

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 1765 of 2015**

Chandra Prakash Kashyap S/o Heeralal Kashyap, Aged About 35 Years
R/o Village Mohatara Kurmi, Post Devharat, Tehsil Lormi, District
Mungeli Chhattisgarh,

---- Petitioner**Versus**

1. State of Chhattisgarh, Through Secretary, Department Of Law And Legislative Affairs, Mahanadi Bhawan, Naya Raipur Chhattisgarh
2. Ranjit Singh S/o Duj Singh Aged About 32 Years R/o Village Mohatara Kurmi, Tehsil Lormi, District Mungeli Chhattisgarh

----Respondents

For Petitioner	:	Dr. Shailesh Ahuja, Advocate
For State	:	Mr. Syed Majid Ali, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy**C.A.V. ORDER****Delivered on 30/07/2018**

1. The present writ petition has been filed seeking for quashment of the order of appointment passed in favour of the respondent No.2 and a direction also has been sought for considering the case of the petitioner instead of respondent No.2.
2. The brief facts of the case is that in the year 2014 there was a vacancy which arose for the post of peon in the office of Additional Public Prosecutor, Mungeli, District Mungeli under the Law and Legislative Affairs Department of the State Government. For filling up of the said post no advertisement as such was published, however names were called from the Employment exchange. The petitioner and few others including the respondent No.2 had also applied for the said post. The respondents on scrutiny of the requisite eligibility criteria found the

petitioner also suitable and called on for interview vide call letter dated 15.07.2014.

3. In all 13 candidates were called for interview of which only 6 or 7 candidates appeared. According to the petitioner on a comparative study of the credentials of all the six candidates interviewed, the petitioner was better placed both as far as the academic qualifications, so also the experience is concerned. According to the petitioner, inspite of the petitioner being better placed, the respondents have arbitrarily appointed the respondent No.2, who undoubtedly is less meritorious in all respects than the petitioner.
4. According to the petitioner, the entire process of selection smacks malafides for the simple reason that; firstly there was no advertisement issued for initiation of the recruitment process, secondly from among the candidates, who had appeared also there was no comparative statement or a comparative assessment either made or prepared or available with the respondents to verify as to who among the candidates interviewed was better.
5. It was also the contention of the petitioner that while preparing the comparative chart the respondents have deliberately shown the petitioner to be 8th pass, whereas he is a Higher Secondary pass candidate and he had applied giving this specific details with documentary proof, but the authorities concerned have ignored this aspect and malafidely shown the petitioner also to be one of the 8th pass candidate. Thus prayed for setting aside of the appointment of the respondent No.2 and also prayed for fresh selection being made

considering the case of the petitioner as well by preparing a comparative chart.

6. Per contra, the counsel appearing for the respondents submits that considering the urgency of the manpower required in the newly established department and also considering the need of the hour, the department thought of selecting a candidate from among the people whose names are sponsored by the Employment exchange. He further submits that the department has in fact prepared a comparative chart and in the process they have found the respondent No.2 to be a most suitable candidate in all respect and therefore they have ordered for appointment of the respondent No.2. The respondents also objected to the contention of the petitioner challenging the recruitment process for not having advertised for the simple reason that the petitioner himself having applied and finding him unsuccessful, now he cannot turn around and question the mode of recruitment.
7. According to the respondents, the selection process should also be not doubted for the reason that the persons were interviewed by the senior level officers of the State Government and therefore there is no malafides. The State Government referring to Annexure R/9 further submitted that the Committee after due scrutiny of the documents and the credentials so also the interview which was conducted, prepared a final selection list wherein the respondent No.2 stood at the top, and thus prayed for dismissal of the writ petition.
8. According to the respondents, by way of the judicial review this Court may not conduct a threadbare inquiry into the entire selection process

going into the minute details of credentials of each of the candidates and then reach to a separate assessment.

9. Having heard the contentions put forth on either side and on perusal of record, some of the admitted positions as it stands is that for the recruitment on the post of peon in the office of Additional Public Prosecutor, Mungeli, District Mungeli under the Law and Legislative Affairs Department of the State Government no advertisement as such was published. For selection only the names from the Employment exchange were called. Though a final tabulation charge has been prepared by the respondents, but what was the criteria, which were looked into, what was the respective educational qualification of each of the candidate, what was the experience of each of the candidates and how much marks they have scored in the interview, if at all, if any held were all missing from the records.
10. If we look at the judicial pronouncements made by the Hon'ble Supreme Court in the recent passed in the year 2011 in a decision in the case of ***"State of Orissa vs. Mamata Mohanty"* (2011) 3 SCC 436**. The Hon'ble Supreme Court in Civil Appeal No.1272/2011 vide its judgment dated 09.02.2011 in paragraphs No. 18 to 20 it has held as under:-

"18. 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, 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 Administration, Delhi & Ors., AIR 1992 SC 789; State of Haryana & Ors. v. Piara Singh & Ors., AIR 1992 SC 2130; Excise Superintendent Malkapatnam, Krishna District, A.P. v. K.B.N. Visweshwara Rao & Ors., (1996) 6 SCC 216; Arun Tewari & Ors. v. Zila Mansavi Shikshak Sangh & Ors., AIR 1998 SC 331; Binod Kumar Gupta & Ors. v. Ram Ashray Mahoto & Ors., AIR 2005 SC 2103; National Fertilizers Ltd. & Ors. v. Somvir Singh, AIR 2006 SC 2319; Telecom District Manager & Ors. v. Keshab Deb, (2008) 8 SCC 402; State of Bihar v. Upendra Narayan Singh & Ors., (2009) 5 SCC 65; and State of Madhya Pradesh & Anr. v. Mohd. Ibrahim, (2009) 15 SCC 214).

19. 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 Notice Board 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 of 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.

11. *20. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. (vide: Upen Chandra Gogoi v. State of Assam & Ors., AIR 1998 SC 1289.)*

12. The same principle was reiterated in *Arun Kumar Nayak v. Union of India and others* [(2006) 8 SCC 111] in the following words:

"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."

13. In *Excise Superintendent, Malkapatnam, Krishna District, A.P. v. K.B.N. Visweshwara Rao and others [(1996) 6 SCC 216]*, a three-Judge Bench while reiterating that the requisitioning authority/establishment must send intimation to the employment exchange and the latter should sponsor the names of candidates, observed:

".... 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."

14. In the case of "***State of Bihar vs. Upendra Narayan Singh***" (2009) 5 SCC 65 the Hon'ble Supreme Court in Civil Appeal No.1741/2009 decided on 20.03.2009 in paragraph No.16 in very categorical terms held as under:

"16. The ratio of the above noted three judgments is that in terms of Section 4 of the 1959 Act, every public employer is duty bound to notify the vacancies to the concerned employment exchange so as to enable it to sponsor the names of eligible candidates and also advertise the same in the newspapers having wider circulation, employment news bulletins, get announcement made on radio and television and consider all eligible candidates whose names may be forwarded by the concerned employment exchange and/or who may apply pursuant to the advertisement published in the newspapers or announcements made on radio/television."

15. From the aforesaid legal position as it stands and from the factual matrix where the records lack issuance of advertisement preparation of a comparative chart or a comparative assessment except for a

tabulation chart showing a consolidated marks, which the candidates had scored cannot be said to be a proper recruitment conducted. Quoting the portion of the Division Bench judgment of the Patna High Court in the case of “***Shambhu Sharan Mahto vs. State of Bihar***” in LPA No. 1639/2014 decided on 06.12.2014, wherein it was held by the Division Bench that:

“Public employment is national wealth and it cannot be withered away on a platter to favour few in violation of Articles 14 and 16 of the Constitution of India, which guarantees equal opportunity of public employment.”

16. This Court also does not have any hesitation in holding that the appointment of the respondent No.2 also was bad in law and was not in accordance with the norms and procedure which has to be otherwise followed at the time of recruitment and the same therefore deserves to be and is accordingly held to be bad in law, illegal and not sustainable and the same deserves to be and is accordingly set-aside with a direction to the respondents to go in for a fresh recruitment after issuing a proper advertisement in a daily newspaper having wide circulation in accordance with the Rules governing the field.
17. The writ petition accordingly stands allowed.

Sd/-
(P. Sam Koshy)
Judge

Ved