

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

WRIT PETITION No.872 of 2016

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

“to issue writ of Mandamus to declare the action of the respondents 2 to 5 in not issuing appointment orders to the petitioner for the post of Artisan in pursuance of employment notification HY/01/2013 in the light of the medical certificate issued by the Sarojini Devi Eye Hospital, Hyderabad (State of Telangana) as illegal, arbitrary, unjustified and in violation of Articles 14 and 16 of the Constitution of India and consequently direct the respondents 2 to 5 to issue appointment orders to the petitioner for the post of Artisan forthwith.”

Heard, Ms.Divya, learned counsel for the petitioner, Sri B. Narayan Reddy, learned Asst. Solicitor General for respondents 1 and 2 and Sri P. Rajasekhar, learned Standing Counsel for respondents 3 to 5, apart from perusing the material available before this Court.

According to the petitioner, consequent upon the death of the petitioner's father, the petitioner was working in GVS Society attached to the respondent organization – BHEL as Master Technician since 2009 to till date. In response to a notification No.HY/01/2013, dated 10-10-2013 issued by the respondents, inviting applications for filling up 800 vacancies of Artisans, petitioner applied for the post of Electrician and after verification of the documents, the respondents issued an order of provisional employment in favour of the petitioner vide letter bearing No.HR/RMX/TE/ 2014, dated 13-01-2014. Subsequently, on the

ground that the petitioner is suffering from deformity of colour blindness, the respondents declined to permit the petitioner to join duty.

The said action is under challenge in the present writ petition. Refuting the affidavit averments made in support of the writ petition and in the direction of justifying the impugned action, a counter-affidavit is filed.

It is contended by learned counsel for the petitioner that the questioned action is highly illegal, arbitrary, unreasonable and violative of Article 14 of the Constitution of India; that the reports obtained from the premier institutions such as Sarojini Devi Eye Hospital and L.V. Prasad Eye hospital, Hyderabad clearly show that the petitioner's vision is normal and he is fit for appointment and that the action of not referring to Board for re-consideration is highly unreasonable. In support of her contentions and submissions learned counsel for the petitioner places reliance on the following decisions:

1. *(2014) 9 Supreme Court Cases 385*
2. *Order passed in W.P.Nos.12758 and 12786 of 2014, dated 12-06-2014.*

Per contra, it is vehemently contended by learned Standing Counsel for respondents that there is absolutely no illegality nor there exists any infirmity in the impugned action; that the G.V.S.S. society where the petitioner is now working has nothing to do with the B.H.E.L. in which the petitioner is seeking appointment; that since the report in the medical examination found the petitioner unsuitable, the respondents are justified in refusing appointment to the petitioner; that as per rules governing the situation the colour

blindness is disqualification for appointment to the post of electrician and that the judgments cited by learned counsel for the petitioners pertain to diabetes, as such, the principles laid down therein cannot be made applicable to the case of the petitioner.

The information available before this Court discloses that enclosing the certificates issued by Sarojini Devi Eye Hospital, dated 26-05-2015 and L.V. Prasad Eye hospital, Hyderabad, dated 22-05-2015, the petitioner made representation to the respondents on 04-07-2015, requesting for reconsideration by referring to the Medical Board.

The certificate issued by Sarojini Devi Eye Hospital opined that the colour vision of the petitioner is normal. The certificate issued by L.V. Prasad institute states that the petitioner has mild colour blindness (CP2) and has a normal visual acuity of 20/20 in both eyes, which should not affect his normal routine professional (electrical) activities at all.

It is an admitted reality that the petitioner, after the death of his father, has been working in G.V.S. society. It is equally true that the colour blindness is a disqualification for consideration for appointment to the post of electrician as per Clause 7.10.2 of Schedule 'A' annexure to medical examination. It is also an admitted reality that enclosing the certificates issued by two premier institutions the petitioner herein submitted representations.

In this context it may be appropriate to refer to the judgment of Hon'ble Apex Court in case of ***NATIONAL THERMAL POWER CORPORATION, KAHALAGAON AND OTHERS V. NAKUL DAS***

AND OTHERS^[1], wherein the Hon'ble Apex Court held in paragraph Nos.19 and 20 as under:

"19. Pursuant to the orders dated 09.05.2013 directing NTPC to appoint the selected candidates, two out of the aforesaid five appellants have given the appointment. However, cases of other three appellants are rejected as in the medical examination conducted, they are found medically unfit as suffering from 'colour blindness'. They are appellants Nos.1, 4 and 5. Learned counsel appearing for these appellants submitted that their medical examination was done in haste; they had made representation to the NTPC regarding constitution of Medical Board to re-examine their cases to which NTPC was not agreeing; they had got themselves medically examined from the same hospital and same doctor namely NTPC, Kahalagaon Hospital and also outside doctor and they had duly certified that these appellants were not suffered from 'colour blindness'. Additional affidavit dated 26th June, 2005 is filed including the result of their medical examination from Out- Patient Department of NTPC, Kahalagaon Hospital, as well as opinion of some private Doctors in support of the aforesaid submission.

20. Having regard to the aforesaid facts, we are of the opinion that it would be in the interest of justice that NTPC constitutes another Medical Board for re-examination of these three appellants and decide their fate on the basis of the opinion given and take further action on the basis of opinion given by the reconstitute Medical Board."

The above judgment rendered by Hon'ble Apex Court dealt with colour blindness. Coming to the judgment of this Court on which the petitioner is placing reliance dealt with the case of Diabetes but not colour blindness.

Having regard to the judgment of the Hon'ble Apex Court and keeping in view the principles laid down therein and the nature of controversy in the present case, this Court is of the considered view that the ends of justice would be met if the respondents are directed to refer the case of the petitioner to the Medical Board afresh for re-consideration of the issue and for taking action basing on the said report.

For the aforesaid reasons, the writ petition is disposed of, directing the respondents to constitute a medical board afresh for re-examination of the petitioner, for submission of report and to proceed, in accordance with the report. This exercise shall be completed within a period of three (3) months from the date of receipt of a copy of this order.

Miscellaneous Petitions pending, if any, shall stand closed.
There shall be no order as to costs.

A.V. SESA SAI, J

February 24, 2016

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

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