

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.23405 of 2016

ORDER:

It is the case of the petitioner that his father M.Rajaiah worked as General Mazdoor Mine GDK 5 Incline, Area Ramagundam-I and rendered service of 25 years. He became medically unfit and he submitted an application seeking employment to his son under Dependent Employment Quota. Subsequently, the petitioner was examined by the Medical Board and he was declared unfit for employment as he was suffering from HIV Re-active. Accordingly, when the fifth respondent issued a letter on 31.10.2016 denying employment to the petitioner, the present Writ Petition was filed.

2. Now, a counter-affidavit is filed stating that the father of the petitioner became medically unfit and an application was filed by him for dependent employment to his son, the petitioner herein. The petitioner was sent to Area Hospital, Ramagundam to ascertain his medical fitness for the job of Badli Worker on 13.02.2016. The petitioner was examined on 09.03.2016 and during medical examination, it came out that he was suffering from HIV Re-active and the same was informed to the petitioner. The employees harbouring dangerous viruses, such as HIV/Hepatitis-B are not allowed to work in underground work and if any existing employee is incidentally found having those viruses, they are providing alternative employment in surface departments. When the petitioner was offered Badli Worker underground, his fitness was evaluated for that particular post and was declared as unfit.

3. Thus, there is no dispute on facts. The petitioner's father became medically unfit, applied for a job to the petitioner and the petitioner was offered the post as Badli Worker, which requires underground duties. During medical examination, it is revealed that the petitioner is HIV Re-active. On that ground employment to the petitioner was denied.

4. Learned counsel for the petitioner submits that even though the petitioner is found to be HIV positive, employment to the petitioner cannot be denied on that ground. If the petitioner cannot be accommodated in underground work, his case should have been considered for surface duties. He relied on the judgment of this Court in **Mr.X, Indian Inhabitant, Vizianagaram, A.P. v. Chariman, State Level Police Recruitment Board, Hyderabad**¹, wherein it was held that classification of persons, who were already in employment and who are seeking employment and denying their employment on account that they were tested HIV positive, is discriminatory.

5. The Division Bench of this Court was dealing with a case relating to A.P.Revised Police Manual and when an employment to the petitioner therein was denied by application of Order 70 (3) of the said Manual, it was declared as *ultra vires*.

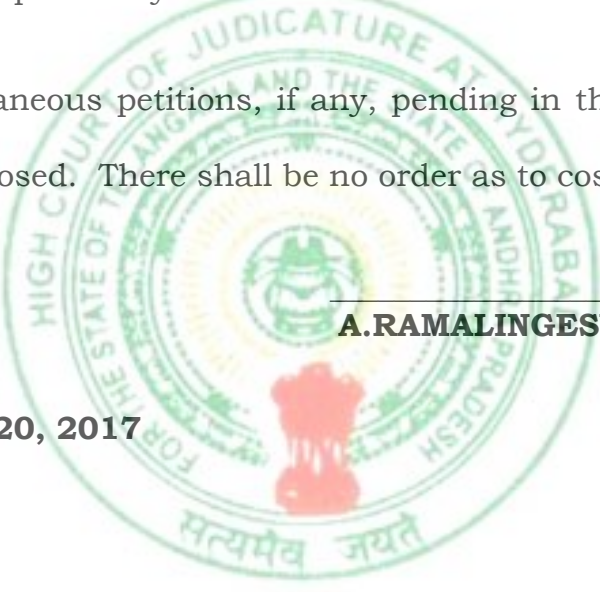
6. Admittedly, the medical examination of the petitioner was conducted in respect of the post of Badli Worker and he was medically found unfit. If the petitioner is medically fit for doing surface duties, the case of the petitioner should be considered, as

¹ 2006 (2) ALD 513 (DB)

the petitioner is entitled for employment under Dependent Employment Scheme.

7. Accordingly, the Writ Petition is allowed by directing respondents 2 to 5 to consider the case of the petitioner for employment for surface duties under Dependent Employment Scheme due to medical invalidation of his father, and appropriate orders shall be passed, within a period of three (03) months from the date of receipt of a copy of this order. However, this order shall not be a precedent in cases of this nature and each case has to be examined independently on the facts of the case.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.



A.RAMALINGESWARA RAO, J

DECEMBER 20, 2017
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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO



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Date: 20.12.2017

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