

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 1619 of 2011**

Ajanti Ekka W/o Late Kunwar Sai aged about 33 years, R/o Darima, Ambikapur, Surguja, District Surguja, Chhattisgarh.

---- Petitioner**Versus**

1. Chhattisgarh Rajya Gramin Bank, Through its Chairman, 15 Recreation Road, Choubey Colony, Police Station Amapara, Raipur Civil and Revenue District Raipur, Chhattisgarh.
2. General Manager, Surguja Kshetriya Gramin Bank, Head Office, First Looor, Vivek Complex, Sangam Gali, Ambikapur, Chhattisgarh.
3. Branch Manager, Chhattisgarh Rajya Gramin Bank 1st Floor, Vivek Complex, Sangam Gali Police Station Ambikapur, Civil and Revenue District Surguja, Chhattisgarh.
4. District Employment Officer, Employment Exchange, Ambikapur, District Surguja, Chhattisgarh.

---- Respondents**AND****Writ Petition (S) No. 1639 of 2011**

Vinod Kumar Vishwakarma S/o Nava Ram Vishwakarma, aged about 36 years, working as Messnger-cum-Sweeper, Surguja Kshetriya Gramin Bank, Ambikapur, District Surguja, Chhattisgarh.

---- Petitioner**Versus**

1. Chhattisgarh Rajya Gramin Bank, Through its Chairman, 15 Recreation Road, Choubey Colony, Police Station Amapara, Raipur Civil and Revenue District Raipur, Chhattisgarh.
2. The Board of Directors, Chhattisgarh Rajya Gramin Bank, 1st Floor, Vivek Complex, Sangam Gali Police Station Ambikapur, Civil and Revenue District Surguja, Chhattisgarh.
3. Directorate of Employment & Training, Through its Director, District Employment & Self Employment Guideline Centre, Ambikapur, District Surguja, Chhattisgarh.

---- Respondents

For respective Petitioners	: Shri Manoj Paranjpe and Ms. Sharmila Singhai, Advocates.
For Respondent/Bank	: Shri N.N.Roy, Advocate.
For Respondent/State	: Ms. Richa Shukla, Deputy Government Advocate.
For Intervenor	: Shri Pankaj Singh, Advocate on behalf of Shri Shri Chandresh Shrivastava, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice

Order on Board

15/01/2019

1. Heard learned counsel for the parties.
2. The crux of the issue which is required to be decided in the two writ applications is whether the exercise initiated by the Respondent-Bank to make certain recruitment on the post of Messenger/Sweeper way back on 25.03.2011 and 26.03.2011, restricting the participation to such candidates whose names were either sponsored by the Employment Exchange or registered with the Employment Exchange is sustainable in law or not?
3. Both the Petitioners had been working in the Respondent-Bank as a daily wager and when regular opening arose in the said Bank and the Bank decided to restrict consideration and ousting the Petitioners, the writ applications came to be filed and an order of restraint was also passed by the writ Court. Because of the said order of restraint, the recruitment has not been carried out and now more than 7 years have gone past. To that extent, the entire exercise of recruitment has been derailed.
4. The argument on behalf of the counsel for the Petitioners is based on a decision which has been rendered by the Hon'ble Supreme Court wherein the Apex Court held that the object of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 was not to restrict but to enlarge the field of choice. The Act was not to restrict or bind an employer only to those persons who had been sponsored by the Employment Exchanges. The Hon'ble Supreme Court, in the case of ***Union of India v.***

Pritilal Nanda {2010 AIR SCW 4643}, enunciated the law in the following words:

"15. In our opinion, there is no merit in the arguments of the learned Additional Solicitor General. In the first place, we consider it necessary to observe that the condition embodied in the advertisement that the candidate should get his/her name sponsored by any special employment exchange or any ordinary employment exchange cannot be equated with a mandatory provision incorporated in a statute, the violation of which may visit the concerned person with penal consequence. The requirement of notifying the vacancies to the employment exchange is embodied in the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (for short, 'the 1959 Act'), but there is nothing in the Act which obligates the employer to appoint only those who are sponsored by the employment exchange. Section 4 of the 1959 Act, which provides for notification of vacancies to employment exchanges reads as under:

"4(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 of 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 exchanges to fill any vacancy merely because that vacancy has been notified under any of those sub-sections."

16. A reading of the plain language of Section 4 makes it clear that even though the employer is required to notify the vacancies to the employment exchanges, it is not obliged to recruit only those who are sponsored by the employment exchanges. In *Union of India v. N. Hargopal* (1987) 3 SCC

308 : (AIR 1987 SC 1225) this Court examined the scheme of the 1959 Act and observed:

“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, Section 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.”

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“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.”

(emphasis supplied)

17. In K.B.N. Visweshwara Rao’s case (1996 AIR SCW 3979) a three-Judge Bench of this Court considered a similar question, referred to an earlier judgment in Union of India v. N. Hargopal (AIR 1987 SC 1225) (supra) and 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

subverted. The equality of opportunity in the matter of employment would be available to all eligible candidates."

18. By applying the ratio of the above noted judgments to the case in hand, we hold that the concerned authorities of the South Eastern Railway committed grave illegality by denying appointment to the respondent only on the ground that she did not get her name sponsored by an employment exchange. "

5. The law being what it is, laid down by the highest Court of the land, the order of restraint imposed upon the Respondent-Bank against making recruitment on the basis of names sponsored by the Employment Exchange was in the teeth and the ratio of the decision taken note of in the earlier part of the order.
6. That being the law, the Respondent-Bank was rightly restrained from proceeding. Therefore, both the writ applications deserve to be allowed.
7. Since more than seven years have elapsed since the last recruitment process was initiated, the Court can only observe that if the Respondent-Bank has vacancies and would still like to make recruitment on those available vacancies now, they can do so by initiating a fresh process of advertisement but keeping in mind the ratio of the decision laid down by the Hon'ble Supreme Court that such consideration or participation cannot be restricted to names sponsored by Employment Exchanges alone.
8. Both the writ applications stand allowed.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE