

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.11919 of 2017

ORDER:

This writ petition is disposed of at the stage of admission, with the consent of both the parties.

2. This writ petition is filed seeking a Writ of Mandamus declaring the impugned order passed by respondent No.3, dated 21/22.02.2017, declaring the petitioner herein as unfit for employment on the ground that the petitioner was suffering with Retro viral disease, as arbitrary, illegal, unilateral, unconstitutional, against the principles of natural justice and violative of Articles 14 and 21 of the Constitution of India and consequently set aside the same.

3. Heard Sri A.K.Jayaprakash Rao, counsel for petitioner and Sri J.Sreenivasa Rao, Standing Counsel for respondents.

4. It has been contended by the petitioner that his father was employed with the respondent-Company and due to health problems, his father submitted an application requesting the respondents to retire him on medical grounds and consider the case of the petitioner for appointment under Dependant Employment Scheme. The petitioner further contended that his father was retired on medical grounds and later on, the case of the petitioner was considered for appointment under Dependant Employment Scheme. The petitioner was subjected to medical examination and in the said medical examination, the

Medical Board of the respondent-Company had declared the petitioner as unfit to be appointed as Badli worker for underground duties, on the ground that the petitioner was suffering with Retro viral disease. The petitioner further contended that the male dependant persons are being considered for underground employment and female dependant persons are being considered for surface duties. The Medical Board of the respondent-Company had declared the petitioner unfit for underground employment as the petitioner was suffering with Retro viral disease, and on that ground, petitioner was denied appointment. Challenging the same, the present writ petition is filed.

5. The petitioner has contended that nowhere in the Service Regulations of the respondent-Company it has been disclosed that the persons suffering with Retro viral disease can be denied employment, but the respondents have rejected the case of the petitioner only on the ground that he was declared unfit for underground employment, by the Medical Board of respondent-Company.

6. The learned counsel appearing for petitioner has further contended that a similar issue fell for consideration before this Court in W.P.No.23405 of 2016, wherein, the person suffering with HIV was denied employment under Dependant Employment Scheme, and this Court was pleased to allow the said writ petition by order dated 20.12.2017, directing the respondents to consider the case of the petitioner for employment for surface duties under Dependant Employment Scheme due to medical invalidation of his father.

However, this Court has observed that the said order shall not be a precedent in cases of this nature.

7. Counsel for petitioner further contended that in the instant case, the issue is about Retro viral disease, but rest of the facts are one and the same. Counsel for petitioner contended that the case of the petitioner be considered for appointment under Dependant Employment Scheme without disqualifying him on the ground that he is suffering with Retro viral disease.

8. The learned Standing Counsel appearing for respondents has contended that as per the settlement entered between the Unions and the management of the respondent-Company, the management has taken a policy decision and the same is reflected in the Circular dated 09.03.2018, as per which, the cases of male dependant employees are to be considered as Badli workers in underground mining area, whereas, the cases of female dependant employees are to be considered as Badli workers on surface. Since the petitioner is a male dependant employee, his case was considered as Badli worker for underground duties and the Medical Board has opined that the petitioner was unfit for underground duties as he was suffering with Retro viral disease, and hence, rejected.

9. This Court, having considered the rival submissions made by the parties, is of the considered view that there is no such disqualification of persons on the ground that they are suffering with

diseases like Retro viral disease. It is the opinion of the Medical Board that the petitioner is unfit for appointment as Badli worker in underground area. There is no prescription in the Regulations of the respondent-Company that a person suffering with Retro viral disease shall be debarred from consideration for employment under Dependant Employment Scheme. Therefore, the action of respondents in rejecting the case of the petitioner for appointment under Dependant Employment Scheme on the ground that he is suffering with Retro viral disease, is arbitrary and illegal and is liable to be set aside.

10. Accordingly, the writ petition is allowed, setting aside the impugned order dated 21/22.02.2017. The respondents are directed to consider the case of the petitioner for appointment as Badli Worker on surface duty and pass appropriate orders within a period of three months from the date of receipt of a copy of this order. However, this order shall not be a binding precedent in future in cases of this nature. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

04th July, 2019

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