

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

* * * *

WRIT PETITION NO.19366 OF 2018

Between:

Union of India rep. by its Secretary,
Department of Atomic Energy,
Mumbai and others ... Petitioners

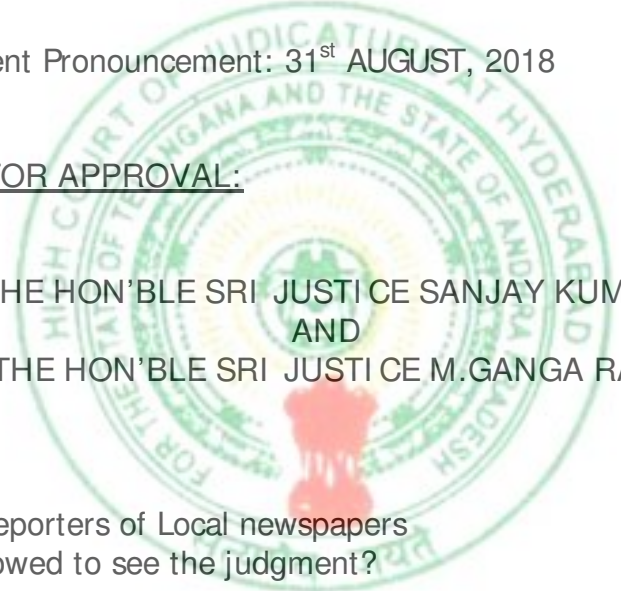
and

Nenavath Suresh ... Respondent

Date of Judgment Pronouncement: 31st AUGUST, 2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

- 
1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
 2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No
 3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

M. GANGA RAO, J

* THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

+ WRIT PETITION NO.19366 OF 2018

% DATED 31st AUGUST, 2018

Between:

Union of India rep. by its Secretary,
Department of Atomic Energy,
Mumbai and others ... Petitioners

and

\$ Nenavath Suresh ... Respondent

< Gist:

> Head Note:

! Counsel for petitioners : Sri K.Lakshman,
Assistant Solicitor General

^ Counsel for respondent : Sri P.Venkata Rama Sarma

? CASES REFERRED: --



THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION NO.19366 OF 2018

ORDER

(Per Sri Justice Sanjay Kumar)

Nenavath Suresh, the respondent herein, aspired to the post of Attendant/A (workshop, plant, lab)/Hospital Attendant/A, now re-designated as Work Assistant 'A'/Hospital Attendant 'A' in Category No.6 (Auxiliary Posts) of the services in the Nuclear Fuel Complex, Department of Atomic Energy, Government of India, pursuant to Advertisement No.NFC/01/2010. Eight out of the 115 posts in this category were reserved for Scheduled Tribes, the category to which the respondent belongs. Upon completion of the selection process, he was placed at Serial No.3 in the wait-list pertaining to the said category. He was however offered *ad hoc* appointment for a period of 89 days in the first instance, under letter dated 08.06.2013 issued by the Administrative Officer-III of the Nuclear Fuel Complex (NFC). Thereafter, Offer of Appointment dated 22.10.2014 was addressed by the Administrative Officer-III of the NFC to the respondent informing him that he had been selected for appointment as Work Assistant 'A' (Industrial Workmen: Non-Technical) in Pay Band-1 of Rs.5,200-20,200 and Grade Pay of Rs.1,800 in a temporary capacity in the industrial establishment of NFC at Hyderabad. His appointment was however subject to medical examination and production of a certificate of fitness. He thereupon produced his fitness and medical certificates but was not issued an appointment order on par with others who were offered such *ad hoc* appointment. By communication dated 26.05.2015, the Administrative Officer-III of the NFC informed the respondent that pursuant to the assessment of his medical fitness by the Medical Committee

on 13.05.2015, the Committee had opined that he was medically unfit for the post of Work Assistant 'A'/Hospital Work Assistant 'A' in the NFC in view of his morbid obesity and uncontrolled hypertension. His candidature for the said post was accordingly cancelled on medical grounds.

Aggrieved thereby, the respondent filed O.A.No.1141 of 2015 before the Central Administrative Tribunal, Hyderabad Bench (*for brevity*, 'the Tribunal'). By common order dated 07.06.2017, the Tribunal allowed the said O.A. along with another O.A. In so far as the respondent is concerned, the Tribunal directed the authorities of the NFC to consider his case for appointment if he was otherwise eligible. The Tribunal opined, on the strength of case law, that a candidate could not be declared unfit for a particular post merely on the ground that he suffered from a disease or disorder without a clear finding that he could not perform the duties and responsibilities attached to the post. The Tribunal also concluded that a candidate could not be declared unfit for a post taking into account his disease/disorder and on the mere apprehension that he may develop complications in future, rendering him unfit for the post at that time. The Tribunal recorded that the authorities did not claim before it that the applicants in the two cases before it were not able to perform the duties and responsibilities of the posts to which they were aspiring due to their medical condition and it was their case that they may acquire severe complications in future rendering them unfit for appointment. This reasoning was held to be invalid by the Tribunal and relief was granted to the respondent also. The Tribunal however left it open to the authorities to subject him to a fresh medical examination, as his earlier examination was nearly two years ago, duly keeping in mind the observations made by it in the said order.

As the Tribunal granted liberty to the authorities of the NFC to conduct a fresh medical examination, the authorities constituted a Medical Board to examine him afresh. Upon such examination, the findings of the Medical Board were that the respondent suffered from:

- i) Hypertension Stage-III,
- ii) Hypertensive Retinopathy Grade-2 (Target Organ damage),
- iii) Hypertensive Nephropathy Stage-1 (Target Organ damage),
- iv) Morbid Obesity, and
- v) Severe Obstructive sleep apnea syndrome.

The Medical Board further opined that he could not perform productive duties and was not fit for the post of Work Assistant 'A'/Hospital Work Assistant 'A'. The respondent was accordingly informed by the Administrative Officer of the NFC, *vide* letter dated 05.09.2017, that the NFC was not in a position to appoint him to the post.

Aggrieved by this fresh rejection, the respondent filed O.A.No.848 of 2017 before the Tribunal. By order dated 21.03.2018, the Tribunal allowed the O.A. and directed the authorities of the NFC to issue an appointment order to the respondent within eight weeks from the date of receipt of a copy of the order. Aggrieved by this direction, the Union of India and the officials of the NFC filed this writ petition.

Heard Sri K.Lakshman, learned Assistant Solicitor General for India appearing for the writ petitioners, and Sri P.Venkata Rama Sarma, learned counsel for the respondent.

It may be noted that the Tribunal had categorically held in its earlier order dated 07.06.2017 that a candidate could not be declared unfit for a particular post without clinical examination and a consequential declaration that he could not perform the duties and responsibilities attached to the concerned post. The scope of the medical examination to be undertaken pursuant to the said order was therefore to ascertain as to whether the

respondent was capable of performing the duties and responsibilities attached to the post of Work Assistant 'A'/Hospital Work Assistant 'A'.

In this regard, it may be noted that the guidelines for general medical examination for appointments to be made in the Department of Atomic Energy provide that no specific standard of physical fitness other than visual acuity is required for appointment of non-technical staff and it is left to the discretion of the examining Medical Officer to determine whether, in his existing state of health, the candidate is fit to discharge the duties continuously and efficiently. Admittedly, the post of Work Assistant 'A'/Hospital Work Assistant 'A' is a non-technical one. Further, it may also be noted that the duties to be performed by a Work Assistant 'A'/Hospital Work Assistant 'A' are as under:

- i) Cosmetic maintenance of laboratories and office buildings and surrounding areas including toilets, providing clean, neat and hygienic ambience in the area and miscellaneous office work.
- ii) Cleaning and decontamination of plants/machinery, assistance in plants/workshops/stores and other utility areas. The duties may also involve working in round the clock shifts.
- iii) Duties, include developing the gardens by digging soil and planting of different plants, maintenance of gardens by sweeping, watering, weeding, mowing, manuring, pruning and propagating plants and flower arrangements.
- iv) Agricultural operations including ploughing, harvesting, seed sorting/packing, pesticides and fertilizer treatment, bird watch etc.
- v) Miscellaneous office work etc.
- vi) Keeping hospital wards or dispensaries in hygienic condition. Helping the patients in sponging, changing, movement for diagnostic tests/treatment. Taking pathology samples to pathology department. Assisting nursing staff in bed making, serving food, taking/handing over articles, pantry articles etc., Bringing indents from Pharmacy stores etc.'

On the face of it, the duties attached to the post, as set out *supra*, are not so onerous or strenuous that only a person in the pink of health can be appointed thereto. It is, however, the case of the authorities of the NFC that a Medical Board, comprising Dr.Rajalingam, Professor, Ophthalmology,

Sarojini Devi Eye Hospital, Hyderabad; Dr.Pradeep Chandra C, Asst. Professor, Orthopedics, Gandhi Hospital, Hyderabad; Dr. (Mrs.) Ashwini Khandekar, Head, Medical Unit, BARC Hospital, Mumbai; and Dr.N.V.B.K.Sai, Cardiologist, South Central Railway Hospital, Secunderabad; was constituted to examine the medical fitness and suitability of the respondent, pursuant to the liberty granted by the Tribunal, and the Board decided that the respondent could not perform productive duties and found him unfit for the job.

Pertinent to note, a Medical Board comprising six specialists, including a General Physician, an Industrial Medicine Specialist, an Ophthalmologist, a Psychiatrist, a Cardiologist and a General Physician had earlier examined the respondent and opined on 13.08.2015 that he suffered from morbid obesity and had been recently diagnosed with hypertension.

He was however found to be negative for Ischaemia (heart disease) not only during his medical examination in 2015 but also during the medical examination in August, 2017. Surprisingly, he was also found medically fit for the post of Work Assistant 'A' by the Professor of Ophthalmology/Civil Surgeon, Osmania General Hospital, Hyderabad, under certificate dated 11.09.2017. More pertinently, the Professor of Ophthalmology also certified that the respondent had no retinopathy. By certificate dated 14.09.2017, the Civil Assistant Surgeon/RMO, Osmania General Hospital, Hyderabad, certified that the respondent was physically and mentally fit for the post of Work Assistant 'A'/Hospital Work Assistant 'A' at the NFC. It is not known how the Ophthalmologist from Osmania General Hospital rendered a finding that the respondent did not suffer from retinopathy but the Ophthalmologist from Sarojini Devi Eye Hospital, the member of the second Medical Board, opined so. In any event, it is not for this Court to sit in appeal over such medical

findings as they are neither judicially manageable issues nor does this Court have the wherewithal to verify the correctness thereof.

Be that as it may.

Significantly, the Minutes of the meeting held by the second Medical Board on 22.08.2017 are placed on record. The Board discussed therein that hypertension is a chronic progressive disease and damage to target organs (Retina and Kidney) had already started and ultimately concluded that the respondent could not perform productive duties and was not fit for the job.

The aforestated discussion of the Board, as set out in the Minutes, in our opinion, clinches the issue. The specific observation made by the Tribunal, in the earlier order dated 07.06.2017, was that the authorities should undertake medical examination to ascertain and verify whether the respondent was capable of performing the duties attached to the post. However, such an exercise was not taken up at all. Further, contrary to the specific direction of the Tribunal that a candidate could not be declared unfit for a post on the ground that he may develop complications in future in relation to the diseases/disorders that he suffers from, the Board took into account the possibility of further target organ damage as such damage had already started and opined that the respondent was unfit for the post. The discussion therefore puts it beyond the pale of doubt that the Medical Board was influenced by the future complications, including further target organ damage, that the respondent might suffer from at a later date to come to the conclusion that he was unfit for appointment at this stage.

As matters stand, the respondent suffers from blood pressure (hypertension) and is overweight. He has no heart disease or other major complications as is clear from the certificates issued by the Osmania General Hospital, Hyderabad, on 11.09.2017 and 14.09.2017, wherein he was found

to be physically and mentally fit for the job. On a fundamental level, the duties attached to the post, as set out *supra*, demonstrate that performance thereof by the respondent may not be impaired by his being overweight or due to his hypertension.

Essentially, the issue that arises is whether a person who suffers from ill-health can be denied employment on the ground that his continued utility is in doubt. It is indeed surprising, if not shocking, that a Central Government Organization such as the NFC should resort to such a practice, whereby a person who is presently capable of doing the job is being denied employment on the ground that he may develop complications in future. That is clearly the thrust of the Medical Board's opinion which was accepted by the NFC and led to the rejection of the respondent's candidature once again under the letter dated 05.09.2017. As to whether the respondent suffers from hypertensive retinopathy at all is one aspect of the matter but as rightly pointed out by the Tribunal, the authorities seem to have gone on a witch-hunt to come up with new diseases/disorders so as to show the respondent the door. This is clear from the fact that the second Medical Board went to great lengths to ascertain the extent of the sleep disorder (apnea) afflicting the respondent. It is however not brought out as to how such a sleep disorder would adversely impact the performance of duties by the respondent, if appointed.

On the above analysis, this Court finds that no error whatsoever was made by the Tribunal while holding to this effect and granting relief to the respondent.

The writ petition is utterly devoid of merit and is accordingly dismissed. The petitioners shall give effect to the order dated 21.03.2018 passed by the Tribunal in O.A.No.848 of 2017 and provide employment to

the respondent, on par with those who were offered appointment on *ad hoc* basis along with him, expeditiously and in any event, not later than four weeks from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, shall also stand dismissed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

M.GANGA RAO,J

31st AUGUST, 2018

Note: L.R. copy to be marked.
(B/o) PGS

