M.V.N. Nataraju Vs Commissioner of Collegiate Education and Others

Court: Andhra Pradesh High Court

Date of Decision: March 20, 2002

Acts Referred: Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools Under Private Managements) Rules, 1993 â€" Rule 12
Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 â€" Section 4(1), 4(2), 4(4)

Citation: (2002) 4 ALT 769

Hon'ble Judges: P.S. Narayana, J

Bench: Single Bench

Advocate: Vedula Venkataramana, for the Appellant; Govt. Pleader for Respondent No. 1 and K.G.K. Prasad, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.S. Narayana, J.
The Writ Petition is filed for a Writ of Mandamus declaring the action of the 1st respondent contained in proceedings

L.Dis. 5545/TCI-3/95, dated 10-4-1996 purporting to reject the proposal of respondents 2 to 4 for absorbing the writ petitioner into the aided

post of Clerk with effect from 1-3-1992 and allow all consequential benefits including the arrears of salary and scale of pay to the petitioner and

grant such other appropriate reliefs.

2. The facts in brief are as follows:

The petitioner states that originally he was appointed as Lower Division Clerk in S.D.S. Shroff College of Arts and Applied sciences, Sriramnagar,

Garividi into a regular post on 15-9-1979 as he was fully eligible and qualified for the said post of Lower Division Clerk and he had submitted his

resignation to the said College and accordingly he was relieved with effect from 7-9-1983. His resignation to the said employment had taken place

due to the fact that he was appointed as Clerk-cum-Typist in the 2nd respondent-Society on a consolidated pay of Rs. 425/- per month as per the

proceedings issued by the 2nd respondent dated 24-08-1983. It is further stated that by the date when he was appointed as Clerk-cum-Typist in

the 2nd respondent-Society, which is running a private Educational Institution including the 4th respondent-College, he was regularly employed as

Clerk in S.D.S. Shroff College under the Management of Sriram Vidyapeeth. At the time of his appointment as Clerk-cum-Typist in the 2nd

respondent-Society he was fully qualified for holding the post of Clerk and due to non-availability of vacancies, he was continued on consolidated

wages and he continued in the employment of the 2nd respondent-Society, which is registered under the Societies Registration Act with the object

of establishing and administering the educational institutions including the 4th respondent-college, with the legitimate expectation that he will be

accommodated in an aided post of Clerk after putting in some length of service and he was also assured to that effect by the 2nd respondent. He

was initially posted in the I.T.I.C. scheme of the 2nd respondent and later by transfer the petitioner was posted as Clerk in the examination section

of the 4th respondent-college on consolidated wages of Rs. 785/- as per proceedings issued by the 4th respondent dated 4-12-1994 and at

present he is working in the Department of Geology of the 4th respondent-college as per the office order issued by the 4th respondent dated 10-

06-1996 and thus he had put in more than 16 years of service as Clerk and he has been discharging his duties sincerely and to the appreciation of

the 2nd respondent, which is evident from the fact that the petitioner was given enhancement of wages with effect from 1-4-1996 and at present he

is being allowed consolidated wage of Rs. 1600/- per month. It is also stated that a vacancy of Junior Assistant (Clerk) (Aided post) had arisen

with effect from 1-03-1992 and the Management of the college had addressed letters dated 27-12-1995 and 29-12-1995 to the 1st respondent

explaining that the petitioner is entitled to be admitted into the said aided post of Clerk (non-teaching staff) and the Management of the college had

proposed for absorbing the petitioner into the said aided post. It is further stated that the 1st respondent had issued the impugned order dated 10-

4-1996 rejecting the proposal of the Management of the college for admitting him into the aided post on the ground that his initial appointment was

made without following any procedure and media of Employment Exchange. It was further stated that the stand taken by the 1st respondent in the

impugned order dated 10-04-1996 is totally unsustainable.

3. In the counter-''affidavit filed by the 1st respondent it was stated that as admitted by the petitioner that he was working in S.D.S. (A) College,

Shreeramnagar in regular vacancy could not be correct, and this submission has nothing to do with the present Writ Petition filed against another

Educational Society. It is also stated that the petitioner had admitted that his initial appointment was with Maharaja Alak Narayan Society of Arts

& Science, Vizianagaram which has its own office with their own staff. The Society runs 13 Educational Institutions, both aided and unaided and

two of these institutions, i.e., M.R. (A) College, Vizianagarm and M.R. (W) College, Vizianagaram, are aided and they are under the

administrative control of the 1st respondent. Further, each college is a separate unit for the purpose of recruitment. The appointment of the

petitioner in the Society of MANSAS has nothing to do with this respondent and this respondent comes into picture if the petitioner is appointed in

one of the above said two aided Institutions. Further the petitioner himself admits that he was appointed in M.R. (A) College, Vizianagaram during

1994. His appointment on 4-12-1994 in the M.R. College (A) is irregular as it is in violation of Act 2/93. Further he is not a candidate sponsored

by Employment Exchange nor selected by the Departmental Promotion Committee as required under recruitment procedure as per Rules. A

Society employee could not have been transferred to the college, which is an aided Institution. It is further stated that due to the ban imposed by

the Government on direct recruitment, the Management was permitted to fill up the non-teaching vacancies by promoting eligible candidates with

prior permission of the respondent. It is also stated that the appointment of the petitioner in the 4th respondent college itself is irregular and he is an

employee of the Society. It is also stated that the contention of the petitioner that the 1st respondent is not competent to control the recruitment of

non-teaching staff is not correct. The State Government is the pay master to all the aided employees. The 1st respondent has to grant permission to

fill up any aided vacancy and after due recruitment, it is the 1st respondent who approves such appointment. The Selection Committee for such

appointments should consist, besides Management representative, the representative of the Government also and hence it is prayed that the Writ

Petition may be dismissed.

4. Heard Sri Venkataramana, the learned counsel representing the writ petitioner and Ms. Yashoda, the learned counsel representing the learned

Government Pleader for Higher Education.

5. Sri Venkataramana, the learned counsel for the writ petitioner had contended that the impugned order as such is not sustainable since the

reasons recorded for the rejection are unsustainable reasons. The learned counsel had further contended that as can be seen from the proceedings

the non-teaching staff had been appointed as per G.O.Ms.No. 1119, dated 18-02-1976. The learned counsel also submitted that the A.P.

Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules, 1988 and 1993,

in fact came into force long thereafter. The learned counsel had pointed out that the 1993 Rules under G.O.Ms. 1, had specifically superseded the

prior 1988 Rules under G.O.Ms. No. 524. The learned counsel further pointed out that at the time when the appointment was made the Rules

which are now being relied upon by the Government were not in force at all and in fact the writ petitioner who has been working for a sufficiently

long time has a legitimate expectation that the proposal sent by the Management relating to aided post will be considered. The learned counsel

further submitted that neither Rule 12 under A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Schools

under Private Managements) Rules, 1993, hereinafter in short referred to as ""Rules"" nor the superseded Rules of 1988 are applicable to the

present case on hand. The learned counsel further submitted that in the counter-affidavit certain grounds had been raised, which in fact had not

been mentioned in the order of rejection and such course is not permissible. The learned counsel also had pointed out the provisions of

Employment Exchanges (Compulsory Notification of Vacancies) Act, hereinafter referred to as ""Act"" in short, does not oblige any employer to

employ those persons only who have been sponsored by Employment Exchanges. The learned counsel further submitted that at any rate since the

Rules imposing such prohibition had been introduced in the year 1988 and subsequently replaced in 1993, the said bar imposed will not operate as

against the writ petitioner. The learned counsel had placed strong reliance on Commissioner of Police, Bombay Vs. Gordhandas Bhanji, ,

Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , Union of India (UOI) and Others Vs. N.

Hargopal and Others, and 3 ACES, Hyderabad Vs. Municipal Corporation of Hyderabad, .

6. Ms. Yashoda, the learned counsel representing the Government Pleader for Higher Education had pointed out that two of the Institutions alone

are aided and the rest are unaided Institutions and the appointment of the petitioner was made in unaided college on 24-08-1983 and was

transferred to aided college 4-11-1994 and inasmuch as the very appointment was to an unaided post, the rejection order is sustainable. The

learned counsel further contended that the claim of the petitioner to aided post cannot be considered and hence there is no illegality in the impugned

order. The learned counsel further submitted that the provisions of the Act referred to supra, are definitely applicable in view of the bar imposed by

the Rules specified above.

7. Heard both the counsel and also perused the material available on record.

8. Before adverting to the respective contentions of the parties, it may be relevant to have a look at the impugned order dated 10-04-1996, which

reads as follows:

The attention of the Secretary and Correspondent, M.R. (A) College, Vizianagaram in the reference read above and he is informed that the

proposal for absorption of Sri M.V.N. Natarajau (Unaided Member) into aided is not feasible of compliance. Since the appointment of the above

incumbent was made without following any selection procedure and without the media of Employment Exchange and violation of the instructions

issued as per G.O.Ms. No. 1119/Education, dated 18-02-1976.

The proposal for absorption of the petitioner into aided post was rejected mainly on the following grounds:

(1) The appointment was made without following any selection procedure;

(2) The appointment was made without the media of Employment Exchange; and

(3) The appointment was made in violation of the instructions issued as per G.O.Ms. No. 1119/ Education, dated 18-02-1976.

These are the three grounds which are mentioned in the impugned order of rejection. No doubt, certain other additional aspects had been averred

in the counter-affidavit.

9. In the decision referred (2) supra, it was held that when a statutory functionary makes an order based on certain grounds, its validity must be

judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise, as otherwise an order bad

in the beginning may by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. The same view

was expressed in the decision referred (1) supra. In fact in the aforesaid decision it was observed:

Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer

making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to

have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with

reference to the language used in the order itself"".

However in the decision referred (4) supra, it was held that the principle that an order of statutory functionary has to be supported by reasons

mentioned in the order but not by fresh reasons in the shape of affidavits, applies only to statutory orders but not to administrative orders.

10. The first objection raised in the present Writ Petition is that the appointment of the writ petitioner was made without following any selection

procedure. However, the proceedings relating to the appointment go to show that the said appointment relating to the non-teaching staff was as

per G.O.Ms. No. 1119, Education, dated 18-02-1976 and hence it cannot be said that the Management made the appointment not in accordance

with the procedure. As far as the violation of instruction issued as per G.O.Ms. No. 1119, Education, dated 18-02-1976 is concerned, it had

already been dealt with since the very appointment was made referring to the said G.O. only. The next ground of objection is that the appointment

was made without the media of Employment Exchange. Section 4(4) of the Employment Exchanges (Compulsory Notification of Vacancies) Act

(Act 31 of 1959), referred to as ""Act"" does not oblige any employer to employ those persons only who have been sponsored by Employment

Exchanges. In the decision referred (3) supra, while dealing with different provisions of this Act, it was held as follows:

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 u/s 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 those 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 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 in 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.

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, bust

depend for their supply of labour on agents or recruit in a haphazard manner from amongst those assemble 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.

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.

Thus, the object of the Act was well explained to the effect that it is not to restrict but to enlarge the field of choice so that the employer may

choose the best and the most efficient and provide an opportunity to the worker to have his claim for appointment considered without the worker

having to knock at every door of employment.

11. It is pertinent to note that the appointment of the writ petitioner was made in accordance with G.O.Ms. No. 1119, long prior to 1988 and

1993 Rules came into force. Rule 12 of the 1993 Rules deals with Appointment of staff and Clause 4 of the said Rule no doubt specifies as

follows:

all the educational institutions receiving grant-in-aid from Government shall notify vacancies to the Employment Exchange and in addition,

advertisements in the Newspapers, that they shall also be required to call the candidates sponsored by Employment Exchange for test and

interview provided that the persons applying to the post in response to the advertisement in the newspapers should have got registered their name

in any Employment Exchanges in the State.

It is pertinent to note that the said Rule under 1993 Rules or the bar imposed in 1988 Rules, both were introduced long after the appointment of

the writ petitioner. Further, serious attempt was made on the part of the Government to show that since by virtue of the transfer the writ petitioner

came to an aided institution, subsequent to the Rules coming into force, even on that ground, the impugned order of rejection is sustainable.

However, it is curious to note that this is not the ground at all on which the impugned order was made by the 1st respondent. In fact, the ground

mentioned in the impugned order is that it is in violation of the instructions issued as per G.O.Ms.No. 1119, dated 18-02-1976. It is also brought

to my notice that these are all educational institutions run by the same Society and the petitioner was appointed as way back as in the year 1983

and has been working and it may be that the petitioner was appointed in one Institution and for the purpose of convenience and depending upon

the exigencies of work and also efficiency and suitability of the particular person, the Management had thought of transferring him to another

Institution, which is an internal affair and the Management thought it fit that in the aided post the petitioner is the suitable candidate to be appointed

and accordingly had sent the proposals. But however in my considered opinion, the 1st respondent had made the impugned order dated 10-04-

1996 totally on unsustainable grounds. Not satisfied with the same, certain other grounds had been raised in the counter-affidavit, which may not

improve the situation in any way. Hence, viewed from any angle, the impugned order of rejection and the reasons specified therein are not

sustainable in law. In the light of the representation and also the correspondence relating to this matter, inasmuch as the 1st respondent had

rejected the representation dated 4-10-1995 of the Secretary and Correspondent of M.R. (A) College, Vizianagaram, on untenable grounds, the

impugned order of rejection is liable to be set aside and in the light of the observations made above, the 1st respondent shall consider the case of

the petitioner for absorption into aided post of Clerk with effect from 1-3-1992, in view of the facts and circumstances referred to supra.

12. In the light of the foregoing discussion, the Writ Petition is allowed. No order as to costs.