

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.09.2019

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No. 20320 of 2018
and
W.M.P.No. 23872 of 2018

K.Sriram

..Petitioner

Vs

1. The IDBI Bank Limited
Rep. by its Deputy General Manager,
IDBI Tower,
WTC Complex,
Cuffe Parade,
Mumbai - 400 005.

2. The IDBI Bank Limited
Chennai Zonal Office,
III Floor, No.115, Anna Salai,
Post Bag No.805,
Saidapet,
Chennai - 600 015.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ order or direction in the nature of writ of Certiorarified Mandamus, call for the entire records relevant to the order in HRD.No.1521/Rec.A-MSB-1142, dated 17.07.2018 passed by the 1st respondent herein and quash the same as illegal, improper, unfair, unreasonable, arbitrary against the settled laws and subsequently direct the respondents to admit the petitioner in Post Graduate Diploma in Banking & Finance, 2016-2017, then, appoint the petitioner as the Assistant Manager (Grade 'A') in the respondent bank.

For Petitioner : Mr.N.Elumalai
For Respondents : Mr.Vanitha Srinivasan

O R D E R

The prayer sought for herein in this Writ Petition is for issuance of a Writ of Certiorarified Mandamus, calling for the entire records relevant to the order in HRD.No.1521/Rec.A-MSB-1142, dated 17.07.2018 passed by the 1st respondent and quash the same and subsequently direct the respondents to admit the

petitioner in Post Graduate Diploma in Banking & Finance, 2016-2017, then, appoint the petitioner as the Assistant Manager (Grade 'A') in the respondent bank.

2. The learned counsel appearing for the petitioner would submit that the petitioner is a visually handicapped person and his disability is more than 40%. Calculating his disability, the Assistant ophthalmic surgeon, Government Hospital, Madurai has also issued a Disability Certificate for the same.

3. The learned counsel appearing for the petitioner would further submit that the respondent bank is an Indian Government owned financial service company and receiving subsidiary of the Reserve Bank of India. Hence the present writ petition is maintainable.

4. It is further submitted that the 1st respondent issued an advertisement dated 16.11.2016, stating that "IDBI Bank has entered into MOU with Manipal Global Education Service Private Limited (MGES), Bangalore to provide training in Banking and Finance to prospective candidates aspiring to join IDBI bank as Assistant Manager Grade 'A'. IDBI Bank invited application from young, dynamic graduates for admissions in Manipal School of Banking, Bangalore for 1st year post graduate Diploma in Banking and Finance (PGDBF) comprising 9 months of classroom studies at MGES Bangalore and 3 months internship of IDBI Bank's branches. After the successful completion of the course, the candidates will be inducted into IDBI bank as Assistant Manager Grade 'A' subject to fulfillment of eligibility criteria as stated in the advertisement".

5. The learned counsel appearing for the respondents would submit that the writ petition itself is not maintainable, in view of the fact that in the advertisement for recruitment, dated 16.11.2016, paragraph 14(z) states as under:

"Any resultant in dispute arising of this advertisement and the selection process shall be subject to the sole jurisdiction of the Courts situated in Mumbai only"

6. The petitioner having responded to this Advertisement should have accepted the above condition and any dispute should be raised before the Courts situated in Mumbai as the contract in fixing the jurisdiction has been entered into and agreed to by the Petitioner.

7. The very same issue has already dealt with by this Court in the case of K.Vijeswaran Vs The Manager/HR (MRP & R) & anr. in W.P.No. 17851 of 2015, dated 26.06.2019 and the relevant paragraphs are extracted here under;

"6. This apart, learned counsel for the respondent states that BHEL is operating Heavy Boilers and the Writ Petitioners have to perform certain hard duties in high degree temperatures. Therefore, the fitness of the employees are of paramount importance and if an employee is not medically fit, the management cannot allow such employees to perform their duties and responsibilities near the boilers. The three Judges Bench of the Hon'ble Supreme Court, in the State of Madhya Pradesh Vs. Abhijit Singh Pawar reported in 2018 (6) CTC 659, observed as follows:

"15. In the present case, as on the date when the respondent had applied, a criminal case was pending against him. Compromise was entered into only after an affidavit disclosing such pendency was filed. On the issue of compounding of offences and the effect of acquittal under Section 320(8) of Cr.P.C., the law declared by this Court in Mehar Sing (supra), specially in paragraphs 34 and 35 completely concludes the issue. Even after the disclosure is made by a candidate, the employer would be well within his rights to consider the antecedents and the suitability of the candidate. While so considering, the employer can certainly take into account the job profile for which the selection is undertaken, the severity of the charges levelled against the candidate and whether the acquittal or was merely on the ground of benefit of doubt or as a result of composition.

16.

17. We must observe at this stage that there is nothing on record to suggest that the decision taken by the concerned authorities in rejecting the candidature of the respondent was in any way actuated by mala fides or suffered on any other count. The decision on the question of suitability of the respondent, in our considered view, was absolutely correct and did not call for any interference. We, therefore, allow this appeal, set aside the decisions rendered by the Single Judge as well as by the Division Bench and dismiss Writ Petition No.9412 of 2013 preferred by the respondent. No costs."

7. The Supreme Court categorically held that even after the disclosure is made by the candidate with regard to the eligibility or otherwise, the employer would be well within his rights to consider the antecedents and suitability of a candidate. Therefore, assessment of suitability with reference to the Rules and the job profile is also an important factor for the purpose of selection and appointment. In respect of the present writ petition, during the medical examination, the writ petitioner was found not fit for appointment to the post of Welder and such a medical report cannot be interfered with by this Court in the present writ petition. Thus, the writ petitioner who was not selected cannot seek any relief for

appointment for the post of Welder in BHEL.

8. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed."

8. In view of all the above, the present writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1.The Deputy General Manager,
IDBI Bank Limited
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2. The IDBI Bank Limited
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Chennai - 600 015.

+1 Cc to M/s.A. Kayalvizhi, Advocate sr 77929.

+1 CC to Mr.N.Elumalai, Advocate sr 77937

W.P.No. 20320 of 2018

NK(CO)
SP(22/10/2019)