

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.A7646-11724 OF 1996  
[arising out of SLP © No.8590-8576 of 1993]

The Excise Superintendent Malkapatnam, Krishna District, Andhra Pradesh	...	Appellant
Versus K.V.R. Bisweshwara Rao & Ors.	...	Respondents

Leave granted.

We have heard learned counsel on both sides

Appeal by special leave arising from the order dated April,21, 1992 of the Andhra Pradesh Administrative Tribunal in O.A. No.9501/91 and batch. The primary petition is that respondents were not sponsored through the Employment Exchange for selection to the 723 posts sought to be filled up from the candidates sponsored through the medium of Employment Exchange. The respondents independently applied for consideration of their claims but they were not considered. Consequently, they approach the Tribunal and short direction for their appointment. Interim directions were issued to consider their cases and to appoint, 41 selected by the selecting authority though the Tribunal held that sponsorship of the candidates through the medium of employment exchange was valid and not violative of Articles 14 and 16 of the constitution since many of the candidates came to be selected in terms of the interim direction, orders are issued to appoint the selected candidates. There is a difference of a opinion in this behalf. Whereas the majority two members held that it is not violative of articles 14 & 16 of the constitution the minority view was that it was violative. Thus these appeals by special leave.

This Court in Union of India and Ors. Vs. H. Hargopal & Ors. (1987) 3 SCC 3081), noted the contention of counsel appearing for respondents there in 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 offen 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. But in view the fact that even the paper publication would not reach many a handicapped who would be unable to have access to the newspaper, it was held that the sponsorship through the medium of employment exchange would not violate Articles 14 and 16. On the other hand, it would advance the rights to the handicapped. In that view, this Court upheld the restriction imposed by the State and Control. Government to consider the cases of the candidates through medium of employment exchange. While holding that such a restriction was not intended to be applicable to the private employment as held in para 6 of the judgement.

Shri Ram Kumar, learned counsel for the State, contended that in view of the above decision, the direction issued by the Tribunal is not in accordance with law. On the other hand, Smt./Shri Shanti Swarup and L.R. Rao, learned counsel appearing for the respondents, contended that the restriction of the field of choice to the selected candidates sponsored through the medium of employment exchange prohibits the right to be considered for employment to a post under the employment exchange to get their names sponsored and the employment exchanges are not adopting fair means and procedure to send the names strictly according to seniority in their record. So, these better course would be to adopt both the mediums viz. of employment exchange and publication the newspaper as that would subsequent the public purpose .

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. 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 case 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.

The appeals are accordingly disposed of No case is made out to disturb the directions issued by the Tribunal for appointment of the selected candidates. Therefore, the directions survive. No costs.

Sd/-  
K.RAMASWAMY

Sd/-  
(B.L.HANSARIA)

Sd/-  
(S.B.MAJHUDAR)

New Delhi  
August 22, 1996.

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No. 947 CUTTACK, THURSDAY, JULY 1, 1999/ASADHA 10, 1921

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No.7693-IIIE-3-28/98-LE.,  
GOVERNMENT OF ORISSA  
LABOUR & EMPLOYMENT DEPARTMENT

**RESOLUTION**

**The 8<sup>th</sup> June 1999**

**SUBJECT-** Procedure on Recruitment of Candidates to the Services/Posts coming under C.N.V. Act, 1959.

The Scheme of Employment Exchange Procedure came under Judicial Scrutiny of the Supreme Court in the matter of Exise Superintendent, Malkapatnam, Krishna District, Andhra Pradesh Vrs. K.B.N. Visweshwara Rao and others [1996 (6) SCALE 676]. The Supreme Court inter alia directed as follows:-

“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”.

2. Consequent upon the above decision of the Supreme Court, the Government have been pleased to liberalise the system of recruitment and to dispense with the requirement of compulsory sponsoring of candidates in the relevant fields by the employment exchanges in the following manner:-

- (i) Notification of vacancies (excluding those filled through the O.P.S.C./Orissa Staff Selection Commission or such other Independent Agency authorised by the Government) to the employment exchange concerned with continue to be compulsory in all prescribed instances. The Employment Exchange will sponsor the names of the candidates to the requisitioning authority/establishment for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate Department or undertaking or establishment will call for the names by publication at least in two leading newspapers having wider circulation in the State for two consecutive days and also display on their notice boards or announce on radio, television and employment news bulletins, and then consider the cases of all the candidates who have applied and sponsored by the Employment Exchanges. For this and other approved purposes, all the prescribed registers and lists will continue to be maintained in the Employment Exchanges in the regular manner as of now.

- (ii) The Employer shall not entertain any application from any candidates in response to any advertisement or notices for a post unless the candidate has a valid registration certificate from any employment exchange in the State for the State Level Services or posts and from any employment exchange of the district for the District Level Services or posts. It will also be the responsibility of the employer to get this verified before actual recruitment. Thus in this fundamental regard the recruitment of the existing system are to continue strictly and without exception where they are applicable.
- (iii) After any such direct recruits being made from the open market, the employer shall intimate the concerned employment exchange the details of the candidates selected against the vacancies 60 advertised within 15 days of issue of the appointment order without fail. Non-compliance with this provision shall be viewed unfavourably by the Government.
- (iv) The Welfare Department would continue to inspect records of the employers regarding proper maintenance of Roster Points in case of appointment of candidates belonging to the Scheduled Castes and Scheduled Tribes categories. Recruitments prescribed under various Government orders for preferential recruitment of any other category of persons (e.g. the Physically handicapped, Ex-Serviceman, Sportsman, Women, S.E.B.C. etc.) are also to remain unaffected by this resolution.
- (v) Any appointment made in violation of the principles laid down in this Resolution shall be viewed illegal and render the selection made through such violation as, invalid and infructuous.

3. These provisions are applicable to the services/posts under the State Government, Public Sector Undertakings owned by the State Government and Autonomous Bodies controlled by the State Government coming under the purview of the Employment Exchanges (C.N.V) Act, 1959.

4. These order will take effect from the date of issue in the extraordinary Gazette and will not apply to such cases where process of recruitment through Employment Exchange/open advertisement has been initiated.

5. This modifies this Department Resolution No.1571-IIE/3069/89-L.E., dated the 7<sup>th</sup> February 1990 and Resolution No.5639-IIE/3-13/92-L.E., dated the 27<sup>th</sup> April 1992 to the above extent.

ORDER- Ordered that the resolution be published in an extraordinary issue of the State Gazette for information and copies thereof be sent to all Departments of Government/all Heads of Department/all Revenue Divisional Commissioners/all Collectors and all Public Sector undertakings.

By order of the Governor  
G.N.PEGU  
Commissioner-cum-Secretary to Government.

**No.14024/2/26-Estt(D)**  
**Government of India**  
**Ministry of Personal, Public Grievance & Pensions.**  
**Department of Personnel & Training.**

New Delhi – 110001.  
May,18,1998.

**OFFICE MEMORANDUM**

Subject : Recruitment of staff through Employment Exchanges.

The undersigned is directed to invite a reference to this Department's Office memorandum No.14024/2/77 – Estt(D), dt.13.04.77. These instructions, inter-alia, provide that all vacancies arising under Central Government offices/establishment (including quasi Government institutions and statutory organisations) irrespective of the nature and duration (other than those filled through UPSC), are not only to be notified to, but also to be filled through the Employment Exchanges alone and other permissible sources of recruitment can be tapped only if the Employment Exchange concerned issues & Non-Availability Certificate. There can be no departure from this recruitment procedure unless a different arrangement in this regard has been previously agreed to in consultation with this Department and the Ministry of Labour (Directorate General, Employment & Training). Similar instructions are also in force requiring vacancies against posts carrying a basic salary of less than Rs.500/- per month in Central Public Sector undertakings to be filled only through Employment Exchanges.

2. The Scheme of Employment Exchange procedure came under the judicial scrutiny of the Supreme Court in the matter of Excise Superintendent, Malkapatnam, Krishan District, Andhra Pradesh v/s K.B.N Viswashwara Rao & Others (1996 (6) SCALE 676). The Supreme Court inter-alia directed as follows :

“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 case of all the candidates who have applied.”

3. Accordingly, it is clarified that in addition to notifying the vacancies for the relevant categories (excluding those filled through the Union Public Service Commission & the Staff Selection Commission ) to the Employment Exchange, the requisitioning authority/establishment may keeping in view administrative budgetary convenience, arrange for the publication of the recruitment notice for such categories in the “Employment News” published by the publication Division of the Ministry of Information and broadcasting Government of India and then consider the cases of all the candidates who have applied. In addition to the above such recruitment notices should be displayed on the office notice boards also for wider publicity.

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4. Those orders will take effect from the date of issue and will not apply to such cases where process of recruitment through employment exchanges/open advertisement has been initiated before the said date.

5. All Ministries/Department are requested to strictly adhere to the aforesaid instructions and also bring to the notice of their attached and subordinate offices for information and compliance.

Sd/-  
(HARAJINDER SINGH)  
JOINT SECRETARY.

To :-

All Ministries/Department of Government of India.

Copy to:-

1. The Director General Employment and Training, Ministry of Labour, Rafi Marg, New Delhi.
2. The Bureau of Public Enterprises, New Delhi.
3. Lok Sabha Secretariate.
4. Rajya Sabha Secretaries.
5. Union Public Service Commission.
6. Staff Selection Commission.
7. Chief Secretaries of All State Governments.
8. All Union Territory Governments/Administrators.
9. All attached & Subordinate offices of the Department of Personnel & Training.
10. The Editor, Employment News, East Block-IV, Level-5/7, R.K. Puram, New Delhi- 110066.