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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH AT HYDERABAD

M.A.No.593/91

O.A.No.490/1991

Date of order: 3-5-1991.

Between

1. V.Ravinder Reddy
2. B.S.Dasarath
3. K.Malla Reddy
4. Shaik Jamsheed Ali
5. Hari Philip
6. Ch.Pandu
7. C.H.Badraiah
8. M.Krishna
9. Surender Babu
10. T.Ramulu
11. Veera Bhandari
12. K.Amar Kumar
13. J.Anil Kumar
14. Deep Singh
15. Alimiddin Javed
16. Tejendersingh
17. Narsingh
18. Kewal Singh

Applicants
(in both the cases)

A n d

1. The Administrative Officer,
Nuclear Fuel Complex, Dept.of Atomic Energy,
Hyderabad.
2. The Dist.Employment Officer,
Rangareddy dist., Hyderabad.

Respondent:
(in both the cases)

Appearance

For the applicants : Shri D.P.Kali, Advocate

For the Respondent No.1 : Shri N.Bhaskara Rao, Addl.CGSC

For the Respondent No.2 : Shri D.Panduranga Reddy, Spl.Counsel for State of
Andhra Pradesh

CORAM

The Hon'ble Shri B.N.Jayasimha, Vice-Chairman

and

The Hon'ble Shri D.Surya Rao, Member (Judicial)

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J U D G M E N T

(of the Bench delivered by Hon'ble Shri D.Surya Rao, Member(J))

M.A.No. 593/91

This Miscellaneous Application is filed seeking permission by 18 applicants to file one common Application. Miscellaneous Application is allowed.

O.A.NO.490/91

In this O.A., the 18 applicants contend that there are vacancies of helpers (class-IV) in the first respondent's organisation, that the first Respondent is contemplating filling up of these vacancies, that the applicants have submitted applications to him but have not been given call letters and that the applicants are not being sponsored by the 2nd Respondent, Employment Exchange despite having registered themselves with the Employment Exchange. It is contended by the applicants that the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 exempts class-IV posts from the purview of the Employment Exchange. It is further contended that in W.P.No.2615/89 dated 16-1-1990, a single judge of the High Court of Andhra Pradesh held ^{that in} ~~that in~~ view of certain categories of posts need not be sponsored by the Employment Exchange if such posts have been excluded from the purview of the above mentioned Act by Section-3 thereof. ^{In} the case of recruitment to Class-IV posts, it was directed that the authorities concerned should interview the petitioners without insisting upon their being sponsored by the Employment Exchange. The applicants, therefore, pray that a direction should be issued to the 1st Respondent to consider them for appointment to the post of Helpers without insisting upon their names being sponsored by the Employment Exchange.

2. We have heard the learned counsel for the applicants, Shri Kali, Shri N.Bhaskara Rao, learned Addl.Standing Counsel for the Central Government and Shri D.Panduranga Reddy, learned Special Counsel for the State of A.P., the Respondent No.2.

3. Shri Kali relies upon the judgment of the single judge of A.P. High Court in W.P. 2615/89 and prays that the names of the applicants should be considered even though they have not been sponsored by the Employment Exchange. Shri N. Bhaskara Rao, however, states that the Supreme Court of India in Union of India Vs. Hargopal & Ors. (1987 SC 1227) had upheld the instructions of the Government of India to the departments requiring them to notify class-IV vacancies to the Employment Exchange and restrict consideration of candidates to only those sponsored by the Employment Exchange. It had been held by the Supreme Court in Hargopal's case 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. Departments should be through the medium of employment exchanges does not offend Arts. 14 and 16 of the Constitution."

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

. . . 4.

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

To

1. The Administrative Officer,
Nuclear Fuel Complex, Dept. of Atomic Energy, Post Bag No. 108, Hyderabad.
2. The Dist. Employment Officer, Rangareddy ~~Stat~~ Dist. Hyderabad.
3. One copy to Mr. D.P. Kali, Advocate,
2-2-1164/15/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 spare copy.

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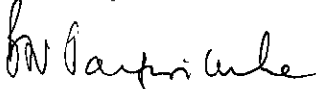
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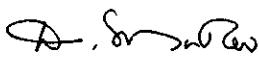
them to various establishments on requisition from them. The Act itself provides for the compulsory notifications and information of various vacancies arising and created in various offices, establishments, companies etc., to the respective employment exchanges. Under Sec.3, which is the exemption section, 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.

The same reasoning as in O.A. 13/1987 would apply to the facts of the present case.

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


B.N. JAYASIMHA)
Vice-Chairman


(D. SURYA RAO)
(Member(J))

Dated: 3rd day of May 1991.

(Dictated in open court)


Deputy Registrar (J)

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SCA/12