

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.12804 of 2014

Date of Decision: **January 14, 2015**

Satvir Singh ...Petitioner

Versus

State of Punjab and anr. ...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr. Jatin Salwan, Advocate for the petitioner.

Mr. Ajaib Singh, Addl. A.G., Punjab
for respondent No.1.

Mr. R.S. Bajaj, Advocate for respondent No.2.

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HARINDER SINGH SIDHU, J

CM No.15686-CWP of 2014

Miscellaneous application is allowed as prayed for.
Replication to written statement filed by respondent No.2, is taken on record.

CWP No.12804 of 2014:

The instant writ petition has been filed praying for issuance of directions to the respondents to issue appointment order to the petitioner against the post of Junior Draftsman (Non-Provincial) reserved for Sports Quota, in terms of the resolution passed by General House of Municipal Corporation, Ludhiana.

The petitioner is a sportsman. He represented the State of Punjab at National Level in the event of cycling. He has won four

medals in various competitions. Gradation certificate was issued to him by the Director Sports Punjab vide Sr. No. 167-Sports 20934 dated 29.05.2003. He had got himself registered with the Employment Exchange, Ludhiana vide registration No.3953 on 31.08.2006.

With an intention to fill up three posts of Junior Draftsman including one under the sports category, respondent No.2 requisitioned the names of eligible candidates from Employment Exchange, Ludhiana. The District Employment Officer vide his communication dated 13.3.2007 forwarded the name of the petitioner and further stated that the petitioner was the only eligible candidate in the sports quota registered with them. Vide another communication dated 24.08.2007, respondent No.2 again inquired from the employment exchange that if any other eligible candidate in the sports category registered with them is available, his name should also be sent. In response thereto, the employment exchange Ludhiana intimated respondent No.2 through letter dated 26.1.2007 that they had circulated the demand in all the employment exchanges of the State of Punjab but they had been informed that the petitioner was the only eligible candidate registered with them in sports category.

It has been further averred that meanwhile, the State Government in response to query of respondent No.2 conveyed that as the post of Junior Draftsman belongs to a non-provincial cadre, therefore, Municipal Corporation, Ludhiana, respondent No.2 is

competent to take a decision regarding appointment of a Junior Draftsman in the sports quota at its own level after due approval of General House. Thereafter, an official agenda item No.944 for formal approval of the General House was put up before General House of respondent No.2 in its meeting held on 6.7.2009. The said agenda item was approved and vide communication dated 14.7.2009 (Annexure P-1) copy of the proceedings including the other resolutions passed was forwarded to the Principal Secretary, Local Government Department Punjab for approval in terms of the requirement of Section 69(1) of the Punjab Municipal Corporation Act, 1976. Though, the Commissioner of Municipal Corporation, Ludhiana was intimated through letter dated 18.09.2009 from the Local Government Department that various resolutions sent vide letter dated 14.07.2009, which included resolution No.944 regarding approval of the appointment of the petitioner had been seen, but thereafter, inexplicably another communication dated 19.11.2009 was addressed to respondent No.2 stating that resolution No.944 is illegal.

Aggrieved of the non-action of the respondents in offering appointment to the petitioner pursuant to the resolution No.944, he filed CWP No.1201 of 2010 seeking directions to the respondents to issue him appointment letter as Junior Draftsman against the vacant post in the Sports quota. During pendency of that writ petition, communication dated 28.11.2011(Annexure P/3) was addressed by the Punjab Govt., Local Government Department to respondent No.2

stating that the Commissioner, Municipal Corporation Ludhiana and the Mayor had accorded approval to resolution No.944 dated 6.7.2009, but the house had disapproved this resolution. On considering the request of the petitioner, it had been decided that appropriate action be initiated for re-considering /passing of Resolution No.944 dated 6.7.2009. This decision was taken on the condition that the petitioner should be bound to withdraw that writ petition. Accordingly, the petitioner withdrew that writ petition.

After withdrawal of that writ petition, another letter dated 23.12.2011 was addressed by the Local Government to respondent No.2 calling them to submit action report with regard to re-consideration/passing of resolution No.944 dated 6.7.2009. Respondent No.2 once again sought clarification from the State Government regarding issuance of appointment letter to the petitioner in accordance with resolution No.944. In response thereto, Local Govt. Department vide communication dated 1.3.2012 (Annexure P-5), again affirmed that the post of Junior Draftsman belongs to non-provincial cadre and the Municipal Corporation, Ludhiana is competent to take decision at its own level and that it should be considered in the General House. Therefore, after due permission for presentation of the case in the House on 06.12.2012, the same was considered vide Resolution No.18 and accepted as per Rules on 12.03.2013 (Annexure P-6). After considerable delay, resolution No.18 dated 12.03.2013 for giving appointment to the petitioner was forwarded to the Director, Local Government

Department seeking permission/direction for appointment of the petitioner. The petitioner meanwhile kept on representing to the respondents that he be given appointment and when he received no favourable response from the respondents, he filed the present writ petition.

In the reply filed on behalf of respondent No.2, reliance has been placed on instructions contained in letter dated 1.1.1997 issued by the Personal & Administrative Reform Department of Government of Punjab, as per which no post can be filled without issuance of public advertisement. It has been averred that although names of suitable candidates for the post of Junior Draftsman were sought from the office of Employment Exchange, however, no advertisement in this regard was published in the newspapers for the information of general public. Hence, the directions contained in the Government guidelines dated 1.1.1997 were not complied with.

The petitioner has filed replication alongwith which he has annexed communication dated 20.07.2007 (Annexure P-10) addressed by the Local Government Department to the Commissioner, Municipal Corporation, Ludhiana. In this letter, it has been stated that there is a ban on the direct recruitment. So far as appointment against the post of Draftsman in sports quota is concerned, all appointments of Junior Draftsman that have been made in the Municipal Corporation Ludhiana, have been made through the office of Employment Exchange. Therefore, the post of Junior Draftsman in the Sports Quota may also be filled up from

amongst the eligible candidates through the Employment Exchange. The petitioner has also annexed information obtained by him through RTI wherein it has been confirmed that the appointments of all Juniors Draftsman working in Municipal Corporation Ludhiana have been made by calling their names from the District Employment Exchange.

I have heard learned counsel for the parties and have gone through the documents placed on the file.

Learned counsel for the petitioner has contended that his name was sponsored by the Employment Exchange Ludhiana in the year 2007 in response to the requisition sent by the Municipal Corporation and he was the only eligible candidate in the sports category. Respondent No.2 subsequently again asked for the names from the Employment Exchange whereafter it was intimated that after getting information from all the Employment Exchanges in the State of Punjab, the petitioner was the only eligible candidate for the post in question in the sports category. Thereafter, the General House of Municipal Corporation passed resolution No.944 on 6.7.2009 approving his appointment. This resolution along with other resolutions was forwarded to the Local Government Department. Inexplicably, a letter dated 19.11.2009 was sent by the Local Government department stating that resolution No.944 is illegal. The petitioner had to file CWP No.1201 of 2010 seeking directions for his appointment whereafter the Local Government Department again wrote to the Municipal Corporation to initiate action to reconsider

and pass the resolution dated 6.7.2009 regarding appointment of the petitioner. Thereafter, after once again seeking clarification from the Government, and after complying with all the formalities the General House of Municipal Corporation Ludhiana again passed resolution No.18 dated 12.03.2013 regarding the appointment of the petitioner. Ld. Counsel has stated that there is no legal impediment in his appointment and the respondents are liable to be directed to appoint the petitioner.

To the contrary the Ld. Counsel for respondent No. 2 Municipal Corporation has relied upon the instructions dated 01.01.1997 of the Personal and Administrative Reforms Department of Government of Punjab that no post be filled without issue of public advertisement.

There is no denying the above stated legal proposition. At present, the law as laid down by the Hon'ble Supreme Court is that every public appointment has to be preceded by a public advertisement in order to meet the requirement of Articles 14 and 16.

In **State of Bihar v. Upendra Narayan Singh, (2009) 5 SCC 65**, at **page 79** :

“The equality clause enshrined in Article 16 mandates that every appointment to public posts or office should be made by open advertisement so as to enable all eligible persons to compete for selection on merit—Umesh . Kumar Nagpal v. State of Haryana, UPSC v. Girish Jayanti Lal Vaghela, State of Manipur v. Y. Token Singh and Municipal Corpn., Hyderabad v. P. Mary

Manoranjani. Although, the courts have carved out some exceptions to this rule, for example, compassionate appointment of the dependant of deceased employees, for the purpose of this case it is not necessary to elaborate that aspect.”

This was stressed and emphasized in another case **State of Orissa v. Mamata Mohanty, (2011) 3 SCC 436, at page 451** :

“Appointment/employment without advertisement:

35. At one time this Court had been of the view that calling the names from employment exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, it came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from employment exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in radio and television as merely calling the names from the employment exchange does not meet the requirement of the said article of the Constitution. (Vide Delhi Development Horticulture Employees’ Union v. Delhi Admn., State of Haryana v. Piara Singh, Excise Supdt. v. K.B.N. Visweshwara Rao, Arun Tewari v. Zila Mansavi Shikshak Sangh, Binod Kumar Gupta v. Ram Ashray Mahoto, National Fertilizers Ltd. v. Somvir Singh, Telecom District Manager v. Keshab Deb, State of Bihar

v. Upendra Narayan Singh and State of M.P. v. Mohd. Abraham.)

36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the noticeboard, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit.”

But in the facts and circumstances of this case, it is not open to respondent No.2 to raise this objection at this stage. It has come on record that the appointment process was initiated by the respondent No.2 in 1997 after due approval of the Government and requisition was sent to Employment Exchange, Ludhiana, which sponsored the name of the petitioner as being the only eligible candidate in the sports category. Second time again, respondent No.2 asked for the names from the Employment Exchange and it was intimated that after getting information from all the Employment

Exchanges in the State of Punjab, the petitioner was the only eligible candidate for the post in question in the sports category. It was only thereafter that resolution dated 7.7.2009 for appointment of the petitioner was passed. When the letter dated 19.11.2009 was sent by the Local Government department stating that resolution No.944 is illegal, the petitioner filed CWP No.1201 of 2010 seeking directions for his appointment whereafter the Government again wrote to the Municipal Corporation to initiate action to reconsider and pass the resolution dated 6.7.2009 regarding appointment of the petitioner. Thereafter, after once again seeking clarification from the Government, and after complying with all the formalities, the General House Municipal Corporation Ludhiana again passed resolution No.18 dated 12.03.2013 regarding the appointment of the petitioner.

The petitioner with his replication has annexed communication dated 20.07.2007 (Annexure P-10) addressed by the Local Government Department to the Commissioner, Municipal Corporation, Ludhiana. In this letter, it has been stated that there is a ban on the direct recruitment. So far as appointment against the post of Draftsman in sports quota is concerned, all appointments of Junior Draftsman that have been made in the Municipal Corporation Ludhiana, have been made through the office of Employment Exchange. Therefore, the post of Junior Draftsman in the Sports Quota may also be filled up from amongst the eligible candidates through the Employment Exchange. The petitioner has also annexed information obtained by him through RTI, wherein, it has been

confirmed that the appointments of all Juniors Draftsmen working in Municipal Corporation Ludhiana have been made by calling their names from the District Employment Exchange. This makes it clear that the Government itself has not insisted on compliance with the instructions which have been referred to by the Ld. Counsel for respondent No.2 and all appointments to the post of Junior Draftsman in Municipal Corporation have been made by calling names from the Employment Exchange.

In this background, the approach of the respondents to deny appointment to the petitioner by relying on the Government instructions appears to be wholly unjust, harsh and inhuman, particularly, when the entire process has been initiated by respondent No.2 after due approval of the Government. Respondent No.2 has failed to understand the reality of the situation and the agony and uncertainty that the petitioner has been made to undergo. The petitioner is an accomplished sports-person having won medals at various levels. The offer of appointment has been kept dangling before the petitioner since 2009. The job has seemed so near and yet been so far. As the mirage whenever it seemed within grasp it has receded away. The petitioner cannot be permitted to be left in this situation. The petition deserves to succeed.

It is not as if the petitioner is being sought to be appointed clandestinely in blatant violation of the requirements of Articles 14 and 16. The Hon'ble Supreme Court had in various cases refuted the argument that Employment Exchanges do not reach everywhere

by observing that the same would be the case with any method of advertising vacancies. Advertisement in the daily press also does not reach everyone desiring employment.

In Union of India v. N. Hargopal, (1987) 3 SCC 308, at page 318 :

“9. The further question is whether the instructions issued by the government that in the case of government departments the field of choice should, in the first instance, be restricted to candidates sponsored by the Employment Exchanges offend Articles 14 and 16 of the Constitution. Shri P. Parmeshwara Rao, learned Counsel appearing for some of the respondents strenuously urged that such a restriction would offend the equality clauses of the Constitution, namely, Articles 14 and 16. He urged that when Parliament had gone into the question and decided that there should be no compulsion in the matter of appointment by way of restriction of the field of choice, it was not open to the Government to impose such compulsion. He argued that it would be unreasonable to restrict the field of choice to those sponsored by the Employment Exchanges. In a country so vast as India, in a country where there was so much poverty, illiteracy and ignorance, it was not right that employment opportunities should necessarily be channelled through the Employment Exchanges when it is not shown that the network of Employment Exchanges is so wide, that it reaches all the corners of this vast country. He argued that it is futile to expect that persons living in distant places could get themselves registered with Employment Exchanges situated far away. The submission of Shri Parmeshwara Rao is indeed appealing and attractive.

Nonetheless, we are afraid we cannot uphold it. The object of recruitment to any service or post is to secure the most suitable person who answers the demands of the requirements of the job. In the case of public employment, it is necessary to eliminate arbitrariness and favouritism and introduce uniformity of standards . and orderliness in the matter of employment. There has to be an element of procedural fairness in recruitment. If a public employer chooses to receive applications for employment where and when he pleases, and chooses to make appointments as he likes, a grave element of arbitrariness is certainly introduced. This must necessarily be avoided if Articles 14 and 16 have to be given any meaning. We, therefore, consider that insistence on recruitment through Employment Exchanges advances rather than restricts the rights guaranteed by Articles 14 and 16 of the Constitution. The submission that 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 recruitment, we think that any restriction that employment in government departments should be through the medium of employment exchanges does not offend Articles 14 and 16 of the Constitution. With this modification of the judgment of the High Court, the appeals and the special leave petitions are disposed of. No orders are necessary in the writ petition.”

In Arun Tewari v. Zila Mansavi Shikshak Sangh, (1998) 2 SCC

332, the Hon'ble Supreme Court upheld the appointments made by resort only to employment exchanges by taking note of the fact situation therein, by observing as under:-

“20. The next contention relates to inviting applications from employment exchanges instead of by advertisement. This procedure has been resorted to looking to the requirements of a time-bound scheme. The original applicants contended that if the posts had been advertised, many others like them could have applied. The original applicants who so complain, however, do not possess the requisite qualifications for the post. As far as we can see from the record, nobody who had the requisite qualifications, has complained that he was prevented from applying because advertisement was not issued. What is more important, in the special circumstances requiring a speedier process of selection and appointment, applications were invited through employment exchanges for 1993 only. In this context, the special procedure adopted is not unfair. The State has relied upon the case of Union of India v. N. Hargopal where Government instruction enjoining that the field of choice should, in the first instance, be restricted to candidates sponsored by the employment exchanges, was upheld as not offending Articles 14 and 16 of the Constitution. In the case of Delhi Development Horticulture Employees' Union v. Delhi Admn. (SCC at p. 111), this Court approved of recruitment through employment exchanges as a method of preventing malpractices. But in the subsequent and more recent case of Excise Supdt. v. K.B.N. Visweshwara Rao this Court has distinguished Union of India v. Hargopal on the

basis of special facts of that case. It has observed that the better course for the State would be to invite applications from employment exchanges as well as to advertise and also give wide publicity through TV, Radio, etc. The Court had to consider whether persons who had applied directly and not through employment exchange should be considered. This Court upheld their claim for consideration.

There are different methods of inviting applications. The method adopted in the exigencies of the situation in the present case cannot be labelled as unfair, particularly when, at the relevant time, the two earlier decisions of this Court were in vogue.”

In Arun Kumar Nayak v. Union of India, (2006) 8 SCC 111, at page 116 :

“7. This Court issued notice on 28-3-2003 and the order of the High Court was stayed. It is stated that in view of the stay order granted by this Court the appellant is still continuing in the post. The High Court upset the reasoning of the Tribunal by relying on the decision of this Court in Union of India v. N. Hargopal where it has been held that the government instructions enjoying the field of choice should in the first instance, be restricted to candidates sponsored by the employment exchanges, and the same was upheld as not offending Articles 14 and 16 of the Constitution. The High Court has also relied on the decision of this Court in Delhi Development Horticulture Employees’ Union v. Delhi Admn. where this Court approved the recruitment through the employment exchanges as a method of preventing malpractices. Subsequent decisions of this Court rendered in Excise Supdt., Malkapatnam v. K.B.N. Visweshwara Rao

wherein Hargopal was considered and distinguished, were placed before the Division Bench of the High Court but the High Court brushed it aside by observing that it was distinguishable on the basis of special facts of that case.

8. In Visweshwara Rao a three-Judge Bench of this Court after considering Hargopal held in para 6 as under: (SCC pp. 217-18)

“6. Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider

circulation and also display on their office notice boards or announce on radio, television and employment news bulletins, and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates.”

9. *This Court in Visweshwara Rao, therefore, held that intimation to the employment exchange about the vacancy and candidates sponsored from the employment exchange is mandatory. This Court also held that in addition and consistent with the principle of fair play, justice and equal opportunity, the appropriate department or establishment should also call for the names by publication in the newspapers having wider circulation, announcement on radio, television and employment news bulletins and consider all the candidates who have applied. This view was taken to afford equal opportunity to all the eligible candidates in the matter of employment. The rationale behind such direction is also consistent with the sound public policy that wider the opportunity of the notice of vacancy by wider publication in the newspapers, radio, television and employment news bulletin, the better candidates with better qualifications are attracted, so that adequate choices are made available and the best candidates would be selected and appointed to subserve the public interest better.*

10. *In Arun Tewari v. Zila Mansavi Shikshak Sangh where to fill about 7000 posts of Assistant Teachers under a time-bound scheme (Operation Blackboard), the statutory rules were amended and decision taken to fill up vacancies district-wise by calling candidates from*

district employment exchanges, without involving the Selection Board, the two-Judge Bench of this Court held that in view of the exigency the method adopted in the given facts was not unfair. Although a reference was made to Visweshwara Rao but it was not even distinguished in Arun Tewari. The decision of the two-Judge Bench of this Court after considering Hargopal, Delhi Development Horticulture Employees' Union and Visweshwara Rao held in para 20 as under: (Arun Tewari case, SCC p. 339)

“20. The next contention relates to inviting applications from employment exchanges instead of by advertisement. This procedure has been resorted to looking to the requirements of a time-bound scheme. The original applicants contended that if the posts had been advertised, many others like them could have applied. The original applicants who so complain, however, do not possess the requisite qualifications for the post. As far as we can see from the record, nobody who had the requisite qualifications, has complained that he was prevented from applying because advertisement was not issued. What is more important, in the special circumstances requiring a speedier process of selection and appointment, applications were invited through employment exchanges for 1993 only. In this context, the special procedure adopted is not unfair.”

Therefore, the decision by this Court in Arun Tewari is based on the facts of that case, namely, a time-bound scheme and exigency of service. No law has been laid down thereunder. But in Visweshwara Rao a three-Judge Bench of this Court has laid down the law and that is still

holding the field.”

Relying on aforesaid observations of the Hon'ble Supreme Court and in view of the fact situation detailed above, this petition is allowed. The respondents are directed to offer appointment to the petitioner against the post of Junior Draftsman (Non Provincial) at Municipal Corporation, Ludhiana, subject to compliance of all necessary formalities viz. medical and character verification, etc. The needful be done within two months from the date of receipt of certified copy of this order.

14.01.2015
dinesh

(HARINDER SINGH SIDHU)
JUDGE