

GAHC010141532013



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/246/2013

RAVIJIT BORO
S/O SRI MONO MOHAN BORO, HOUSE NO.4, KARMAVEER BORDOLOI
PATH, RUKMININAGAR NEAR WIRELESS CENTRE, DISPUR, GHY-6,
KAMRUP, ASSAM

VERSUS

STATE BANK OF INDIA and 3 ORS
HEAD OFFICE, EASTERN CIRCLE, G.S.ROAD, P.O. ASSAM SACHIVALAYA,
DISPUR, KAMRUP, ASSAM, REPRESENTED BY GENERAL MANAGER
HUMAN RESOURCES DEPARTMENT

2:ASSTT. GENERAL MANAGER HR
HUMAN RESOURCE DEPARTMENT
LOCAL HEAD OFFICE
NORTH EASTERN CIRCLE
G.S. ROAD
ASSAM SACHIVALAYA
DISPUR
GHY-6
ASSAM

3:GENERAL MANAGER TRAINING
STATE BANK LEARNING CENTRE
S.K. BARUA ROAD
RUKMININAGAR
P.O. ASSAM SACHIVALAYA
DISPUR
KAMRUP
ASSAM

4:ASSTT. GENERAL MANAGER TRAINING

STATE BANK LEARNING CENTRE
S.K. BARUA ROAD
RUKMININAGAR
P.O. ASSAM SACHIVALAYA
DISPUR
KAMRUP
ASSA

Advocate for the Petitioner : MR.R R KAUSHIK

Advocate for the Respondent : MR.M K DAS

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

For the petitioner : Mr. K. Goswami, Sr. Advocate, Mr. A. Sandilya.
.... Advocate

For the respondents: Mr. A. Parvez
. ...Advocate

Date of hearing : 19.09.2023.

Date of judgment : 19.09.2023.

JUDGMENT AND ORDER (ORAL)

Heard Mr. K. Goswami, learned Senior Counsel assisted by Mr. A. Sandilya, learned counsel for the petitioner. Also heard Mr. A. Parvez, learned counsel for the respondent State Bank of India.

2. The petitioner's case in brief is that pursuant to an Advertisement dated 01.03.2012, for filling up the post of Assistant (Clerical Cadre) under the State Bank of India (SBI), the petitioner took part in the selection process. On being successful, the petitioner was given an offer of appointment vide letter dated 15.11.2012. The

petitioner was thereafter asked to undergo a Medical Test and after having undergone the Medical Test, the petitioner was informed by the respondent No. 4 about the inability of the SBI to allow the petitioner to join the post of Assistant, as he was stated to have been found medically "unfit", vide letter dated 04.12.2012.

3. The petitioner's counsel submits that the Medical Report of the petitioner issued by the Excelcare Hospitals Pvt. Limited shows that the petitioner was suffering from '*known Ankylosing spondylitis*', which was a progressive disease, though 'there was no disease activity currently'. The petitioner's counsel further submits that though the petitioner was suffering from *Ankylosing spondylitis* but presently, he was not suffering from any physical disability.

4. The petitioner's counsel submits that there being no finding/ observation made by the Doctor to the effect that the petitioner was incapable of doing the job of an Assistant (Clerical Cadre) under the Bank, the denial of appointment to the petitioner was arbitrary.

In support of his submission, the learned Senior Counsel has relied upon the (i) Judgment of the Hon'ble Supreme Court in the case of *Nandkumar Narayanrao Ghodmare Vs. State of Maharashtra & Others*, (1995) 6 SCC 720 (ii) the decision of the Bombay High Court in *MX of Bombay Indian Inhabitant Vs. M/s ZY and Another*, AIR 1997 BOMBAY 406 (iii) the decision of the Delhi High Court in *Anil Kumar Vs. State Bank of India*, 2012 SCC Online Del 4005.

5. Mr. A. Parvez, the learned counsel for the SBI submits that as per the Doctor's Report, the petitioner's disease was a progressive disease and as such, there was no infirmity with the decision of the SBI not to appoint the petitioner to the post of Assistant, which involved sitting in the Bank the whole day. He submits that due to the progressive disease suffered by the petitioner, the petitioner would not have been able

to sit on his job the whole day. He also submits that the Bank, in terms of the "Note to the personal statement of the candidates" provided by the Bank, has clearly stated that no appeal would lie against the decision of the Medical Examiner and if the petitioner produced evidence regarding the possibility of an error of judgment in the decision of the Medical Examiner within one month, the Bank could allow an appeal to the Medical Board to be constituted by the Bank. He submits that as the petitioner did not avail of the opportunity to challenge the decision of the medical examiner, with regard to the petitioner's disease being a progressive disease within one month, the decision of the Medical Examiner has to be treated to be final. As such, there was no infirmity in not appointing the petitioner in the post of Assistant. In this regard, he has relied upon the Judgment of the Hon'ble Supreme Court in the case of *Indian Council of Agricultural Research and Another Vs. Smt. Shashi Gupta*, reported in *AIR 1994 SC 1241*.

6. I have heard the learned counsels for the parties.

7. The submissions made by the counsels for the parties and the documents on record show that the Medical Examiner had stated that the petitioner was suffering from *Ankylosing spondylitis* with neck rigidity, which was a progressive disease. The Medical Examiner, Dr. Dharitri Deka, has also stated in his report that he had discussed the case with the Chief Medical Officer, Corporate Centre Mumbai, who has stated that the petitioner was not fit for the Bank, as he was suffering from a progressive disease.

8. Though the report of the Medical Examiner states that the petitioner is suffering from a progressive disease and is unfit, he had not stated that the petitioner was incapable of performing the normal job functions required of an Assistant (Clerical cadre) in the Bank.

9. In the case of *MX of Bombay Indian Inhabitant (Supra)*, the Division Bench of

the Bombay High Court while considering the case of an HIV patient, had held that no person can be deprived of his right to livelihood except according to procedure established by law. The rule providing that a person must be medically fit before he is employed or to be continued while in employment is obviously, with the object of ensuring that the person is capable of or continues to be capable of performing his normal job requirements and that he does not pose a threat or health hazard to the persons or property at the workplace. The persons who are rendered incapable, due to the ailment, to perform their normal job functions or who pose a risk to other persons at the work place, due to having been infected with some contagious disease which can be transmitted through the normal activities at the workplace can be reasonably and justifiably denied employment or discontinued from the employment, inasmuch as such classification has an intelligible differentia which has clear nexus with the object to be achieved, viz., to ensure the capacity of such persons to perform normal job functions, as also to safeguard the interests of other persons at the work place. But the person who, though has some ailment does not cease to be capable of performing the normal job functions and who does not pose any threat to the interests of other persons at the workplace during his normal activities, cannot be included in the aforesaid class. The Bombay High Court thus held that denying employment merely on the ground of having an ailment is arbitrary and unreasonable.

10. In the case of *Anil Kumar Vs. State Bank of India (Supra)*, the petitioner therein was directed to be appointed as a Probationary Officer by the Delhi High Court, as the Medical Report made by the Medical Board was of a view that there was no impediment for him to join the post as a Probationary Officer in the SBI, though he was suffering from Haemophilia B Disease with bilateral knee joint involvement as target joints.

11. In the case of *Nandkumar Narayanrao Ghodmare(Supra)*, the petitioner was not

appointed on account of his handicap i.e. colour blindness. Though the Supreme Court had earlier directed that if needed, the Government could send the petitioner therein for medical examination to an expert Government Ophthalmologist, no action was taken by the Government. On the other hand, the petitioner had filed an affidavit stating that only 5 out of 35 posts in the Department required perfect vision, without colour blindness. Under the above circumstances, the Supreme Court directed the Government to consider the case of the petitioner for appointment to the post of Agricultural Officer.

12. In the case of *Indian Council of Agricultural Research and Another (Supra)*, the Supreme Court held that once the Medical Board and the Appellate Medical Board had found the respondent medically unfit for the post of Scientist Grade S, the Central Administrative Tribunal, New Delhi had no jurisdiction to go over the medical opinions and direct the appointment of the respondent to the post of Scientist Grade S. It further held that medical fitness is the *sine qua non* for appointment to public services and it is the inherent right of an employer to be satisfied about the medical fitness of a person before offering employment to him/her.

13. As can be seen from the above judgments, appointments to a post cannot be denied to a successful candidate, if he/she is capable of performing the normal job functions related to the post. However, the employer had a right to be satisfied about the medical fitness of a person and could deny a candidate appointment, if the person was unable to do the normal job functions required for the job. Though the medical opinion stating that the petitioner is unfit implies that the petitioner is incapable in performing the normal job functions of an Assistant (Clerical cadre) in the Bank, there is no clear finding or observation made that the petitioner was not capable of doing the normal job functions. The implication of the medical examiner's report is that the disease being progressive, it was unlikely that the petitioner could do the normal job functions in future. The only statement made by the Medical Officer was that the

petitioner was unfit due to the petitioner's disease being a progressive disease. The judgments referred to above also shows that medical fitness is the *sine qua non* for appointment in public service, the exceptions being the posts reserved under the Persons with Disability Act, 1995. As the "Note to the Personal Statement of the candidates" provides for examination of a candidate by a Medical Board, this Court is of the view that a Medical Board should examine the case of the petitioner and take a decision, as to whether the petitioner is able to render the normal job functions assigned to an Assistant (Clerical Cadre). Though the one month period provided for referring the decision of a medical examiner to a Medical Board has long expired, this Court is of the view that the examination of the petitioner by a Medical Board constituted by the SBI, would settle the issue regarding whether the petitioner's disease, which was diagnosed more than 10 years ago has progressed and whether the petitioner would be able to perform the normal job functions required of the job. Accordingly, the respondents shall constitute a Medical Board within a period of one month from the date of receipt of a certified copy of this order. The petitioner should then be informed to be present for the medical examination on a date to be fixed by the Medical Board/ respondents.

14. The Medical Board shall consist of at least three Doctors, one of whom shall be a specialist in relation to the disease suffered by the petitioner i.e. *Ankylosing spondylitis*. The Medical Board shall specifically state as to whether the petitioner's disease is progressive and whether the petitioner is capable/incapable of performing the normal job functions of an Assistant (Clerical cadre). The respondents shall thereafter issued necessary order(s) in pursuant to the decision to be taken by the Medical Board.

15. The fate of one post of Assistant (Clerical cadre) under the SBI, which should be vacant in terms of the Order dated 24.01.2013, shall accordingly be decided on the basis of the decision to be made by the Medical Board.

16. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant