

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.5863 of 2014

and

MP.No.1 of 2014

R.Venkatachalam

.. Petitioner

Vs

1.Tamil Nadu Electricity Generation and
Distribution Corporation,
Rep.by its Board of Directors
No.144, Anna Salai,
Chennai - 600 002.

2.The Chief Engineer (Personnel),
Tamil Nadu Electricity Generation and Distribution
Corporation,
No.144, Anna Salai,
Chennai - 600 002.

3. District Employment Officer,
District Employment Office,
Vellore.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring the action of the 1st respondent in trying to fill up the 4000 posts of Helper by direct recruitment from the candidates sponsored by the Employment Exchange without inviting application from open market by giving wide publicity in News Paper, Media and source of recruitment as illegal, arbitrary and contrary to law and consequently direct the respondents to fill up the 4000 vacancies in the post of Helper by selection process by inviting applications from the eligible candidates by giving wide publicity through advertisement in News Papers, Media and source of recruitment instead of calling the names only from the Employment Exchange and pass such other orders or directions.

For Petitioner : Mr.Balan Haridas

For Respondents : Mrs.R.Varalakshmi, for R1 & R2
Mr.A.Raja Perumal,
Additional Government Pleader, for R3

O R D E R

The relief sought for in this writ petition is for a declaration declaring the action of the first respondent in trying to fill up the four thousand posts of Helper by direct recruitment from the candidates sponsored by the Employment Exchange without inviting application from open market by giving wide publicity in News Papers, Media and source of recruitment as illegal, arbitrary and contrary to law and consequently direct the respondents to fill up the four thousand vacancies in the post of Helper by selection process by inviting applications from the eligible candidates by giving wide publicity through advertisement in News Papers, Media and source of recruitment instead of calling the names only from the Employment Exchange.

invited open markets.

2. This Court is of the opinion that the relief sought for in this writ petition is sensible and to be considered in accordance with the constitutional perspectives.

3. Mr. Balan Haridass, the learned counsel appearing for the writ petitioner brought to the notice of this Court that the respondents have indulged in providing appointment in violation of the Constitutional principles and perspectives, by not effecting publications in a wide manner through newspapers and other publications for recruiting to the post of Helper in huge numbers that is to say, to fill up nearly four thousand posts.

4. In this regard the learned counsel cited the Judgment of the Full Bench of this Court in the case of R. Sivakumari and 17 others vs. Ramanathapuram Mavatta Payirchipetra Edainilai Asiriyargal Sangam, rep. by its Secretary, 1/272, Mahasakthi Nagar, Collectorate Post, Ramanathapuram - 623 503 and four others, reported in 2007 (5) CTC 561. Paragraphs 15, 16 and 17, which reads as follows:

"15. In order to find an answer to the above question, it is necessary to have a peep into the statutory provisions governing the functions and the role of the Employment Exchanges. In order to provide for Compulsory Notification of Vacancies to Employment Exchanges, the Parliament enacted the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959. As the Preamble as well as the title given to the Act indicates, the Act provides only for Compulsory Notification of Vacancies. The Act does not even provide for the Employment Exchanges to sponsor candidates to employers. While Section 2 of the Act contains definitions, Section 3 specifies the posts and vacancies to which the Act would not apply. Section 4 makes Notification of Vacancies to Employment Exchanges mandatory and

Section 5 imposes an obligation upon the employers to file returns and furnish information. Section 6 enables the Government to nominate an Officer to have access to the records or documents in possession of any employer who is required to file returns under Section 5. Section 7 prescribes penalties for the failure of employers to notify vacancies and Section 8 provides the manner in which cognizance of offences could be taken. Section 9 provides for immunity for action taken in good faith, and Section 10 vests rule making power upon the Central Government.

16. Thus the entire scheme of the Act makes no whisper about the role of the Employment Exchange in sponsoring candidates for appointment to Government Services or Private or Public Sector. The Act does not even prescribe as to what the Employment Exchanges are supposed to do with the notification of vacancies made to them by employers. Even Section 10(2), which lists out the matters that could be provided for in the Rules framed by the Central Government, does not deal with sponsorship by Employment Exchange, of candidates. However, there is a residuary clause under Clause (d) of sub-section (2) of Section 10 where the rule making power of the Central Government is extended to any other matter also.

17. In exercise of the power conferred under Section 10 of the Act, the Central Government had issued the Employment Exchanges (Compulsory Notification of vacancies) Rules, 1960. Rule 2 of the said rules contains the definitions. Rule 3 lists out the vacancies which had to be notified to Employment Exchange. Rule 4 prescribes the form and manner of Notification of Vacancies. Rule 5 prescribes the time limit for Notification of Vacancies. Rule 6 prescribes the time and the form in which returns are to be submitted. Rule 7 prescribes the Director of Employment and Training as the person who is authorised to exercise the power to call for records under Section 6 of the Act. Rule 8 confers power upon the Director of Employment to sanction prosecution under the Act. Thus, the rules also do not deal with the procedure to be followed while sponsoring candidates for appointment to any posts in Government or Private or Public Sector."

4. Yet another case, The Union of India and Others Vs. N.Hargopal and Others, reported in (1987) 3 SCC 308, paragraphs 4 and 5 of the judgment, the Hon'ble Supreme Court, observed 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 Section 4 (1) or Section 4(2). In the face of Section 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. The learned Additional Solicitor General invited our attention to the speech of the Minister of Labour and Employment and Planning (Shri Nanda) made at the time of the introduction of the Employment Exchanges (Compulsory Notification of Vacancies) Bill. Far from being of any assistance to the learned Additional Solicitor General, the speech appears to be against his submission. In his speech, the Minister quoted from the report of the Training and Employment Services Organisation Committee and observed that the recommendation of the Committee offered a full explanation of the provisions of the Bill. The recommendation of the Committee which he quoted was :

"Though we have not, for the present, recommended compulsion on private employers to recruit through the Employment Exchanges, we recommend that they be required on a compulsory basis to notify to the Exchanges all vacancies, other than vacancies for unskilled categories, vacancies of very temporary duration and vacancies proposed to be filled through promotion."

The Minister further said :

"The main thing is that an obligation is being placed that after this legislation becomes operative, from that date, the employer in every establishment in the public 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 so far as the private sector

is concerned, there is this further qualification that the government concerned may specify by notification that the employer in every establishment in private sector or every establishment pertaining to any class or category of establishments in private sectors shall, before filling up any vacancy in any employment in that establishment, notify that vacancy to such Employment Exchanges as may be prescribed. This is the kernel of this provision. This is the main object, that is, an obligation placed on the employer to notify the vacancies that may occur in their establishment before filling these vacancies."

The Minister was conscious that there was a likelihood of the Bill being misunderstood as compelling the employers to make appointments through the Employment Exchanges only. He clarified the position saying,

"The misunderstanding is as if this Bill gives power to the government to compel the employers to recruit only such persons as are submitted by the Employment Exchanges. That is not so. This compulsion extends only to notification of vacancies. Naturally the employer has to consider the names which are submitted by the employment exchanges but there is no compulsion that they must restrict to the choice only to the least (sic list) that is submitted to them. Of course, there is also the objection from the other side that it may not go far enough. We believe that even this will make things very much better. In any case, when the Committee reported, they also suggested this much advance. At present, they said, we should have only compulsory notification, but not compel the employers to recruit only out of the list that is sent by the employment exchanges."

5. As we said the speech of the Minister, at the time of the introduction of the Bill, is totally destructive of the contention of the learned Additional Solicitor General that the employers are under an obligation to recruit persons for appointment through the Employment Exchanges only. The learned Additional Solicitor General requested us to give a

purposive interpretation to the provisions of the Act and insist that employers, in making appointments, should restrict their field of choice to candidates sponsored by the Employment Exchanges. We are unable to appreciate the argument since there is no provision of the Act which requires interpretation by us and which we may reasonably interpret as compelling the employer to appoint persons sponsored by the Employment Exchanges. On the other hand, we have already referred to Section 4(4) which is explicit that there is no such obligation on the part of the employer. We also notice that the object of the Act is not to restrict the field of choice in any particular manner, but to enlarge the field of choice. That is why in his introductory speech, the Minister said :

" a large number of employers, particularly in similar industrial establishments and in construction works, do not employ any scientific method, but depend for their supply of labour on agents or recruit in a haphazard manner from amongst those assembled at factory gates or at works sites. The methods adopted are not always dictated by a consideration of efficient service, but as more a matter of bestowing patronage and favour. This applies in varying degrees to a large number of employers."

The Minister discussed the existing position and anticipated position in the following words:-

The Act of notification of vacancies has important consequences. In the first place, so far as the employer is concerned, he will be placed in a position to have a much wider choice for the purpose of selection. Now, what is the present position? Any person knocks at the gate of the factory or the mill or other establishment and from those few who are there they choose. Now it would be possible for them to have a wider area of selection. The names of so many others who may not be able to go and knock at every gate, can be submitted and out of them, the best can be selected. So far as the quoting of selection is concerned, it should improve because of the wider range of choice. On the side of the worker certainly

it means a more equitable distribution of employment opportunities. It should not be necessary for a person to be all the day moving from place to place. It should be sufficient for him to register at a place, give all the particulars about his qualifications and then he should be sure that at any rate, his name will be considered along with other names and there will be some regard for fitness in the choice of people who enter these new places for employment."

5. Even in the case of Renu and Others Vs. District and Sessions Judge, TIS Hazari Courts, Delhi and Another, reported in (2014) 14 SCC 50, the Hon'ble Supreme Court reiterated the Rules even if provides such a restricted way of selection the same is unconstitutional.

6. Thus, it is a Constitutional mandate that a wide publication in all newspapers, media, websites, Internet etc., be provided to all the citizens enabling them to participate in the open competitive process. Any restricted publication will certainly deprive the citizens from participating in the selection process. Consequently, the meritorious and best candidates will be losing their opportunity, so also, the public administration will also lose the meritorious candidates and the Courts are of the opinion that the public posts are to be filled up only through meritorious candidates for effective administration.

7. The learned counsel appearing for the respondents contended that after 2014, the respondents' board is following the open competitive process and by providing wide publications as per the guidelines issued by the Hon'ble Supreme Court and recruitment rules are also scrupulously followed in this regard. Further, the learned counsel for the respondents made a submission that as of now the respondents board are scrupulously following the legal principles settled by the Constitutional Courts in the matter of process of selection and appointment.

8. In respect of the present writ petition, this Court is of the view that the selection for the year 2012 is under question and after a lapse of 5 years these points need not been adjudicated. However, the above lacunae occurred during the relevant point of time is placed on record. Since, the learned counsel appearing for the writ petitioner brought to the notice of this Court only with an object that the respondents would not repeat the same in future selections.

9. Thus, the respondents are hereby directed to follow the entire legal principles settled in the matter of selection and appointment while undertaking the process of selection for the posts and cadres under the respondents board.

10. With these observations, the writ petition deserves to be closed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS IV)

//True copy//

Sub Assistant Registrar

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To

1. The Board of Directors,
Tamil Nadu Electricity Generation and
Distribution Corporation,
No.144, Anna Salai,
Chennai - 600 002.
2. The Chief Engineer (Personnel),
Tamil Nadu Electricity Generation and Distribution
Corporation,
No.144, Anna Salai,
Chennai - 600 002.
3. The District Employment Officer,
District Employment Office,
Vellore.

+1cc to Mr. Balan Haridoss, Advocate SR.No.89625
+1cc to Mr. R. varalakshmi, Advocate SR.No.89809
+1cc to government Pleader SR.No.89711

W.P.No.5863 of 2014

GN (09/01/2018)

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