

THE EXCISE SUPERINTENDENT MALKAPATNAM,
KRISHNA DISTRICT, ANDHRA PRADESH

v.

K.B.N. VISWESHWARA RAO AND ORS.

AUGUST 22, 1996

[K. RAMASWAMY, B.L. HANSARIA AND S.B. MAJMUDAR, JJ.]

Constitution of India, 1950 : Articles 14 and 16.

Service Law—Equality of opportunity in employment—Restricting selection to candidates sponsored by Employment Exchange—Employment under State—Candidates sponsored through Employment Exchange— Respondents applied independently for consideration as they were not sponsored through Employment Exchange—As their claim was not considered they sought directions from Tribunal for their appointment—Interim directions issued by Tribunal to consider cases of respondents—Pursuant to interim directions issued by Tribunal many candidates were selected—Appeal preferred by State—Held no case was made out to disturb the directions issued by the Tribunal for appointment of the selected candidates—Held the principles of fair play justice and equal opportunity require that it should be mandatory for the requisitioning authority to intimate the Employment Exchange—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.

Union of India & Ors. v. N. Hargopal & Ors., [1987] 3 SCC 308, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal no. 11646-11724 of 1996.

From the Judgment and Order dated 21.4.92 of the Andhra Pradesh Administrative Tribunal at Hyderabad in O.A. Nos. 9501-10, 11938-39-11309-12/91, 53143, 56222, 49638, 49640, 49656-59, 52869 52877, 53141-42/90, 11801, 11836-37/91,55763, 56217, 56227, 56309, 56402, 56435-36/90, 11821-23 & 11112-16 of 1991.

A K. Ram Kumar and C. Balasubramanian, for the Appellant.

L.N. Rao, R. Sauthanakrishnan, K. R. Nagaraja, Manoj Swarup, and Santanu Bhowmick for the Respondents.

B The following Order of the Court was delivered :

Leave granted.

We have heard learned counsel on both sides.

C These appeals by special leave arise from the order dated April 21, 1992 of the Andhra Pradesh Administrative Tribunal in O.A. No. 9501/91 and batch. The admitted position is that the respondents were not sponsored through the employment exchange for selection to the 723 posts sought to be filed 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 approached the Tribunal and sought direction for their appointment. Interim directions were issued to consider their cases and to appoint, if selected by the selecting authority. Though the Tribunal held that sponsorship of the candidate 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 were issued to appoint the selected candidates. There is a difference of opinion in this behalf. Whereas the majority of two members held that it is not violative of Articles 14 and 16 of the Constitution, the minority view was that it was violative. Thus, these appeals by special leave.

F This court in *Union of India & Ors. v. N. Hargopal & Ors.*, [1987] 3 SCC 308, noted the contention of counsel appearing for respondents therein 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 offend 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 of 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
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H 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 Central Governments 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 judgment.

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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, S/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 State and many people cannot reach the employment exchange to get their names sponsored and the employment exchanges are not adopting fair means and procedure to sent the names strictly according to seniority in their record. So, the better course would be to adopt both the mediums, viz., of employment exchange and publication in the newspaper as that would subserve the public purpose better.

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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

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A 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.

B 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.

T.N.A.

Appeals disposed of.