

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.7523 of 2003

Between:

I.Tarakaraman

...Petitioner

VERSUS

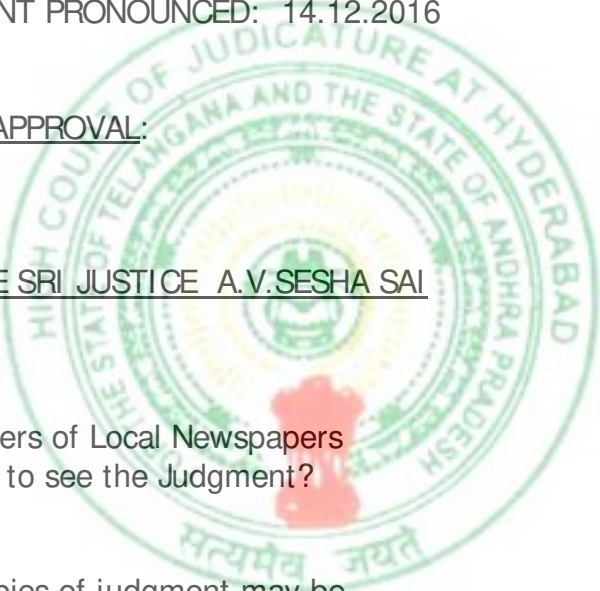
Banking Service Recruitment Board, Mumbai,
Regent Chambers, 11th floor, Nariman Point,
Mumbai, rep. by its Secretary and others.

...Respondents

DATE OF JUDGMENT PRONOUNCED: 14.12.2016

SUBMITTED FOR APPROVAL:

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

- 
1. Whether Reporters of Local Newspapers
May be allowed to see the Judgment? Yes/No
 2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? Yes/No
 3. Whether Their Lordship wish to see the
Fair copy of the judgment? Yes/No

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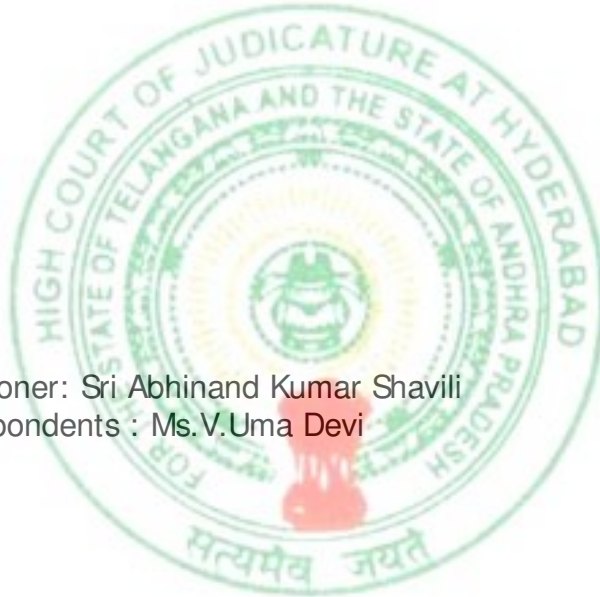
...Respondents

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!Counsel for Petitioner: Sri Abhinand Kumar Shavili

^ Counsel for Respondents : Ms.V.Uma Devi



? Cases referred:

1. Civil Appeal No.7414 of 2014
2. (2008) 149 PLR 431 (DB)
3. L.P.A.No.477 of 2009 in CWP No.19782 of 2001 dated 22.6.2009
4. Civil Misc. Writ Petition No.35898 of 2009 (DB)
5. (2014) 4 SCC 108
6. (2015) 3 SCC 1
7. (1969) 1 SCC 110
8. (2013) 1 SCC 353
9. (1998) 4 SCC 117

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.7523 of 2003

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the action of the Respondents in declaring the petitioner as medically unfit for the post of Clerk in State Bank of India, Aurangabad Zone and the petitioner herein prays for a consequential direction to the Respondents to appoint him in the said post.

The facts and circumstances of the case, leading to the filing of the present writ petition are as infra:

2. In response to a notification dated 12.1.1996 issued by the Banking Services Recruitment Board (BSRB), inviting applications for filling up clerical cadre posts in various branches of the Bank in the States of Maharashtra and Goa, petitioner herein had also responded against the vacancies of Aurangabad zone. Thereafter, the petitioner herein appeared for written test and he got qualified in the same and later faced the skill test on 27.10.1996 and subsequently, BSRB asked the petitioner to appear for interview before a Committee and he attended the same on 2.1.1997 and vide letter dated 31.1.1997, BSRB informed the petitioner that he was provisionally selected for appointment in the clerical cadre and allotted to State Bank of India, Aurangabad Zone. The respondents, thereafter asked the petitioner to undergo medical tests between 12.5.1997 and 14.5.1997 and the petitioner had undergone the same and vide letter bearing No.DGM:AUR:PER:112:1960 dated 6.11.1997, the Chief General Manager (PER & HRD) informed the petitioner that he was declared unfit by the Medical Board. The petitioner, subsequently submitted a representation dated 22.11.1997 to the Chief General Manager, State Bank of India, Mumbai-2nd

respondent herein, requesting to review the issue by referring to the duly constituted Medical Board for fresh examination. By way of a letter dated 14.5.1998, petitioner was asked to appear before the Bank's Medical Officer at Zonal Office, Aurangabad on 26.5.1998 along with necessary papers. Thereafter, petitioner was referred to Dr.Chitgopehar, Civil Surgeon, Aurangabad by the Medical Officer vide letter dated 25.5.1996 and subsequently, after examination Dr.Chitgopehar certified on 28.5.1998 that the petitioner is fit for clerical job while indicating the vision of the petitioner as 6/18 – 6/9. Subsequently, vide letter bearing No.PER:SDG:112:1116 dated 24.8.1998, the Chief General Manager (PER & HR) informed the petitioner as under:

“On the strength of report of Medical Board constituted on 28.5.1998 for rechecking eyesight of you, you have been declared unfit as per the Bank's standard for recruitment for the job by the competent authority, hence we regret to offer you appointment in our Bank which please note”.

3. Later on 9.9.1998, petitioner herein submitted a mercy appeal to the Chairman, State Bank of India, Central Office, Mumbai, bringing to his notice the following factors:

- “(i) That though the Zonal Office, Aurangabad reportedly constituted a fresh Medical Board on 28.5.1998 as requested in my appeal dated 22.11.1997 addressed to the Chief General Manager, Mumbai, the fact still remains that no such Medical Board was constituted and I was asked to appear before various doctors on 28.5.98 and 29.5.98 separately at their respective places with the result that a consensus decision has not been taken in my case to assess my fitness for appointment in the Bank.
- (ii) That the medical certificate issued by Civil Surgeon, Aurangabad after taking into consideration of the report of the ophthalmist of Civil Hospital, Aurangabad clearly states as under:
 “The patient was examined by me and my Optholmist. With spectacles his vision is 6/18 – 6/9. Fit for clerical job and typing work”.

Since the certificate issued by the Civil Surgeon and the Optholmist of Civil Hospital, Aurangabad are quite enough to consider my appointment in the Bank, the action of Zonal Office, Aurangabad in again referring me to appear before another Optholmist is required to be examined as to whether the issue has been dealt with in right perspective to render justice to me.

- (iii) That as stated in para 6 above that as per recruitment rules read out by the Medical Officer of Zonal Office, Aurangabad that even if I am considered as "one eyed candidate", when the rules provide that the candidate cannot be denied of appointment, the right course of action on the part of Zonal Office could have been to obtain an undertaking from me as stipulated in the recruitment rules and allowed me to join in services of State Bank of India rather than denying appointment with the plea of medical report of so called constituted "Medical Board".
- (iv) That I successfully passed the written examination conducted by the BSRB with the same sight and vision, passed the typing test with same sight and vision and also successfully got through in the personal interview. Thus I am equally capable with the same sight and vision to discharge my duties in the SBI".

4. By way of the said representation, while pointing out the above issues, the petitioner herein sought the intervention of the Chairman in the matter and to issue suitable orders to the Zonal Office, Aurangabad to accommodate him. Subsequently, vide letter dated 7.6.1999, the Assistant General Manager (PER & HRD) reiterated their earlier stand. By way of a representation dated 16.6.1999, the petitioner herein requested the Chief General Manager, State Bank of India, Local Head Office, Mumbai to consider him for appointment as "one eyed" candidate and gave an undertaking that in the event of further deterioration of his vision in future, he would resign from the post without claiming any benefit

from the bank and he also undertook that he would not make any claim to appear in the departmental promotion tests.

5. On 6.4.2000 and 23.10.2000, petitioner made similar requests. Subsequently, vide letter bearing No.P&HRD/SCT/RHC dated 13.11.2001, the Assistant General Manager (P&HRD) informed that the Respondent Bank decided to refer the petitioner to Vocational Rehabilitation Centre (VRC) for the physically handicapped for evaluation of suitability for recruitment in the Bank. In response to the same, petitioner appeared before the VRC on 10.12.2001. Vide letter bearing No.P&HRD/SCT/SDK/1825 dated 23.4.2002, the Assistant General Manager (P&HRD) informed that they were unable to consider the request on the ground that the VRC expressed opinion that a person being blind with one eye is not covered under the category of Physically Handicapped person (visually handicapped – blind). Thereafter, on 14.5.2002, petitioner herein made another representation to the Chief General Manager, State Bank of India, Local Head Office, Mumbai, stating that his case would not fall under the purview of Physically Handicapped and he requested to consider the Medical Certificate issued by the Civil Surgeon, Aurangabad on 28.5.1998 and to take appropriate action for issuance of appointment order. Thereafter, petitioner made another representation on 23.10.2002.

6. In the above background, contending that the action of the Respondents is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India, the present writ petition came to be instituted.

7. Responding to the rule nisi issued by this Court, a counter affidavit deposited by the Chief Manager (PER & HRD) has been filed, principally

contending that the vision of the petitioner is not in consonance with the standards prescribed by the bank.

8. Heard the learned counsel for petitioner, Sri Abhinand Kumari Shavili and Ms.V.Umadevi, learned Standing Counsel for Respondent Bank, apart from perusing the material available before the Court.

9. It is contended by the learned counsel for the petitioner that the impugned action on the part of the Respondent authorities is highly illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India and the settled proposition of law. It is the further submission of the learned counsel that the Respondents herein refused to consider the request of the petitioner, totally discarding the certificate dated 28.5.1998 issued by their own Doctor. It is further submitted by the learned counsel for the petitioner that the objections taken by the Respondents in their counter as to territorial jurisdiction of this Court and the ground of delay cannot be sustained. In support of his submissions/contentions, the learned counsel placed reliance on the following judgments:

- (1) Judgment of the Hon'ble Supreme Court in Naval Kishore Sharma v. Union of India and others¹.
- (2) Shikha Malhotra v. State Bank of India and another².
- (3) Judgment of Punjab and Haryana High Court in State Bank of India and another v. Rajesh Babbar³.
- (4) Judgment of the Allahabad High Court in Yogesh Dutt v. Union of India and others⁴.

10. On the contrary, it is strenuously contended by the learned Standing Counsel for the Respondent Bank that there is no illegality nor any arbitrariness

¹ Civil Appeal No.7414 of 2014

² (2008) 149 PLR 431 (DB)

³ L.P.A.No.477 of 2009 in CWP No.19782 of 2001 dated 22.6.2009

⁴ Civil Misc. Writ Petition No.35898 of 2009 (DB)

in the impugned action and the Respondents are perfectly justified in refusing to consider the request of the petitioner on the ground that the petitioner is unfit to hold the post. She further contends that the present writ petition is liable to be dismissed on the ground of delay and lack of territorial jurisdiction to this Court. It is further contended that since the petitioner did not fulfill the standards prescribed by the Bank, the action of the Respondents cannot be faulted.

To bolster her submissions/contentions, the learned Standing Counsel for Respondent-Bank places reliance on the judgment of the Hon'ble Apex Court in Chennai Metropolitan Water Supply and Sewerage Board and others v. T.T. Murali Babu⁵

11. In the above background, now the issues, which this Court is called upon to consider and adjudicate in the present writ petition are;

- (i) Whether the present writ petition, filed under Article 226 of the Constitution of India, is maintainable before this Court?
- (ii) Whether the writ petition is liable to be dismissed on the ground of delay?
- (iii) Whether the Respondents are justified in declining to give appointment order in favour of the petitioner?

Issue No.1

12. It is the first contention of the learned Standing Counsel for the Respondent Bank that the present writ petition filed under Article 226 of the Constitution of India is not maintainable before this Court, as no cause of action did arise within the territorial jurisdiction of this Court. On the contrary, it is the submission of the learned counsel for the petitioner that the said contention of the counsel for the respondents, touching the jurisdiction of this Court is neither sustainable nor tenable, as a part of cause of action arose within the territorial

⁵ (2014) 4 SCC 108

jurisdiction of this Court. In support of the said submission, the learned counsel for the petitioner takes the support of the judgment of the Hon'ble Apex Court in *Naval Kishore Sharma v. Union of India* (1 supra) in Civil Appeal No.7414 of 2014. In the said judgment, the employee therein who was working in Mumbai, was considered permanently unfit for Sea service due to dilated cardiomyopathy (heart muscle disease) as per the certificate dated 18.3.2011 and the Shipping Department, Government of India, Mumbai issued order dated 12.4.2011, canceling his registration as a Seaman. Thereafter, he settled at his native place, Gaya, Bihar State and he sent letters/representations from the said place in Bihar to the Respondents for his financial claims. Since the authorities did not settle the said claims, he approached the Patna High Court under Article 226 of the Constitution of India for redressal of his grievance. Before the Patna High Court, an objection was raised as to the maintainability of the writ petition on the ground that no cause of action did arise within the territorial jurisdiction of Patna High Court. The Patna High Court dismissed the said writ petition on the ground of lack of territorial jurisdiction, agreeing with the case of the authorities. Thereafter, the employee approached the Hon'ble Apex Court by way of Special Leave. The Hon'ble Supreme Court, after thoroughly considering the earlier judgments and the provisions of clause (2) of Article 226 of the Constitution of India, held in favour of the employee, holding that the High Court ought not to have dismissed the writ petition for want of territorial jurisdiction. In this context, it may be appropriate to refer to the observations of the Hon'ble Apex Court in the above said judgment:

“10. The interpretation given by this Court in the aforesaid decisions resulted in undue hardship and inconvenience to the citizens to invoke writ jurisdiction. As a result, Clause 1(A) was inserted in Article 226 by the Constitution (15th) Amendment Act, 1963 and subsequently renumbered as

Clause (2) by the Constitution (42nd) Amendment Act, 1976. The amended Clause (2) now reads as under:

226. Power of the High Courts to issue certain writs-(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by Clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) xxxxx

(4) xxxxx

11. On a plain reading of the amended provisions in Clause (2), it is clear that now High Court can issue a writ when the person or the authority against whom the writ is issued is located outside its territorial jurisdiction, if the cause of action wholly or partially arises within the court's territorial jurisdiction. Cause of action for the purpose of Article 226(2) of the Constitution, for all intent and purpose must be assigned the same meaning as envisaged Under Section 20(c) of the Code of Civil Procedure. The expression cause of action has not been defined either in the Code of Civil Procedure or the Constitution. Cause of action is bundle of facts which is necessary for the Plaintiff to prove in the suit before he can succeed.

12. The term 'cause of action' as appearing in Clause (2) came for consideration time and again before this Court.

13. Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings Under Article 226 of the Constitution. In order to maintain a writ petition, the Petitioner has to establish that a legal right claimed by him has

been infringed by the Respondents within the territorial limit of the Court's jurisdiction.

14. We have perused the facts pleaded in the writ petition and the documents relied upon by the Appellant. Indisputably, the Appellant reported sickness on account of various ailments including difficulty in breathing. He was referred to hospital. Consequently, he was signed off for further medical treatment. Finally, the Respondent permanently declared the Appellant unfit for sea service due to dilated cardiomyopathy (heart muscles disease). As a result, the Shipping Department of the Government of India issued an order on 12.4.2011 cancelling the registration of the Appellant as a seaman. A copy of the letter was sent to the Appellant at his native place in Bihar where he was staying after he was found medically unfit. It further appears that the Appellant sent a representation from his home in the State of Bihar to the Respondent claiming disability compensation. The said representation was replied by the Respondent, which was addressed to him on his home address in Gaya, Bihar rejecting his claim for disability compensation. It is further evident that when the Appellant was signed off and declared medically unfit, he returned back to his home in the District of Gaya, Bihar and, thereafter, he made all claims and filed representation from his home address at Gaya and those letters and representations were entertained by the Respondents and replied and a decision on those representations were communicated to him on his home address in Bihar. Admittedly, Appellant was suffering from serious heart muscles disease (Dilated Cardiomyopathy) and breathing problem which forced him to stay in native place, wherefrom he had been making all correspondence with regard to his disability compensation. *Prima facie*, therefore, considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation.

15. Apart from that, from the counter affidavit of the Respondents and the documents annexed therewith, it reveals that after the writ petition was filed in the Patna High Court, the same was entertained and notices were issued. Pursuant to the said notice, the Respondents appeared and participated in the proceedings in the High Court. It further reveals that after hearing the counsel appearing for both the parties, the High Court passed an interim order on 18.9.2012 directing the authorities of Shipping Corporation of India to pay at least a sum of Rs. 2.75 lakhs, which shall be subject to the result

of the writ petition. Pursuant to the interim order, the Respondent Shipping Corporation of India remitted Rs. 2,67,270/- (after deduction of income tax) to the bank account of the Appellant. However, when the writ petition was taken up for hearing, the High Court took the view that no cause of action, not even a fraction of cause of action, has arisen within its territorial jurisdiction.

16. Considering the entire facts of the case narrated hereinbefore including the interim order passed by the High Court, in our considered opinion, the writ petition ought not to have been dismissed for want of territorial jurisdiction. As noticed above, at the time when the writ petition was heard for the purpose of grant of interim relief, the Respondents instead of raising any objection with regard to territorial jurisdiction opposed the prayer on the ground that the writ Petitioner-Appellant was offered an amount of Rs. 2.75 lakhs, but he refused to accept the same and challenged the order granting severance compensation by filing the writ petition. The impugned order, therefore, cannot be sustained in the peculiar facts and circumstances of this case.

17. In the aforesaid, the appeal is allowed and the impugned order passed by the High Court is set aside and the matter is remitted to the High Court for deciding the writ petition on merits.”

13. In the instant case also, though the petitioner appeared in the qualifying test in response to the notification issued by the BSRB for various posts in the States of Maharashtra and Goa and even though he was medically tested in Maharashtra, the reality remains that he is a resident of Nidadavole, West Godavari district, Andhra Pradesh, which falls under the territorial jurisdiction of this Court and he made correspondence with the respondent-bank authorities from his native place i.e. Nidadavole and the Respondent-Bank authorities also communicated the rejection orders to Nidadavole address only, therefore, the present case clearly falls under clause (2) of Article 226 of the Constitution of India. Therefore, by any stretch of imagination, it cannot be contended that this Court lacks territorial jurisdiction to entertain the writ petition. Therefore, the Issue No.1 is answered in favour of the petitioner and against the Respondents,

holding that this Court, undoubtedly has territorial jurisdiction to entertain the writ petition.

Issue No.2

14. It is the contention of the Respondent Bank that the present writ petition is liable to be dismissed on the ground of delay. On the contrary, it is the submission of the learned counsel for the petitioner that the said contention cannot be sustained. In the instant case, initially vide letter bearing No. No.PER:SDG:112:1116 dated 24.8.1998, the Respondent Bank informed the petitioner that he was declared unfit as per the Bank's standards. Thereafter, the Respondent Bank authorities referred the case of the petitioner to VRC and obtained their opinion also and the Respondents communicated the said opinion by way of letter dated 23.4.2002, while expressing their inability to accede to the request of the petitioner.

15. In *Chennai Metropolitan Water Supply and Sewerage Board v. T.T. Murali Babu* (5 supra), the Hon'ble Apex Court at paragraph 16 held that the doctrine of delay and laches should not be lightly brushed aside and a writ court is required to weigh the explanation offered and the acceptability of the same and the same should bear in mind that it is exercising an extraordinary and equitable jurisdiction and as a Constitutional Court, it has a duty to protect the rights of the citizens, but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the Court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the //s at a belated stage should be entertained or not.

16. The Hon'ble Apex Court further held that in certain circumstances, delay and laches may not be fatal but in most circumstances, inordinate delay would

only invite disaster for the litigant who knocks at the doors of the Court and the delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix and the delay does bring in hazard and causes injury to the *lis*.

17. In *Assam Sanmilita Mahasangha and others v. Union of India and others*⁶, the Hon’ble Apex Court held that when it is case of violation of fundamental right and personal liberty, delay or laches by itself would not be sufficient to shut the doors of the Court on any petitioner.

18. In *M/s. Tilokchand Motichand and others v. H.B. Munshi, Commissioner of Sales Tax, Bombay and others*⁷, the Hon’ble Apex Court held that there is no lower limit and there is no upper limit and in a suitable case the Court may entertain such a petition even after a lapse of time and it will all depend on what the breach of the Fundamental Right and the remedy claimed, are and how the delay arose. The Hon’ble Apex Court further held that no hard and fast rule can be maintained for deciding whether this Court or High Court should entertain a belated petition filed under Articles 32 and 226 of the Constitution of India and each case can be decided on its own merits.

19. In *Tukaram Kana Joshi and others v. Maharashtra Industrial Development Corporation and others*⁸, the Hon’ble Apex Court while dealing with the aspect of delay held that no hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. The Hon’ble Apex Court further held that in the event that the claim made by the

⁶ (2015) 3 SCC 1

⁷ (1969) 1 SCC 110

⁸ (2013) 1 SCC 353

applicant is legally sustainable, delay should be condoned and where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches and that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred and on the other side cannot claim to have a vested right in the injustice being done, because of a non- deliberate delay. The Hon'ble Apex Court further held that the Court should not harm innocent parties if their rights have infact emerged, by delay on the part of the Petitioners.

20. As stated supra, in the instant case, the respondents communicated the opinion of VRC by way of letter, dated 23.4.2002 and the present Writ Petition came to be filed on 17.4.2003, therefore, by any stretch of imagination it cannot be contended that the delay defeats the right of the petitioner to seek any relief by way of present Writ Petition. Therefore, Issue No.2 is also answered in favour of the petitioner and against the respondents, holding that the present Writ Petition cannot be rejected on the ground of delay.

Issue No.3

21. There is absolutely no dispute as regards the fact that in response to the representation dated 22.11.1997 to the Chief General Manager, State Bank of India, Mumbai-2nd respondent herein, requesting to review the issue by referring to the duly constituted Medical Board for fresh examination, by way of a letter dated 14.5.1998, petitioner was asked to appear before the Bank's Medical Officer at Zonal Office, Aurangabad for re-medical examination on 26.5.1998. There is also no controversy on the issue that in response to the same, petitioner appeared before the Doctor of the Respondent Bank i.e. Dr.Chitgopehar, Civil

Surgeon, Aurangabad. The said Doctor, obviously after examination by way of certificate on 28.5.1998, certified as follows:

“The patient was examined by me and my Ophthalmist. With spectacles his vision is 6/18 – 6/9”. For clerical jobs, he is fit for continue to work”.

Though the Doctor of the Respondent Bank certified in favour of the petitioner, the Chief Manager (PER & HRD) informed the petitioner that he had been declared unfit as per Bank's standards. As per the counter affidavit, the vision must be 6/9 – 6/12 for the persons below 35 for the post of Clerk. There is absolutely no dispute that the vision of the petitioner is 6/18 – 6/9. Therefore, there is error in one eye and the other eye is perfect and without any error. Obviously, that is the reason why the Doctor of the Respondent Bank certified that the petitioner is fit to work as Clerk. According to the learned counsel for the petitioner, the impugned action, declining the request of the petitioner for appointment is illegal and contrary to various pronouncements. In this context, it may be appropriate to refer to the judgments cited by the learned counsel for the petitioner.

22. In *Shikha Malhotra v. State Bank of India* (2 supra), the Division Bench of the Punjab and Haryana High Court found fault with an identical refusal by the State Bank of India and quashed the impugned order therein, while directing the Respondents to appoint the petitioner therein with all consequential benefits. In the said case, the State Bank of India issued an advertisement, inviting applications for filling up the posts of Probationary Officers in the Bank and the petitioner therein was one of the selected candidates under General Category and on medical examination, he was found to have an artificial right eye and the other eye was perfect as per the standards. In those circumstances, the petitioner therein was found medically unfit. The Punjab and Haryana High Court took note of the fact that there is no condition in the advertisement in

respect of vision of the candidates and found that the aim of medical examination was to have the candidates with good mental and bodily health. An objection was taken on behalf of the Respondent Bank during the course of arguments that due to the increased use of computers, the petitioner therein may not be able to perform her duties as she will not have three dimensional visions. The Punjab and Haryana High Court in the said judgment categorically held that once the vision of the petitioner therein in respect of one eye is not wanting in any manner, the denial of appointment on the ground that the petitioner cannot see from other eye is depriving of an appointment to an eligible candidate. The Punjab and Haryana High Court, at paragraphs 5 to 10 of the said judgment held as under:

“5. However, the said stand of the respondents is nothing but based upon surmises and conjectures. The vision of the petitioner with left eye is 6 x 6 and there is no distortion. Once, the vision of the petitioner in respect of one eye is not wanting in any manner, the denial of appointment on the ground that the petitioner cannot see from other eye is depriving of an appointment to an eligible candidate. If the respondents can appoint a totally blind person as a Probationary Officer, it could not be explained as to why, the petitioner who has 6 x 6 vision from one eye, cannot be appointed. It is not disputed by the learned Counsel for the respondents that a candidate who is totally blind or has impaired vision is eligible for appointment against the seats reserved for visually handicapped persons. No doubt, the petitioner is not suffering from a disability within the meaning of Section 2(b) of the Act, but it cannot be said that the petitioner is not eligible for appointment as a general category candidate as well. The petitioner has to fall in one or the other category. If the petitioner is not entitled to reservations for the post meant for visually handicapped category, the petitioner has to be treated as a general category candidate.

6. In fact, denied of opportunity of appointment on such ground is wholly arbitrary, discriminatory and violates the rights guaranteed under Articles 14 and 16 of the Constitution of India. The petitioner is being denied right of appointment for wholly untenable reason. The stand of the respondent is without any justification and is wholly arbitrary and has caused manifest injustice to the petitioner.

7. Reference may be made to a judgment of the Hon'ble Supreme Court in *Amita v. Union of India* : (2005) III LLJ 749 SC. In the said case, the candidate was not even permitted to appear as a candidate for appointment to the post of a Probationary Officer. During the pendency of the petition before the Hon'ble Supreme Court, the Union of India has filed an affidavit in respect of certain jobs which could be performed by the visually handicapped persons. Written submissions were filed on behalf of the Union of India, wherein it was stated to the following effect:

It was further stated that the writ petitioner being a visually impaired candidate has to either appear in the examination for selection under the reserved category or she can appear with the general candidates. It was further clarified that if she wants to appear as a general category then she has to compete with the general category candidates only and she cannot be given any weightage as the same would amount to discrimination to others competing with her in the said category. It was further clarified the position that O.M. No. 36035/4/2003-Establishment dated 8.7.2003 provided that the vacancies reserved for any category need to be filled by persons belonging to that category and such vacancies are not open to others. On the other hand, unreserved vacancies are open to all and reserved category candidates cannot be denied the right to compete for appointment against such vacancies, provided they are otherwise eligible.

8. Considering the stand of the Union of India, the Hon'ble Supreme Court has returned a finding that the nature of duties of a Probationary Officer can be performed by a visually impaired candidate and some percentage of impaired candidates are entitled to be selected and appointed as Probationary Officers of the Bank either from the General Category or from the reserved category. The Hon'ble Supreme Court in the Said judgment has observed as under:

That apart, the writ petitioner, although a visually impaired lady had not asked for any special favour for selection to the post of Probationary Officer. The writ petitioner without asking for any favour had only applied for writing the examination for selection not as a reserved handicapped candidate but along with general candidates who were allowed by the Board to sit and write the examination. Since the writ petitioner was similarly situated with other general candidates, and the writ petitioner had not asked for any advantage for being a visually impaired candidate, we failed to understand why she was not permitted to sit and write the examination for the post of Probationary Officer in the Bank.

At the risk of repetition, it may be reiterated that the writ petitioner fulfilled all the conditions mentioned in the advertisement for the post. The primary object which is guaranteed by Article 16(1) is equality or opportunity and that was violated by the Board by debarring the writ petitioner from appearing in the examination on the mere fact of disability which was not mentioned in the advertisement and which according to the writ petitioner is not an impediment for the post. We are therefore, of the view that the action of the Board was arbitrary, baseless and was in violation of the right of the writ petitioner under Article 16(1) of the Constitution.

9. In the present case the petitioner has not sought any reservation as a visually handicapped person, therefore, she as a General Category candidate is entitled to be appointed as Probationary Officer.

10. In view of the above, we have no hesitation in setting aside and quashing the impugned order (Annexure P.5) and to direct the respondents to appoint the petitioner with all consequential benefits. The consequential benefits shall include pay fixation and seniority from the date, the other appointments were made, pursuant to advertisement (P.1). However, the petitioner shall not be entitled to any arrears of salary prior to her appointment. Such directions be complied within a period of two months from today."

23. In *State Bank of India and another v. Rajesh Babbar* (3 supra), the Division Bench of the Punjab and Haryana High Court, while expressing the similar view held that the primary object, which is guaranteed by Article 16(1) of the Constitution of India is equality of opportunity and that was violated by the Board by debarring the writ petitioner from appearing in the examination on the mere fact of disability, which was not mentioned in the advertisement, which according to the petitioner is not an impediment for the post. In the said judgment, the Punjab and Haryana High Court referred to the earlier judgments of *Shikha Malhotra's* case and also took note of the fact that the Supreme Court upheld the principle laid down in *Shikha Malhotra's* case.

24. In *Yogesh Dutt v. Union of India* (4 supra), the Allahabad High Court deprecated an identical impugned action and directed the Respondents therein to provide employment to the aggrieved party therein. It may be appropriate to refer to the observations made in the said judgment. In the said case, a person was selected as Probationary Officer in the Bank and later he was declared unfit on the ground that he had no left eye, which he lost during his childhood in an accident. The Allahabad High Court at paragraphs 24 to 30 held as under:

“24. In India we have many examples of the disabled persons excelling in music, law, science, sports. Shri Ravinder Jain a blind person is a singer and musician of great accomplishment. His total blindness has not come in his way in achieving laurels in musics. Shri Mansoor Ali Khan Pataudi, captained Indian Cricket team to victory in 14 matches and made a double century against West Indies after he lost his right eye in an accident. Several Advocates, and an Advocate General of the State of West Bengal was a blind person. He is a highly respected lawyer, who overcame his disability and used brail to read and argue cases.

25. The petitioner is a partially physically disabled person, but whether he treats himself to be disabled in life, is his personal choice. His vision has not been impaired by loss of one eye, in the accident. His right eye has normal vision. The Senior Medical Officer of the State Bank of India found his vision of right eye to be 6/5 with naked eye, without glasses. Dr. Anand Sharma examining him on behalf of State Bank of India on 25.4.2009 and found his right eye to be absolutely normal. Dr. Atul Kumar, Senior Medical Officer declared him to be medically unfit in column-15 and 16, with a note at the bottom of his report that as per Central Government Office Memorandum dated 3.5.2002 Annexure to G1, Ministry of Social Justice and Empowerment Notification dated 18.1.2007, if applicable in State Bank of India, he is medically fit.

26. The petitioner is measured to be physically disabled to the extent of 30%, which does not give him an opportunity to claim reservation either as a person, who is blind or a person with low vision, or orthopedic handicapped. He did not want to claim vertical reservation in the category of OBC. He was confident; competed in the general category and was selected in open competition to be appointed as Probationary Officer. He does not

suffer with any handicap, nor is incapable of performing the normal duties as Officer in the Bank. There was no column in the application form nor was he required to give details of the events in his life in which he may have suffered any injuries or loss of limbs or parts of body. The loss of one eye in the accident in his childhood was thus not required to be disclosed in the application form, more so, when he did not treat it as an handicap in being selected and performing the duties of his job.

27. In the present case, we are unable to appreciate the approach of the Central Government and the Bank. The State Bank of India has treated the petitioner to be medically unfit, and placed him in the category of physically handicapped, not entitled to be appointed as an officer in the bank. He has been accused of failing to give the information of loss of one eye in the application form, and has been treated to be medically unfit for the job whereas he was not required to give any such information and his one eye is normal and healthy. There is nothing which he cannot do, which a person with two healthy eyes can do.

28. The State Bank of India has not pleaded or placed on record any material to justify the Circulars dated 25.10.1983, and 16.1.2001, and its revision by circular dated 17.2.2007, providing that one eyed candidates would be barred from all further recruitment in clerical or official's cadre. There is absolutely nothing to show that a person with one healthy eye with normal vision cannot perform clerical or officers work in bank. There is no medical opinion supporting the decision of the bank. The decision is apparently full of prejudice to the handicapped persons. The enactment of PWD Act to provide social justice to disabled, and the shift in the approach to disabled persons by the Supreme Court negatives the argument in favour of the decision of the bank. When a totally blind person can claim to be appointed as an officer in the bank, the declaration that one eyed persons is medically unfit, is a contradiction in terms. The Circulars of the Bank denying opportunity of employment of one eyed persons as clerks and officers, is violative of Article 14 of the Constitution of India. The issue raised in the present case is more a human right issue, than a disability issue.

29. We are of the opinion that the petitioner has been illegally and arbitrarily denied appointment as a Probationary Officer. After change of the approach to the physically handicapped persons, under PWD Act, it is no longer open for the State Bank of India to contend that that a person with one normal eye is medically unfit to the officer's job in the Bank.

30. The writ petition is allowed. The communication of the Assistant General Manager (Human Resource), Human Resource Development, Local Head Office, State Bank of India, Mumbai dated 18.5.2009 declaring the petitioner unfit and denying him appointment is quashed. A writ of mandamus is issued to the respondents to appoint the petitioner as Probationary Officer for which he was selected in pursuance to advertisement No. CRPD/PO/08-09/04 within one month and to give seniority with effect from the date when a person next junior to him, in his category was appointed.”

25. In the case on hand, petitioner herein stands on a better pedestal, because the vision of one eye is perfect and other eye suffers from error and the fact remains that the second eye is not totally blind. It is also significant to note that the Respondents’ own Doctor certified that the petitioner is fit to perform the duty. It is also to be noted that it is not the case of the Respondents that they mentioned vision standards in the notification. Yet another submission made by learned Standing Counsel for respondent-bank is that since the fixation of standards of vision is a policy matter of the Bank, the same cannot be agitated by way of writ petition under Article 226 of the Constitution of India and the learned counsel relies on the judgment of the Hon’ble Apex Court in State of Punjab and others v. Ram Lubhaya Bagga and others⁹. In the facts and circumstances of the case and having regard to the judgments referred to supra, the said judgment would not render any assistance to the respondents. Therefore, this Court has absolutely no scintilla of hesitation to hold and conclude that there is absolutely no justification on the part of the Respondent Bank authorities in denying appointment to the petitioner. Therefore, Issue No.3 is also answered in favour of the petitioner and against the Respondents.

26. For the aforesaid reasons, the writ petition is allowed, declaring that the action of the Respondents in declaring the petitioner as medically unfit for the

⁹ (1998) 4 SCC 117

post of Clerk in State Bank of India is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India and the Respondents are directed to appoint the petitioner as Clerk with retrospective effect from 31.1.1997 with all consequential benefits, including seniority and monetary benefits. As a sequel, the Miscellaneous Petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 14.12.2016

Note:

L.R. copy be marked.

B/o

DA



THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.No.7523 of 2003

14.12.2016

