

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Uday Kumar

FMA 254 of 2024
with
IA No. CAN 2 of 2024

**West Bengal State Electricity Distribution
Company Limited & Ors.**
Vs.
Sri Supratim Mukherjee

For the Appellants	:	Mr. Joydip Kar, Sr. Adv. Mr. Debanjan Mukherjee, Adv.
For the Respondent/ Writ Petitioner	:	Mr. Durga Prasad Dutta, Adv., Mr. Souvik Sen , Adv., Mr. Sumanta Ganguly , Adv.
Hearing Concluded on	:	16 th May, 2024
Judgment on	:	22 nd May, 2024

Soumen Sen, J.:

1. By consent of the parties the appeal and the applications are taken up together and disposed of by this common order.
2. We have heard the learned counsel appearing for the parties.
3. The petitioner is an aspirant for the post of Office Executive in the West Bengal State Electricity Distribution Company Limited (in short,

WBSEDCL). The writ petitioner applied for recruitment pursuant to an advertisement dated 22nd December, 2018. The petitioner qualified in the computer test and also got selected in the personal interview. However, his candidature was rejected by an office order dated 18th November, 2022 as he was declared 'temporarily unfit' due to high Myopia. Thereafter, the writ petitioner underwent Lasik Laser Surgery for correction of his eye sight. Thereafter, he prayed for reconsideration of his candidature vide representation dated 24th November, 2022 made to the General Manager (HR&A), WBSEDCL.

4. While the said representation was pending the petitioner made another representation on 13th December, 2022 for reconsideration of his candidature by the said officer. In view of non-consideration of the said representation the writ petitioner filed a writ petition in which a order was passed on 16th January, 2023.

5. In the first writ petition before the learned Single Judge Mr. Debanjan Mukherjee, learned advocate appeared on behalf of the appellant had submitted that the writ petition is not maintainable as all the terms and conditions of the advertisement have been complied with by WBSEDCL in deciding his candidature. It appears that all relevant clauses of employment notification including the clause which gives finality of the decision of the Board pertaining to pre-employment medical test report were placed.

6. It was further submitted that reconsideration, if allowed at that stage, would open the flood gate and cause immense inconvenience to the employer.

7. After hearing the learned counsel appearing for the parties learned Single Judge, inter alia, passed the following order in WPA 318 of 2023:-

“Having considered the rival submissions of the parties and the materials placed on record, this Court finds that;

a. The number of vacancies in respect of the Office Executives is 745. There may be a possibility of all the posts not being filled up as on date.

b. The petitioner after qualifying for the interview went for pre-employment medical examination.

c. After being found temporarily 'unfit, he went for Lasik Laser Surgery.

d. No prejudice or grave inconvenience will be caused to the employer in the event the petitioner's candidature is reconsidered as per the regulations and guidelines of the company and the petitioner is sent for another pre-employment medical examination since he was temporarily UNFIT.

In the light of the discussions above, this Court directs the order dated November 18, 2022 be set aside and the representation dated December 13, 2022 be considered by the respondent no. 2/General Manager (HR & A) within six weeks from date upon giving a personal hearing to the petitioner. A reasoned order be passed and communicated to the petitioner within two weeks of passing thereof. Needless to mention that in the event all the posts are not filled up as on date, one post of Office Executive will be kept vacant till such time the representation of the petitioner is considered and disposed of.

This order is passed in view of the peculiar facts and circumstances of the case.” (emphasis supplied)

8. The General Manager (HR & A) passed an order denying employment to the petitioner. The General Manager held that

"Eligibility of a candidate for employment is supposed to be verified on the date of notification of employment. In other words, candidates should have acquired qualification on or before date of notification. As per academic qualification he was qualified that is why he was called for the Computer Based Test, and Viva-voce subsequently. As he passed Computer Based Test, and Viva-voce he was referred for PMT. During PMT it was found that his vision was not at par with physical requirement as per O.O. No. PP/Pre- emp. Medical checkup/ 10/33 Dated: 06.05.2010 of the Director (HR), WBSEDCL. In the said Office Order there is provision for corrective measures in case of BMI, Gento Urinary System etc., individual above 35 yrs of age detected to be having type-II diabetes without organ involvement & Pregnancy but there is no provision for corrective measures in case of low vision. As there is no such provision of corrective measures in the said office order, in case of low vision, his corrective measures is not considerable." (emphasis supplied)

9. This order was challenged in WPA 4953 of 2023 on the ground that the basis of declaring the petitioner 'temporarily unfit' due to high Myopia in the pre-recruitment Medical Board Examination does not survive by reason of the report of the Ophthalmologist showing that after the Lasik surgery on both the eyes, the petitioner is free from vision impairment. This fact was not considered by the authority in deciding the representation.

10. On behalf of WBSEDCL it was submitted that the writ petitioner did not possess the requisite qualification at the time of recruitment and

therefore, even though the writ petitioner subsequently became medically fit by reason of surgery, his eligibility criterion should be considered as on the date of the advertisement and curing of disease later cannot relate back to the date on which his application was made or considered.

11. It appears that large number of decisions have been cited by the counsel for the appearing parties in justification of their submissions. Learned Single Judge on consideration of the said decisions observed that during the recruitment process, the infirmity relating to low vision was admittedly cured and there was no stipulation in the advertisement that defect relating to 'low vision' had to be rectified long before the selection process. There was no specific bar preventing the petitioner from curing the infirmity during the recruitment process. Therefore, the writ petitioner cannot now be barred from participating in the selection process on the ground that the infirmity was cured during the recruitment process. Learned Single Judge was also of the view that the General Manager (HR & A) in deciding the representation had disregarded the direction passed on 16th January, 2023. The Court found out it perplexing as when re-assessment of candidates in few categories could be re-assessed there could be no reason for the appellant not to re-assess the candidature of the writ petitioner after he had undergone Lasik surgery and regained a better vision.

12. Mr. Joydip Kar, learned senior counsel representing the appellants, submits that the order of the learned Single Judge passed on 16th January, 2023 has categorically stated that the appellant should follow its

rules and regulations and guidelines in deciding the application and the result of another pre-employment medical examination after surgery cannot in any way dilute the regulations and guidelines which have to have followed in the recruitment process. It is submitted that by reason of the specific direction of the learned Single Judge, the writ petitioner's candidature was reconsidered as per the regulations and guidelines. The medical report subsequently obtained after the recruitment process was over could not furnish a ground for reconsideration of the petitioner for the post as he was not eligible on the date when his candidature was considered in terms of notification and the regulations and guidelines of the company.

13. Mr. Kar has submitted that in a public employment the employer is required to strictly adhere to the stipulated selection procedure and unless there is any power of relaxation specifically reserved in the relevant statutory rules or mentioned in the terms and conditions of the advertisement no relaxation could be given to any candidate as in the event of such relaxation those candidates who were ineligible due to similar infirmity would not receive similar benefits and would be deprived of an equal opportunity to apply and compete as observed in ***Bedanga Talukdar v. Saifudaullah Khan & Ors.***¹

14. It is submitted that it is well settled that a person who does not possesses all the requisite qualifications on the date of the notification for the post cannot cure later or at any stage and appointing such a person would amount to a serious illegality and not mere irregularity. The person is required

¹ 2011 (12) SCC 85

to possess all the requisite qualification on the date of declaration of the result. The writ petitioner was aware of the fact that his final appointment is conditional upon being declared medically fit by the Medical Board and he has to pass through the pre-medical test. If any relief is granted to the writ petitioner at this stage it would deprive a large number of candidates who were ineligible as per the recruitment rules due to similar disability or infirmity. They would lose the opportunity to cure such disease before the list is finally published. Granting any benefits to the writ petitioners would be violative of the doctrine of equality as observed in ***Rakesh Kumar Sharma v. State (NCT of Delhi) & Ors.***²

15. Per contra Mr. Durga Prasad Dutta, learned advocate for the writ petitioner has submitted that the appellant having accepted the order of the learned Single Judge and allowed another pre-employment medical examination after he was temporarily declared unfit cannot not turn around and assail the order of the learned Single Judge as it was incumbent upon them to consider the medical report showing that the extent of vision impairment after surgery.

16. It is submitted that in a similar situation the Division bench of the Delhi High Court in ***Ms. Sreeja K. v. Union of India & Anr.***,³ and later on the Hon'ble Supreme court in ***Union of India v. K. Rajashekhar Reddy***⁴ in Civil Appeal no. 4569 of 2022 decided on 14th June, 2023 permit appointment on

² 2013(11) SCC 58

³ 2012 SCC Online Del 3131

⁴ AIR 2022 SC 2861; 2022 (8) SCC 246

submission of re-medical fitness certificate after the candidature was declared temporarily unfit.

17. Mr. Dutta submits that on consideration of the fact that the writ petitioner was declared “temporarily unfit” and it was cured before the recruitment process was completed the learned Single Judge has rightly allowed the writ petition and directed appointment of the writ petitioner.

18. The fundamental question raised by Mr. Kar which needs to be answered is whether the curing of eye sight subsequent to the pre-medical examination could be considered relevant in deciding the suitability of the candidate. Mr. Kar has assailed the order primarily on the ground that the Court cannot re-write the terms and conditions of the advertisement notice as also the rules, regulations and guidelines governing the recruitment process. The eligibility of a candidate has to be assessed on the date of the advertisement/notification. On the date of advertisement the writ petitioner might have fulfilled the academic qualification and was successful in the viva-voce but he was temporarily “medically unfit” for the job. Rules and regulations have categorized cases where certain diseases were to be considered as temporary in nature and reassessment was allowed if the disability is overcome within the period specified. Beyond such period however the candidates could not be considered for the post. The rules and regulations are not under challenge. It is true that he was temporarily unfit and the disease was curable, but in absence of any rules and regulations the Court cannot direct the bending of rules to accommodate the writ petitioner depriving

other candidates whose candidature might have been rejected on similar grounds.

19. However, it appears that in the earlier litigation the learned Single Judge directed reconsideration of the candidature of the petitioner as per the regulation and guidelines of the company upon another pre-employment medical examination since the writ petitioner was declared temporarily unfit. The tenor of the said order makes it clear that the learned Single Judge directed the authority to reconsider the candidature based on the result of the pre-medical examination to be conducted by the writ petitioner notwithstanding an objection raised on behalf of the appellant that the rules and regulations do not permit any such re-examination or relaxation. This order has attained finality. This order has been implemented. Once this order is accepted and allowed to be implemented and a pre-medical examination was held in order to assess the extent of impairment in the eyes it is no more open for the authority concerned to decide suitability of the petitioner based on the earlier report and for that precise reason the learned Single Judge has observed that the authority cannot sit in appeal over the order passed by the learned Single Judge. In this regard we may refer to the following observation of the learned Single Judge:

“71. The issue with regard to the impermissibility in the Regulations/Guidelines was considered by this Court, on January 16, 2023, but the General Manager sought to give a go-bye to the specific directions of this Court by again referring to the Guidelines/Regulations of the Corporation. It has been sought to be

argued on behalf of the Corporation that under Clause "D" of the order dated January 16, 2023 the petitioner's candidature was required to be considered as per the Regulations/Guidelines of the Corporation. The Regulations/Guidelines of the Corporation did not permit such re-examination for people with low vision. Therefore, by not reassessing the candidature of the Petitioner the General Manager did not fail to comply with the Order passed by this Court.

72. When this Court specifically directed that no prejudice or grave inconvenience would be caused to the employer in the event the petitioner's candidature was reconsidered as per the Regulations/Guidelines of the Corporation and the petitioner was sent for another Pre-Employment Medical checkup, it was incumbent upon the General Manager to read the Order as a whole to appreciate its true spirit and meaning without relying on only a part of the Order and seeking to interpret it in a restrictive manner, according to his convenience. After hearing the arguments on behalf of the Respondent Corporation, the Order dated January 16, 2023 was passed. The General Manager could not have again resorted to the same arguments to deny Pre-employment Medical check-up of the petitioner, after corrective surgery

73. When this Court directed the candidature of the petitioner to be reconsidered as per the Regulations/Guidelines of the company, it naturally implied that the consideration of petitioner's candidature to be made, keeping in mind the Medical Parameters as stipulated by the Regulations/Guidelines of the Corporation. It did not give the GM any authority to sit in Appeal over this Court's Order by seeking to frustrate the directions of this Court in the garb of impermissibility as per the Regulations/Guidelines of the Corporation.

74. In the present writ petition being WPA 4953 of 2023 the same arguments have been advanced on behalf of the Corporation which were considered and rejected in WPA 318 of 2023. Arguments have

been advanced on the issue why the Court's Order dated January 16, 2023 should not be carried out by citing several Judgments. The Order dated January 16, 2023 has not been carried in Appeal nor an application for clarification of the order was made by the Corporation. The approach of the Corporation is not at all appreciated by this Court.

75. Therefore, this Court is not willing to accept the arguments of the Respondent Corporation intended to frustrate/not comply with the directions passed by this Court on January 16, 2023 The attitude of the Corporation is recalcitrant, to say the least”.

20. It is also been observed that no application was filed by the appellant for clarification of the said order if they were at all in doubt at the time of implementation of the earlier order. We are also of the view that the authority could not have ignored the earlier order and decide the suitability of the petitioner based on the earlier pre medical examination report. Moreover, we find that the writ petitioner was successful in qualifying for pre medical examination and thus he has passed the threshold test. Pre-medical examination was done in order to find out whether the petitioner would be suitable for the job. A person temporarily unfit and permanently disabled cannot be treated at par. The appellant in the rules and regulations categorized certain diseases which are curable and for which a timeline is set for the candidates to cure themselves of such diseases. The impairment of the vision was found to be temporary and was curable.

21. In view of the aforesaid we are unable to accept the submission of Mr. Kar that the earlier order does not prevent the appellant from reconsidering

the medical fitness of the petitioner after he has underwent LASIK (laser assisted in situ keratomileusis) surgery. Once the learned Single Judge has allowed a second medical examination and the appellant has accepted the said direction and in the second medical examination after surgery his vision was found to be perfect and suitable for the job. The appellant now at this stage cannot reject the candidature of the writ petitioner that the writ petitioner did not succeed in the first pre medical examination. There is nothing on record to show that the person similarly placed as that of the writ petitioner has approached the court for reconsideration on similar grounds. The appellant has not disclosed the names of the persons who have been disqualified on the self same ground earlier. Although we accept the decision in ***Union of India v. K. Rajashekhara Reddy*** (*supra*) passed by the Hon'ble Supreme Court in exercising its plenary power under Article 142 of the Constitution. We are of the view that the petitioners having crossed the threshold test and fulfill the essential conditions could not have been deprived of employment on the ground of temporary unfit due to high myopia which was cured later on before the entire recruitment process was over. Unlike the decisions referred to by Mr. Kar where the essential documents were not produced or that the candidates did not have the requisite qualification on the date of the advertisement/notification and acquired the essential qualification after the advertisement, in the instant case, the writ petition has produced all requisite documents and fulfill essential condition.

22. In the instant case we are of the view that the writ petitioner was having the essential qualification on the date of advertisement and the nature of the disease was temporary in nature and curable as would be evident from the medical report. On such special facts we are not inclined to interfere with the order passed by the learned Single Judge. The appeal and the applications stand dismissed.

23. In view of the fact that one post has been kept reserved, the appellant is directed to give appointment to the writ petitioner forthwith.

24. However, there shall be no order as to costs.

25. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

I agree

(Soumen Sen, J.)

(Uday Kumar, J.)