

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.18639 of 2013

ORDER:

The present Writ Petition came to be filed seeking issuance of Writ of Mandamus declaring the action of the respondents in declaring the petitioner as fit for duty, as arbitrary and illegal and consequently direct the respondents to absorb the petitioner on any surface job or in the alternative to direct the 3rd respondent to refer the petitioner to the Appellate Medical Board, Dhanabad, Jharkand to examine his fitness to work as Lineman.

2) The petitioner herein was initially appointed in the 1st respondent/Company in the month of March, 1988 as Badli Filler. Later he was confirmed as Coal Filler in the year 1990. In the year 2007, he was converted as General Mazdoor and later promoted as Lineman in 2008. On 11.05.2012, the petitioner met with an accident leading to multiple fractures. He underwent operation and took treatment for several months. It is averred that a rod was implanted in his right leg and the same is existing in the body. On 18.08.2012, the petitioner was referred to Area Hospital, Ramakrishnapuram to ascertain his fitness and also as to whether he can hold regular duties of Lineman. On examination, the petitioner was referred to Main Hospital, Kothagudem. The Chief Medical Officer of Area Hospital, Kothagudem declared the petitioner as fit vide proceedings dated

21.08.2012. Basing on the above, the petitioner was compelled to do the underground work. Challenging the same, the present Writ petition came to be filed.

3) Learned counsel for the petitioner mainly submits that the petitioner is facing lot of problems while doing the work of a Lineman, as working in underground mine, is complete different from working on surface. It is said that more pressure has to be exerted on legs while climbing down and up and since the wound inside is not completely healed, he is put to lot of inconvenience. It is said that though the petitioner made several representations seeking employment on surface, the same went un-heed. Hence, the petitioner submits that his case may be referred to Appellate Medical Board to examine his fitness, as on today.

4) The same is opposed by the learned counsel for the respondent disputing the averments made in the affidavit filed in support of the Writ Petition. According to him, the petitioner herein was declared fit by the Area Hospital authorities on 03.09.2012 and thereafter he resumed his duties at Kasipet Mine on 05.09.2012. The petitioner has put in 244 musters in the said Mine, from September 2012 to July 2013, which explains his fitness to do the job of a Lineman. It is said that if really the petitioner was suffering with pain, he could have reported his sickness to the colliery hospital and

ought to have explained his difficulty. It is urged that without resorting to any of these methods, nor submitting any representation, the petitioner approached this Court. It is submitted that having worked for a such long time in the underground mine he cannot now complain about the pain and suffering in respect of the accident, which took place in the year 2012. Insofar as re-examination by appellate medical board is concerned, it is urged that Rule 29 (J)(1) of Mines Rules, 1955 does not contemplate sending him to Medical Board, Dhanbad. The said rule explain as to when the employee is to be declared fit for the same job, referring him to Medical Authorities would not arise. Further, it is stated that the practice of making a person fit with metal implants is nothing new and that many a number of patients with metal implants inserted in the body either as a result of mine accident or road traffic accidents are being made fit for duty even for their original underground job. As such, the metal implantation within the body does not entitle any one to claim for an automatic job on surface. It is stated that a person can be referred to Appellate Medical Board only when he is declared unfit either in initial medical examination or in the periodical medical examination. Having regard to the above, it is pleased that there are no merits in the petition and the same is liable to dismissed.

5) The fact remains that the petitioner herein met with an accident in the year 2012 and thereafter he underwent a surgery,

leading to insertion of an iron rod in his right leg. It is also not in dispute that the Area Hospital as well as the headquarters hospital at Kothagudem declared the petitioner fit to do the job of a Lineman. These certificates refer to health condition of the petitioner in the year 2012. Probably due to fitness he was able to attend to duty for a period of 11 months i.e., from September 2012 to July 2013. A year later, representations were said to have been made, requesting the authorities to provide him surface job as he is not in a position to do underground work.

6) The issue some what identical to the case on hand, came up for consideration before this Court in Writ Appeal No.477 of 2013. It was a case where the respondent in the appeal was suffering with hearing impairment, which was found to be a occupational hazard. Though the medical board certified that the petitioner was fit, but the order of the learned Single Judge directing the appellants therein to refer the respondents to medical board for his re-examination, was confirmed by the Bench.

7) The grievance of the petitioner is that though he made representations, the same were not considered by the authorities. On the other hand, the respondent/corporation submits that if any representation is received, they would definitely take steps, in accordance with law.

8) In view of the above, the petitioner shall make a fresh representation seeking reference of his case to the appellate medical board for re-examination, in which event the authorities shall consider the same in accordance with law, keeping in view the judgment of this Court referred to above.

9) With the above direction, the Writ Petition is disposed of. No costs. Miscellaneous Petitions pending if any in this Writ Petition, shall stand closed.

Dt: 20.04.2017
GM

C. PRAVEEN KUMAR, J

