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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 9848/2024

PRADEEP KUMAR SHRIVAS

.....Petitioner

Through: Ms. Deepriya Snehi, Advocate.

versus

NATIONAL THERMAL POWER CORPORATIONRespondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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19.07.2024

CM APPL. 40394/2024 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 9848/2024 and CM APPL. 40393/2024 (Stay)

3. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking the following reliefs:-

“(i) Issue a Writ in the nature of Mandamus to command the Respondent authorities to appoint the Petitioner on the post of Assistant Manager (O/M- Electrical) at E3 grade at the earliest.

(ii) Issue a Writ of Certiorari for quashing the impugned Sections 18.2 and 18.3 of the NTPC norms, in so far as they create an arbitrary and discriminatory classification system regarding diabetes and job qualification.

(iii) In alternative and without prejudice, this Hon'ble Court may kindly be pleased to issue a Writ in the nature of Mandamus to direct that the appointment on the post of Assistant Manager (O/M-Electrical) at E3 grade shall be subject to the final outcome of instant Writ Petition.

(iv) Any other writ, order or direction, which this Hon'ble Court deems fit and proper in the facts and circumstances of the case, may also kindly be passed, in the interest of justice.”

4. The factual matrix emerging from the writ petition is that an advertisement bearing no. 10/23 was issued by the Respondent inviting

W.P.(C) 9848/2024

Page 1 of 8



applications to fill up 120 vacancies for the post of Assistant Manager in the discipline of Operation/Maintenance-Electrical in E3 Grade. The qualifications and the experience required for the said post were as under:-

“Qualification: *B.E./B. Tech Degree in Electrical/Mechanical/Electronics /Instrumentation with atleast 60% marks from a recognized University/Institution.*

Experience Profile: *Minimum 7 years of post qualification experience in power project/plant of capacity 200 MW or more.*

Experience Requirement: *Minimum 7 years of post-qualification experience (excluding training period, if any) in the executive cadre in the relevant area in a Govt./Public Sector Undertaking out of which minimum 3 years’ experience in the post and scale of Rs. 50000-160000 or above or equivalent level/post profile in a private company of repute.”*

5. Petitioner applied online and on being successful in the written examination held on 26.08.2023, received a provisional offer letter vide communication dated 12.02.2024. This communication required the Petitioner to return a signed copy in acceptance of the offer, within five days. Additionally, Petitioner was instructed to report to the HR Department for completion of joining formalities after undergoing a medical examination, which as per the Petitioner was only a routine fitness test.

6. It is averred that Petitioner responded on 14.02.2024 and accepted the offer of appointment and also furnished an undertaking dated 13.02.2024, as required. Complying with the instructions, Petitioner underwent medical examination on 17.02.2024 and was orally informed that his candidature was rejected on the ground that he was diagnosed with ‘Diabetes Mellitus’. Formal rejection was conveyed to the Petitioner vide email dated 26.02.2024. Challenging the cancellation of his candidature, Petitioner has filed the present petition.

7. It is argued on behalf of the Petitioner that as per the medical norms and standards prescribed by the Respondent under the heading ‘18.0 Blood



Sugar’, it is mentioned that all candidates with Type-I diabetes will be declared unfit irrespective of age. It is further provided that candidates up to 35 years of age detected with diabetes will be declared unfit while those above 35 years of age detected with Type-II diabetes, without organ involvement, shall be declared temporarily unfit for maximum period of 21 days, during which their blood sugar has to be within normal limit otherwise they will be declared unfit. This, according to the Petitioner, is an unfair discrimination based on age as it allows conditional qualification for older candidates with Type-II diabetes but disqualifies younger applicants with the same condition.

8. It is argued that a blanket ban based on medical condition is inappropriate and overlooks the medical advancement in today’s times. Several medications have been introduced which help monitor and regulate blood glucose levels and it is well known that diabetes in most patients can be regulated with proper diet and a proper lifestyle including an exercise regime. The American Diabetes Association has brought out that any person with diabetes, whether insulin treated or non-insulin treated, is eligible and fit for any kind of employment. Section 2(s) of the Rights of Persons with Disabilities Act, 2016 (‘2016 Act’) defines ‘person with disability’ as a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others. In the list of specified disabilities specified in the Schedule under Section 2(zc), diabetes is not a specified disability, which implies that diabetes of any kind cannot be a hindrance in the way of the Petitioner joining the Respondent post his selection. Even assuming that diabetes constitutes a disability, Petitioner’s candidature cannot be rejected on this ground, as that would defeat the



objective of the Act, which was enacted for the purpose of providing *inter alia* several rights and entitlements to persons with disabilities so that they come at par with the others and live with dignity.

9. I have heard learned counsel for the Petitioner and examined her contentions.

10. The moot question that arises for consideration in the present case is whether this Court can interfere with the prescribed medical criteria in the advertisement, which is the basis of disqualification of the Petitioner and consequential rejection of his candidature. In order to answer this question, it would be pertinent to have a close look at the advertisement whereby online applications were invited by the Respondent for the post of Assistant Manager in the area of Operation/Maintenance at E3 level. From the advertisement placed on record by the Petitioner, it is evident that under the heading 'Health', it was provided that candidates should have sound health and before joining, will be required to undergo medical examination at any of the NTPC Hospitals and the decision with respect to the medical examination will be final and binding. It was further provided that no relaxation in health standards will be allowed and that the detailed medical norms were available on the website of the NTPC. Candidates were also cautioned that while applying for the post, they should ensure that they fulfill the eligibility conditions and other norms mentioned in the advertisement and any anomaly detected at any stage of recruitment would automatically lead to cancellation of the candidature. The relevant 'Norms and Standards' for medical fitness, published by the Respondent in relation of blood sugar are as follows:

"18.0 BLOOD SUGAR:

18.1 All candidates with type-1 diabetes will be declared unfit irrespective of age.



18.2 Up to 35 years of age all the individuals detected to be having diabetes will be declared unfit.

18.3 Individual above 35 years of age detected to be having type-II diabetes, without organ involvement, shall be declared temporarily unfit for maximum period of 21 days during which their blood sugar has to be within normal limit otherwise they will be declared unfit.

18.4 All diabetics with any of the target organ involvement shall be made unfit irrespective of age.”

11. From a conjoint reading of the advertisement and the medical norms, it is evident that candidates up to 35 years of age suffering from diabetes were unfit for employment. It is an admitted position that on the date of the application, Petitioner was under 35 years of age and it is equally undisputed that Petitioner was diagnosed with diabetes and therefore, declared medically unfit for appointment to the post of Assistant Manager.

12. It is a settled position of law that it is open to an appointing authority to prescribe both eligibility conditions as well as medical standards for recruitment to various posts. Prescription of medical standards as well as qualifications for the post is undoubtedly a policy decision of the employer and is legitimately taken bearing in mind several features including nature and functionality of the job so that on appointment the employee discharges his duties efficiently. *Albeit* in the context of essential qualifications required for appointment to a post, the Supreme Court in ***Maharashtra Public Service Commission Through its Secretary v. Sandeep Shriram Warade and Others, (2019) 6 SCC 362***, held as follows:

“9. 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. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the



language of the advertisement and the rules are clear, the court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.”

13. The Supreme Court has from time to time propounded that when an eligibility condition or a qualification is set out in an advertisement, the same can neither be whittled down by the Courts and nor can the Courts direct prescription of any other eligibility condition and on this analogy Courts cannot direct alteration of the requisite medical standards. It is no part of the role or function of a Court in judicial review to expand upon the ambit of prescribed qualifications or medical standards in the advertisement or determine what should be the medical criteria to judge the medical fitness of the aspiring candidates for appointment/selection to a post. Being matters of policy decision, judicial review must tread warily. In light of the settled law, it is not open to this Court, exercising the power of judicial review under Article 226 of the Constitution of India, to determine whether the prescribed medical criteria for assessing the fitness of aspiring candidates i.e., ‘*candidates under 35 years of age diagnosed with diabetes will be declared unfit*’, is justified. Respondent, while issuing the advertisement, had categorically provided therein that candidates must satisfy themselves of the medical norms and no relaxation whatsoever will be given to any candidate who does not meet the said norms. Candidates were also informed through the advertisement that if at any stage of recruitment, it was found that any candidate was not fulfilling the eligibility criteria or any other norms, the candidature was liable to be cancelled automatically. Detailed medical standards and norms were prescribed keeping in mind the functional



requirements of the post in question and this Court has no expertise to decide whether Petitioner will be fit to perform the duties of an Assistant Manager with diabetes and/or by regulating and monitoring the blood glucose levels through medication, exercise and a proper lifestyle, which the Petitioner calls upon this Court to do. Petitioner was well aware of the medical standard required to be met and cannot claim equity because his candidature has been cancelled. It must be noted that Petitioner has pleaded discrimination and thus violation of Article 14 of Constitution of India between candidates who were under 35 years of age and those who were above the said age. It is urged that candidates above 35 years suffering from Diabetes type-II were not rejected outrightly and were granted 21 days to bring their blood sugar levels to normal and the same treatment should be accorded to those below 35 years. The onus to prove the alleged discrimination based on some sound criteria and/or scientific basis is on the Petitioner but other than making a bald and vague averment that there is discrimination based on age, nothing more has been pleaded or argued, which would enable this Court to hold in his favour and quash the medical norms.

14. Insofar as reliance on 2016 Act is concerned, the contention merits rejection. First and foremost, the stand of the Petitioner on this score is self contradictory. While on one hand, it is pleaded and asserted that diabetes is not a notified disability in the Schedule to Section 2(zc) of the said Act, on the other hand, benefit of the Legislation is sought. The 2016 Act is no doubt a beneficial legislation with an objective to give equal opportunity to persons with disabilities in matters of employment. However, the pre-condition for applicability of the Act will be that the person claiming the benefit must fall within the expression 'person with disability' as defined in



Section 2(zc) and the disability should be a notified disability with a further condition that it is certified that such person suffers from 40% disability. The case of the Petitioner clearly falls outside the ambit of the Legislation even as per his own case in the writ petition. Petitioner also overlooks the fact that his claim is not hinged on a reserved vacancy under the ‘Persons with Disabilities’ category, but is essentially founded on a challenge to a medical criteria prescribed by employer as a part of a selection process to ensure that candidates on selection at the threshold meet the medical fitness required for a particular post. Therefore, in my view, reliance on the provisions of 2016 Act is wholly misplaced.

15. There is no merit in the petition and the same is accordingly dismissed.

JYOTI SINGH, J

JULY 19, 2024/kks