

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP-20887-2017

Date of Decision: 22.11.2023

Ravi Kumar

...Petitioner

Versus

Union of India and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Rao Ajender Singh, Advocate for the petitioner

Ms. Anita Balyan, Senior Panel Counsel
for Union of India-respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order/medical certificate dated 25.06.2017 (Annexure P-4) whereby he has been declared unfit.

2. The petitioner pursuant to an advertisement applied for the post of Airmen in the Indian Air Force. The petitioner cleared the written test and thereafter, appeared for physical examination. The petitioner was found medically fit. The medical report was valid for six months. The petitioner after ten months was again subjected to medical examination because he was not made to join within six months from the date of first medical examination. 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.

3. 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***.

4. Learned counsel for the respondent submits that as per prescribed medical standards of Indian Air Force, a candidate having tattoo cannot be considered medically fit. The Court cannot substitute opinion of medical experts. The petitioner had participated in the selection process which took place in 2017 and at present, there is possibility that no post is lying vacant.

5. A Division Bench of Bombay High Court in ***Hardik Rameshkumar Vaghela*** 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."

6. Madras High Court in *K.M. Manojkumar (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.”*

7. It is an admitted case of the parties that petitioner at the first instance was found medically fit and 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. It means there was no tattoo on the arm of the petitioner at the time of first as well as second medical examination, however, there was Keloid which developed on account of removal of tattoo. The petitioner participated in the selection process which took place in 2017. The petitioner filed writ petition before this Court in 2017, thus, there is no delay on the part of the petitioner in approaching this Court. The matter is pending before this Court for last 6 years and petitioner cannot be blamed for the delay. The case of the petitioner is squarely covered by judgments of Division Bench of Bombay High Court in *Hardik Rameshkumar Vaghela (supra)* as well as Madras High Court in *K.M. Manojkumar (supra)*.

8. In the peculiar facts and circumstances of the case, the respondents are directed to reconsider claim of the petitioner. He may be subjected to fresh medical examination. If he is found medically fit and a post is available, the claim of the petitioner may be considered in the light of

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judgment of Division Bench of Bombay High Court in *Hardik Rameshkumar Vaghela (supra)* as well as Madras High Court in *K.M. Manojkumar (supra)*.
The needful shall be done within six months from today.

Disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

22.11.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>