(1985) 03 KL CK 0015

High Court Of Kerala

Case No: O.P. No. 2987 of 1983

Kuriakose		APPELLANT
	Vs	
Cochin Shipyard and Others		RESPONDENT

Date of Decision: March 14, 1985

Acts Referred:

- Apprentices Act, 1961 - Section 22
- Constitution of India, 1950 - Article 14, 16
- Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 - Section 10, 3, 4, 4(1), 5

Citation: (1985) KLJ 328

Hon'ble Judges: U.L. Bhat, J

Bench: Single Bench

Advocate: K. Ramakumar, for the Appellant; M. Pathrose Mathai, P. Radhakrishnan, Pirappancode V. Sreedharan Nair and K.P. Dandapani, for the Respondent

Judgement

U.L. Bhat, J.

Petitioner was selected as an apprentice in the Cochin Shipyard Ltd. (first respondent) in the trade Mechanical (Diesel) for a period of two years as per agreement duly executed. The contract was terminated as per Ext. P1, order at the expiry of the term of the contract. Under Ext. P1 apprentices were advised to register their names in the Employment Exchange so that their cases could be considered for appointment against future vacancies in the Company. Petitioner completed his training in November, 1981. Among the apprentices in his batch, seven, persons including petitioner were not absorbed permanently in the Shipyard. It appears, apprentices who completed training in the subsequent batches (respondents 3 to 5 were absorbed under Ext. P2 order. Petitioner has therefore filed this original petition seeking to quash Ext. P2 in so far as it relates to respondents 3 to 5, seeking a writ of mandamus forbearing further appointments without reference to Employment Exchange and to absorb petitioner consistent with

his qualifications and training in the trade. Petitioner was trained in the sixth batch of apprentices in the trade Mechanical (Diesel). Respondents 3 to 5 appointed under Ext. P2 as Fitters Structural Gr. I were trained in the eighth batch. This job falls within the category of Mechanical (Diesel). According to petitioner, appointment given to respondents 3 to 5 overlooking his prior claim amounts to hostile discrimination violative of Articles 14 and 16 of the Constitution of India. Though in the original petition reliance has not been placed by the petitioner on the provisions of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (for short ''the Act''), learned counsel for the petitioner at the stage of arguments placed reliance on the same.

1A. Second respondent has filed counter affidavit. On behalf of respondents 4 and 5, fourth respondent has filed counter affidavit. Second respondent is the Manager (Personnel) under the first respondent. His counter affidavit shows that petitioner was selected as apprentice under the Apprentices Act for training in the designated trade, Mechanical (Diesel). Petitioner had executed contract of apprenticeship which was duly registered with the Regional Director of Apprenticeship Training, Southern Region, Madras. Under the Apprentices Act, there is no obligation on the part of the employer to offer employment to apprentices on completion of apprenticeship training. The same is the position regarding the contract of apprenticeship also. Therefore, petitioner has no legal right to compel his appointment. During earlier years when the Cochin Shipyard was established, there were large number of vacancies in different trades. There were not enough suitable or qualified candidates available for recruitment. Therefore, first respondent had to appoint apprentices on completion of training. Apprentices in the five batches could be so absorbed for employment. Petitioner was an apprentice in the sixth batch. By that time vacancies available were few in number and only some of the apprentices could be absorbed-Petitioner could not be absorbed for want of vacancy. Subsequent vacancies arose only in 1983, long after petitioner left the Shipyard. At that time, apprentices of the eighth batch had just completed training and three among them were appointed under Ext. P2. This did not amount to discrimination against petitioner. This was done as per practice adopted earlier to appoint apprentices on completion of training subject to availability of vacancies. There was no discrimination or arbitrariness or violation of Articles 14 and 16 of the Constitution as alleged.

2. Petitioner has not made out his right to compel first respondent to give him appointment. His claim, such as it is, could only be on the basis that he was an apprentice trained under the first respondent in the sixth batch between 1979 and 1981. That was governed by a contract of apprenticeship. The contract did not confer on him any right to employment. On the other hand, the contract, as the counter affidavit would show, clearly stated that it shall not be obligatory for the employer to offer employment to the petitioner after completion of the period of apprenticeship and it shall not be obligatory on the part of the apprentice also to

accept employment under the employer. This part of the contract is consistent with the provisions of the Apprentices Act, 1961. Petitioner was appointed apprentice by virtue of the provisions of this Act. It is necessary only to refer to Sec. 22 of this Act. Sub-sec. (1) of Sec. 22 states that it shall not be obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship training in his establishment, nor shall it be obligatory on the part of the apprentice to accept an employment under the employer. Sub-sec. (2) states that notwithstanding anything in Sub-sec. (1), where there is a condition in a contract of apprenticeship that the apprentice shall, after the successful completion of the apprenticeship training, Serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract.

3. Learned counsel for the petitioner placed reliance on a decision of the Supreme Court in Narinder Kumar and Others Vs. State of Punjab and Others, . That was a case in Which the contract of apprenticeship clearly stipulated that on successful completion of the training, the apprentice would be absorbed in the department if there wore vacancies without any commitment. The Supreme Court held that by virtue of the contract, the apprentice had a right to be appointed subject to availability of vacancies and there was commitment on the part of the management to appoint him subject to availability of Vacancy. By virtue of the contract, the case came within the purview of sub-sec. (s) of Sec. 22 of the Apprentices Act. But where the contract does not contain any such provision, it is Sub-sec. (1) of Sec. 22 Which would apply. The employer is not obliged to offer employment to apprentice on completion of the period of training and the apprentice is not obliged to accept employment under the employer.

4. Learned counsel for the petitioner placed strong reliance on the provisions of the Employment Exchanges (Compulsory notification of vacancies) Act to contend for the position that action of the first respondent in appointing respondents 3 to 5 without reporting the vacancies to the Employment Exchange was illegal. According to learned counsel, appointments could have been made only of persons advised by the Employment Exchange. Petitioner had registered his name in the Employment Exchange and there was every likelihood of his name being advised by the Employment Exchange for consideration for appointment. That opportunity was denied to him since the vacancies were not reported to the Employment Exchange.

5. Sub-sec. (1) of Sec. 4 of the Act states that after the commencement of the Act, the employer in every establishment in public sector before filling up any vacancy in any employment in that establishment shall notify that vacancy to such Employment Exchange as may be prescribed. Sub-sec. (2) states that appropriate Government may by notification published in the gazette require that 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 Exchange as may be prescribed and the employer shall thereupon comply with such requisition. Establishment of the, first respondent is an establishment in public sector. Therefore, it is contended that the first respondent had obligation to notify the vacancies to the Employment Exchange concerned and any appointment made disregarding the provisions of Sec. 4 (1) of the Act should be treated as illegal.

6. No doubt, by virtue of Sec. 4(1) of the Act, first respondent should have notified the vacancies to the Employment Exchange concerned. Question is whether the provision is mandatory in the sense that non-observance thereof involves consequence of invalidity of appointment. No doubt, the provision uses the expression "shall". But that is not decisive of the intention of the legislature to make it mandatory. In border to decide this question, the Court has to carefully study the nature, design and scope of the statute, the consequences which would follow from considering it one way or the other, the impact of other provisions whereby the necessity of complying with the provision is avoided or projected provisions for penalty for non-compliance of the provision serious or trivial nature of the consequences there of and whether the object of the legislation would be protected or defeated and other relevant circumstances. It is not enough that the act required to be done is for public benefit so as to be regarded as mandatory. The controversy must be decided on the basis of practical reasoning and public convenience.

7. The Act is to provide for compulsory notification of vacancies to Employment Exchanges. Sec. 3 makes the Act inapplicable in relation to vacancies in Certain establishments. Sub-sec. (1) of Sec. 4 requires the employer of every establishment in public sector to notify vacancies to the Employment Exchange concerned before filling up the Vacancies. Sub-sec. (2) enables appropriate Government to extend this provision to establishments in private sector also Sub-sec. (4) states Nothing in Subsections (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.

8. It appears to me that Sub-sec. (4) is of vital significance. It declares that the employer has no obligation to recruit any person through the employment exchange merely because the employer has complied with Sub-sec. (1) If a vacancy is reported to the employment exchange by an employer, under Sub-sec. (1), normally one Would expect the employment exchange to submit names of persons registered in the Employment Exchange, Even so, because of Sub-sec. (4) the employer is not obliged to recruit anyone of the persons advised by the employment exchange. He could appoint any other person. That is not inhibited by the provision. Such action could not be illegal. If this is the consequence where an employer complies with Sub-sec. (1), it is extremely difficult to hold that this will not

be the result where the employer has not complied with sub-sec. (1).

9. Sec. 5 of the Act requires that the employer in every establishment in public Sector shall furnish such information or return as may be prescribed in relation to vacancies that have occurred or are about to occur to such employment exchanges as may be prescribed. Sec. 6 states that such officer of the Government as may be prescribed in this behalf, or any person authorised by him in writing shall have access to any relevant record or document in the possession of any employer required to furnish information or return under Sec. 5 and may enter at any reasonable time any premises where he believes such record or document to be and inspect or take copies of relevant records or documents or ask any question necessary for obtaining any information required.

10. Sec. 7 provides for penalties. If any employer fails to comply with the provisions of Sub-sec. (1) or Sub-sec. (2) of Sec. 4, he shall be punishable in the manner stated therein. Sec. 8 deals with cognizance of offences. No prosecution for an offence under the Act shall be instituted except by, or with the sanction of, such officer of Government as may be prescribed in this behalf or any person authorised by that officer in writing. Sec. 10 gives the Central Government power to frame rules for carrying out the different purposes of the Act,

11. Provision for imposition of penalties cannot be treated as, decisive of, the legislative intent to make Sub-sec. (1) of Sec. 4 mandatory particulary in the light of Sub-sec. (4) of Sec. A : Object of the statute is to compel employers to notify vacancies in their establishments to, the employment exchanges concerned. The statutes : does not prohibit appointment being made by employers to fill up vacancies, occurring, in their, establishments. The Statute does not contain any provision rendering invalid appointments made otherwise than through the employment exchanges and without complying with sub-sec. (1) of Sub-sec. (2) of Sec. 4. There is a specific provision which declares that it is not obligatory on the part of the employer to appoint persons, advised by the employment exchange.

12. On a consideration of the scheme of the Act, object which it is intended to serve and in the light, of Sub-sec. (4) of Sec. 4, I have to hold that Sub-sec. (1) is not mandatory and appointments made by the employer will not be rendered invalid merely by reason, of the employer not complying with the requirements, of sub-section (1). "of Sub-sec. (2) of Sec. 4. I am strengthened in this view by a decision of the Mysore High Court in Narastmhamurthi v. Director of Collegiate Education (1967 (2) L.L.J. 606) and a decision of the Allahabad High" Court in Sambhu Natk Tewari v. The, State of Uttar Pradesh and others (1975(2) S.L.R. 636). In these circumstances, I have to hold that appointment of respondents 3 to 5 is not invalid. They, were trained in the eight batch of apprentices. When, the training programme was complected, vacancies were available and were offered to them. That was what happened when training programme of apprentices in the first five batches was completed. That was what happened when the training programme of the sixth,

batch in which petitioner was also trained, was completed. Unfortunately, at that time sufficient vacancies were not available to accommodate petitioner. I am unable to find anything unreasonable or arbitrary in, the action of the first respondent. I, may also advert to the submission made by learned counsel for respondents 1 and 2 to the effect that hereafter first respondent, will report all vacancies to the employment exchange and appointments will be made through the employment exchange. These submissions are recorded and the O.P. dismissed but in the circumstances without costs.