

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 31-01-2020

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.20899 OF 2018

S.Thenmozhi

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Petitioner

-vs-

1.IDBI Bank Limited,
rep.by its Deputy General Manager,
Human Resources,
Regd.Office : IDBI Tower,
WTC Complex, Cuffee Parade,
Mumbai-400 005.

2.The Human Resources Manager,
IDBI Bank Ltd., 3rd Floor,
Chennai Zonal Office,
115, Anna Salai,
Post Bag No.805, Saidapet,
Chennai-15.

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Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order, dated 31.07.2018, issued by the first respondent in HRD No.1713/Rec.A-MSB-1506 and quash the same and consequently direct the first respondent to admit the petitioner to the Post Graduate Diploma in Banking and Finance Programme as well as to induct the petitioner as Assistant Manager-Grade 'A' on successful completion of PGDBF Programme and Internship.

For Petitioner : Mr.S.Saravanan

For Respondents: Ms.Vinithra Srinivasan,
for M/s.NVS & Associates.

ORDER

This Writ Petition has been filed, challenging the rejection of the candidature of the petitioner, who applied in the respondent Bank to the post of Assistant Manager, Grade 'A'.

2. The first respondent issued an online advertisement on 09.12.2016, inviting applications from the aspirants to undergo a One Year Course in Post Graduate Diploma in Banking and Finance at Manipal School of Banking, Bengaluru, consisting of 9 months of Class Room Studies, and 3 months of Internship at IDBI's Branches and, on completion of the course, to get inducted in any one of the branches of IDBI as Assistant Manager, Grade 'A'. The petitioner submitted an application through online and she was permitted to take her online examination conducted on 03.02.2017. Based on her performance in the examination, her name was shortlisted and she was called for an interview on 07.02.2018. Thereafter, a communication was sent to the petitioner on 23.03.2018 by the respondents, calling upon her to report before the second respondent.

3. Accordingly, the petitioner appeared before the second respondent. The petitioner was asked to fill up a Pre-Recruitment Health Check-up Form. The petitioner submitted the form and she was directed to undergo a medical check-up, where, the Medical Officer concerned found that the petitioner had already undergone a cardiac surgery and, therefore, a remark was made in the report to evaluate the cardiac status of the petitioner and to get a fitness certificate from a Cardiologist.

4. The petitioner submitted certain medical certificates from Manipal Hospitals, Apollo Hospital and Miot Hospital. All those certificates revealed the fact that the petitioner had undergone a Surgery Closure for Atrial Septal Defect (ASD). The certificates were placed before the Medical Officer of the respondent Bank, who, by his letter, dated 23.07.2018, opined that the petitioner was unfit to be considered for appointment. Pursuant to the said opinion of the Medical Officer, the candidature of the petitioner was rejected by the Bank by means of the impugned letter, dated 31.07.2018. Aggrieved over the same, the present Writ Petition has been filed before this Court.

5. Learned counsel for the petitioner submitted that the certificates given by the hospitals reveal the fact that the health status of the petitioner was normal and she was fit to be considered for appointment. He also submitted that the Medical Officer of the respondent Bank had relied upon the Bank's Revised Fitness Standard and, more particularly, Para 2 (c) (vi), to hold that the petitioner was unfit to be considered for appointment. The learned counsel, by bringing to the notice of this Court the relevant Rule, submitted that only those cardiac diseases, including Septal Defects, which

require a Surgical Correction, can be said to be a disqualification for consideration, but, however, in the present case, the petitioner had already undergone the surgery in the year 2009; by the time of recruitment, she completely recovered and, therefore, the finding of the Medical Officer is contrary to the regulations and, as such, his report should not have been relied upon by the respondent Bank. Accordingly, the learned counsel submitted that the impugned rejection letter issued by the respondent Bank requires interference. The learned counsel, in order to substantiate his submissions, relied upon a Division Bench decision of the Bombay High Court in Ranjit Kumar Rajak v. State Bank of India, reported in CDJ 2009 BHC 816.

6. Conversely, learned counsel appearing for the respondents submitted that the petitioner did not participate in the selection by revealing the correct facts. She also submitted that the petitioner was given a Pre-Recruitment Health Check-up Form, wherein, certain details were sought for regarding the personal history of the candidate and Serial Nos.11,13 and 17 therein are very relevant to the present case. Serial No.11 makes a query as to whether the candidate was hospitalised at any time. For this, the petitioner neither said 'Yes' nor 'No'. Likewise, for the query as to whether the candidate had undergone any surgical operation, the petitioner responded in a similar way. In so far as the query as to whether the candidate had any heart disease or abnormality or any history of fainting, breathlessness or palpitation, the petitioner responded as 'No'. The learned counsel submitted that the petitioner had obviously attempted to conceal the correct details regarding her health and, only after the petitioner underwent medical test, the earlier operation, that was performed on the petitioner in the year 2009, came to be detected. According to her, the candidature of the person, who does not come clean for selection, is liable to be rejected on that ground alone.

7. Learned counsel for the respondents also submitted that the Medical Officer of the respondent Bank, after considering the medical records and the certificates of the petitioner, found the petitioner unfit to be considered for appointment. She further submitted that the said opinion has been given by an expert and this Court cannot sit over it and come to a different conclusion. She also submitted that suitability of the candidate is very much left to the discretion of the employer and the same cannot be interfered with, unless it is apparently illegal. The learned counsel, in order to substantiate her submissions, relied upon an order

passed by this Court in W.P.No.20320 of 2018, dated 09.09.2019, wherein, this Court, while considering a similar issue, had dismissed the Writ Petition.

8. This Court has carefully considered the submissions made on either side and the material available on record.

9. It is an admitted case that the petitioner has undergone a surgery for Atrial Septal Defect (ASD) in the year 2009. This is a surgery performed for a cardiac defect. When the petitioner participated in the selection, she was aware of this fact. Therefore, the petitioner should have honestly answered in the relevant columns of the Pre-Recruitment Health Check-up Form, by revealing that she was hospitalised and that she had undergone a surgical operation. However, the petitioner conveniently did not answer both the queries. Further, the petitioner went ahead and furnished a false information for the query as to whether she had any heart disease. For this query, she replied as 'No' in the form. This shows the unclean mind of the petitioner and the petitioner has obviously tried to conceal a material fact at the time of selection. The Hon'ble Supreme Court has repeatedly held that concealment of material facts itself is a ground for rejecting the candidature.

10. In the considered view of this Court, a false information has been provided by the petitioner for a material fact that was sought for by the respondent Bank in the Pre-Recruitment Health Check-up Form. The truth came to light only when the petitioner underwent physical examination and the report of the Medical Officer shows that the Officer was able to detect the fact that the petitioner had undergone a cardiac surgery and, therefore, the petitioner was asked to get Medical Certificate regarding her health status. The petitioner provided some information to the hospitals and, based on the information provided by her, Medical Certificates were issued by the hospitals. This was examined by the Medical Officer of the respondent Bank and she opined that the petitioner was unfit for appointment in the Bank. This is purely an opinion of the expert, which deals with suitability of the candidate.

11. At this juncture, it is relevant to take note of the judgment of the Hon'ble Apex Court in State of Madhya Pradesh v. Abhijit Singh Pawar, 2018 (6) CTC 659. The relevant portions of the said judgment are extracted hereunder :

'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 was merely on the ground of benefit of doubt or as a result of composition.

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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."

12. The above judgment of the Hon'ble Supreme Court was subsequently followed by this Court in W.P.No.20320 of 2018 and this Court held that it is well open for the employer to consider the suitability of a candidate and unless the decision of the employer is actuated by mala fides or it suffers on any other count, this Court cannot interfere with the said decision, in exercise of its jurisdiction under Article 226 of the Constitution of India. This Court rejected a similar plea that was taken by a candidate against the very same respondent Bank.

13. The judgment that has been cited by the learned counsel for the petitioner in the case of *Ranjit Kumar Rajak*, cited above, will not apply to the facts of the present case.

That was not a case, where the candidate did not reveal the medical condition. In that case, the candidate had actually disclosed the medical condition that he had undergone a renal transplant and the Bombay High Court held that the cancellation of the provisional appointment thereafter was bad. The said judgment cannot be applied to the present case, since the petitioner herein has attempted to conceal a material information regarding the surgery underwent by her.

14. In view of the above discussion, this Court does not find any ground to interfere with the impugned letter of the first respondent, dated 31.07.2018. Therefore, this Writ Petition is dismissed. No costs. Consequently, the connected W.M.P.Nos.24534 and 24535 of 2018 also stand dismissed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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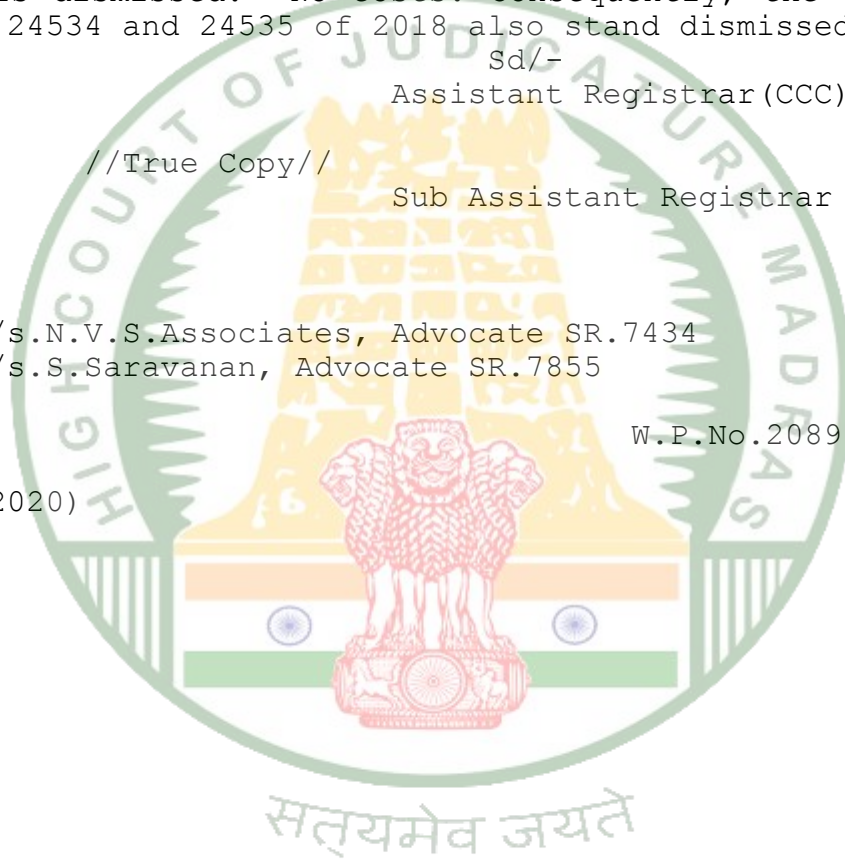
+1cc to M/s.N.V.S.Associates, Advocate SR.7434

+1cc to M/s.S.Saravanan, Advocate SR.7855

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RGN(CO)

CB(12/03/2020)



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