

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(121)

LPA-924-2024 (O&M)

Decided on : 16.04.2024

Union of India & others

.....Appellant(s)

Versus

Ramesh Kumar

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Ms.Gurmeet Kaur Gill, Advocate for the appellant (s).

G.S. Sandhawalia, Acting Chief Justice (Oral)

CM-2266-LPA-2024

Application for condonation of delay of 85 days in filing the appeal, is allowed, in view of the averments made in the application, duly supported by affidavit of the official. Delay of 85 days in filing the appeal is condoned.

CM stands disposed of.

LPA-924-2024 (O&M)

1. Consideration in the present appeal is to the judgment dated 24.11.2023 passed by the Learned Single Judge in CWP-361-2021 whereby the writ petition was allowed and directions have been issued to the present appellants to reconsider the claim of the respondent herein and subject him to fresh medical examination. If found medically fit, to consider his case in the light of the Division Bench judgments of the Bombay High Court in **Hardik Rameshkumar Vaghela Vs. Union of India through Secretary & others, W.P. No.1991 of 2019**, decided on 21.02.2019 and of the Madras High Court in **K.M.Manojkumar Vs. The Secretary Staff Selection Commission & others, W.P.(MD) No.16282 of 2020**, decided on 01.04.2021. The Learned Single Judge also kept in mind the fact that vide interim order dated

08.01.2021, respondents were directed to keep one post vacant and therefore,

directed the respondents to adjust the petitioner if he complies with other formalities.

2. Counsel for the appellant-Union of India has vehemently argued that the Writ Court could not substitute its opinion over the report of the medical experts and issue the necessary directions. Secondly, it is submitted that the recruitment process is of the year 2019-2020 and therefore, the selection process has been duly completed.

3. We are of the considered opinion that the argument regarding the selection process being complete is without any merit, keeping in view the fact that the Learned Single Judge had noticed that specific directions had been issued for keeping one post vacant keeping in view the medical report dated 01.02.2020 (Annexure P-6) and Review Medical Board's report dated 18.09.2020 (Annexure P-11). In such circumstances, on account of the length of the litigation, the writ petitioner cannot be divested of his legal rights and from seeking the fruits of litigation.

4. Regarding the issue of consideration, the Learned Single Judge found that the primary reason for declaring him unfit was that there was a tattoo in the right forearm which was removed after his first medical examination and the removal had led to keloid formation. In such circumstances, the Learned Single Judge came to the conclusion that it is a curable infirmity and the keloid had developed only on account of the removal of the tattoo. Reliance has been placed upon the Division Bench judgments of the Bombay High Court and Madras High Court, as noticed above, on the said issue which also pertain to tattoo removal and the remedial affects, as such. In such circumstances, we are of the considered opinion that the benefit which has been granted does not suffer from any infirmity as it is not a case of

unfitness on account of the fact that the writ petitioner might not be able to carry out his duties since consideration is for the post of Constable.

5. Challenge had successfully been raised to the certificate dated 18.09.2020 (Annexure P-11) which shows that the unfitness is on account of incomplete healed scar (7x5cms) on the right arm which has not been issued by the competent authority but by some other Medical Officer. The review medical examination of the writ petitioner however by the competent authorities would go on to show that in column no.2, the rejection is only on account of the ugly scar and the keloid. Accordingly, we are of the considered opinion that the earlier deficiencies did not meet the approval of the second review itself which were pertaining to the chest infirmity and the hemorrhoids etc. Only on account of the healing due to the tattoo removal, objections had been raised, which, in our considered opinion, has correctly been met by the Learned Single Judge as it would not come in the way of performance of duties of the writ petitioner.

6. Accordingly, in view of the above discussion, we do not find any plausible reason to interfere in the well reasoned order passed by the Learned Single Judge. Resultantly, the present appeal is hereby dismissed. All pending application(s) also stand disposed of.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

16.04.2024
Sailesh

(VIKAS SURI)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No