

CWP-361-2021

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2023:PHHC:150251

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-361-2021

Date of Decision:24.11.2023

RAMESH KUMAR

..... Petitioner

Versus

UNION OF INDIA AND ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Ms. Alka Chatrath, Advocate
for the non-applicant petitioner.

Ms. Gurmeet Kaur Gill, Advocate
for the applicant-respondents No.1 to 4.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of Medical Report dated 01.02.2020 (Annexure P-6) and Review Medical Examination Report dated 20.09.2020 (Annexure P-11) whereby petitioner has been declared medically unfit for the post of Constable (GD) exam-2018.

2. The petitioner pursuant to advertisement dated 21.07.2018 applied for the post Constable (GD). The petitioner qualified the written exam and was declared successful in physical standard test (PST) as well as physical efficient test (PET). The petitioner was called for detailed medical examination. The petitioner appeared for the said examination and vide medical report dated 01.02.2020 (Annexure P-6) was declared medically unfit on account of five infirmities. The petitioner appeared before Review Medical Board on 18.09.2020 and was declared unfit only

on account of 'incomplete healed scar of tattoo on right arm'.

3. The petitioner seeking setting aside of review medical report preferred present writ petition before this Court. Vide interim order dated 08.01.2021 one post has been ordered to be kept vacant. The order dated 08.01.2021 reads as:

“Learned counsel for the petitioner, at the outset has relied on notice of motion order dated 2nd of November 2020 passed by this Court in CWP No.18218 of 2020. Notice of motion.

On the asking of Court, Ms. Palika Monga, DAG, Haryana accepts notice through video conferencing. List on 28.05.2021.

Interim directions in the same terms i.e. in the meantime one post to which petitioner would have otherwise been recruited, be not filled till the next date of hearing.”

4. Learned counsel for the petitioner *inter alia* contends that case of the petitioner is squarely covered by judgment of Division Bench of Bombay High Court in ***Hardik Rameshkumar Vaghela v. Union of India Thru Secretary and Others, W.P. No.1991 of 2019***; judgment dated 01.04.2021 of Madras High Court in ***K.M. Manojkumar v. The Secretary Staff Selection Commission and Others, W.P.(MD) No.16282 of 2020*** and judgment dated 21.02.2023 of Jammu and Kashmir High Court in ***Sunil Kumar vs. Union of India and Others, SWP No.2108 of 2016***.

5. Learned counsel for the respondents submits that in the second medical examination, he was declared unfit on account of development of Keloid on his right forearm. The Keloid got developed because petitioner got removed a tattoo which was imprinted on his right

arm. The Court cannot substitute opinion of medical experts.

6. I have heard the arguments of both sides and with the able assistance of learned counsel perused the record.

7. A Division Bench of Bombay High Court in ***Hardik Rameshkumar Vaghela*** (supra) has adverted with identical issue. The relevant extracts of the judgment read as:

“8. A bare perusal of the record would reveal that the Petitioner has successfully cleared all the tests including physical fitness and trade proficiency. The opinion of the Medical Board that the Petitioner had a 'knock knee', has not been approved by the Review Board and it came to the conclusion that the Petitioner does not suffer from knock knee. The certificate issued by the Review Medical Board dated 24th July, 2017 records that though the Petitioner is undergoing laser treatment, yet the tattoo on right arm has not disappeared completely. It implies that the Petitioner has been making earnest efforts to get the tattoo removed by undergoing the prevalent treatment. From the nature of the employment i.e. Constable/Driver, which the Petitioner seeks, it does not appear that the existence of tattoo on the right arm would constitute a hindrance in effectively performing the duties of the said post. We cannot loose sight of the fact that in tradition bound societies, tattoos are inscribed on the body, often during early childhood, under the belief that it would protect the child from evil influence or bring luck. Such a traditional practice, ordinarily should not come in the way of public employment unless there is an overwhelming justification for the same, in the context of the duties of the particular post. Nor it appears to be an irreversible medical

condition.

9. *Even otherwise, the judgment of this Court in the case Shridhar Mahadeo Pakhare (supra) covers the controversy sought to be raised on behalf of the Respondents. In the said judgment, the Division Bench of this Court, has noted that for the post of Sub-Inspector in CISF, the advertisement issued provides certain relaxation as regards the tattoo mark on the body of the aspirants. The rationale of the said relaxation is the religious sentiments of the countrymen. The Division Bench, thus, found that it would not be permissible for the employer to treat the class of the employees differently and apply different parameters. The observations of this Court in paragraph 5 are material and seal the issue.*

"In our opinion, it would not be permissible for the employer to treat the class of employees differently and apply different parameters. As has been recorded above, the religious sentiments of the individual need to be respected. For the reasons recorded above, we are of the opinion that the claim of the petitioner for employment need to be considered. The petitioner is otherwise found fit by the Medical Board, except on account of carving out the tattoo which has also been removed admittedly to the extent of 90%. We are of the opinion that the respondents need to be directed to consider the claim of the petitioner for employment since he has been found otherwise fit. The Writ Petition is thus allowed. The respondents are directed to consider the claim of the petitioner for employment to the post of 'constable/driver' in C.I.S.F. and the medical opinion holding the petitioner ineligible on account of tattoo mark shall not be construed as an impediment for issuing an order of appointment in favour of the petitioner.

Rule is accordingly made absolute. There shall be no order as to costs."

10. Having regard to the facts of the case and the ground for declaring the Petitioner, 'medically unfit', and in the light of the aforesaid observations, we are of the view that the action of the Respondents of declaring the Petitioner 'medically unfit' for having a tattoo on the right arm, is unsustainable. We are, therefore, inclined to direct that the Petitioner's candidature shall not be rejected on the ground that the Petitioner has a tattoo on the right arm. We are, thus, inclined to direct Respondent nos.1 and 2 to consider the case of the Petitioner for appointment to the post of Constable/Driver. The Writ Petition, thus, stands allowed.

11. Rule is, therefore, made absolute in terms of prayer Clauses (b) and (c). In the circumstances, there shall be no order as to costs."

8. Madras High Court in *K.M. Manoj kumar (supra)* has held that formation of Keloid is a condition of healing of skin and is not a permanent deformity, thus, a candidate cannot be rejected on the ground of formation of Keloid. The relevant extracts of the said judgment read as:

5. The aforesaid observation of the Hon'ble Division Bench of Bombay Court is also in favour of the petitioner herein. As such, disqualification of the petitioner's candidature by the respondents cannot be sustained.

6. Moreover, formation of keloid, is a condition of healing of skin and is not a permanent deformity. In other words, its a remedial defect. The Hon'ble Supreme Court in the case of Dharmvir Singh Vs.

State of Uttar Pradesh and another passed in W.P. (Civil) No.444 of 2019 dated 19.07.2019, had taken into consideration of remedial defects and subjected the candidate therein for re-medical defects and subjected the candidate therein for re-medical examination. Even on this ground, the petitioner herein would be entitled to succeed.

7. *Accordingly, the impugned proceedings in Form No.4 of Constable (GD) Exam 2018 Review Medical Examination Report, dated 03.10.2020, is quashed. Consequently, the respondents are directed to subject the petitioner herein to further selection process without reference to the impugned disqualification of the Review Medical Examination, which has been quashed.”*

9. It is an admitted case of the parties that petitioner at the first instance was found medically unfit on 5 counts, however, in the second medical examination, he was found unfit on the sole ground that Keloid has developed on his right arm. The Keloid had developed on account of removal of tattoo. The Review Medical Board found that petitioner is not suffering from 5 infirmities as pointed out in DME. It means respondent accepted either there was infirmity in the Medical Examination at the first stage or the petitioner has recovered from other infirmities. The infirmity pointed out by Review Medical Board is also a curable infirmity. The case of the petitioner is squarely covered by judgments of Division Bench of Bombay High Court in *Hardik Ramesh kumar Vaghela (supra)* as well as Madras High Court in *K.M. Manoj kumar (supra)*.

10. In the wake of above noted facts and discussion, the respondents are directed to reconsider claim of the petitioner. He may be subjected to fresh medical examination. If he is found medically fit, the

claim of the petitioner may be considered in the light of judgment of Division Bench of Bombay High Court in *Hardik Ramesh kumar Vaghela (supra)* as well as Madras High Court in *K.M. Manoj kumar (supra)*. The petitioner participated in the selection process which took place during 2019-2020 and this Court vide order dated 08.01.2021 has directed the respondents to keep one post vacant, thus, petitioner may be adjusted if he complies with other formalities. Let the needful be done within six months from today.

11. Disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

24.11.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>