

(2014) 05 RAJ CK 0136

In the Rajasthan High Court

Case No : Civil Writ Petition No. 292/2012 and Stay Application No. 214/2012

Anil Kumar Ameta

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 15-05-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 05 RAJ CK 0136

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Saransh Saini, Advocate for the Appellant; B.L. Avasthi, Additional Government, Advocate for the Respondent

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by Anil Kumar Ameta with prayer that the respondents be directed to provide him appointment consequent upon his selection and placement in the merit at 60th rank in RAS State and Subordinate Services Combined Competitive Examination, 2010 as per his merit. Action of the respondents in not providing such appointment be declared arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India.

2. Shri Saransh Saini, learned counsel for the petitioner, contended that the petitioner successfully qualified the preliminary and main written examination and interview, was placed in the merit, and placed in the merit at serial no. 60. The petitioner was required to appear before the Medical Board, S.M.S. Hospital, Jaipur on 29th of September, 2011 vide communication dated 21.09.2011 (Annexure-3). In compliance of the aforesaid communication, petitioner appeared on 29th and 30th September, 2011 before the Medical Board. He was subjected to medical examination in respect of each of his body part including eyes. One of the members of the Medical Board Dr. M.K. Jhirwal, Ophthalmologist, directed the petitioner to appear in person on 5th October, 2011 in OPD at Charak Bhawan, S.M.S. Hospital, Jaipur and under the oral

direction of the said Doctor, the petitioner appeared before him on 5th October, 2011 at 9.30 AM. He conducted the eye examination of the petitioner and found everything in order and declared the petitioner medically fit to the petitioner. It is contended that even in the medical examination conducted on 29th and 30th of September, 2011, the petitioner was declared medically fit which is evident from the report of the medical board dated 30.09.2011. The learned counsel for the petitioner submitted that the petitioner was already serving the respondent State on the post of Assistant Director (Industries) in which also he was selected by the RPSC in RAS Combined Competitive Examination of 2008, and before his appointment, he was subjected to medical examination and therefore this was not necessary for him to appear for medical examination as his case was identical to those other government servants who in this selection were exempted from such medical examination. In this connection, learned counsel for the petitioner has referred to clause 2 of the appointment order dated 22.12.2011 (Annexure-2), which mentions that the candidates, whose serial number of that order was mentioned therein, were not required to appear for medical examination since they were already in the government services and they were granted exemption. Since the petitioner was subjected to medical examination before appointment only in June or that very year i.e. 2011, his name should also have been included in the names given in Para 2 below the list of appointees. Even in respect of others, who did not appear in time, respondents gave further notice requiring them to appear. No such notice was given to the petitioner. Learned counsel for the petitioner submitted that the petitioners served on the respondents legal notice for demand of justice in response to which it has responded by the respondents that vide communication dated 08.02.2012 that after appearing before the medical board on 29th September, m2011, the petitioner did not appear before the Board on 30th September, 2011, therefore his medical examination remained in complete, which is clearly incorrect as on both the dates the petitioner appeared and the report by the Board was sent in complete respect.

3. Learned Additional Government Counsel, opposed the writ petition and submitted that as per the information dated 23.12.2011 received from the Convener, Medical Board, S.M.S. Hospital, Jaipur, the petitioner appeared belatedly for his medical examination of eyes on 22.12.2011 and therefore it is wrong to suggest that the examination of his eyes had taken place earlier. He also referred to communication dated 02.03.2012 Convener, Medical Board, S.M.S. Hospital, Jaipur, sent to the Superintendent, S.M.S. Hospital, Jaipur, informing that the petitioner was called for his examination of eyes on 05.10.2011 in the OPD and that it was not known whether the petitioner appeared in OPD on that date or not.

4. On hearing learned counsel for the parties and perusing the material on record, I find that the premises on which the notice of the petitioner has been replied by the respondent that the petitioner did not appear on 30.09.2011 stands falsified from the communication of the Medical Board, S.M.S. Hospital

dated 02.03.2012 (Annexure R-3), in para no. 1 of which it is written that the petitioner was subjected to medical examination on consecutive two days i.e. 29th and 30th of September, 2011. While the petitioner asserted that he appeared again on 05.10.2011 before Dr. M.K. Jhirwal, Ophthalmologist, for his examination of eyes, the Convener of the Medical Board is thus not disputing this fact. What he states is that he was not aware whether the petitioner appeared on that date or not. Assertion of the petitioner that he was subjected to medical examination and his eyes were also examined, is also proved from the medical examination report of the Medical Board, in which the columns relating to eyes have been fully filled, and the queries have been replied thus-(1) Any disease-No, (2) Nigh blindness-No, (3) Defect in Colour Vision-No, (4) Field of Vision -, (5) Visual Acuity-6/4-6/6p, (6) Fungus Examination-GM. The vision of his right eye is indicated to be 6/9 and that of left eye to be 6/6p. Thus the eye examination of the petitioner also took place, although may be that the Ophthalmologist would have required the petitioner to appear again for further and thorough examination on 05.10.2011. Although the respondents have stated on the basis of communication dated 02.03.2012 received from the Convener of the Medical Board that petitioner appeared for his eye examination on 22.12.2011, but it appears otherwise from the report of the Medical Board that the petitioner was subjected to medical examination with respect to his eye sight on 30.09.2011. Besides the petitioner has asserted that he was already serving the respondents on the post of Assistant Director (Industries) on the basis of his selection in RAS Examination, 2008 conducted by the respondent RPSC and for that purpose also he was subjected to medical examination in the month of June, 2011, and as such there was no reason not to grant similar exemption to the petitioner, which the respondents have granted to several others, which is evident from para 2 below the appointment order dated 22.12.2011 (Annexure-2). However, the petitioner is also informed that the respondents had granted further opportunity to many other candidates by issuance of subsequent notice, who failed to appear on 26.09.2011, and reference is made to notices sent to several other candidates, which have been placed on record of the writ petition as Annexure-5, 6 and 7. Clearly the action of the respondents, being discriminatory, was violative of Articles 14 and 16 of the Constitution of India.

5. Action of the respondents in not giving appointment to the petitioner pursuant to selection, therefore, is declared to be illegal and arbitrary.

6. The writ petition is accordingly allowed. The respondents are directed to consider the case of the petitioner for appointment on the basis of his placement in merit in Rajasthan State and Subordinate Service examination, 2010 and grant him appointment as per his merit within a period of two months from the date of furnishing the certified copy of this order. His appointment shall relate back to that date on which candidate immediately below in merit was so appointed for the purpose of seniority, continuity of service and increments etc., but he shall only be entitled to notional benefits for such intervening period.

7. Writ petition accordingly stands disposed of. This also disposes of stay application.