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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Order : 15<sup>th</sup> January, 2020*

+ **W.P.(C) 1565/2019**

**DELHI SUBORDINATE SERVICES**

..... Petitioner

Through: Mrs.Avnish Ahlawat, standing  
counsel, GNCTD (services) with  
Mr.Nitesh Kumar Singh and  
Mr.Himank Ahuja, Advts.

versus

**SURENDER PAL**

..... Respondent

Through: Mr.Ghanshyam Thakur, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**G.S. SISTANI, J. (ORAL)**

1. This is a petition filed under Article 226 of the Constitution of India. The petitioner is aggrieved by the decision dated 19.09.2018 rendered by the Central Administrative Tribunal ('Tribunal') by which the following directions have been passed:

*“Considering the nature of relief prayed for, without insisting on reply from the respondents, we dispose of this OA at the admission stage itself with a direction to the respondents to allow the applicant to participate in the PET whenever it is held next. We also expect that the respondents would conduct PET as early as possible, preferably within a month. Needless to say that in case the applicant clears the PET, the respondent (DSSSB) would take subsequent action as per rules.”*

2. Mrs.Avnish Ahlawat, learned standing counsel appearing for the petitioner submits that the order of the Tribunal has been passed without any application of mind. She further contends that the matter was heard without any reply having being filed at the admission stage itself. Thus a proper opportunity was not granted to the petitioner herein to contest the matter. She submits that the Tribunal has overlooked the fact that if the direction issued is complied with, it would lead to serious complications in the scheme and system of examinations, in the sense that the petitioner (DSSSB) conducts a large number of public examinations throughout the year for different user departments and each examination process will carry-on endlessly if individual candidates are accommodated for their individual problems and difficulties.
3. It is further submitted that if the dates of the Physical Endurance Test (PET) are changed on account of illness or for any other reason, there would not be any finality to the process and the filling-up of the vacancies would be delayed endlessly. Further, Mrs.Ahlawat contends that the un-filled vacancies have since been sent back to the user department. If the user department wishes to fill-up vacancies, the petitioner would be called upon to send more dossiers. Otherwise, the user department may choose to commence a fresh recruitment process.
4. *Per Contra*, Mr.Ghanshyam Thakur, counsel for the respondent submits that there is no infirmity in the order passed by the Tribunal. The petitioner had invited applications for recruitment to 26 posts of Fireman (Band) under post code 56/15. The respondent had applied for the said post pursuant to an advertisement which was published on

20.10.2015. Thereafter, written examination was conducted on 14.05.2017 and the respondent was shortlisted. The respondent and other shortlisted candidates were informed through SMS on 13.09.2018 that the PET is scheduled to be conducted for the post of Fireman (Band) on 18.09.2018 between 8.30 a.m. to 1:00 p.m. On 13.09.2018, the respondent sent a letter to DSSSB informing them that he was suffering from high viral fever; and therefore he requested that his PET be held after two weeks. A medical certificate is also stated to have been annexed with the letter. Mr.Thakur further submits that the reason for not appearing in the PET was bona fide, which is evident from the fact that a medical prescription dated 15.09.2018 was submitted, which has also been filed before this court.

5. The respondent also addressed emails to the Chief Minister, Deputy Chief Minister and the Chief Secretary of the Government of NCT of Delhi. The respondent even visited the examination center to personally inform the petitioner about his ill-health but his request was not entertained. Thereafter, he went to the Model Town Police Station and also intimated the SHO about the same.
6. In this backdrop, learned counsel for the respondent submits that the illness of the respondent was bona fide and therefore the order of the Tribunal should be complied with. He has relied upon a decision rendered by the Rajasthan High Court in the case of ***Laxmi Devi vs. State of Rajasthan through Principal Secretary, Department of Home, Government Secretariat, Jaipur***, Civil Writ Petition No.18808/2015, wherein there was delay in conducting the PET and at the time of PET

the petitioner in that case could not appear since she was pregnant. In the said case, the court observed as under :

*"It may be noticed that pregnancy is not a disability but is one of the natural consequence of marriage and any distinction made on the ground of pregnancy be always held to be arbitrary and violative of Art.14 of the Constitution.*

*By a restriction which has been imposed by the respondents in the standing orders that the women candidates who are pregnant, there shall be no provision for additional/extra chance and they are required to submit a Doctor's report in this respect and it will be at their own risk, appears to be an ingenious attempt made by the respondents just to defeat the claim of the women candidates. Freedom of personal choice in matters of marriage and family life is one of the liberties protected by the mandate of law and the same if very from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child. The Father of Nation, Mahatma Gandhi eloquently said:*

*"Marriage is a natural thing in life, and to consider it derogatory in any manner is wholly wrong. The idea is to look upon marriage as a sacrament and therefore, to lead a life of self restraint in the married state."*

*To say that one fears to lose employment on getting married is to forget the fact that the bloom or light of all life's happiness consists in marriage. It is nothing more than a civilized way of living. No wonder Channing Pittock Said "Marriage is the greatest educational institution on earth" and certainly protect fundamental rights conferred u/Art.21 of the Constitution where no person shall be deprived of his life or personal liberty except according to procedure established by law and 'life' in this Article cannot be considered to be a mechanical one. It is an attendant with all that is*

*required to make the life blossom and all enjoyment within the permissible limits of law.*

*Here is a case of a married woman who chooses to have a child, can the State or an authority like the respondents impose itself and curtail this life or personal freedom of the woman? No detailed discussion is required in the matter of appointment against such post which prescribes for Physical Standard Test/Physical Efficiency Test and it shall no longer be necessary to declare woman candidate completely unfit if she is found to be unfit during the period when she is ordinarily required to appear in the Physical Standard Test/Physical Efficiency Test for qualifying in the selection process.*

*In the given facts & circumstances, she certainly deserves indulgence of relaxation which she has to qualify after the reasonable period which the authority in the given circumstances considers appropriate in affording her an opportunity to qualify the Physical Standard Test/Physical Efficiency Test depriving or eliminating her from the selection process for the reason that she is at the advanced stage of pregnancy on the date notified by the respondents to appear in the Physical Standard Test/Physical Efficiency Test, in our considered view, is certainly arbitrary & violative of Art.14 of the Constitution.*

*The restriction which has been imposed by the respondents fundamentally does not hold good and it is certainly prejudicial & against Indian womanhood which pervades the service Rules and there is a reasonable basis for the charge of bias under the Rules and it makes an ominous indifference of the executive to bring about the banishment of discrimination in the service Rules.*

*It cannot be forced upon a woman to have a choice between bearing a child and employment as it interferes both - with her reproductive rights and her right to employment and such an action cannot have any place in the present modern era.*

*We would refer to a passage occurring at page 166 of Swamy's Complete Manual on Establishment and Administration. The said passage reads ad infra:-*

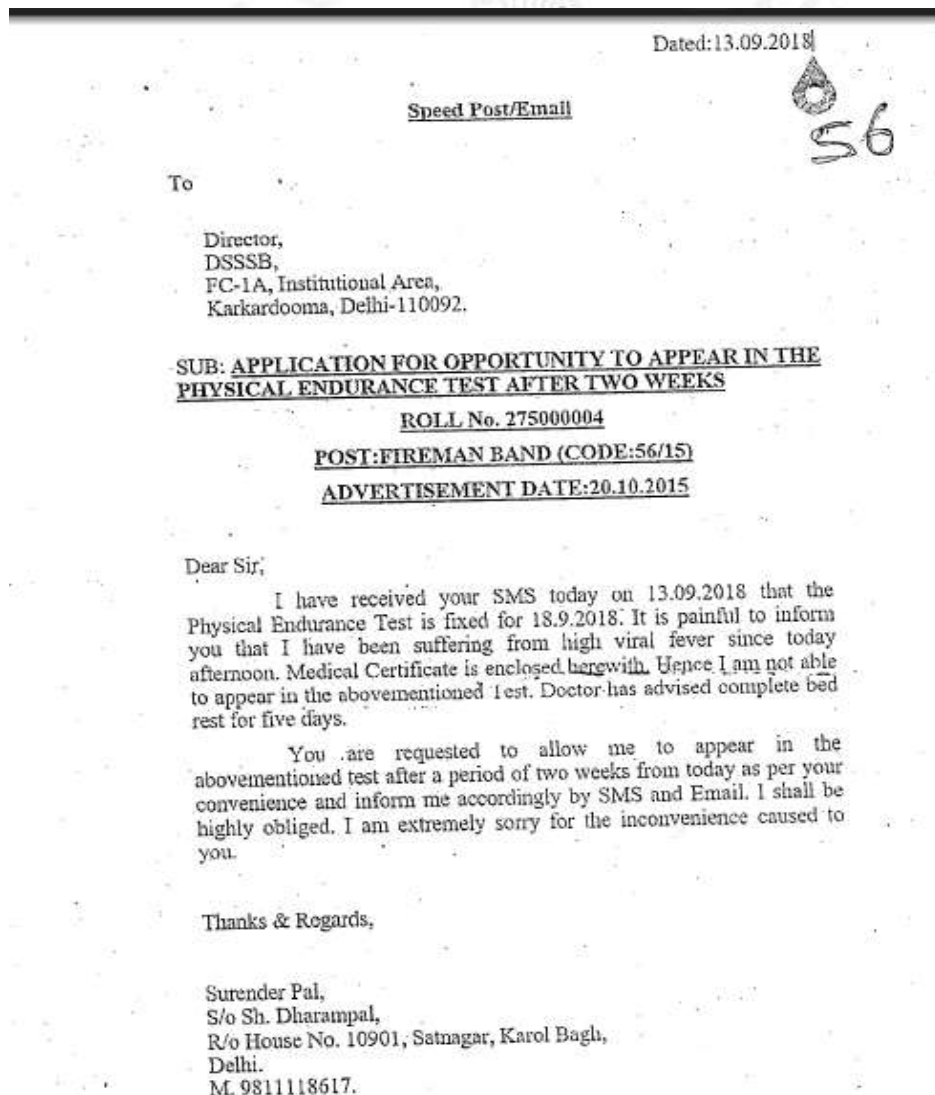
*"Employment of women candidates in state of Pregnancy-*

*(a) For appointment against posts carrying hazardous nature of duties- Where a pregnant woman candidate is to be appointed against a post carrying hazardous nature of duties, e.g., in Police Organisations, etc., and she has to complete a period of training as a condition of service and who as a result of tests is found to be pregnant of twelve weeks standing or over shall be declared temporarily unfit and her appointment held in abeyance until the confinement is over. She should be re-examined for a fitness certificate six weeks after the date of confinement, subject to the production of medical certificate of fitness from a registered medical practitioner. The vacancy against which the woman candidate was selected should be 'kept reserved for her. If she is found fit, she may be appointed to the post kept reserved for her and allowed the benefit of seniority in accordance with para 4 of Annexure to MHA OM No. 9/11/55-R.S, dated the 22nd December, 1959.*

*(b) For appointment against posts which do not prescribe any elaborate training- It shall no longer be necessary to declare a woman candidate 'compulsorily unfit' if she is found to be pregnant during medical examination before appointment against posts which do not prescribe any elaborate training, i.e., She can be appointed straightway on the job."*

7. We have heard the learned counsel for the parties and have considered their rival submissions.

8. The basic facts which we have narrated above are not disputed. The respondent cleared the written examination which was held on 14.05.2017 but he did not participate in the PET held on 18.09.2018. The respondent claims that he was suffering from fever, for which a medical prescription has been relied upon. We find that although the medical prescription dated 15.09.2018 shows that the respondent was suffering from fever but we are surprised to note that on 13.09.2018 itself, that is even before issuance of the medical prescription, the following application was made to the DSSSB:



9. Additionally, during his illness, the respondent addressed emails to the Chief Minister, Deputy Chief Minister and Chief Secretary, Government of NCT of Delhi. He also travelled more than 15 kilometers to the place where the examination was being held and thereafter to the SHO, PS: Model Town to register his grievance.
10. In our view, if the respondent was really suffering from fever to the extent as is being claimed, he would rather have rested and not spent time addressing e-mails and physically reaching the place of the PET and also intimating the local police. We find force in the submissions made by Mrs. Ahlawat that if such relief is granted, DSSSB will never be able to complete any recruitment process; matters would be delayed endlessly; and vacancies would remain unfilled.
11. The facts in the case of *Laxmi Devi* (supra) relied upon by the counsel for the respondent, do not co-relate with the facts of the present case since in the case of *Laxmi Devi* (supra) there was a long gap in conducting the PET of selected candidates who had qualified the written examination; and in the meanwhile, the petitioner in that case was at an advanced stage of the pregnancy. It was in such circumstances that it was held that maternity is a human right of a woman and cannot be turned into an impediment. It was observed that pregnancy is not a disability but one of the natural consequences of marriage; therefore woman candidates deserve indulgence of qualifying the physical standards after affording a reasonable time in attaining fitness, as the authority may consider appropriate, keeping in view the provisions of the Maternity Benefit Act, 1961.

12. Coming to the facts of the present case, any candidate may fail to appear in the physical examination, or for that matter in any other part of the examination process, on account of a plethora of reasons. There may be bereavement in the family of a candidate; or he may miss a flight/train to reach the place of examination; or he could be prevented from appearing on account of illness. However, we are of the considered opinion, that in 'public examinations' it is not possible for the body conducting the examination to re-schedule or postpone examinations on such grounds, even though the grounds may be genuine, bona-fide and not of the making of a given candidate. Acceding to such relaxation would create utter chaos, uncertainty and open-endedness to the entire process of public examinations; which would not be conducive to public interest.
13. In view of the above observations, the writ petition is allowed. The impugned order dated 19.09.2018 passed by the Tribunal is set aside.
14. The date fixed for 10.02.2020 stands cancelled.
- CM APPL 7233/2019 (stay)**
15. In view of the order passed in the writ petition, the application stands disposed of.

**G.S. SISTANI, J**

**ANUP JAIRAM BHAMBHANI, J**

**JANUARY 15, 2020**

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