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HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT APPEAL NO. 411 OF 2014

1. State of Chhattisgarh, through the Secretary, Department of Water Resources, Zero Point, New Mantralaya, P.S. Mandir Hasaud, Raipur, District Raipur (C.G.)
2. Engineer-in-Chief, Water Resources Department, Sihawa Bhawan, Civil Lines, Raipur, District Raipur (C.G.)

... Appellants

Versus

Roshni Sahu D/o Shri Yashwant Sahu Aged About 22 Years R/o Village & Post Lal Bahadur Nagar, Tah Dongargarh, Dist Rajnandgaon (C.G.)

... Respondent

WRIT PETITION (S) NO. 3336 OF 2015

Sudhir Kumar S/o. Shri Sahas Ram, Aged About 23 Years R/o Village & Post Seepat (Naveen Chowk), Thana Masturi, Dist Bilaspur (C.G.)

... Appellant

Versus

1. State Of Chhattisgarh, Through : The Secretary, Department Of Home, New Raipur, P.S. Rakhi Raipur, District Raipur (Chhattisgarh).
2. Jail and Reformative (Sudharatmak) Service, Through Its Director General, Head Quarter Jail And Reformative (Sudharatmak) Service, Raipur (Chhattisgarh).
3. Deputy Inspector General of Jail and Chairman, Selection Committee, Jail Warder Recruitment- 2013, Bilaspur Circle, Central Jail Bilaspur (Chhattisgarh)
4. Jail Superintendent O/o Jail Superintendent, Central Jail Bilaspur (Chhattisgarh)

... Respondents

WRIT PETITION (S) NO. 3334 OF 2015

Akhilesh Kumar S/o Shri Vedram, Aged About 26 Years R/o Village Devri, Post Pandhi, Thana Seepat, Tah. Masturi, Distt Bilaspur (Chhattisgarh).

... Appellant

Versus

1. State of Chhattisgarh Through : The Secretary, Department of Home, New Raipur, P. S. Rakhi Raipur, District Raipur (Chhattisgarh).
2. Jail And Reformative (Sudharatmak) Service, Through Its Director General, Head Quarter Jail and Reformative (Sudharatmak) Service, Raipur (Chhattisgarh).
3. Deputy Inspector General Of Jail And Chairman, Selection Committee, Jail Warder Recruitment- 2013, Bilaspur Circle, Central Jail Bilaspur (Chhattisgarh)
4. Jail Superintendent O/o Jail Superintendent, Central Jail Bilaspur (Chhattisgarh)

... Respondents

WRIT APPEAL NO. 360 OF 2014

1. State of Chhattisgarh, through the Secretary, Department of Panchayat and Rural Development, Mahanadi Bhawan, Mantralaya, PS Mandir Hasaud, Raipur, Dist Raipur (C.G.)
2. The Development Commissioner Raipur, Distt Raipur (C.G.)
3. The Chief Engineer Rural Engineering Services, office of the Development Commissioner, Raipur, Dist Raipur (C.G.)

... Appellants

Versus

Talib Khan S/o Aslam Khan, Aged About 24 Years, R/o House No. NF-4, Revenue Colony, PS Rampur, Korba, Civil & Revenue Distt Korba (CG)

... Respondent

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- Mr. J.K. Gilda, Advocate General, for the Appellants in Writ Appeal Nos. 411 and 360 of 2014 and for the Respondents in Writ Petition (S) Nos. 3336 and 3334 of 2015.
 - Mr. Jitendra Pali and Mr. R.K. Kesharwani, Advocates, for the Respondent in Writ Appeal No. 411 of 2014.
 - Ms. Sharmila Singhai, Advocate, for the Respondent in Writ Appeal No. 360 of 2014.
 - Mr. Vinod Deshmukh, Advocate, for the Petitioners in Writ Petition (S) Nos. 3336 of 2015 and 3334 of 2015.
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Hon'ble Shri Deepak Gupta, Chief Justice

Hon'ble Shri Justice Goutam Bhaduri

Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per, Deepak Gupta, C.J.,

21/10/2016

1. These four cases have been referred to the Full Bench in view of conflict of judgments delivered by the different Benches of this Court.
2. It would pertinent to mention that the first Bench comprising of Hon'ble Justice Yatindra Singh, the then Chief Justice of this Court and Hon'ble Justice Radhe Shyam Sharma, while deciding Writ Appeal No. 426 of 2013, on 18.7.2013, held that if the name of a candidate applying for a post is not registered with the Employment Exchange he has no right to be considered for employment. Another Bench headed by the Hon'ble Justice Yatindra Singh, the then Chief Justice along with

Hon'ble Justice Pritinker Diwaker took a different view while deciding the Writ Appeal Nos. 322 and 323 of 2014, on 16.9.2014, inasmuch as it held that though the applicants at the time of filing of the applications for filling up the post were not registered with the Employment Exchange, since they were so registered at the stage of counseling they were entitled not only to be considered but if found eligible on merit could be appointed to the post in question.

3. There are two questions which arise. The first question is whether the State which issued the advertisement containing a condition that the applicant for the job should be on the live registration of the Employment Exchange, despite no such proof having been given along with the application has allowed the applicant to appear in the written test as well as interview, can be permitted to reject the candidature of such candidate after he has been found eligible to be selected on merit?

4. The second question is whether the State can impose such a condition that only those who are on the live registration of the Employment Exchange can be considered for appointment?

5. To decide these questions, it would be apposite to refer to Section 4 of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 which reads as follows :

“4. Notification of vacancies to employment exchanges.- (1) After the commencement of this Act in any State or area thereof, the employer in every establishment in public sector in that State or area shall, before filling up any vacancy in any employment in that establishment, notify that vacancy to such employment exchanges as may be prescribed.

(2) The appropriate Government may, by notification in the Official Gazette, require that from such date as may be specified in the notification, the employer in every establishment in private sector or every establishment pertaining to any class or category of establishments in private sector shall, before filling up any vacancy in any

employment in that establishment, notify that vacancy to such employment exchanges as may be prescribed, and the employer shall thereupon comply with such requisition.

(3) The manner in which the vacancies referred to in sub-section (1) or sub-section (2) shall be notified to the employment exchanges and the particulars of employments in which such vacancies have occurred or are about to occur shall be such as may be prescribed.

(4) Nothing in sub-sections (1) and (2) shall be deemed to impose any obligation upon any employer to recruit any person through the employment exchange to fill any vacancy merely because that vacancy has been notified under any of those sub-sections.”

6. This Section has been considered in a number of judgments. The Apex Court in **Union of India & Others Vs. N. Hargopal & Others** [1987 (3) SCC 308] after considering the provisions of Section 4 of the Act of 1959 quoted herein above held as follows :

“4. 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.”

Thereafter, the Apex Court considered the contentions of the learned Additional Solicitor General as well as the speech made in the Parliament by the Ministers while introducing the Bill and went on to hold as follows :

“6. 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 to 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.”

The Apex Court also considered the question as to whether the Government could issue instructions restricting employment only to those persons who were sponsored by the Employment Exchange.

Dealing with this question, the Apex Court held as under :

“8. 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, the Government may not compel statutory bodies to make appointments of person 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.”

Thereafter, the Apex Court considered the submissions made by the learned counsel for the petitioners that any such condition would be violative of Articles 14 and 16 of the Constitution of India as it would deny equal opportunity to those not registered with the Employment Exchange. Dealing with this submission, the Apex Court held as follows :

“9. The further question is whether the instruction 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 Arts. 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, Arts. 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 Arts. 14 and 16 have to be given any meaning. We, therefore, consider that insistence of recruitment through employment exchanges advances rather than restricts the rights guaranteed by Arts. 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 Arts. 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."

7. In **N. Hargopal** (supra), the Apex Court found the argument of the counsel for the petitioner attractive but rejected it. Thereafter, this issue came up for consideration in **Excise Superintendent Malkapatnam, Krishna, District, A.P. Vs. K.B.N. Visweshwara Roa & Others** [1996

(6) SCC 216]. The Apex Court interpreted **N. Hargopal** judgment in the following terms :

“4. This Court in *Union of India v. N. Hargopal* noted the contention of counsel appearing for respondents therein that excluding the candidates who were not sponsored through medium of employment exchange and restricting the choice of selection to the candidates sponsored through the medium of employment exchange, would offend the equality clause of Articles 14 and 16 and held that the contention was attractive and it was not open to the Government to impose restriction on the field of choice.”

Thereafter, the Apex Court dealing with the contention of both the parties held as follow :

“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 candidates are 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 are 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.”

8. Last judgment which has been cited before us is of **Union of India Vs. Pritilata Nanda** [2010 (11) SCC 674]. In this case, the Apex Court held that it was not mandatory to appoint only those persons who were sponsored by the Employment Exchange. The issue before the Apex Court was whether the candidates who had not been sponsored by the Employment Exchange but had been permitted to take part in the selection process and had been successful in the selection process could be denied employment on the ground that their names have not

been sponsored by the Employment Exchange. Dealing with this issue the Apex Court held as follows :

“20. The issue deserves to be considered from another angle. It was neither the pleaded case of the appellants before the Tribunal and the High Court nor was any evidence produced by them to prove that notification/ advertisement dated 31.1.1987 was sent to all the employment exchanges including the special employment exchanges in the State of Orissa. Before this Court also, no document has been produced to show that the advertisement was circulated to the employment exchanges in the State. In this backdrop, it is not possible to approve the stance of the appellants that the respondent was not appointed because she did not get her candidature sponsored by an employment exchange.

21. We also agree with the High Court that once the candidature of the respondent was accepted by the authorities concerned and she was allowed to participate in the process of selection i.e., written test and viva voce, it was not open to them to turn around and question her entitlement to be considered for appointment as per her placement in the merit list on the specious ground that her name had not been sponsored by the employment exchange. In our considered view, by denying appointment to the respondent despite her selection and placement in the merit list, the appellants violated her right to equality in the matter of employment guaranteed under [Article 16](#) of the Constitution.”

9. As far as the present cases are concerned, in Writ Appeal No. 411 of 2014 the advertisement was issued on 7.2.2013. Last date for submission of application was 23.2.2013 and at the time when the application was submitted the respondent-applicant was not registered with the Employment Exchange. After she submitted her application, she got herself registered with the Employment Exchange on 25.3.2013. Despite the fact that she was not registered, the appellant-State permitted her to appear in the examination. She was successful in the written test. Only after she was found eligible for employment, was an objection raised that since her name was not on the live registration of the Employment Exchange at the time when the application for the post was filed her candidature was rejected.

10. As far as Writ Appeal No. 360 of 2014 is concerned, the advertisement was issued on 28.4.2012 and the last date for submission of documents was 31.5.2012. When the respondent-applicant submitted his application he was not registered with the Employment Exchange. He however got himself registered on 28th September, 2012. Despite the fact that he was not registered with the Employment Exchange he was permitted to appear in the written test. After he was successful in the written test he was permitted to appear in the interview and in fact in the first select list his name was mentioned as one of the successful candidates but later on an objection was raised that he was not registered with the Employment Exchange at the time when the application was filed and therefore his candidature was cancelled.

11. In Writ Petition (S) Nos. 3336 and 3334 of 2015, the advertisement was issued on 2.7.2013 and the last date for submission of the documents was 23.9.2013. The petitioners were registered with the Employment Exchange in August, 2013. They were permitted to appear in the examination. Though there were no proof of their registration at that time, the petitioners were permitted to appear in the written test and thereafter also in the physical test. It was only after they were successful that their candidature was cancelled on the ground that at the time when their applications were submitted they were not registered with the Employment Exchange.

12. As far as these four cases are concerned, we are clearly of the view that these are squarely covered by the judgment of **Pritilata Nanda** (supra), especially by the observations of the Apex Court made in paragraph 21 quoted herein above. This is also the view taken by the Division Bench of this Court in Writ Appeal Nos. 322 and 323 of 2014,

decided on 16th September, 2014. We agree with the view expressed in this case.

13. In this view of the matter, the cases of the petitioners will have to be accepted and therefore it is not necessary for us to enter into the second question and the decision thereof is left open.

14. In view of the above discussion, Writ Appeal Nos. 411 and 360 of 2014 are dismissed and Writ Petition (S) Nos. 3336 and 3334 of 2015 are allowed. The Petitioners in the Writ Petition (S) Nos. 3336 and 3334 of 2015 be considered for appointment if otherwise eligible.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(Goutam Bhaduri)
Judge

Sd/-
(P. Sam Koshy)
Judge

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