

(2017) 10 KAR CK 0002
In the Karnataka High Court
Case No : 203725 of 2017 (S-RES)

Devappa

APPELLANT

Vs

The Chief Managing Director & Anr

RESPONDENT

Date of Decision : 03-10-2017

Acts Referred:

Citation : (2017) 10 KAR CK 0002

Hon'ble Judges : S.Sujatha

Bench : SINGLE BENCH

Advocate : Mahantesh Patil, Deepak V. Barad

Final Decision : Allowed

Judgement

1. The petitioner has challenged the order dated 18.05.2017 passed by the respondent No.2 at Annexure-H to the writ petition inter alia seeking for a writ in the nature of mandamus, directing the respondents to re-instate the petitioner to the post of Technical/Mechanical Assistant with all consequential service benefits.

2. The petitioner applied for the post of Technical/Mechanical Assistant pursuant to the advertisement published by respondent No.1 calling for various posts in the Corporation including the post of Technical/Mechanical Assistant. The respondent No.1 appears to have passed work place order. The respondent No.2 not being satisfied with the medical certificate issued by the Medical Superintendent, RIMS Hospital, Raichur with regard to temporary corneal blindness in left eye of the petitioner, referred the petitioner to the Director, Health and Family Welfare Department, Bangalore. The petitioner was further referred to the Medical Board Kalaburagi by the Director, Health and Family Welfare Department, Bangalore. It transpires that the Medical Board, District Hospital, Kalaburagi certified that the petitioner is fit for the job of Technical/Mechanical Assistant. Not being satisfied with the same, the respondent No.2 once again referred the petitioner for the medical examination by referring Regulation 6 of the NEKRTC Regulations. In the light of the Regulation 6 of the

Regulations, the District Medical Board again examined the petitioner and certified that he is fit for the post of Technical/Mechanical Assistant. However, the respondent No.2 passed the order impugned herein, removing the petitioner from the job. Hence, this writ petition.

3. Learned counsel Sri Mahantesh Patil appearing for the petitioner referring to the certificates issued by the Medical Board contends that the Medical Board opined that the petitioner is fit for the job of Technical/Mechanical Assistant post in NEKRTC Department at the first instance. Again referring to Regulation 6 of the NEKRTC Regulations, the petitioner was reexamined and it was certified that he is fit for the job of Technical/Mechanical assistant. Despite the same, the respondent No.2 passed the impugned order, removing the petitioner from the job, which is unjustifiable.

4. Learned counsel Sri Deepak V. Barad appearing for the respondents filing the statement of objections refutes the contentions of the petitioner, placing reliance on the advertisement No.3/2014 dated 03.09.2014 marked at Annexure-R to the statement of objections. According to the learned counsel, for the post of Mechanical Assistant, only the hearing impairment persons and the persons cured from Leprosy are considered as the physically handicapped persons eligible for the said post, the petitioner suppressing his disability of the corneal blindness of left eye had applied for the post as a trainee for a period of two years. After noticing the same, respondent No.2 issued the order impugned, which do not warrant any interference by this Court. It is thus contended that the petitioner has no right to claim, it is the choice of the employer to appoint a suitable person to the post advertised. The disability in one eye would definitely bring down the competency of the person employed for the post of Technical Assistant.

5. Having heard the learned counsel appearing for the parties and perusing the material on record, it is manifestly clear that the petitioner was subjected to examination by the Medical Board and was certified as a qualified person for the post of Technical Assistant. Again on the re-examination done, keeping in mind the Regulation 6 of the NEKRTC Regulations, the Medical Board opined that the petitioner is fit for the post of Technical Assistant. The Medical Board consists of three members amongst them, an Ophthalmologist is also a member. On further re-examination referred to by the Corporation, an Ophthalmologist has examined the petitioner and has certified that the petitioner is not fit for the post of driver, but is fit for the post of Mechanical Assistant. These certificates issued by the Ophthalmologist/ specialist in the medical field rather proves the satisfaction of the experts to ensure the petitioner as a fit person for the job of Technical/Mechanical Assistant. Despite the said certificates issued by the Medical Board consisting of an Ophthalmologist, removing the petitioner from the said post is unsustainable. The Regulations of the Corporation specifies that the person having the vision in one eye is not qualified for the post of the driver but, that is not so in a case of the Technical/Mechanical Assistant.

6. Hence, the order impugned is set aside. The respondents shall re-instate the

petitioner to the post of Technical/Mechanical Assistant as expeditiously as possible. Writ petition stands allowed accordingly.