



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.06.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

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W.P.[MD]No.17851 of 2015

and

M.P.[MD]Nos.1 to 3 of 2015

K.Vijeshwaran

... Petitioner

Vs.

1.The Manager / HR (MPP & R),
Human Resource Department,
Building No.24,
Bharat Heavy Electricals Limited.,
Tiruchirapalli - 620 014.

2.The Sr.Deputy General Manager / HR (R & W),
Human Resource Department,
Building No.24,
Bharat Heavy Electricals Limited,
Tiruchirapalli - 620 014.

... Respondents

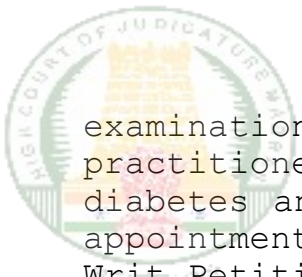
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records in No.TP:HR:R:ADVT:294 dated 05.07.2012 issued by the first respondent and quash the same as arbitrary, illegal and direct the first respondent to appoint the petitioner in the suitable post of Welder in the respondents organization.

For Petitioners : Mr.N.Sudalai Muthu

For Respondents : Mr.A.V.Arun

ORDER

The order of rejection dated 05.07.2012 issued by the respondent is under challenge in the present writ petition. The writ petitioner states that he participated in the process of selection for appointment to the post of Welder in Bharat Heavy Electricals Limited [BHEL]. The writ petitioner is fully qualified and had undergone apprenticeship training in the respondent BHEL. Therefore, the petitioner participated in the selection process pursuant to the recruitment notification issued for appointment to the post of Artisans. The writ petitioner is eligible to the post of Welder. His application was admitted and he was permitted to participate in the written test and the writ petitioner was successful in the written test and thereafter, underwent medical



examination. During the medical examination, the medical practitioners found that the writ petitioner was suffering from diabetes and therefore, declared the writ petitioner as not fit for appointment to the post of Welder. Challenging the same, the present Writ Petition is filed.

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2.Learned Counsel for the petitioner states that Diabetes is a common disease which cannot be a disqualification for appointment to the post of Welder. The writ petitioner is capable of performing his duties as Welder and that apart, the writ petitioner has undergone apprenticeship training with BHEL. This being the factum, the order of rejection is to be set aside.

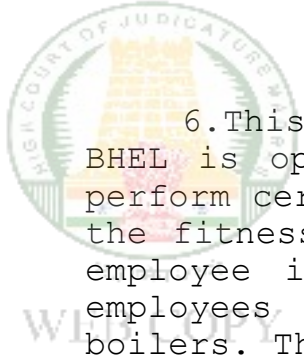
3.Learned Counsel for the respondents disputed the contentions by stating that the Rules in relation to the medical examination states as follows:

"13.Urine:

Non orthostalic albunimuria will be a cause for rejection. If sugar is detected during routine chemical tests, further laboratory tests such as standard blood sugar tolerance test will be undertaken by a Medical Specialist before determining the fitness. If a candidate is diagnosed to be suffering from diabetes, he shall be declared unfit."

4.With reference to the Rules, medical examinations were conducted in respect of the selected candidates. During the medical examination, the Doctors found that the writ petitioner is not fit to perform the duties and responsibilities attached to the post of Welders. Thus, the certificate of unfitness was granted and accordingly, the writ petition has been filed.

5.This Court is of the opinion that Diabetes is not a disease at all. As per the medical experts, Diabetes is a deficiency and not a disease. However, the employer is competent to ascertain the suitability of the person for a particular job. Even in the absence of any such diseases including Diabetes, an employer is empowered to ascertain the fitness of a candidate with reference to the job profile. Thus, assessment of fitness is a Rule and the employer is very well within their power to do so. In the present case, the writ petitioner was sent for medical examination and during the medical examination, the Doctors ascertained that the petitioner is not fit for the post of Welder. When the medical experts have submitted a report, this Court cannot interfere with the opinion of such medical practitioners. The Courts are not experts and such opinion cannot be interfered with in a routine manner.



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 Singh (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 in question was an honourable 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.

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Sd/-

Assistant Registrar

/ True Copy /

Sub Assistant Registrar (CS-)

+1 CC to M/s.A.V.ARUN, Advocate (SR-71408[F] dated 26/06/2019)

MR

W.P[MD]No.17851 of 2015
26.06.2019

ES/08.07.2019/4P/2C