

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

+ Writ Petition No.29719 of 2010

% 30-11-2010

Between:

Varadi Raju and another

...Petitioners

And

Chairman, Visakhapatnam Port Trust, and others

...Respondents

! Counsel for Petitioners : Sri P. Lakshmana Rao

^ Counsel for Respondents : G.P. for R-3,
Sri A. Krishnam Raju, SC for RR 1
& 2

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Citations:

- 1) 2003 (4) ALD 225 (DB)
- 2) (1987) 3 SCC 308
- 3) (1992) 4 SCC 99
- 4) (1996) 6 SCC 216
- 5) (1998) 2 SCC 332
- 6) 2010 (2) ALT 14

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W.P.No.29719 of 2010

ORDER:

The petitioners are unemployed persons belonging to Scheduled Tribe. The Visakhapatnam Port Trust proposed to engage 17 Pool Khalasies for providing intermittent work to them, by paying consolidated pay of Rs.5,500/- per month. The further object was to explore the possibilities of inducting them into its service, as and when posts reserved for STs arise, after verification of the qualifications, etc. With this object, the Secretary of the Port Trust, the 2nd respondent herein, addressed a letter dated 24-04-2010 to the Employment Officer, Sub-Employment Exchange, Paderu, Visakhapatnam District, the 3rd respondent, to sponsor the names of eligible candidates.

The petitioners contend that, for one reason or the other, they did not get themselves registered with the 3rd respondent, and the Port Trust cannot restrict the consideration, only to the candidates sponsored by the 3rd respondent. Placing reliance upon the judgments rendered by the Supreme Court, they insist that their cases also be considered, subject to their holding the requisite qualifications.

At the stage of admission itself, the learned Standing Counsel for the respondents 1 and 2 obtained instructions. On their behalf, it is urged that the Port Trust has the discretion to confine the consideration to the candidates sponsored by the employment exchange, and the petitioners do not have any right to insist that their

cases be considered. Reliance is placed by them, on the judgment rendered by the Division Bench of this Court in **Chief Manager, Personal and HRD Section, State Bank of India, Zonal Office, Tirupathi, v. K. Lakshamma**^[1].

Heard Sri P. Lakshmana Rao, learned counsel for the petitioners and Sri A. Krishnam Raju, learned Standing Counsel for the respondents 1 and 2, and learned Government Pleader for respondent No.3.

The question as to whether the State or any organizations, established by it, can restrict the consideration only to the candidates to be considered by employment exchange, for the purpose of making appointments, or whether they are under obligation to issue a general notification, enabling all the qualified persons to apply; was the subject-matter of several judgments before the Hon'ble Supreme Court. The answer to this, however, was not uniform, and accordingly the litigation proliferated.

In **Union of India v. N. Hargopal**^[2], the Supreme Court held that the Government instructions, directing that the choice of candidates shall be confined only to those, sponsored by the employment exchanges, do not offend Articles 14 and 16 of the Constitution of India. This was reiterated in **Delhi Development Horticulture Employees' Union v. Delhi Administration**^[3]. However, a different view was taken in **Excise Superintendent, Malkapatnam v. K.B.N. Visweshwara Rao**^[4]. It was held [para 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 exchange should sponsor the names of the candidates to the requisitioning department for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins, and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates”.

Two years later, the Supreme Court, in **Arun Tewari v. Zila Mansavi Shikshak Sangh**^[5], struck a different note, which, however, appears to be, specific to the facts of that case. It was in relation to appointment of Assistant Teachers under a time bound scheme viz., “Operation Blackboard”. The decision taken by the State Government to fill the posts by calling the candidates from the District Employment Exchanges alone, was held to be not illegal.

The ratio in **Arun Tewari’s** case (5 supra) was treated as at variance from the one, in **Visweshwara Rao’s** case (4 supra).

In **Lakshamma’s** case (1 supra), a Division Bench of this Court discussed the matter at length, and ultimately followed the ratio in **Arun Tewari’s** case (5 supra). It was held that a *Writ of Mandamus* does not lie, to compel an employer, to act contrary to its own regulations or Rules, nor can this Court direct an employer to consider the cases of the persons, who submit applications unless their cases have been sponsored by the employment exchange.

It was also held that if there are no such restrictions imposed under the regulations or Rules of the concerned organization, the employer is bound to follow the directions issued by the Hon'ble Supreme Court in **Visweshwara Rao's** case (4 supra). This dicta was followed by a learned single Judge of this Court in **M.Sravan Kumar and others v. District Employment Officer, Rangareddy and another**^[6].

After this Court decided **Lakshmamma's** case (1 supra), the Hon'ble Supreme Court had an occasion to consider the very question, extensively, in **Arun Kumar Nayak v. Union of India and others**^[7]. After referring to the prominent decisions rendered by it, on the subject, the Supreme Court ultimately observed that its decision rendered in **Arun Tewari's** case (5 supra), was on the facts of that particular case, and it cannot be said to have laid a general principle of law. It was also observed that the law laid down in **Visweshwara Rao's** case (4 supra) would hold the field. The result is that, a semblance of doubt, that clouded the principle, laid down in **Visweshwara Rao's** case (4 supra), in the light of the judgment in **Arun Tewari's** case (5 supra); stood removed. Now, the observations in **Visweshwara Rao's** case (4 supra) operate, without any hindrance. The principle as of now is universal in its application, irrespective of the content of the Service Rules of the organization.

Hence, the writ petition is allowed, and the respondents 1 and 2 shall issue public notification, inviting applications for the posts or positions, that have been notified through the employment exchange, and enable all the eligible candidates to apply.

There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.30-11-2010.

Note:

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[\[1\]](#) 2003 (4) ALD 225 (DB)

[\[2\]](#) (1987) 3 SCC 308

[\[3\]](#) (1992) 4 SCC 99

[\[4\]](#) (1996) 6 SCC 216

[\[5\]](#) (1998) 2 SCC 332

[\[6\]](#) 2010 (2) ALT 14

[\[7\]](#) (2006) 8 SCC 111