
(2005) 11 AHC CK 0166

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 25503 of 2002

Ajay Kumar Tripathi

APPELLANT

Vs

Hindustan Aeronautics Ltd.

RESPONDENT

Date of Decision : 21-11-2005

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2006) 5 AWC 4921 : (2006) 108 FLR 960

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Advocate : Ashok Khare and A.K. Singh, for the Appellant; Vijay Singh, K.C. Sinha, V.B. Singh, V.D. Srivastava and S.D. Srivastava, for the Respondent

Judgement

D.P. Singh, J.—Heard learned counsel for the petitioner. None appears for the respondents, even in the revised list. Perused the counter affidavit.

2. The petitioner, after completing his Diploma in Mechanical Engineering from the Institute of Engineering and Rural Technology, Allahabad, underwent Apprenticeship for a year as Mechanical Engineer Technician in the respondent organization. He was declared successful in the examination held for recruitment as "Diploma Trainee" (Mechanical) by the respondent establishment and an offer of appointment dated 29th March, 2001 was issued to him. During a routine screening test, he was diagnosed as Hepatitis B positive and thus was not appointed and was asked to again report for medical examination on 28.9.2001, but this date was changed to 10th . October, 2001, when the petitioner was got examined in a private pathological clinic it diagnosed that he was still Hepatitis B positive. By the impugned order dated 29th October, 2001, the offer of appointment was cancelled on medical grounds for having tested Hepatitis B positive. This order is impugned in the present petition.

3. Learned counsel for the petitioner has urged that there was no pre-existing norm in the respondent company by which a candidate testing positive for Hepatitis B positive was to be treated as medically unfit. He has also urged that

the Sanjay Gandhi, Post Graduate Institute, Lucknow had issued a certificate dated 24.4.2002 after due investigation that the petitioner was not suffering from any nature of Hepatitis and was fit to join any service.

4. It is not in dispute that the Hindustan Aeronautics Limited is a fully owned government company and is a state within the meaning of Article 12 and has to act like a model employer. Along with the counter affidavit, the respondents have filed the revised medical standards for Pre-employment Medical Examination. In the aforesaid document, a reference is made to several types of disorders including pulmonary tuberculosis, bronchial Asthma, congenital heart etc. It is indicated therein that most of these disorders do not render an incumbent as medically unfit if it is subject to recovery. The respondent Corporation has relied upon a letter of Chief of Medical Services who himself has opined that a person normally comes out of such disorders after about six months. But if it continues, it may render the person unfit for permanent employment in view of long term complications. In the case at hand, it is not denied that Sanjay Gandhi, Post Graduate Institute has already declared that the petitioner is not a victim of Hepatitis and is fit for appointment. The object of declaring a person medically unfit has a direct nexus with the nature of the job, which is to be performed. It cannot be said that any illness would render a person medically unfit for all jobs. It has to be construed relatively and have a bearing on the normal discharge of duties and only those infirmities which interfere with the normal and ordinary functioning of the duties of the post could render an incumbent as medically unfit. The defect or deficiency must be such as would disable the person from carrying out his duty. Though, no rule has been cited on behalf of the respondents by which the standards of defect or deficiency have to be tested on the entry of an incumbent, but generally the object is to be examined qua the nature of the job. Authoritative medical books like Harisons have found that physical isolation of Hepatitis patient is not necessary except in the case of fecal incontinence because it can only be transmitted through blood or through sexual inter course. Assuming that the petitioner was suffering with the deficiency, it was curable and in fact was cured. The respondent being a state cannot take a ruthless and inhuman approach. They cannot be heard saying that since it is a technical industry, it cannot have waited beyond six months. Normally, such an ailment has to be considered by a well qualified Medical Board but in the present case, the respondents have utterly failed to constitute such Board. A Division Bench of the Bombay High Court in the case of *MX of Bombay Indian Inhabitant Vs. M/s. ZY and another, and G. Indian Inhabitant of Mumbai v. New India Assurance Company Ltd.* (Writ Petition No. 1562 of 1999) decided on 16th January, 2004, while dealing with HIV positive cases has, after holding that no person can be deprived of his livelihood except through a procedure which is just fair and reasonable, has gone on to hold that even such a person is fit for normal duties as the disease manifest itself after about eight to ten years.

5. In view of the discussions hereinabove the impugned order dated 29.10.2001 is hereby quashed and the respondents are directed to reconsider the case of the

petitioner in the light of the observations made hereinabove within a period of two months from the date of service of a certified copy of this order. No order as to costs.