

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

Before:

The Hon'ble Justice Lapita Banerji

**WPA 4953 of 2023
Supratim Mukherjee**

Vs.

**West Bengal State Electricity Distribution
Company Limited & Ors.**

For the petitioner : Mr. Durga Prasad Dutta, Adv.,
Mr. Sumanta Ganguly, Adv.,

For the State : Ms. Joydip Kar, Sr. Adv.,
Mr. Debanjan Mukherjee, Adv.,

Heard on : 25.09.2023

Judgment Delivered on : 19.10.2023

Lapita Banerji, J:- In a previous writ petition being W.P.A. 318 of 2023 the petitioner prayed for re-assessment by the Pre-Recruitment Medical Board for appointment to the post of Office Executive in the West Bengal State Electricity Distribution Company Limited (in short, WBSEDCL). The petitioner participated in a recruitment process pursuant to an advertisement dated

December 22, 2018. He qualified in the computer test and also got selected in the personal interview. However, the petitioner's candidature was rejected by an office order dated November 18, 2022 as he was declared temporarily '**unfit**' due to high Myopia in the Pre-Recruitment Medical Board Examination.

2. Mr. Dutta, learned counsel appearing on behalf of the petitioner submits that after the said rejection order, the petitioner underwent **Lasik** Laser Surgery for correction of his eyesight. He prayed for reconsideration of his candidature vide representation dated November 24, 2022 made to the respondent no. 2/the General Manager (HR & A), WBSEDCL.

3. Furthermore, another representation was made on December 13, 2022 for reconsideration of his candidature by the Respondent no. 2. Representations dated November 22, 2022 and December 13, 2022 were not considered. Being aggrieved by such inaction the previous writ petition being WPA 318 of 2023 was filed.

4. Mr. Mukherjee, learned counsel appearing on behalf of the WBSEDCL submitted during the hearing of the writ petition being WPA 318 o 2023 that it was not maintainable as all the terms of the advertisement were complied with by the Respondent/WBSEDCL. He drew the attention of this Court to the conditions of the Employment Notification in support of his contention that it was specifically notified that the decision of WBSEDCL pertaining to Pre-Employment Medical test will be "*final*" and "*binding*" on the candidate. Therefore, it was against the conditions and the guidelines stipulated in the

Advertisement of the Corporation to reconsider the candidature of the petitioner.

5. He also submitted that once such prayer for *reconsideration* was allowed, the same would open *floodgates* unnecessarily and cause immense inconvenience to the Employer. He referred to the guidelines of the company dated May 6, 2010 regarding the norms and standards for “Medical Fitness”.

6. Having considered the rival submissions of the parties and the materials placed on record, this Court on January 16, 2023 found that;

a. The number of vacancies in respect of the Office Executives are 745. There may be a possibility of all the vacancies not being filled up as on date.

b. The petitioner after qualifying in the interview went for Pre-Employment Medical Examination.

c. After being found temporarily ‘**unfit**’, he went for Lasik Laser Surgery.

d. No prejudice or grave inconvenience will be caused to the employer in the event the petitioner’s candidature was reconsidered as per the Regulations and Guidelines of the company and the petitioner was sent for another pre-employment medical examination since he was *temporarily* **UNFIT**.

7. This Court directed that the Order dated November 18, 2022 be set aside and the Representation dated December 13, 2022 be considered by the respondent no. 2/General Manager (HR & A) within six weeks from date, upon giving a personal hearing to the petitioner. A reasoned order was directed to be passed and communicated to the petitioner within two weeks of passing thereof.

8. Furthermore, it was directed that in the event all the vacancies were not filled up as on date, one vacancy to the post of Office Executive be kept till such time the Representation of the petitioner is considered and disposed of.

9. This said order was passed in view of the peculiar facts and circumstances of the case.

10. Mr. Dutta Learned Counsel appearing for the Petitioner submitted that by the Impugned order dated February 16, 2023, passed pursuant to the order dated January 16, 2023, the General Manager (HR & A) sought to reopen the issue that was already settled by this Court by the order dated January 16, 2023. The General Manager sought to interpret the order in a manner refusing to allow re-examination of the Petitioner, without taking into account the findings of this Court.

11. Mr. Dutta, cited a Division Bench Judgment passed by the High Court of Delhi reported in 2012 SCCOnLine Del 3131 (**Ms. Sreeja K Vs. Union of India & Anr.**). In that case, the petitioner was held to be **unfit** on account of '*high myopia*' by the Medical Board constituted for pre-recruitment medical examination. She appeared in a selection process for appointment to the post of Junior Geologist with the Geological Survey of India (GSI).

12. Thereafter, the petitioner underwent LASIK surgery. She requested a second medical examination. The same was allowed. The petitioner's vision was within the prescribed parameters.

13. The petitioner was held to be **unfit** due to correction of her vision by way of LASIK surgery after the first Medical Examination. After the LASIK surgery,

the petitioner's vision in both the eyes fell within the standard prescribed in the Regulations but the Tribunal rejected the Application of the petitioner. The Division Bench held that the Medical Board could not have declared the petitioner as an **unfit** candidate since there were no Rules prescribing that a person, who underwent LASIK surgery, would be either disqualified or declared **unfit**. The Division Bench held that as per the own Office Memorandum of GSI, an employee's eye sight could be corrected by suitable procedure.

14. He then cited a decision reported in ILR (2014) 1 Del 752 (**Union of India & Anr. Vs. Saikat Roy**). The Hon'ble Division Bench of Delhi High Court held that it cannot be disputed that in the absence of any restriction in Rule or Regulation, the mere fact that a person has undergone corrective surgery, cannot ipso facto tantamount to him being declared medically **unfit**. The case of **Saikat Roy** (Supra) followed the case of **Ms. Sreeja K** (Supra).

15. Next he cited a decision reported in 2016 SCC OnLine Raj 8067 (**Ajay Singh Vs. State of Rajasthan**) passed by a Coordinate Bench in the High Court of Rajasthan. The Coordinate Bench held that even though it is true that there must be an end to examination and re-examination of a candidate, but, whether or not the person should be sent for re-examination depends on the facts of the case. In that case, since there was a wide variation in the Report of the authorities leading to the rejection and the Report of the Government Hospital which examined the petitioner later, the respondent authorities were directed to constitute a Board for examining the petitioner.

16. Mr. Kar, Learned Senior Counsel appearing on behalf of WBSEDCL submits that no infirmity has been committed by the G.M. (H.R. & A) in not sending the Petitioner for re-examination as the Petitioner's candidature was directed to be considered by this Court in terms of the Regulations and Guidelines of the Company. Since, the Regulations and Guidelines of the Company did not permit re-examination by the Pre-Employment Medical Board, the G.M. was justified in not allowing the re-assessment of the Petitioner by the Pre-Employment Medical Board.

17. Mr. Mukherjee, Learned Counsel also appearing on behalf of the Respondents cited a decision reported in AIR (1994) SC 1241 (**Indian Council of Agricultural Research & Anr, vs. Smt. Shashi Gupta**). In that case, the petitioner was offered appointment in the Agricultural Research Service as Scientist Grade-S. She was required to produce a Medical Certificate of fitness. Unfortunately, she was declared **unfit** by the Medical Board. The Appellate Board also declared her to be **unfit**. She challenged the Medical Reports by way of filing a writ petition.

18. The writ petition was transferred to the Central Administrative Tribunal. The Tribunal quashed the Medical Reports and directed the petitioner to be appointed in service. The petitioner challenged the Medical Reports before the Tribunal on the grounds that she was already examined by a medical expert at the time of her initial appointment as a Senior Computer/Technical Assistant.

19. Next she challenged the Medical Reports on the ground that she was not required to undergo medical examination as the initial constitution of the service rules did not provide for the same.

20. Since she was already a quasi-permanent candidate, she could not be subjected to further medical examination.

21. The Tribunal's view that since the petitioner already held a quasi-permanent status, no further medical test was required, was not accepted by the Apex Court. The Apex Court held that once the Medical Board and the Appellate Medical Board found the writ petitioner/respondent in the Appeal **unfit** for the post, the Tribunal had no jurisdiction whatsoever to sit in Appeal over the Medical opinions and direct the writ petitioner's appointment to service. The employer had inherent right to be satisfied about the *Medical Fitness* of a person before offering employment to him/her.

22. In the present case, this Court by its previous Order directed the petitioner to be medically examined again by the Medical Board, for the employer to be satisfied about the *medical fitness* of the candidate, before offering employment to him. This Court did not proceed to interfere with the opinion of the Medical Board. It only directed a fresh Medical Examination, upon the petitioner undergoing a corrective surgery.

23. Also in the present writ petition, the Petitioner did not seek to challenge the requirement of being examined by a Pre-Recruitment Medical Board.

24. Therefore, this Court fails to see how the decision in **Shashi Gupta** (Supra) aids the case of the respondent/WBSEDCL. The case of **Shashi Gupta** (Supra) was also distinguished on facts in **Ms. Sreeja K** (supra).

25. The next decision cited on behalf of the WBSEDCL is reported in 2011 (12) SCC 85 (**Bedanga Talukdar Vs. Saifudaullah Khan & Ors.**) In that case, an advertisement was issued in 2006 for holding the preliminary examination (screening of candidates) for a combined competitive examination, for recruitment to the posts advertised by APSC. The last date for receipt of the completed application forms was September, 2006. Posts were reserved for several categories of candidates like OBC, SC, ST but no reservation was made in favour of the disabled candidates under The Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

26. Pursuant to a Public Interest Litigation (PIL), a fresh advertisement was required to be made incorporating 3% reservation for Persons with Disabilities. A Corrigendum was issued in June, 2007 to the advertisement issued in August, 2006. Applications were invited for one post in Assam Civil Service from the persons suffering from Locomotor Disability. It was made clear that the candidates with Locomotor Disability must produce supporting documents in the Office of the Assam Public Service Commission (APSC) or in the examination hall before commencement of the examination. The Respondent No.1 was certified by the District Medical Board, Dhubri as physically disabled to the extent of 50% as on January 1, 2004. The preliminary examination was held on September 23, 2007. The Respondent No.1 did not submit the

mandatory documents to substantiate his claim to the seat reserved for candidates with Locomotor Disability. Therefore, he appeared in the examination as a General Category candidate.

27. Both the Appellant and the Respondent No.1 successfully participated in the preliminary examination and were called for the main examination. A prescribed application form was required to be filled up. The Respondent No.1 claims to have indicated in the second form that he suffered from 50% *locomotor disability*. According to him, he also submitted supporting certificate. Both the Appellant and the Respondent No.1 successfully completed the main written examination and were called for interview in December, 2008. The Respondent No.1 claimed that he produced his certificate during the interview. Such facts were disputed by the authorities. When the list was published in June, 2009, the respondent No.1's (R1's) name did not feature in the list as a physically handicapped candidate. The Respondent No.1 made an application under Right to Information Act, 2005. He came to learn that he had scored 100 marks more compared to the Appellant. The revised list of selected candidates was published in February, 2010. The Respondent No.1's name did not appear in the said list. In a writ petition filed by the Respondent No.1, the High Court passed a direction on APSC to consider the case of the R1 afresh.

28. The R1's case was considered by the authorities in May, 2010. His claim was not accepted. Another writ petition was filed by R1.

29. The authorities decided not to consider the case of R1 for appointment against the ***solitary*** post earmarked for physically handicapped candidates, since the identity card showing him as a physically handicapped candidate was not submitted by R1 at different stages. The High Court directed the R1's case to be considered taking into account the ID Card produced by him.

30. In such circumstances, the Apex Court held that there cannot be any relaxation in the terms and conditions of the advertisement unless such power was specifically reserved. The R1 submitted his document in respect of Locomotor Disability for the first time in December, 2009. The R1 was being considered as a general category candidate.

31. The Apex Court was of the view that the High Court could not have issued the impugned direction to consider the claim of the R1 on the basis of the identity card submitted after the **selection process was over**, with the publication of the selected list.

32. The Apex Court was considering the candidature of the Appellant and the R1 in respect of **one** reserved post. There was a specified date within which the certificate of '*disability*' had to be produced by R1, for being considered as a Reserved Category candidate.

33. This Court again fails to see how the case of **Bedanga Talukdar** (Supra) aids the Respondents' case. By an Order dated January 16, 2023, this Court clearly recorded that there was a possibility of all the posts of Office Executives (745 in number) not being filled up as on date. Therefore, in no way prejudice

or inconvenience would be caused to the employer if the petitioner's case was reconsidered after his corrective surgery.

34. The petitioner, in the present case, had fulfilled all the *eligibility criteria* and was sent for Pre-recruitment Medical test. The petitioner's Myopia was beyond the prescribed limit. During the currency of the selection procedure, this Court directed the petitioner to be re-examined by the Medical Board of the Respondent/WBSEDCL to consider his medical fitness, as a candidate. How the facts of the two cases can be equated, is beyond the comprehension of this Court.

35. Next, he relied on a decision reported in 2013 (11) SCC 58 (**Rakesh Kumar Sharma vs. State (NCT of Delhi) & Ors.**). In that case, a pre-requisite for applying to the post of Trained Graduate Teachers (TGT) was a B.Ed degree prior to the submission of the application form. The last date of submission of application form was October 29, 2007. The Appellant had sat for the B. Ed. Examination prior to the said date, but, his result was declared on January 28, 2008. Provisional letter of appointment was issued on June 19, 2009. It was made clear that, if at any stage it was found that any information given by the candidate was false or there was any concealment or misrepresentation, the appointment would be liable to be terminated.

36. The competent authority terminated the service of the appellant in October, 2010.

37. The Hon'ble Apex Court held that the Appellant did not possess the requisite qualification on the last date of submission of the application form

even though he represented that he possessed the same. Therefore, even though the Appellant possessed the qualification on the date of declaration of the result, the same could not be held to relate back to the date on which the application was made or the examination was held. Furthermore, if the Appellant's case was treated sympathetically, a large number of candidates, who were not eligible as per the stipulations contained in the advertisement regarding eligibility criteria would be treated in a discriminatory manner since they may not have applied by considering themselves to be ineligible as per the terms of the advertisement. Therefore, there was no obligation to protect an *illegal* appointment or usurpation of a post by an *ineligible* candidate.

38. In the present case, the General Manager (HR&A), WBSEDCL by its reasoned/Impugned Order dated February 16, 2023 has himself stated that the petitioner as per academic qualifications was an *eligible* candidate and that was why he was allowed to appear in the computer based test and participate in viva voce. The *eligibility* of a candidate for employment was to be verified on the date of the notification of employment.

39. There was no dispute with regard to the petitioner being an *eligible* candidate as on the date of publication of the employment notification. The Petitioner has not mis-represented in any manner. The conduct of the Petitioner was not such whereby in the event his candidature had been considered sympathetically other eligible candidates would have been unfairly discriminated against.

40. Therefore, this Court is of the view that the case of **Rakesh Kumar Sharma** (Supra) does not aid the case of the Respondents. The *eligibility* of the petitioner is not in dispute. After fulfilling the *eligibility* criteria, a candidate may be declared **unfit** during the time of Pre-recruitment Medical test. The *eligibility* of a candidate cannot be equated with the *suitability* of a candidate assessed during Pre-Recruitment Medical Examination. Only *eligible* and *provisionally selected* candidates would be sent for Pre-Recruitment Medical Examination for assessment of *suitability*.

41. The next unreported Judgment relied upon is passed by a Hon'ble Division Bench of the Delhi High Court on August 4, 2016 in **Mamta Yadav & Ors. vs. Union of India & Ors.** The writ petitioner participated in the recruitment process for employment in the Railway Protection Force (RPF). The medical standards stipulate the distant and near vision to be as per the prescribed schedule without corrective surgery. As per the Respondents, data shows that 17.5% of the candidates, who undergo LASIK surgery, report night vision problems later.

42. Indian Railway Medical Manual, 2000 was published when LASIK surgery was not available. In order to update the Manual, a Committee comprising of 3 senior Railway Ophthalmologists, was constituted. The Committee held that LASIK surgery should not be permitted for RPF Personnel.

43. In a gazette notification issued by the Government of India, the standard distant and near vision for classes of service was stipulated. The notification classified the services under 2 categories; “Technical and Non-Technical”. The non-technical services included Indian Civil Accounts Service, Indian Railway Accounts Service, Indian Defence Accounts Service etc.

44. It was held by the Apex Court that the gazette notification regarding the permissibility of corrective surgery, would be applicable only to the candidates, who applied for “non-technical” posts. The vires of Medical standard prescribed by the Board for appointment of Constables in BSF and RPF was not under challenge. Therefore, the petitioners placing of reliance on a Gazette Notification concerning the 14 Services relating to “Non-Technical” posts was misplaced while seeking recruitment to ‘Technical’ posts.

45. **Mamta Yadav** (supra) goes to show that the petitioner can avail of LASIK surgery since he applied for recruitment to the post of an Office Executive which can be equated with a “non-technical” post. The standard to be followed for an Enrolled member of a Force, in a ‘Technical Post’ cannot be held to be the standard that is applicable for an Office Executive working in a “non-technical” Post.

46. Also in the present writ petition, no issue has been raised regarding disqualification of candidates undergoing LASIK surgery applying for the Post of Office Executive.

47. A decision reported in (2019) 6 SCC 362 (**Maharashtra Public Service Commission Vs. Sandeep Shriram Warade & Ors.**) has been relied upon by

Mr. Mukherjee. In that case, the Apex Court held that the essential qualifications for appointment to a post, are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. The employer is best suited to decide the requirements that a candidate must possess. The Court cannot lay down conditions of *eligibility* or desirable qualifications. The Court cannot re-write the terms of the advertisement by interpreting the conditions of “*essential eligibility*”. In the event there is an ambiguity in the advertisement, the same should go back to the appointing authority after appropriate orders. No Court, in the garb of judicial review can sit in the chair of the appointing authority and decide what is best for the employer.

48. In that case, a candidate with required to obtain degree/qualification in chemistry etc. coupled with practical experience in manufacturing and testing drugs for a stipulated number of years. ‘Preference’ could be given to candidates who had the desirable qualification of research experience. It was held that the word ‘preference’ mentioned in the advertisement could not be interpreted to mean that just because a candidate had research experience, he had a ‘preferential right’ to be considered **suitable** for appointment.

49. Again, this Court fails to see how the essential *eligibility criteria* as stipulated by the employer has been sought to be usurped in the garb of judicial review by this Court. This Court had only directed the employer to re-examine the **medical fitness** of the petitioner in accordance with the terms and conditions/parameters stipulated in the advertisement/guidelines.

50. Next he cited a Judgement reported in 2021, SCC OnLine SC 1262 **(State of Bihar and Others Vs. Madhu Kant Ranjan and Another)**.

51. In that case, the original writ petitioner applied for appointment as a constable pursuant to an advertisement published in 2004. He participated in a physical test held on September 08, 2006. The original writ petitioner did not submit his NCC certificate either with the first application form or with the second application form. Additional 5 marks were to be given to holders of NCC 'B' certificate and 10 marks for holders of NCC 'C' certificates. The Petitioner was a holder of NCC 'B' Certificate.

52. As the petitioner did not submit the NCC 'B' certificate he was not awarded 5 additional marks. The original NCC 'B' certificate was submitted after the physical test in 2007. The cut off date for such submission was February, 2004.

53. The Hon'ble Apex Court held that as per the advertisement, the applicants were required to produce the relevant documents, certificates along with the application form. The originals were required to be produced at the time of their appointment before the Selection Council.

54. The settled proposition of law is that a candidate has to comply with all the conditions/eligibility criteria as per the advertisement before the "*cut off*" date mentioned in the advertisement, unless extended by the recruiting authority. Since the applicant did not submit the said certificate along with the application form and submitted the same after three years he was not entitled to get additional 5 marks for holding a NCC 'B' certificate.

55. By the Impugned Order in the present writ petition, the authorities concerned admitted that the “*eligibility criteria*” was fulfilled by the candidate. He was also a *provisionally selected* candidate as he passed the computer based test and viva-voce. The issue with regard to the petitioner, not fulfilling the *eligibility* criteria on the “*cut off*” date did not arise in the present case.

56. He then relied on a Coordinate Bench’s Judgment/Order dated August 18, 2022 of High Court of Madhya Pradesh in W.P. No.894 of 2022 (**Ms. Harshita Pandey Vs. Northern Coalfields Limited & Anr.**) where it was held that the petitioner *must* conform to the rules relating to the medical examination of Coal India Limited (CIL). The petitioner’s eye sight, was much below the acceptable of vision as per the Medical Attendance Rules of CIL. Furthermore, she suffered from “by-lateral temporal polar,” meaning irreversible damage to retina.

57. Again this Court fails to see why the decision in **Harshita Pandey** (Supra) has been cited by the respondents. This Court by the Order dated January 16, 2023, did not direct the Respondents to either give a go-bye to the Rules and guidelines pertaining to the Pre-recruitment Medical Examination. It only directed the petitioner to be assessed again keeping in mind the prescribed parameters of the Respondent Corporation as he was declared to be temporarily **unfit** only.

58. Since the petitioner underwent LASIK surgery, this Court directed the Medical Board to assess whether the eye sight of the petitioner could fall within the prescribed parameters stipulated for the Pre-recruitment Medical Examination.

59. Next, he cited an unreported decision passed in R/Special Civil Application No.24720 of 2022 (**Mahendra Chawla Vs. Union of India**), on December 12, 2022, by a Coordinate Bench in the High Court of Gujarat at Ahmedabad. In that case, the petitioner was held to be **unfit** for recruitment to the post of Constable in view of the tattoo that he had on his right forearm.

60. Despite the tattoo being removed, the petitioner was declared **unfit** in the RME as he did not remove the tattoo long before the RME was conducted and the scar did not fade away substantially. In such case, the Coordinate Bench held that infirmity could not be subsequently cured in order to dilute the provision of advertisement.

61. The said case is distinguishable on facts. The petitioner was required to (a) remove the tattoo and (b) the removal should have resulted in the tattoo fading substantially so that the same could be treated as a *scar* and not a *tattoo* during the recruitment process.

62. In such circumstances, the Court held that if the tattoo was removed during the recruitment process and had not faded substantially, the infirmity could not be subsequently cured. In **Mahendra Chawla's** case (supra) even though the tattoo may have been removed by the Petitioner, the infirmity with regard to the mark not being substantially faded, remained during the recruitment process.

63. In the present case, during the recruitment process, the infirmity relating to low vision was admittedly cured. There was no stipulation in the advertisement that defect relating to 'Low Vision' had to be rectified long before

the selection process. There was no specific bar preventing the petitioner from curing the infirmity during the recruitment process. Therefore, the petitioner cannot now be barred from participating in the selection process on the ground that the infirmity was cured during the recruitment process.

64. The aforesaid case aids the petitioner since for recruitment of an Enrolled Member of the Force also, the Court directed the authorities to constitute medical Board for re-examination of the petitioner.

65. **Ms. Sreeja K**'s case (Supra) aids the case of the writ petitioner as he underwent LASIK surgery after being rejected by the Pre-recruitment Medical board and subsequently his eye-sight was found within the acceptable parameters and was directed to be considered by the Division Bench.

66. The case of **Ajay Singh** (supra) aids the petitioner since for recruitment of an Enrolled Member of the Force, the Court directed the authorities to constitute Medical Board for re-examination of the petitioner even though as per the guidelines the decision of the RME Board is "final". The same is usually recorded in the Report of the RME itself.

67. In the present writ petition by the Impugned Order, the General Manager (HR & A) held that:

"Eligibility of a candidate for employment is supposed to be verified on the date of notification of employment. In other words, candidates should have acquired qualification on or before date of notification. As per academic qualification he was qualified that is why he was called for the Computer Based Test, and Viva-voce

subsequently. As he passed Computer Based Test, and Viva-voce he was referred for PMT. During PMT it was found that his vision was not at par with physical requirement as per O.O. No. PP/Pre-emp. Medical checkup/10/33 Dated: 06.05.2010 of the Director (HR), WBSEDCL. In the said Office Order there is provision for corrective measures in case of BMI, Gento Urinary System etc., individual above 35 yrs of age detected to be having type-II diabetes without organ involvement & Pregnancy but there is no provision for corrective measures in case of low vision. As there is no such provision of corrective measures in the said office order, in case of low vision, his corrective measures is not considerable.”

68. In effect, the General Manager (HR&A) sought to disregard the directions passed by this Court on January 16, 2023 by the Impugned Order. On January 16, 2023, Mr. Mukherjee, the Learned Counsel appearing on behalf of the respondent, WBSEDCL, categorically submitted that the petitioner’s candidature could not be considered by way of re-examination since the Regulations of the company did not permit the same. He also submitted that such reconsideration will open “*flood gate*” unnecessarily and cause immense inconvenience to the Employer.

69. This Court finds it perplexing that as per the Regulations of the company, reassessment of candidates in cases of BMI, Genitourinary System, Type-2 diabetes without organ involvement and pregnancy could be reassessed without the issue of opening of “*flood gates*” being raised but, as a special case,

despite the directions of this Court the “reassessment” of the candidature of the Petitioner, was resisted on the issue of opening of *“flood gates”*.

70. The issue with regard to the impermissibility in the Regulations/Guidelines was considered by this Court, on January 16, 2023, but the General Manager sought to give a go-bye to the specific directions of this Court by again referring to the Guidelines/Regulations of the Corporation. It has been sought to be argued on behalf of the Corporation that under Clause “D” of the order dated January 16, 2023 the petitioner’s candidature was required to be considered as per the Regulations/Guidelines of the Corporation. The Regulations/Guidelines of the Corporation did not permit such re-examination for people with ‘low vision’. Therefore, by not reassessing the candidature of the Petitioner the General Manager did not fail to comply with the Order passed by this Court.

71. When this Court specifically directed that no prejudice or grave inconvenience would be caused to the employer in the event the petitioner’s candidature was reconsidered as per the Regulations/Guidelines of the Corporation and the petitioner was sent for another Pre-Employment Medical checkup, it was incumbent upon the General Manager to read the Order as a whole to appreciate its true spirit and meaning without relying on only a part of the Order and seeking to interpret it in a restrictive manner, according to his convenience. After hearing the arguments on behalf of the Respondent Corporation, the Order dated January 16, 2023 was passed. The General

Manager could not have again resorted to the same arguments to deny Pre-employment Medical check-up of the petitioner, after corrective surgery.

72. When this Court directed the candidature of the petitioner to be reconsidered as per the Regulations/Guidelines of the company, it naturally implied that the consideration of petitioner's candidature to be made, keeping in mind the Medical Parameters as stipulated by the Regulations/Guidelines of the Corporation. It did not give the GM any authority to sit in Appeal over this Court's Order by seeking to frustrate the directions of this Court in the garb of impermissibility as per the Regulations/Guidelines of the Corporation.

73. In the present writ petition being WPA 4953 of 2023 the same arguments have been advanced on behalf of the Corporation which were considered and rejected in WPA 318 of 2023. Arguments have been advanced on the issue why the Court's Order dated January 16, 2023 should not be carried out by citing several Judgments. The Order dated January 16, 2023 has not been carried in Appeal nor an application for clarification of the order was made by the Corporation. The approach of the Corporation is not at all appreciated by this Court.

74. Therefore, this Court is not willing to accept the arguments of the Respondent Corporation intended to frustrate/not comply with the directions passed by this Court on January 16, 2023. The attitude of the Corporation is recalcitrant, to say the least.

75. Accordingly, the Impugned Order dated February 16, 2023 is quashed and/or set aside. The parameters of the petitioner relating to his vision will be

re-assessed by the Pre-recruitment Medical Board and if the same falls within the prescribed limits stipulated in the advertisement/Medical guidelines of the Corporation, Petitioner will be considered for recruitment to the post of Office Executive, upon compliance of all the formalities, within two months from the date of this order.

76. With the directions aforesaid, **WPA 4953 of 2023** is **disposed** of.

77. All parties to act on the downloaded server copy of this order from the website.

78. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

(Lapita Banerji, J.)