

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

WRIT PETITION No.20418 of 2018

ORDER: (ORAL)

(Per Suresh Kumar Kait, J)

Vide the present writ petition, petitioners have challenged order dated 27.03.2018 passed in O.A.No.1555 of 2015 by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, whereby the application filed by the respondent herein has been allowed.

2. Briefly stated, the facts of the case are that the respondent herein applied for the post of Drugs Inspector in response to advertisement No.16/2010 in the 2nd petitioner-organization and was also qualified in the written examination conducted for the said post by the 3rd petitioner. Respondent had also appeared for interview and was selected for the said post by the 3rd petitioner. Thereafter, respondent was issued an offer of appointment dated 12.11.2002 subject to production of a certificate of fitness from a Civil Surgeon authorized for the purpose. Thereafter, vide letter dated 04.04.2013, respondent was asked to appear for medical examination at DR.RML Hospital, New Delhi, wherein he was declared 'unfit' by the Medical Board on account of 'diabetics mellitus'. The respondent preferred an appeal dated 11.09.2013 along with the medical certificates issued by two different Doctors stating that he is not 'diabetic' and requested the authorities to conduct re-examination. In response to the respondent's request, petitioners have agreed for re-medical examination and the

respondent was directed to appear before the Medical Board of Safdarjang Hospital on 18.11.2013 for re-medical examination. The Medical Board of Safdarjang Hospital also declared the respondent as 'unfit' for the post of Drugs Inspector and the said decision was communicated to the respondent vide order dated 29.01.2014.

3. Being aggrieved, the respondent challenged the same before the Central Administrative Tribunal. After considering the rival contentions of the parties and while relying upon the order passed by the Madras Bench of CAT in O.A.No.381 of 2012, which was also upheld by High Court of Madras in W.P.No.21802 of 2013, the Tribunal allowed the application filed by the respondent.

4. Learned counsel appearing on behalf of the petitioners submits that the Tribunal has failed to notice the fact that a Drugs Inspector has to undertake travel across the country for the purpose of enforcement of the Drugs and Cosmetics Act and Rules to various places which are remote also and his being medically unfit can hamper the job of the Government in proper administration and enforcement of the provisions of Drugs and Cosmetics Act and Rules.

5. Vide order dated 19.06.2018, the matter was adjourned to verify as to whether order passed by the Madras Bench of Central Administrative Tribunal in O.A.No.381 of 2012, which was upheld by the Madras High Court in W.P.No.21802 of 2013, has been challenged before the Hon'ble Supreme Court, or not.

6. Learned counsel appearing on behalf of the petitioners submits that though he made efforts to find out the said information, there is no result. Learned counsel appearing on behalf of the respondent submits that the aforesaid order of the Madras Bench of CAT has not been challenged before the Hon'ble Supreme Court, therefore, the order passed by the Madras High Court in W.P.No.21802 of 2013 still holds the field.

7. We note, the High Court of Madras in W.P.No.21802 of 2013, held as under:

“... Medical experts opine that diabetes is a condition where the body fails to utilise the ingested glucose properly. Further, there is a strong school of thought that a diabetic is not suffering from a disease, but only a disorder that could be managed. Approximately, as of 2011 as per survey 62.4 million (as against 1.2 billion Indian population) are diabetics, which is stated to increase in 2030 to 110.1 million from the large work force of our country. Diabetes usually has no impact on an individual's ability to do a particular job, and in most cases the employer may not even know that his employee has diabetes. As the impact of diabetes and its management varies among individuals there cannot be a blanket ban on giving public employment to persons with diabetes...”

“Therefore, to deny employment to the second respondent on speculation that what might occur in future is unreasonable. Medical experts state that blood glucose levels fluctuate throughout the day, which is also the case of people without diabetes, and one test

result cannot be an assessment of the overall health of a person with diabetes.”

8. Since the very same issue had come before the Madras High Court and the order passed therein has not been challenged before the Hon’ble Supreme Court, the said order still holds the field.

9. In that view of the matter, we see no reason to interfere with the impugned order.

10. Writ petition is accordingly dismissed. No order as to costs.

As a sequel, miscellaneous petitions if any pending, stand closed.



SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

July 17, 2018
MRR