

(2007) 10 MAD CK 0181

Madras High Court (Madurai Bench)

Case No: Rev. Application (MD) No"s. 14 of 2007, Review Application (MD) No"s. 15 of 2007 and Review Application (MD) No"s. 40 to 47 of 2007 and Review Application (MD) No"s. 49 to 52 of 2007

R. Sivakumari and 17 others

APPELLANT

Vs

Ramanathapuram Mavatta
Payirchipetra Edainilai
Asiriyargal Sangam and Others

RESPONDENT

Date of Decision: Oct. 11, 2007

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 47 Rule 1, Order 47 Rule 5, 114
- Constitution of India, 1950 - Article 14, 16, 16(1), 16(3), 16(4)
- Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 - Section 10, 10(2), 2, 3, 4

Hon'ble Judges: V. Ramasubramanian, J; S. Nagamuthu, J; P.K. Misra, J

Bench: Full Bench

Advocate: N.G.R. Prasad, Mr. C. Selvaraj, for the Appellant; S.N. Ravichandran, For RR1, Mr. N. Kannadasan, Additional Advocate General, For RR 2 to 5, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.K. Misra, J.

Against a common order passed in a batch of about 30 writ petitions, by a Division Bench in W.P. No. 910 of 2007 batch, dated 05.04.2007, persons who were not parties thereto came up with the present Review Applications. While entertaining the Review Applications, it was felt that the issues raised in the Review Applications were of greater importance, requiring consideration by a Full Bench. Hence, the Review Applications were referred to the Full Bench. The order of reference to the Full Bench reads as follows:

"(a) The Constitutional rights guaranteed under Article 16(1) and Article 19(1)(g) of the Constitution are being violated by depriving such petitioners the opportunity of seeking employment to an office under the State merely on the ground that such persons are already employed in Private aided Schools.

(b) The conditions of service being dissimilar and the opportunities being better in Government Schools, they have every right of seeking better opportunity which is being denied.

(c) Directions have been issued in the writ petitions directing the reversion of some of the petitioners in the Review Applications thus affecting their accrued rights, even though they had not been given an opportunity of hearing and had not been impleaded in the connected writ petitions."

2. The genesis of this litigation is as follows:

(a) The recruitment to the posts of Secondary Grade Teachers were made through the Tamil Nadu Teachers Recruitment Board up to the year 1996. But by G.O.Ms. No. 447, Education, Science and Technology Department dated 16.07.1996, the selection through Teachers Recruitment Board was dispensed with and a new procedure was introduced. Under the said procedure, Secondary Grade Teachers are to be appointed only with reference to their seniority of registration in the Employment Exchanges and their selection would be done by a committee consisting of Chief Educational Officer as its President and the District Educational Officer/District Elementary Educational Officer as its member.

(b) Though the post of Secondary Grade Teachers falls under the Tamil Nadu Educational Subordinate Service and the recruitment to the said post is governed by Statutory Rules issued under the proviso to Article 309 of the Constitution, the Government issued another Order in G.O.Ms. No. 59, School Education (MI) Department dated 12.06.2004 removing the restriction relating to the upper age limit prescribed as 35 years for appointment to the said post under Special Rules.

(c) In the light of the aforesaid orders, the Director of Elementary Education issued proceedings dated 07.07.2006 addressed to all the Chief Educational Officers and District Elementary Educational Officers, to fill up about 4039 posts of Secondary Grade Teachers in about 32 Districts of the State.

(d) In pursuance of the said proceedings of the Director, the Chief Educational Officer, Ramanathapuram addressed a letter to the District Employment Officer, Ramanathapuram dated 14.07.2006 requesting him to sponsor a list of candidates for appointment to 117 posts of Secondary Grade Teachers.

(e) At this stage, some complaints appear to have been received by the District Employment Officer, Ramanathapuram that some of the candidates whose names were found in the rolls of the Employment Exchange were employed in Private Schools. Therefore, the District Employment Officer, Ramanathapuram collected

information from Private Schools and removed the names of those candidates from the live register of the Employment Exchange. But some of the Private Schools did not furnish correct information. Therefore, the District Employment Officer, Ramanathapuram issued a communication dated 00.12.2006 to the District Elementary Educational Officer, Ramanathapuram advising him to give appointments only after ensuring that the candidates were not employed in Private Schools.

(f) A similar communication was also issued by the District Employment Officer, Ramanathapuram on the same day to the District Elementary Educational Officer, in respect of candidates who got transfer of registration from other District Employment Office to the Ramanathapuram District Employment Office.

(g) In pursuance of the communication of the District Employment Officer, the District Elementary Educational Officer identified about 9 persons from out of a list of 38 candidates pointed out by the Employment Exchange, to be employed in Private aided Schools on time scale of pay. Consequently, the District Employment Officer, Ramanathapuram deleted the names of those 9 persons from the list of sponsored candidates, by a communication dated 29.01.2007.

(h) However, by another communication of the same date namely, 29.01.2007, the District Employment Officer, Ramanathapuram informed the District Elementary Educational Officer, Ramanathapuram that if a person had obtained registration afresh with a No Objection Certificate from the Private aided School where he is employed, such a person can be sponsored for consideration for appointment to a Government post. This stand taken by the District Employment Officer, Ramanathapuram was based upon a circular bearing No. 30/99 (date not indicated anywhere) to the effect that a person employed in a Private aided School can be considered for appointment to the post of Secondary Grade Teacher in a Government School, if his name is registered afresh on the basis of a No Objection Certificate from his employer.

(i) When the selection process was nearing completion, in December 2006/ January 2007, some candidates whose names were in the rolls of the District Employment Office, Ramanathapuram came up with a batch of writ petitions. While some of them challenged the validity of the communications of the District Employment Officer, Ramanathapuram seeking to delete the names of the employed candidates from the live register as well as the communication demanding No Objection Certificate from the employers, the others sought a positive direction to delete the names of candidates who were already employed in Private aided Schools from the live register of the Employment Exchange.

(j) The two batches of writ petitions were taken up by the Division Bench and disposed of with several directions holding that persons already employed in Private aided Schools are not entitled to be sponsored by the Employment Exchange and

that their names cannot continue in the live register of the Employment Exchange even if a No Objection Certificate is produced from the present employer. The Division Bench also directed the cancellation of appointments of any such person who was already employed in a Private Aided School.

(k) In pursuance of the said order of the Division Bench, some candidates who had already been appointed, lost their jobs, and some candidates got their names deleted from the live register of the Employment Exchange. These candidates have come up with the present Review Applications.

3. Heard Mr. N.G.R. Prasad, Mr. C. Selvaraju, learned Senior Counsel and Mrs. S. Srimathi, learned counsel appearing for the applicants in the Review Applications, Mr. N. Kannadasan, learned Additional Advocate General appearing for the official respondents and Mr. S.N. Ravichandran, learned counsel appearing for the contesting respondents.

4. At the outset, the learned counsel appearing for the contesting respondents (writ petitioners) raised a preliminary objection with regard to the maintainability of the Review Applications, both on the ground that the scope of review is very limited and also on the ground that the Review Applications should be heard only by a Bench comprising of the Judge or Judges who were parties to the earlier decision.

5. In so far as the scope of review is concerned, the issue does not need a consideration in extent. A Civil Court derives its power of review by virtue of Section 114 read with Order XLVII of the Code of Civil Procedure. Though the provisions of CPC are not per se applicable to the proceedings under Article 226 of the Constitution, this Court has plenary powers which include a power of review.

6. On the question as to whether such a power should be exercised in the present case, the answer could only be in the affirmative, for the simple reason that by the Order under review, the vested rights of the review applicants were taken away, without the review applicants being heard. In its Judgment dated 05.04.2007, the Division Bench issued several directions in para 40, which include a direction to cancel the appointment orders issued to candidates who were already employed in Private Aided Schools. The Division Bench also issued a direction to delete the names of the employed candidates from the live register of the Employment Exchanges. Persons who were adversely affected by those directions were not parties before the Division Bench. Therefore, they have every right to seek a review of the judgment, on the ground that they were not heard before their appointment orders were directed to be cancelled and their names directed to be deleted from the rolls of the Employment Exchange.

7. Coming to the second aspect relating to maintainability, it was contended that by virtue of Order XLVII, Rule 5C.P.C, a Review Application should be heard to the extent possible, only by the same Bench. Order XLVII, Rule 5C.P.C. reads as follows:

"5. Application for review in Court consisting of two or more Judges.- Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same."

8. But the provisions of C.P.C. are not per se applicable to the proceedings under Article 226 of the Constitution. As a matter of fact some of the principles such as resjudicata as found in the C.P.C. are imported into writ proceedings only by invoking principles analogous to them. The proceedings under Article 226 are governed by a set of rules issued by the High Court, in exercise of the power conferred under Article 225 of the Constitution.

9. In so far as our High Court is concerned, the proceedings under Article 226 are governed by Appendix IV of the High Court Rules known as, "Rules To Regulate Proceedings Under Article 226 of the Constitution of India". But a new set of Rules under Appendix VI Rules were notified in 2002, which appear to have been kept in abeyance. However, these Rules throw some light on the issue. Rules 24 to 27 of the said Rules, prescribe the procedure to be followed while dealing with a Review Application arising out of writ proceedings. These Rules are as follows:

"24. The Court may review its Order but no application for review will be entertained except on the ground mentioned in Order XLVII, Rule 1 of the Code of Civil Procedure.

25. An application for review shall be by a petition duly supported by an Affidavit and shall be filed within 30 days from the date of the Order sought to be reviewed and it shall clearly set out the grounds for review. However, the Court may on good and sufficient reasons shown as to why it was not so filed in time, entertain the review petition even thereafter.

26. Unless and otherwise ordered by the Court, a petition for review shall be disposed of, as far as practicable, by the same Judge who delivered the Order sought to be reviewed. The Court may either dismiss the petition or direct Notice to the opposite party.

27. Where an application for review of any Judgment or Order has been made and disposed of, no further application for review shall be entertained in the same matter."

10. It is seen from Rule 26 extracted above that the requirement of posting a Review Application before the same Judge or Bench is only when it is not ordered otherwise. The requirement to post a review before the same Bench is circumscribed by the

words "unless and otherwise ordered". Therefore, if a review is ordered to be posted before a Bench, by the Chief Justice, the requirement stipulated in the later part of the Rule goes. But as stated above, these rules have been kept in abeyance, despite having been notified. However we have referred to the same, for the purpose of drawing inspiration before deciding the issue on hand.

11. The same issue came up for consideration before the Full Bench in "Mayavaram Financial Corporation Ltd., Mayiladuturai V. The Registrar of Chits, Pondicherry (1991 (2) LW Page 80)" and the relevant portion of the said judgment is as follows:

"26.To sum up:

(1) CPC does not apply to a writ proceeding under Art.226of the Constitution of India. Courts, however, sometimes constructively apply certain basic principles enshrined therein to the writ proceedings, on grounds of public policy or dictates of reason or necessity whenever it is found to be essential for effective administration of justice.

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3. The Honourable the Chief Justice has the inherent power to allocate the judicial business of the High Court including who of the Judges should sit alone and who should constitute the Bench of two or more Judges. No litigant shall, upon such constitution of a Bench or allotment of a case to a particular Judge of the Court will have a right to question the jurisdiction of the Judges or the Judge hearing the case. No person can claim as a matter of right that this petition be heard by a single Judge or a Division Bench or a particular single Judge or a particular Division Bench. No Judge or a Bench of Judges will assume jurisdiction unless the case is allotted to him or them under the Orders of the Honorable the Chief Justice.

4. A Judge or the Judges constituting the Bench will not decide whether to entertain a review petition or not unless the same is placed before him or them under the Orders of the Honourable the Chief Justice.

5. Unless it is on account of exceptional circumstances or to meet an extraordinary situation the Honourable the Chief Justice decides to allot the work to some other Judge or Judges, as the case may be, we consider it to be prudent as well as desirable that the Judge or Judges who pass the judgment/decreed or made the order sought to be renewed, hear the review petition and in the case of the judgment, decree or order of a Bench the Judge or Judges who are available are associated as members of the Bench."

The desirability to post a matter before the same Bench as a matter of prudence, as enunciated in para 26.5 of the Full Bench decision (extracted above), is obviously not without exceptions. As held by the Full Bench, the Honourable Chief Justice, has the prerogative to allot the work to other Judges, under exceptional circumstances or in order to meet extraordinary situations. In the present case, the order under review

was passed by a Division Bench comprising of Justice F.M. Ibrahim Khalifulla and Justice K. Veeraraghavan. Unfortunately, Justice K. Veeraraghavan is now no more and Justice F.M. Ibrahim Khalifulla is now sitting in the Principal Bench at Madras. Therefore, the Chief Justice thought fit to post the review applications before another Division Bench, which in turn, sought a reference of the issues involved, to a Full Bench. Once a reference has been made to a Full Bench, by the Chief Justice, it is no longer open to the respondents to question the composition of the Full Bench, by falling back upon Order XLVII, Rule 5, C.P.C.

12. Again in [A. Srinath and others Vs. The Andhra Pradesh State Road Transport Corporation and others](#), the Full Bench of the Andhra High Court held in para 7 of its judgment as follows:-

"If the CPC applies perforce, a review petition has to be heard by a Judge or Judges or any of them who had passed the decree or made the order, a review of which is applied for, and no other Judge or Judges of the Court shall hear the same. If, however, it is applied as a rule of convenience or constructively as respects exercise of the Letters Patent power, the Court has to make its own rules. CPC is applied only constructively. There is no mandate of law that review must be done by the Judge or Judges whose order is sought to be reviewed."

Therefore, we have no hesitation in overruling the objections raised by the learned counsel for the contesting respondents with regard to maintainability.

13. Coming to the dispute on hand, it is seen that the core issue raised in the writ petitions is as to whether a candidate who gets appointment in a private aided school, loses his right to be sponsored by the Employment Exchange to a Government post or not. The Division Bench has concluded that a person who gets appointment in a private aided school has no right to have his name retained in the live register of the Employment Exchange and to get sponsored to a Government job.

14. In order to find an answer to the above question, it is necessary to have a peep into the statutory provisions governing the functions and the role of the Employment Exchanges. In order to provide for compulsory notification of vacancies to Employment Exchanges, the Parliament enacted the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959. As the Preamble as well as the title given to the Act indicates, the Act provides only for compulsory notification of vacancies. The Act does not even provide for the Employment Exchanges to sponsor candidates to employers. While Section 2 of the Act contains definitions, Section 3 specifies the posts and vacancies to which the Act would not apply. Section 4 makes Notification of Vacancies to Employment Exchanges mandatory and Section 5 imposes an obligation upon the employers to file returns and furnish information. Section 6 enables the Government to nominate an Officer to have access to the records or documents in possession of any employer who is required to file returns

u/s 5. Section 7prescribes penalties for the failure of employers to notify vacancies and Section 8provides the manner in which cognizance of offences could be taken. Section 9provides for immunity for action taken in good faith, and Section 10vests rule making power upon the Central Government.

15. Thus the entire scheme of the Act makes no whisper about the role of the Employment Exchange in sponsoring candidates for appointment to Government Services or Private or Public Sector. The Act does not even prescribe as to what the Employment Exchanges are supposed to do with the notification of vacancies made to them by employers. Even Section 10(2),which lists out the matters that could be provided for in the Rules framed by the Central Government, does not deal with sponsorship by Employment Exchanges, of candidates. However, there is a residuary clause under Clause (d) of Sub-section (2) of Section 10where the rule making power of the Central Government is extended to any other matter also.

16. In exercise of the power conferred u/s 10of the Act, the Central Government had issued the Employment Exchanges (Compulsory Notification of Vacancies) Rules,1960. Rule 2 of the said rules contains the definitions. Rule 3 lists out the vacancies which had to be notified to Employment Exchanges. Rule 4 prescribes the form and manner of notification of Vacancies. Rule 5 prescribes the time limit for notification of Vacancies . Rule 6 prescribes the time and the form in which returns are to be submitted. Rule 7 prescribes the Director of Employment and Training as the person who is authorised to exercise the power to call for records u/s 6of the Act. Rule 8 confers power upon the Director of Employment to sanction prosecution under the Act. Thus, the rules also do not deal with the procedure to be followed while sponsoring candidates for appointment to any posts in Government or Private or Public Sector.

17. In the absence of a specific provision in the Act or in the Rules, both for maintenance of what is termed by the respondents as "Live Register" and for the inclusion or deletion of the name of a person, it is to be seen if the official respondents are entitled to make a distinction between employed and unemployed candidates while sponsoring their names for recruitment. This question would not have arisen for consideration if the law laid down by the Supreme Court that the Employment Exchanges cannot act as the only source of recruitment, had been taken note of by the respondents.

18. As a matter of fact, way back in the year 1987, the Supreme court held in [Union of India \(UOI\) and Others Vs. N. Hargopal and Others](#), that there is no provision in the Act which obliges an employer to make appointments through the agency of Employment Exchanges. It was held in paragraphs4 of the said Judgment that

"Section 4(4) of the Act makes it clear that the employer is under no obligation to recruit any person through the Employment Exchanges to fill in a vacancy merely because the vacancy has been notified".

Again in para:6 it was made 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 most efficient and to provide an opportunity to the worker to have his name considered without the worker having to knock at the doors of every employer. However, the Act does not oblige any employer to employ only those persons who have been sponsored by the Employment Exchanges.

19. However it was made clear in the second half of the said judgment that "in the absence of a better method of recruitment, the restriction that employment in Government Departments should be through the medium of Employment Exchanges does not offend Articles 14 and 16 of the Constitution."

20. After about ten years, what was considered in N. Hargopal's Case to be "in the absence of better method of recruitment", was resolved in [Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others](#), wherein the Supreme Court indicated a better view.

21. It was held in para 6 of the said judgment as follows:-

"6. 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 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 exchanges should sponsor the names of the candidates to the requisitioning departments for selection strictly according to the 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 sub served. The equality of opportunity in the matter of employment would be available to all eligible candidates."

22. Again after another ten years, the Supreme Court held in [Arun Kumar Nayak Vs. Union of India \(UOI\) and Others](#), that the law laid down in Visweshwara Rao's case still held the field, (last portion of para 10 of the judgment).

23. Therefore, if the recruitment of about four thousand secondary grade teachers to the Government schools, were to be made in accordance with the law laid down by the Supreme Court, the respondents ought to have followed the following

procedure namely -

A) Notify the Employment Exchanges.

B) Issue publications in newspapers having wide circulation, inviting applications.

C) Display the notification in the notice boards of the respective offices or make announcements in the media.

24. If the above procedure, as prescribed by the Supreme Court had been followed, the question of restricting the choice of selection only to those whose names are borne on the rolls of the Employment Exchanges and the removal of the names of already employed candidates from the "Live Register" of the Employment Exchanges would not have arisen. As a matter of fact, persons who are already employed, would have made applications in response to the advertisements issued in the newspapers, without being bothered about the sponsorship through Employment Exchanges. Since the aforesaid procedure laid down by the Supreme Court has not been followed, the question as to whether a person has a right to continue to have his name on the rolls of the Employment Exchanges, even after securing employment in a private school, has come up for consideration.

25. The Division Bench in its decision dated 05.04.2007 has come to the conclusion that persons who are already in employment have no right to continue in the rolls of the Employment Exchanges, on the basis that their status changes from that of "unemployed persons" to that of "employed persons" and that it would be inequitable to state that they are entitled to be sponsored. Such an argument would not have been available, if the respondents had resorted to a proper method of recruitment by inviting applications even from the open market. Right to seek employment to public services is a valuable right and Article 16 of the Constitution guarantees equality of opportunity in matters relating to employment or appointment to any office under the State. This fundamental right is subject to the entitlement of the State to make any law under Article 16(3) or 16(4) including 16(4A) and 16(4B). Now a discrimination is sought to be made between persons already in employment and persons who are not in employment. This classification, unless made under any law enacted by the Parliament or the State under Article 16(3) or 16(4), cannot be a valid classification.

26. Article 19(1)(g) of the Constitution guarantees to all citizens, the right to carry on any occupation. By holding that persons who are now in employment in private aided schools are not entitled to be sponsored for appointment to government schools, the fundamental right of such employed persons, is sought to be taken away. But this cannot be done without enacting a law imposing reasonable restrictions under Article 19(6).

27. In other words, the rights guaranteed under Articles 16 and 19(1)(g) cannot be taken away or abridged without a law duly enacted. It is admitted by the learned

Additional Advocate General that there is no provision either in the Employment Exchanges (Compulsory Notification of Vacancies) Act 1959 or the Rules thereunder, which enables the Employment Exchanges to delete the names of persons who are already in employment, from the live registers.

28. The attempt to remove the names of persons already in employment in private aided schools, from the live registers of the employment exchanges, has not been made in the present case (i) either by the Government (ii) or by the Directorate of Employment and Training, but by the District Employment Officer, Ramanathapuram, who is only one of the 32 such District Employment Officers, in the State of Tamil Nadu. Therefore, the decision taken by one of the 32 District officers of the State, cannot even be accorded the status of executive orders issued under Article 162 of the Constitution.

29. Mr. N. Kannadasan, learned Additional Advocate General invited our attention to Form ER1 prescribed under the Rule 6 of the aforesaid Rules for submission of returns by the employers. The caption of the said Form indicates that the information in the prescribed form was required "to assist in evaluating trends in employment and for action to correct imbalances about labour supply and demand". Therefore, the learned Additional Advocate General contended that by inference, the Act and the Rules intended to provide relief to unemployed persons.

30. Mr. S.N. Ravichandran, learned counsel appearing for some of the contesting respondents also contended that the very object of the Act is to provide employment to the unemployed and that such object will be defeated by making it a free for all. Mr. S.N. Ravichandran produced the National Employment Service Manual issued by the Government of India containing the policy of procedure, the collection of market information etc. We have gone through the manual. The manual speaks of the procedure for registration at Employment Exchanges, the preparation of "Index Cards" of various types, preparation and maintenance of live register etc. Inviting our attention to Chapter X, the learned counsel contended that once a person gets employment, his name will have to be transferred from the "live register" to the "dead order register". Paragraph 10.14 and 10.15 relied upon by the learned counsel reads as follows:-

"Dead Order Register 10.14 Order Cards in respect of vacancies which have been filled, or in respect of which no further action has to be taken should be transferred from the Live Order Register (over the dated initials of the officer concerned, in col.15) and filed in the Dead Order Register. An Order Card in respect of which the result of submissions is pending should under no circumstances be transferred to the Dead Order Register. 10.15. Information regarding the "number of submissions made" and the "number of vacancies filled" should be entered in the respective columns of the Vacancy Order Register (X-64). The date and reason for transfer of the Card to the Dead Order Register should be entered in the remarks column of the Vacancy Order Register."

31. we have carefully considered the submissions of learned Additional Advocate General as well as Mr. S.N. Ravichandran and we have also perused Form ER1 under the Rules and the National Employment Services Manual. But, we are unable to detect any embargo either under Form ER1 or under the aforesaid manual restraining a person from seeking better prospects merely because he is already employed. As a matter of fact, the argument of the learned counsel for the respondents, is fallacious, for the following reasons namely -

A) The employment exchanges are not intended just for the benefit of the unemployed, as has been misunderstood.

The registration at the Employment Exchanges need not necessarily be an indication of non-employment. It is only an indication of the availability of a person seeking employment.

B) The law does not prevent a person who is in employment from seeking a change in his career, whether for the better or for the worse, since a right to be considered for public employment is a valuable right.

32. When the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 or the Rules issued thereunder, do not restrict the right of a person to have his name retained in the rolls of the Employment Exchange, his right to be sponsored and his right to be considered for Public Employment, cannot be taken away by a communication issued by the District Employment Officer, Ramanathapuram, who is only one of the 32 such District Officers in the Directorate of Employment and Training. Even the Government has not issued any executive instructions, having the force of law under Article 162 of the Constitution. Therefore, on the basis of the circular issued by a District Employment Officer, the names of persons in service in Private aided Schools cannot be deleted from the live register of the Employment Exchanges.

33. As a matter of fact, Mr. N. Kannadasan, learned Additional Advocate General did not attempt to justify the circular issued by the District Employment Officer, Ramanathapuram. On the other hand, the learned Additional Advocate General focused attention only on Rule 10A of the General Rules for Tamil Nadu State and Subordinate Services Rules, which reads as follows:

"(10.A. Recruitment to posts, which are outside the purview of the Tamil Nadu Public Service Commission.-(a)Where the posts are outside the purview of the Tamil Nadu Public Service Commission, recruitment shall be made only by calling for names of eligible candidates from the Employment Exchange. In respect of specialised posts for which candidates are not available with the Employment Exchange, the appointing authority shall get a certificate of a non-availability from the Employment Exchange, and call for applications from eligible candidates by advertising the posts in prominent daily newspapers giving the number of vacancies and indicating the qualifications, etc.)"

34. It is the contention of the learned Additional Advocate General that as per the aforesaid Rules, which are statutory rules issued under the proviso to Article 309 of the Constitution, recruitment to posts falling outside the purview of the Tamil Nadu Public Service Commission will have to be done by inviting a list of candidates from the Employment Exchanges and the Government is obliged to resort to a recruitment from the open market through other methods, if suitable candidates are not available in the rolls of the Employment Exchange. The learned Additional Advocate General relied upon the Judgment of the Apex Court in Hargopal's case in support of his contention that a statutory rule providing for recruitment through Employment Exchanges cannot be held to be bad.

35. However, we are not now concerned with this question. The question before this Bench is as to whether a person who is employed in a Private aided School can be deprived of his right to continue in the live register of the Employment Exchange and to be sponsored for a post in Government service.

36. If the respondents had gone ahead with the recruitment strictly in accordance with statutory rules, as contended by the learned Additional Advocate General, the respondents should have followed the restriction relating to age. Rule 6 of the Special Rules for Tamil Nadu Educational Subordinate Services prescribes an upper age limit, though it is also subject to the usual relaxations for reserved categories. Despite the prescription relating to upper age limit in the statutory rules, the Government appears to have issued G.O.Ms. No. 59, School Education Department dated 12.06.2004 removing the upper age limit contained in the rules. Thus a Rule was sought to be annulled by executive instructions. Para 5 of the said Government Order stipulated that the Director of School Education should forward the proposals for amending the necessary Rule. The amendment is yet to see the light of the day. But in the present recruitment, even persons above 53 years of age have been selected and appointed, in utter violation of the statutory rules, taking umbrage under G.O.Ms. No. 59, which does not have the force of law. Therefore, the contention of the learned Additional Advocate General that the recruitment has been done strictly in accordance with the statutory rules, is not supported by facts.

37. In short, the communications of the District Employment Officer deleting the names of candidates employed in Private aided Schools from the live registers of the Employment Exchanges, appear to be illegal for the following reasons:

(a) The classification sought to be made between employed candidates and unemployed persons, for the purpose of retaining their names in the Employment Exchanges, is not based upon any statute, rule or even executive instructions.

(b) Such a classification does not also have any nexus with the object sought to be achieved. The object sought to be achieved by the recruitment is to fill up about 4000 posts of Secondary Grade Teachers and the object of this recruitment cannot be taken to provide employment to unemployed persons.

(c) Candidates who are already in employment in the Private aided Schools, would have had an opportunity to apply for the present recruitment, if the respondents had strictly followed the law laid down by the Supreme Court in K.B.N. Vishveswar Rao's case, which was followed in Arunkumar Nayak's case. The chance that these candidates would have otherwise had, if a transparent and lawful process of selection had been adopted, cannot be deprived by an improper method of selection.

(d) Ironically, even full fledged Government Servants are permitted to register their names in the Employment Exchanges with a view to securing suitable jobs consistent with their qualifications, as seen from a Government Order in G.O.Ms. No. 1069, Labour and Employment Department dated 28.04.1980. Though the said order permitted the regular employees of the State Government/Local Bodies/Autonomous Bodies/State owned Corporations and Undertakings to register their names for higher posts under the Government/Public Sector Undertakings, on production of "No Objection Certificate" from the employers, the Government Order reflected the mind-set on the part of the Government in recognising even the right of regular employees to seek better career prospects. While so, we are unable to persuade ourselves to accept the contention that persons employed in aided schools cannot have such benefit.

(e) Though the teachers employed in Private Aided Schools are in receipt of the same scales of pay and similar terms and conditions of service, the employment in a Private Aided School cannot always be treated on par with the employment in a Government School. By virtue of the provisions of the Tamil Nadu Recognised Private Schools Regulation Act, the disciplinary control over the teacher of a Private Aided School vests with the School Committee and certain safeguards are provided under the Acts and Rules. But the service conditions of teachers employed in Government Aided Schools are governed by Statutory Rules issued under the Proviso to Article 309 of the Constitution and the employment in Government School is actually one of Status. When a teacher is rendered surplus in a Private Aided School, he has to be rehabilitated by the method of redeployment. But, insofar as a teacher employed in a Government School is concerned, such rehabilitation takes place by an instant transfer. Therefore, the security of employment is much more in Government Service than in a Private Aided School. In any event, the promotional prospects in a private aided school are very bleak when compared to the promotional prospects in a Government School, since the field of promotion and the zone of consideration in Government Service is very huge compared to that in a Private Aided School. Therefore, there are many number of reasons for a person to seek a switch over from Private Aided Schools to Government Schools. The denial of such an opportunity to teachers employed in Private Aided Schools, to switch over to Government Schools, would violate their fundamental right to be considered for appointment to Government Service.

In the result, all the Review Applications are allowed on the following terms:

(a) Persons who are in employment in Private aided Schools are not disqualified from having their names retained in the rolls of the Employment Exchanges. Therefore, the deletion of the names of persons already in service in Private aided Schools, from the live registers of the Employment Exchanges, is violative of Article 16 and 19(1)(g) of the Constitution and the same is not also authorised by any law.

(b) The demand made by the respondents for a No Objection Certificate from the Managements of the Private aided Schools, for sponsoring the names of those candidates for recruitment to Government posts, is also illegal as it is not based upon any law.

(c) The cancellation of appointments of some of the selected candidates now sought to be made in pursuance of the Judgment of the Division Bench in W.P. No. 910 of 2007 dated 05.04.2007 is illegal and hence, such cancellation orders shall be recalled and those persons will have to be reinstated in service.

(d) Persons already in employment in Private aided Schools, whose names were deleted from the live register of the Employment Exchange shall have their names restored in the live registers with the same seniority and the Employment Exchanges are directed to sponsor their names against existing vacancies.

(e) The restoration of the names of already employed candidates in the live registers of the Employment Exchanges, pursuant to the above directions, shall not affect any of the selected candidates.

(f) All future recruitments shall be made only in accordance with the statutory rules and not in accordance with executive instructions which are inconsistent with statutory rules.