HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.24900 OF 2006

ORDER:

1. This writ petition is filed seeking to issue a writ of Mandamus declaring the action of the respondents in not appointing the petitioner as messenger in State Bank of India, as illegal, arbitrary and unconstitutional, and consequently, to direct the respondents to appoint the petitioner as messenger with all consequential benefits.

2. Heard Y.V. Ravi Prasad, learned Counsel for the petitioner and Smt. V. Uma Devi, learned Standing Counsel for the respondents.

3. The case of the petitioner in brief is as follows:

The petitioner has been working as temporary messenger in the State Bank of India, Narsipatnam Branch since 1986 on full pay for 200 working days in a particular year. Though he used to discharge the duties of messenger, he was shown as daily wage employee by the respondent-Bank. While so, he received a letter from the 1st respondent, dated 1.3.1997 to the effect that he was provisionally selected for appointment as messenger in the bank, subject to fulfillment of eligibility criteria and medical fitness. The petitioner was referred to Bank Medical Officer, who in turn referred him to Dr. G. Sai Gopal, Cardiologist. The said Dr. G. Sai Gopal certified that the petitioner is fit for appointment as messenger. However, the Bank Medical Officer declared that the petitioner was unfit due to rheumatic heart disease. Basing on the said declaration of the Bank Medical Officer, the 3rd respondent issued letter dated 27.3.1997 stating that the appointment of the petitioner stood cancelled. Aggrieved by the same, the petitioner made a representation to the Chief Manager, State Bank of India, Zonal Office, Visakhapatnam on 29.3.1997 requesting to consider his case. Thereafter, the petitioner was referred to another specialist Dr. K. Gopala Krishna. The said Dr.Gopala Krishna declared that the petitioner is fit for employment as messenger. Meanwhile, some of the temporary employees approached the Courts by filing writ petitions. Therefore, the 1st respondent informed that the petitioner will be appointed after disposal of the writ petitions. Then, the petitioner made a representation to the Chief General Manager, State Bank of India, Local Head Office, Hyderabad to consider his case sympathetically. In response to his representation dated 7.9.2006, the Chief Manager sent a letter dated 13.9.2006 enclosing a copy of letter dated 9.8.2006 in which it was stated that as the petitioner was declared medically unfit, the matter was referred to Corporate Central Office of the Bank at Bombay, and the Corporate Central Office is not in favour of reopening the case after a gap of nine years, especially as the vacancy was already filled up. Aggrieved by the same, the petitioner filed this writ petition.

4. The learned Counsel for the petitioner contends that as per the reports of two cardiologists, the petitioner is medically fit for appointment as messenger in the bank and there are no laches on the part of the petitioner for the delay occasioned in this matter, but the respondents themselves delayed the matter, and till date, the vacancy was not filled up and therefore, the action of the respondents in not appointing the petitioner as messenger in spite of his eligibility and fitness, is arbitrary and illegal.

5. Learned Standing Counsel for the respondents contends that as the petitioner was found to be suffering from heart ailment, he was referred to a specialist Dr. G. Sai Gopal and the said specialist declared that the petitioner was having Rheumatic heart disease, and that the petitioner was declared as medically unfit about 10 years prior to filing of this writ petition and there is inordinate delay and lapses in filing the present writ petition. She contends that there is no messenger post vacant either on the date of filing this petition or as on today. She further contends that the petitioner cannot ask as a matter of right for consideration of his candidature despite the fact that he was found medically unfit.

6. Another contention raised by the learned Standing Counsel for the respondents is that there is inordinate delay and laches on the part of the petitioner, as he approached this Court after a lapse of more than 10 years and after being declared as medically unfit, and therefore, the writ petition is liable to be dismissed only on the ground of laches.

7. This Court has considered the rival submissions made by the parties and perused the material available on record. Firstly, insofar as the delay is concerned, this Court is of the view that the petitioner submitted a series of representations to the respondents, and his last representation was dated 7.9.2006, and then the Chief Manager sent a letter dated 13.9.2006 enclosing a copy of letter dated 9.8.2006, in which it was stated that the petitioner was declared medically unfit and then the matter was referred to Corporate Central Office of the Bank at Bombay, and the Corporate Central Office is not in favour of reopening the case of the petitioner after a gap of 9 years. From the above said correspondence, it is clear that the respondents referred the case to the Corporate Central Office at Bombay and the Corporate Central Officer took a decision in 2006 not to reopen the case of the petitioner. No details are forthcoming as to why the case of the petitioner was referred to Corporate Central Office; when the case was referred to Corporate Central Office and when the Corporate Central Office

took a decision. In the absence of the same, the respondents cannot plead that there is delay on the part of the petitioner. The contention raised by the respondents as to the delay is not sustainable.

8. It is the case of the petitioner that despite the medical reports furnished by two specialists declaring him as medically fit for appointment of messenger, the respondents declined to consider his case. As per chapter 27.3 of the guidelines to be followed by the Medical Officers/Bank's Authorized Doctors/Chief Medical Officer/Other Doctors carrying out Medical Examinations of Candidates for Appointment/ Promotion in the Bank, the aim of medical examination is spelt out as follows:

> "The Medical Examiner is expected to ensure that a candidate in his/her existing state of health will be able to render uninterrupted service to the bank. Hence, medical examiner must give a thorough medical check-up. To be passed as fit for appointment, a candidate must be in good mental and bodily health and free from any physical defect likely to interfere with the efficient performance of the duties of his/her appointment."

As per the above guidelines, kidney ailments, congenital heart diseases, Rheumatic Heart, Malignant Hypertension, Diabetes, Juvenile/or otherwise are considered to be the disqualifications. Further, as per the said guidelines, whenever any person is suffering with the above said diseases and wherever considered necessary medical examiners should take specialist's opinion before finalizing the report and they should always consider whether the candidate is fit for continuous service in the bank for a long period, and cases such as kidney ailments, congenital heart diseases, Rheumatic Heart, Malignant Hypertension, Diabetes, Juvenile/or otherwise should not be missed.

9. Further, in the above said guidelines, it is stated that in the cases where the medical examiner despite a specialist's opinion is unable to come to a final conclusion regarding the fitness or otherwise of the candidate, he may obtain the opinion of a second specialist. Even then, if the medical examiner finds any difficulty in coming to a conclusion about fitness or otherwise of a candidate he may refer such cases to the Bank's Senior Medical Officer of the concerned Local Head Office through the Personnel Manager. If necessary, the Circle Authorities may also refer these cases to Central Office for guidance in the matter.

10. Perusal of the above guidelines would indicate that having the above said diseases, itself is not a disqualification and the Bank officers will have to take an opinion of specialized medical officers and decide the suitability or otherwise of the employee likely to be appointed or promoted. In the instant case, the case of the petitioner was

referred to specialist and cardiologist Dr. G. Sai Gopal, who examined the petitioner and opined as follows:

> "This is to certify that I have examined Sri Srinivasa Rao. K, and found him to have mild M.S. He need no treatment at present and is well compensated. He is fit as a messenger at present"

There after, he was again referred to another specialist and Cardiologist Dr. K. Gopala Krishna, who certified vide letter dated 24.7.1997 as follows:

> "He has no symptoms attributable to heart disease. He has clinical and echo cardiographic evidence of Mild Mitrel Stenosis. During computerized exercise ECG testing he has exercised for more than 9 mts. In Bruce protocol attaining 10 mts work load without any shortness of breath.
>
> In view of his good effort tolerance, I am of the opinion that he is fit for employment as a messenger in the bank.

The above facts would go to show that the petitioner was referred to two cardiologists and he was declared by them as fit for appointment as messenger. In spite of the same, the bank medical officer rejected the case of the petitioner holding that he is unfit for appointment as he is suffering with Rheumatic Heart disease. As per the above guidelines of the bank, mere having Rheumatic Heart disease itself is not a disqualification. The persons who are suffering with Rheumatic Heart disease should be referred to specialist Doctor and then, their case should be considered if they are fit for appointment or promotion. In the instant case, the Bank medical officer has mechanically rejected the case of the petitioner, in spite of the fact that two specialists certified that the petitioner is fit for appointment as messenger, and it is totally arbitrary exercise of the bank medical officer.

11. The guidelines would abundantly make it clear that the medical officer must take the opinion of the specialist doctor when a person is suffering with Rheumatic Heart disease and consider whether the petitioner is fit for rendering long service or not. Further, as per the guidelines if the medical officer finds any difficulty to come to a conclusion about fitness or otherwise of a candidate, he may refer such cases to the second specialist doctor. But he cannot take decision on his own to disqualify a person merely because he is having Rheumatic heart disease. Further, the learned counsel for the respondents has not disputed the reports of two specialists viz., Dr. G. Sai Gopal and Dr. K. Gopala Krishna. Therefore, the impugned action of the respondents in relying upon the report of the Bank Medical Officer and rejecting the case of the petitioner for appointing him as messenger is unjust. In the circumstances and in view of the medial reports of two specialists, this Court is of the view that a direction can be given to the respondents to appoint the petitioner as messenger.

12. Accordingly, the Writ Petition is allowed directing the respondents to appoint the petitioner as messenger by duly taking into account that two specialists/cardiologists declared that the petitioner is fit for appointment as messenger, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 25th September, 2018.
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HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 24900 OF 2006

25/09/2018

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