CORAM :

THE HON'BLE MR. B.N. JAYASIMHA, VC

THE HON'BLE MR. J. NARASIMHA MURTHY, MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the Judgment
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment
4. Whether it needs to be circulated to other Benches of the Tribunal
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not present)

bwnj
(HBNJ)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT : HYDERABAD

O.A. No.10/91

Date of order: 15th March '91

Between

Sri B. Mahender

.. Applicant

Vs.

1. The Admn. Officer,
Controllerate of Quality Assurance,
Govt. of India, 156, Gough
Lines, Tirmulgiri, Secunderabad.

2. The Dist. Employment Officer,
Chikkadpally, Hyderabad.

.. Respondents

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Appearance

For the applicant

: Shri D.P. Khali, Advocate

For the respondents

: Shri N.Bhaskara Rao, Addl.
Standing Counsel for
Central Govt.

Shri D. Pandu Ranga Reddy,
Special Counsel for State
of Andhra Pradesh.

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CORAM

THE HON'BLE SHRI B.N. JAYASIMHA, VICE CHAIRMAN

THE HON'BLE SHRI J.NARASIMHA MURTHY, MEMBER (J)

b/w

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(Judgement of the bench delivered by Shri B.N.Jayasimha)
Hon'ble Vice Chairman

The applicant is unemployed and has registered his name in the Employment Exchange, Hyderabad. He seeks a direction to respondent No.1 to appoint him as a Watchman.

2. The applicant states that he had registered his name in the Employment Exchange with Registration No.US/3344/86. He is a Scheduled Caste Candidate and he has been waiting for ^{The} _^ sponsoring ^{of} _^ his name for any of the Class IV vacancies notified to the Employment Exchange. But so far his name has not been sponsored. He came to know that respondent No.1 had notified the vacancies of watchman to the Employment Exchange. He therefore approached the Employment Exchange Officer for sponsoring his name to the said vacancy. Thereafter the applicant submitted an application to respondent No.1 for considering his case for appointment as a Watchman, but without any result. He has therefore filed this application contending that the Compulsory Notification of Vacancies Act, 1959 exempts the categories of Class IV vacancies as these vacancies are outside the purview of Employment exchange. He says that the action of the respondent in not considering his application directly is illegal.

3. We have heard Shri D.P.Kali, Counsel for the applicant, and Shri N. Bhaskara Rao, Addl. Standing Counsel for respondents, and Shri D. Pandu Ranga Reddy, Special Counsel for the State of A.P. The main contention of Shri D.P.Kali that Section 2 of Compulsory Notification of Vacancies Act, 1959, does not require the employers to notify the Class IV vacancies. He

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(Contd....)

also relies upon a judgement of the A.P. High Court in W.P. No.2615/89 wherein a Govt. order of the State Govt. requiring sponsorship of the name from the Employment Exchange was held to be not in accordance with the provisions of the Act.

4. Shri N. Bhaskara Rao, however states that the Supreme Court in Union of India Vs. N. Haragopal & others had upheld the Govt. of India instructions to all the Departments of the Central Govt. requiring them to notify the Class IV vacancies to the employment exchanges and restricting the consideration to only those sponsored by the Employment Exchange. It had also held that the procedure adopted in notifying the vacancies to the Employment Exchanges furthers the cause of equal opportunity. The Supreme Court in Union of India Vs. N. Haragopal and others (AIR 1987 SC 1227) had observed as follows:

"Insistence of recruitment through Employment Exchanges advances rather than restricts the rights guaranteed by Arts.14 and 16 of the Constitution. The plea that the Employment Exchanges do not reach everywhere applies equally to whatever method of advertising vacancies is adopted. Advertisement in the Daily Press, for example, is also equally ineffective as it does not reach everyone desiring employment. In the absence of a better method of requirement, any restrictions that employment in Govt. Depts., should be through the medium of employment exchanges does not offend Arts.14 and 16 of the Constitution."

(Para 10).

He therefore contends that the application is without any merit.

5. We had earlier considered similar arguments advanced in a batch of cases in O.A. No.13/87 etc., and had observed as follows:

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(Contd....)

Para 11. "The Learned Counsel for applicants who are seeking Class IV posts however argued that according to Sec.3(d) of the Act, the Act does not apply to vacancies in any employment to do unskilled office work. Section 2(1) of the Act defines unskilled office work means work done in an establishment by any of the following categories of employees, namely :-

1. Daftari
2. Jamadar, orderly and peon;
3. Dusting man of farash;
4. Bundle or record lifter;
5. Process Server;
6. Watchman;
7. Sweeper;
8. Any other employees doing any routine or unskilled work which the Central Govt., may by notification in the Official Gazette, declare to be unskilled office work".

Since the Act itself does not apply to these posts, the judgement of the Supreme Court cannot be said to cover recruitment to these posts in Govt. establishments. They therefore contend that the instructions issued by Govt. of India in so far as these posts are concerned should be held invalid and applicants, even though not sponsored by the employment exchanges, should also be considered along-with these sponsored by the employment exchanges, on the basis of the applications directly made by them to the employer. The learned counsel for the applicants referred to the following observations of the Supreme Court:

"While the Govt. 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 find any bodies which are created by statute and which function under the authority of statute".

It is contended that the instructions issued in so far as they apply to class IV staff, contravenes the provisions of the EE(CNU)Act, 1959.

Para 12:

The employment exchanges came into existence long before the Act came into force. The employment exchanges have been registering candidates for all these posts also and sponsoring

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To

1. The Administrative Officer, Controllerate of Quality Assurance, Govt. of India, 156 Gough Lines, Tirmulgiri, Secunderabad.
2. The Dist. Employment Officer, Chikkadapally, Hyderabad.
3. One copy to Mr. D. P. Khali, Advocate 2-2.1164/16/B, Tilaknagar, Hyderabad.
4. One copy to Mr. N- Bhaskar Rao, Addl. CGSC. CAT. Hyd.
5. One copy to Mr. D. Panduranga Reddy, Spl. Counsel for A.P. State
6. One copy to Hon'ble Mr. J. Narasimha Murty, Member (J) CAT. Hyd.
7. One spare copy.

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them to various establishments on requisition from them. The Act itself provides for the compulsory notifications and information of various vacancies arising and created in various offices, establishments, companies etc., to the respective employment exchanges. Under Sec.3, which is the exemption section, there is no compulsion to notify certain vacancies to the Employment Exchanges concerned. Non-notification of such vacancies do not attract the panel provisions. Thus the scope of the Act is limited only to compulsory notification and does not extend to recruitment to various posts through the medium of employment exchanges. When such is the position, we do not see how the instructions of Govt. restricting employment even in respect of those not covered by the Act, to those sponsored by the Employment Exchanges is against the provisions of Employment Exchanges (Compulsory notification of vacancies) Act, 1959.

Para 13:

Even, if the contention that it violates the provisions of Employment Exchanges (Compulsory Notification of vacancies) Act, 1959 is accepted, the question then arises, what should be the procedure for filling the posts not covered by the Act? It cannot obviously be on the basis of applications submitted to the concerned Govt. establishment by individual applicants on the information gathered by them informally. It would then be necessary to prescribe a procedure under which adequate publicity is given in regard to vacancies, and for inviting applications. Answer to this is to be found in the judgement of the Supreme Court extracted above. Even for these posts, in the absence of a better method, the medium of employment exchange is to be preferred.

6. In the circumstances, we find no merit in the case and accordingly reject the same. No order as to costs.

B.N.Jayasimha
(B.N. JAYASIMHA)
VICE CHAIRMAN

J.N.Murthy
(J. NARASIMHA MURTHY)
MEMBER (JUDICIAL)

Dt. 15th March, 1991

Deputy Registrar
for Deputy Registrar