

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.23853 of 2016

Sheela Vargheese .. Petitioner

versus

1. The Director,
ESI Corporation Hospital,
K.K.Nagar, Chennai-78.
2. The Joint Director (Admn.),
ESI Corporation Hospital,
K.K.Nagar, Chennai-78.
3. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai 600 104. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the records, relating to the 3rd respondent/Tribunal's order made in O.A.No.2 of 2013, dated 18.12.2015, quash the same and consequently, direct the respondents to forthwith consider and appoint the petitioner as Staff Nurse and to extend all consequential benefits, arising thereto.

For Petitioner : Mr.L.Chandra Kumar

For Respondents 1 & 2 : Mr.C.V.Ramachandramurthy

ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this writ petition is to an order of the Central Administrative Tribunal, Madras Bench, Chennai, in O.A.No.2 of 2013, dated 18.12.2015, by which, the Tribunal has declined to quash the order, dated 31.10.2012, passed by the Joint Director (Admn.), ESI Corporation Hospital, Chennai, 2nd respondent, by which, the petitioner has been informed that the offer given to her, for the post of staff nurse, has been cancelled, on the ground of medical unfitness for employment.

2. Short facts leading to the writ petition are that the petitioner has applied for the post of Staff Nurse in ESI Corporation. She came out successful in the written examination. Vide memorandum, dated 10.10.2012, she was issued with an offer of appointment. She was directed to appear before the Medical Board, which she did. However, the offer of appointment was cancelled, by order, dated 31.10.2012. Challenging the same, she has filed O.A.No.2 of 2013, before the Central Administrative Tribunal, Madras Bench, contending inter alia, that she had worked as a staff nurse from November, 2006, till August, 2008 in UAE and other hospitals, as staff nurse and therefore, contended that she ought not to have been found to be unfit to work as Staff Nurse. She has B.Sc., Nursing Degree, and therefore, fully qualified for the post.

3. Before the Tribunal, the respondents have contended that when the petitioner was subjected to medical examination, it was found that she is suffering from "Rheumatic Heart Disease (RHD)" and the Specialist of Government General Hospital, Chennai, has also certified her health condition as, "fit for light work only". It was contended by the respondents that the petitioner cannot take advantage of the experience certificates, issued by the previous employers of the private institutions, as medical fitness for employment, in ESIC Hospital.

4. The petitioner has filed a re-joinder, quoting an Office Memorandum No.F.5(11)-45/56, M.II, dated 17th November, 1956 and further contended that "Rheumatic Heart Disease (RHD)" is not a bar for employment, as staff nurse. The respondents have filed a reply to the rejoinder, reiterating their stand, and further contended that the findings of the Board was communicated to the petitioner.

5. Adverting to the above rival submissions, after going through the medical report and by observing that the writ petitioner has not disputed "Rheumatic Heart Disease (RHD)" and in view of the report of the Medical Board, declaring the petitioner as unfit, on account of the above disease, the Tribunal declined to grant the relief sought for. Being aggrieved by the above, instant writ petition has been filed.

6. Assailing the correctness of the order impugned, Mr.L.Chandrakumar, learned counsel for the petitioner submitted that order of the Joint Director (Admn.), ESI Corporation Hospital, Chennai, the 2nd respondent herein, declaring that the petitioner as "constitutionally weak and bodily infirm", is liable to be set aside, as the same is contrary to the certificates, issued by the Hospital authorities, where she had worked earlier, as staff nurse. When the petitioner possesses the necessary qualification, B.Sc., Nursing degree and

sufficient experience, as staff nurse, the same ought not to have been ignored, by citing that the petitioner suffers from "Rheumatic Heart Disease (RHD)", unsuitable or unfit for employment, as staff nurse, in the Corporation. It is also his contention that the medical report of the Special Board, ESI Hospital, K.K.Nagar, Chennai, is not based on consensus.

7. Mr.C.V.Ramachandramurthy, learned counsel appearing for the respondents made submissions to sustain the order of the Tribunal.

Heard the learned counsel appearing for the parties and perused the materials available on record.

8. Material on record discloses that in the typed set of papers, the petitioner has enclosed a certificate from Annammal Hospital, Kuzhithurai, certifying that she had worked as staff nurse, in a multi-specialty hospital, from 1st November, 2001 to 28th February' 2002. President of St. Antony's School of Nursing, Amanattentheri, Enayam Post, Kanyakumari District, is stated to have given a certificate, dated 11.05.2004, stating that the petitioner had worked as an Instructor, from 1st March' 2002 to 31st May' 2002. There is yet another certificate, dated 16.11.2004, issued by Irudhayams Hospital (P) Ltd., Nagercoil, certifying that the petitioner was employed on voluntary basis, as a staff nurse, in the said hospital, from June' 2002, till the date of issuance of the abovesaid certificate. So also, a certificate has been issued by Kerala Institute of Medical Sciences, Trivandrum, certifying that the petitioner was working in the said institute, as a Staff Nurse, Grade II, Department of Nursing from 1st August, 2007 to 04th August, 2008. Manager of Life One Clinic, Dubai, UAE, is stated to have issued a certificate.

9. Offer of appointment to the post of staff nurse in ESI Corporation, dated 10.10.2002, has been issued to the petitioner, subject to certain conditions, which includes, a medical certificate of fitness to be issued by a competent authority. Vide letter, dated 16.10.2012, the Joint Director (A), ESI Corporation, Chennai, 2nd respondent, has constituted a Medical Board, for examination of candidates, selected and issued, with an offer of appointment to the post of staff nurse. The Medical Board, which includes, a Cardiologist from Government Hospital, Madras Medical College, Chennai, has taken ECG. Finding that the petitioner suffers from "Rheumatic Heart Disease (RHD)" and considering its working environment and that odd hours duty, as per the needs, the Medical Board has opined that, "the petitioner is fit only for light work". The Medical Board has also observed that the petitioner is unfit for the post of staff nurse, ESI Hospital, K.K.Nagar, Chennai-78. Medical fitness certificate for employment, dated 16.10.2012,

issued by the Chairman, Special Medical Board, ESIC Hospital, K.K.Nagar, Chennai-78, is extracted hereunder:

ESIC HOSPITAL, K.K.NAGAR
ASHOK PILLAR ROAD, CHENNAI 600 078.

MEDICAL FITNESS CERTIFICATE FOR EMPLOYMENT

I do hereby certify that after examination of Smt. Sheela Vargheese, a candidate for employment in ESIC Hospital, Chennai-78, by the duly constituted Medical Board, the Medical Board discovered any disease - RHD (Communicable or otherwise) or constitutional weakness or bodily infirmity, to fit only for light work.

(1) She is found to be unfit from employment for the post of staff nurse, ESIC Hospital, K.K.Nagar, Chennai-78, considering its working environment and that odd hours duty as per the needs.

(2) I do not consider this a disqualification for employment in ESIC Hospital, K.K.Nagar, Chennai-78.

(3) Any other remarks: For (1) above, I agree with the Board of Examiners (Medical Officers) and found her unsuitable/unfit to the employment offered. She is therefore, made medically unfit.

* Score out whichever is not applicable.

sd/-
CHAIRMAN
SPECIAL MEDICAL BOARD
ESIC HOSPITAL, K.K.NAGAR,
CHENNAI 600 078.

10.10.2012

Cardiologist opinion, GH, MMC, Chennai:

-> RHD

-> MODERATE MITRAL RESTENUSIS (POST BMU - 3 TIMES)

-> SENERE PAH

-> FIT ONLY FOR LIGHT WORK

10. Another medical examination has also been conducted on 20.12.2012 and the same is reproduced hereunder:

REPORT OF THE SPECIAL MEDICAL BOARD
DATE OF MEDICAL EXAMINATION: 18/20.10.2012
PHYSICAL EXAMINATION

General Developments: Good

Nutrition: Average

Height (without shoes): 160 Cms; Weight: 64 Kgs.

Temperature: 98.4 F; Blood Group: 'O' Positive

Girth Chest

1. After full inspiration: 84 Cms
2. After full expiration: 82 Cms
3. Skin: Any obvious disease: Normal
4. Eyes: (1) Any disease:
(2) Night Blindness:
(3) Defect in Colour vision:
(4) Field of vision: Normal
(5) Visual Acuity: 6.6
(6) Fundus Examination: NS
.....
8. Respiratory system - Does physical examination reveal anything abnormal in the Respiratory change. If yes.
explainfull: NVRS
9. Circulatory system: Known case of mitral stenosis
BMN - 3 times done - 1997, 2000 and 2007
Needs Cardiologist
(G.H.) Cardiologist opinion - Fitness
for a light work
- (a) Heart - any organic lesionns - 74/mt ...Rate:
Standing
After hopping 25 times: 100/mt
12 Minutes after hopping: 120/mt
- (b) Blood pressure: Systollc: 110; Diastollc: 70
.....
14. Is there anything in the healthy of candidate likely to render him/her unfitfor the efficient discharge of his/her duties in service, for which, Ms.Sheela Vargheese is a candidate?
Rheumatic MS - Pulmonary HW.
Note:- In the case of female candidate, if it is found that she is pregnant of 12 weeks standing or over, she should be declared temporarily unfit (Regulation 9).
- (i) State the category/post (Gazetted/Non-Gazetted/Medical/Para-Medical), for which, the candidate has been examined: F
- (ii) Whether he/she has been found qualified in all respects for the efficient and continuous discharge of his/her duties in the above category/post?

(iii) Is the candidate fit for field services?

Note: The Board should record their findings under one of the following three categories:

Unfit on account of Rheumatic heart disease - Post BMV (3 Times) - Pulmonary Hyper Tension.

Sd/-
Members

CAR -> Cardiology - LA Enlargement - Pulmonary HTN

ECG -> Normal - Sinus Rhythm - LA Enlargement

11. Vide letter, dated 30.10.2012, the Joint Director (Admn.), ESI Corporation, Chennai, has communicated to the petitioner that in view of the opinion of the Medical Board, certifying that the petitioner as unfit, due to "Rheumatic Heart Disease (RHD)" and declaring as "constitutionally weak and bodily infirm", the offer of employment to the post of staff nurse, stood cancelled.

12. Material on record discloses that subsequently, the petitioner has obtained a certificate from Kerala Institute of Medical Science, Kerala and filed the Original Application before the Central Administrative Tribunal, Madras.

13. Offer of employment, dated 10.10.2012, makes it clear that appointment to the post of staff nurse in ESI Corporation, is subject to medical certificate of fitness. Medical Board has been constituted and that the petitioner has been subjected to medical examination, by a team of doctors. As per the Note, dated 16.10.2012, details of the specialists, constituting the Medical Board, are as follows:

1.	Medical Superintendent	Chairman
2.	General Medicine Member	Dr.H.Ganesh, Specialist (For Male) and Dr.Nandagopal, Specialist (For Female)
3.	General Surgery Member	Dr.Anbazhgan, HOD/Dr.Manjula
4.	ENT Department	Dr.G.Raju, Specialist
5.	Eye Department	Dr.D.Rajakannan, Specialist
6.	Obstetrics & Gynaecology	Dr.Binayak Deb Burman, HOD (He is requested to nominate the specialist for the examination of the Candidate)

14. Duly constituted Board has conducted certain tests and found that the petitioner is suffering from "Rheumatic Heart Disease (RHD)" and hence, opined that she is fit to do only

light work. Considering the working environment and odd hours duty, as per the need, and having found that the petitioner is suffering from Rueumatic Heart Disease (RHD), the Medical Board declared the petitioner, as unfit/unsuitable, for employment to the post of staff nurse.

15. Though Mr.L.Chandrakumar, learned counsel appearing for the petitioner submitted that the opinion of the Board was not based on consensus, this Court is not inclined to accept the same. A cardiologist, working in Government Hospital, Madras Medical College, Chennai and a member of the Board, has categorically recorded that the petitioner suffers from Rueumatic Heart Disease (RHD). In the subsequent medical examination conducted on 18/20.10.2016 also, the Medical Board has once again reiterated that the petitioner is suffering from Rueumatic Heart Disease (RHD) and pulmonary hyper tension.

16. When the employer is obligated to find out the suitability of a candidate to a post notified, depending upon the nature of duties, working environment and odd hours duty, as per the need and when a duly constituted Medical Board has offered its opinion, on more than one occasion, stating that the petitioner, suffering from Rueumatic Heart Disease (RHD) and Pulmonary Hypertension, is fit only for light work and not suitable/unfit to the post of staff nurse and thus, found her medically unfit, we are of the considered view that Courts are not experts to reverse the said finding of medical fitness and judge the suitability of a candidate to a post. Reference can be made to few decisions,

(i) In State Bank of India v. G.K.Deshak reported in 1994 Supp (1) SCC 70, the Hon'ble Supreme Court, at Paragraph 3, held as follows:

"The medical opinion, which is on the records of the case, clearly indicates that the defect in his eyes is very serious and he is unfit for the post. He was allowed to join in obedience to the writ issued by the High Court. The reasons given in the impugned judgment indicate that the High Court took upon itself to decide the question of medical fitness of the respondent and on reaching a conclusion in favour of the respondent, preferred the same as against the medical opinion of the specialist doctor. It is significant to note that it is not suggested on behalf of the respondent that the authorities of the appellant State Bank of India have acted mala fide or with any malice against the respondent. In the circumstances, we do not approve of the approach adopted by the High Court in allowing the writ petition."

(ii) In Indian Council of Agricultural Research and another v. Smt. Shashi Gupta reported in AIR 1994 SC 1241, at Paragraph 7, the Hon'ble Apex Court held as follows:

"7. We do not agree with the reasoning and the conclusions reached by the tribunal. We are of the view that once the medical board and the Appellate Medical Board found the respondent medically unfit for the post of Scientist Grade S the tribunal had no jurisdiction whatsoever to have got over the medical opinions and directed her appointment to the Service. The Tribunal out-stepped its jurisdiction and acted with an utter perversity. Medical fitness is the sine qua non for appointment to public services. It is the inherent right of an employer to be satisfied about the medical fitness of a person before offering employment to him/her."

17. The petitioner has obtained a degree in B.Sc., Nursing and stated to have worked in private hospitals. The fact that the petitioner suffers from Rheumatic Heart Disease (RHD), is not disputed. When the respondents have conducted medical examination twice, and reiterated their stand that the petitioner suffers from Rheumatic Heart Disease (RHD) and not suitable for employment, certificates obtained from the private institutions would not lend any support to the case of the petitioner, for selection to the post of staff nurse, in ESI Hospital.

18. Procedure for appointment in ESIC, is to subject the candidates for medical examination, by a duly constituted Board of Doctors. In the case on hand, twice on 16.10.2012 and 18/20.10.2012 respectively, medical examination has been done, with a clear opinion of the medical board, as to the suitability of the petitioner and whereas, the petitioner has obtained a certificate from a private institution on 02.11.2012. The respondents, vested with a duty and responsibility, in the matter of selection of a suitable candidate, for the post of staff nurse, cannot ignore the certificates issued by the duly constituted Medical Board, comprising Government Doctors and give preference to the certificates issued by private institutions. This Court also deem it fit to record that it would be inappropriate to sit in appeal, over the judgment of the Medical Board and is of the view that, it is the inherent right of the employer to satisfy the medical fitness of the candidate, for appointment to the post notified. Positive declaration of a duly medical board, as regards, unfitness, cannot be overturned, unless, legal and justifiable cause is shown, which on the material on record, we are not inclined.

Courts, while exercising the jurisdiction, under Article 226 of the Constitution of India, should not overstep and reach any conclusion of perversity. Besides, accepting the stand of the petitioner would run contrary to the procedure followed in selecting candidates in Government/Corporation, as the case may be.

19. Though Mr.L.Chandrakumar, learned counsel appearing for the petitioner submitted that there is no consensus in the Board, while issuing the certificate, going through the same, we are of the view that it is otherwise. For the reasons stated supra, we find no infirmity in the order of the Tribunal, warranting interference.

20. In the result, the Writ Petition is dismissed. No costs.

skm

Sd/-

Assistant Registrar (CS-III)

/TRUE COPY/

Sub-Assistant Registrar

To

1.The Director,
ESI Corporation Hospital,
K.K.Nagar, Chennai-78.

2. The Joint Director (Admn.),
ESI Corporation Hospital,
K.K.Nagar, Chennai-78.

3.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai 600 104.

+1CC to MR.C.V.RAMACHANDRAMURTHY Advocate SR.NO.58458

+1CC to MR.L.CHANDRA KUMAR Advocate SR.NO.58766

W.P.No.23853 of 2016

LRS [CO]
MK:12/11/2016