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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 16.05.2016

+ W.P.(C) 5156/2015

UNION OF INDIA & ORS

..... Petitioner

Through: Mr. Arun Bhardwaj, Adv. CGSC with
Mr. Satya Ranjan, Adv.

versus

LAXMI DEVI & ORS

..... Respondent

Through: Mr. A.K. Trivedi, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

JUSTICE SANJIV KHANNA (Oral)

This writ petition impugns order dated 05.02.2015 passed by the Principal Bench of the Central Administrative Tribunal whereby O.A. No. 45 of 2013 filed by (i) Smt. Laxmi Devi; (ii) Vijay Kumar; (iii) Satpal; (iv) Rajesh and (v) Puran Singh has been partly allowed with the following directions:

“2. In terms of the aforesaid order, they have conducted the medical examination of all those Casual Labourers. However, according to the impugned order dated 07.09.2012, the applicants have not met the required medical standards. In the case of two of the applicants, namely, Smt. Laxmi Devi and Shri Rajesh Kumar, the reason for their medical infirmity is that they are overweight by 15 kgs. In the case of other three applicants, namely, Shri Vijay Kumar, Puran Singh and Shri Sat Pal, they are suffering from Mild

varicose Vein (Rt) Side.

3. In my considered view, the respondents have been very arbitrary in their decision to disqualify the applicants on medical grounds. Admittedly, the applicants have to work as Sweepers. They are not required to work as BSF Constables who require certain physical standards. Just because a person is overweight by 15 kgs or suffering from Mild varicose vein, it cannot be said that they cannot perform duty as Sweepers. Consequently, I allow this OA and quash and set aside the impugned order of the respondents dated 07.09.2012 rejecting the case of the applicants for regularization on the aforesaid medical grounds. I also direct that the respondents shall regularise the services of the applicants along with other casual Labourers from the same date with all consequential benefits. The respondents shall also pass appropriate orders in compliance of the aforesaid directions within a period of two months from the date of receipt of a copy of this order.”

2. Having heard the learned counsel for the petitioner we are not inclined to interfere with the directions given above. Objection is not to regularization, but to the fact that the applicants do not meet the required medical standards.

3. The applicants were appointed as *farash/sweeper* on different dates during the period from 1988 to 1999. It is apparent that the applicants have aged and they cannot be asked to undergo and meet the physical standards applicable to the new and young constables. This was the error made by the petitioners, when by their order dated 07.09.2012 it was held that the applicants do not meet the required medical standards.

4. Learned counsel for the petitioner submits that in some cases the applicants are overweight and Laxmi Devi is short in height. Some applicants are suffering from mild varicose veins.

5. We are not impressed with the aforesaid submission. The applicants have been working since 1988-1997. Laxmi Devi was appointed on 17.04.1998. Satpal was appointed in the year 1988. It is not the case of the petitioners that the applicants were/are unable to perform their duties as assigned to them or remain absent or take leaves on medical grounds. The fact that the applicants have been able to efficiently perform their duties for the last more than two decades reflects and shows that the respondents meet the required physical standards. Physical and medical condition of the applicants has been tested and cannot be doubted at this belated stage and that too on parameters applicable to those who are 15 to 20 years younger in age.

6. Learned counsel for the petitioner has expressed apprehension that others similarly situated persons might file O.A.s in view of the relief granted by the Tribunal. This is an assumption. The facts of the present case are peculiar for the applicants have been working for the last 20 to 25 years and it would not right to ask them to undergo medical standard test as applicable to new and young constables. If and when another application is filed, it will be open to the petitioner to defend the proceedings and take all pleas available to them.

7. The writ petition is dismissed.

SANJIV KHANNA, J

NAJMI WAZIRI, J

MAY 16, 2016/acm