

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

127

CWP-1729-2024
Date of Decision: 29.01.2024

Yogesh

...Petitioner

Versus

United of India and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Rohit Mittal, Advocate for the petitioner
Mr. Arihant Goyal, 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 dated 24.09.2022 (Annexure P-5) whereby candidature of the petitioner has been rejected on the ground that he is suffering from Gynaecomastia Bilateral.
2. Learned counsel for the petitioner submits that respondent has rejected candidature of the petitioner on the ground that he is suffering from Gynaecomastia Bilateral. The petitioner has undergone surgery and after surgery he is no more suffering from the said disease.
3. A Division Bench of this Court vide judgment dated 29.05.2019 in *LPA No.277 of 2017, Satish Kumar v. Union of India and others* has considered the issue at length and held that the candidature of a candidate cannot be rejected on the ground of aforesaid disease. The relevant extracts of the judgment dated 29.05.2019 read as:

“6. XXXX XXXX XXXX

Before proceeding any further, it is essential to understand the meaning and impact of 'congenital malformation' and “congenital abnormality”. 'Congenital malformation' or defect or abnormality is any malformation of the body whether physical, mental or psychological, which is a deviation from the normal and is present at birth. A genetic malformation is an abnormality in the genes and may manifest at birth or later in life or not at all. Congenital malformation could be due to a number of causes which may be genetic, environmental or a combination of both. It is important to note that congenital malformation may be minor, causing little or no impairment. For instance, the same could be in the nature of a port wine stain of the face; an extra nipple on the chest; a short fourth finger; an extra finger or other abnormal facial or bodily features; formation of breasts in a male; formation of male genitalia in a female etc. Some such defects as in the nature of a cleft lip or a cleft palate etc. may be totally correctable. Other defects may cause serious impairments as in the nature of mental retardation, severe physical abnormalities, increased incidence of cancer etc. It is also important to notice that existence of a particular condition in a candidate would not ipso facto render such candidate unfit for discharging the assigned duties in the service. The meaning of the expression “congenital malformation” in the standards appointed by the respondents cannot be interpreted generally or so broadly so as to include even such minor defects that do not impact functional efficiency in any manner. The same have to be of such a nature so as to impair the normal expected functioning of an individual. There are occasions when a man may develop female like breasts known as gynaecomastia and may undergo surgical correction.

XXXX XXXX XXXX

10. *In view of above, it has to be considered as to whether the respondents' decision to reject the appellant's candidature based on above said deficiencies was actually connected to the objective of medical fitness for service and therefore was not discriminatory or arbitrary. It needs no elaboration that there can*

be no compromise in the standards of medical fitness inasmuch as national security has to be placed on much higher pedestal than any interest of the individual seeking recruitment. There can be no dispute at all that the respondents have the right to prescribe recruitment criteria which would be motivated by interests of national security. Constable (General Duty) performs arduous tasks which can be fulfilled only by physically and mentally fit personnel. Thus, so far as the intendment of the criteria is concerned, it cannot be disputed that the same is a valid and a clearly intelligible motive. The question which the appellant agitates is as to whether the rejection of his candidature on the ground of medical unfitness had any rational connection to the objective of recruiting fit personnel who were able to withstand the rigors of service and that the decision was not arbitrary. The respondents are therefore required to show that it had taken a rational decision in concluding that the appellant's disorder would interfere with the duties assigned to a Constable (General Duty). Medical standards needed for the performance of specific jobs need to be rationally read and interpreted. Reasonable medical standards help carrying out the required job functions with ease. Insisting on or interpreting a medical condition or standard in a manner that has no relationship with the level of medical fitness required to perform the stated job description is really not necessary and may even be discriminatory. The record placed before this Court also shows that initially respondents have noted "GYNAECOMASTIA BOTH SIDES" that is sole ground for rejecting the appellant's candidature but the said ailment was cured well before the review medical examination. It is pertinent to mention here that though during the course of review medical examination of appellant, Reviewing Medical Board gave remarks that appellant has female type body structure and increased estradiol level but in a given set of facts so-called infirmities/deficiencies have no footing to stand. In fact, it is an admitted position that the appellant has successfully completed the physical efficiency and written tests. The respondents thus clearly do not conclude that person affected with gynaecomastia, which is already cured, is unable to perform the typical duties entrusted to Constable (General Duty) which would have been the

relevant consideration for rejecting the appellant's candidature. The conclusions of the respondents therefore do not satisfy the test of any nexus let alone a rational nexus to the objective sought to be achieved. Thus, there is no material at all to arrive at a conclusion that gynaecomastia ailment, which has already cured, would have rendered the appellant incapable of performing the assigned duties.”

4. On being confronted with aforesaid judgment, Mr. Arihant Goyal, learned counsel for the respondents submits that competent authority would re-consider case of the petitioner in the light of afore-cited judgment.
5. Learned counsel for the petitioner agrees with the aforesaid arrangement.
6. In the wake of statement of both sides, the present petition stands disposed of with a direction to the respondents to re-consider case of the petitioner and pass appropriate orders within 6 weeks from today.

(JAGMOHAN BANSAL)
JUDGE

29.01.2024
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No