(1998) 06 KAR CK 0055

In the Karnataka High Court

Case No : Writ Petition No. 15846 of 1997

M. Dinesan APPELLANT

Vs

State Bank of India, Bhubaneswar, Orissa RESPONDENT

Date of Decision : 23-06-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16 (1)

Citation : (1999) ILR (Kar) 3411 : (2000) 3 KarLJ 369

Hon'ble Judges : R.V. Raveendran, J

Bench : Single Bench

Advocate : Sri P.S. Rajagopal, for the Appellant; M/s. Sundaraswamy, Ramdas and Anand, for the Respondent

Judgement

1. The petitioner is a person with only one eye. He claims to have lost the other eye when he was six years old. According to petitioner, his eyesight in the remaining one eye is normal and the loss of one eye did not come in the way of pursuing his education and obtaining a degree in Arts and a postgraduate degree in law, with excellent academic record and merit scholarship from the University Grants Commission. He practised as an Advocate for seven years, taught law for two years and was appointed as Law Officer in Vijaya Bank in 1983. His initial appointment was in Junior Management Grade Scale-I and in 1992 he was promoted to Middle Management Grade Scale-II in merit channel. He claims that during about 20 years of education and about 20 years of work, he never felt handicapped, nor did any one feet that he had a deficiency.

2. The Central Recruitment Board (State Bank Group) invited applications for the post of Law Officers in Senior Management Grade, Scale-IV by an advertisement in the Employment News dated 18-24/November 1995. The petitioner fulfilled the prescribed qualifications and applied for the said post. Item (iv) of the general information to candidates, contained in the said notification, made it clear that the appointment of selected candidates is subject to the candidate being declared medically fit as per the requirement of the bank concerned. The

advertisement did not stipulate any standards of medical fitness nor barred persons having only one eye from applying to the post. After interview, the Central Recruitment Board selected the petitioner for appointment as Law Officer in Senior Management Grade, Scale-IV. In pursuance of it, the respondent-Bank (local head office of the bank at Bhuvaneshwar) issued a letter of offer of appointment dated 12-7-1996. The letter stated that the appointment is subject to completion of necessary pre-appointment formalities like the medical examination, verification of antecedents etc. The letter made it clear that it was only an offer and the letter of appointment will be issued only on completion of all pre-recruitment formalities.

3. The respondent-Bank also requested its Assistant General Manager (Personnel and HRD) at its local head office at Bangalore, to arrange for petitioner''s medical examination and send them the report at an early date. A copy of the said letter dated 12-7-1996 was endorsed to the petitioner, requiring him to contact the Assistant General Manager (Personnel and HRD) at the bank''s local head office, Bangalore for medical examination.

4. The petitioner accordingly appeared before the bank''s Senior Medical Officer at Bangalore (Dr. S. Manohar). He referred the petitioner to Dr. C.N. Vishwanath, an eye surgeon, Dr. C.N. Vishwanath gave a report dated 1-8-1996 (Annexure-E) stating that the right eye of the petitioner had been removed by surgery in 1975 and he has only the left eye, which is good and normal in all respects. He also certified that the vision in the left eye was 6/6 normal; and the field of vision (ocular movement etc.) were within the normal limits; and there was no other evidence suggestive of any other ocular progressive or degenerative changes seen. The petitioner also underwent several other tests, and submitted the records. On 5-8-1996, the Medical Examiner (Dr. S. Manohar, Senior Medical Officer of the Bank at Bangalore) gave a report. In regard to the eyes, he stated that the vision was not normal as he had only one eye; that the petitioner was referred to an eye specialist; the petitioner was blind in the right eye, as it was removed by surgery in 1975; and that the left eye was normal. Against the column ''Is there anything in the health of the candidate to render him/her unfit for the efficient discharge of his/her duties in the service in which he/she is a candidate'', the Medical Examiner made the following remark: "The candidate has no right eye, being blind in the right eye following a surgical removal of right eye in 1975, is not fit being blind in the right eye". In column No. 16 where the Medical Examiner had to record whether the candidate was fit or unfit, he noted "unfit on account of total blindness in right eye".

5. Thereafter the petitioner received a communication dated 24-3-1997 (Annexure-H) from the respondent-Bank informing him that as he had been declared medically unfit for the appointment in the Bank as Law Officer in SMG Scale-IV, the offer of appointment was withdrawn. The petitioner sent a representations dated 4-4-1997 and 28-4-1997 stating that he had normal vision of 6/6 without glasses; that as per a decision taken by the respondent-Bank in

January 1997, candidates having one eye with normal vision (i.e., 6/6 without glasses) could be considered medically fit for "the purpose of promotion to supervisions cadre; and that the action of the bank would be discriminatory, as it applied different standards of medical fitness to promotees and the direct recruits. The bank sent reply dated 17-5-1997, stating that the Chairman of the bank had considered the matter and the decision conveyed in the earlier letter dated 15-2-1997 remained unaltered. According to the petitioner, he has not received the letter dated 15-2-1997, but obviously the said letter also informed him that he was medically unfit and was not therefore selected. Feeling aggrieved, the petitioner has filed this petition and sought (a) quashing of Annexure-H dated 24-3-1997 and a direction to the respondents to appoint him to the post of Law Officer in SMG Scale-IV, pursuant to the offer of appointment dated 12-7-1996 with all consequential benefits, including the seniority and monetary benefits; (b) a declaration that treating the candidates having one eye with normal vision as medically unfit for direct recruitment, while holding such candidates to be medically fit for the purpose of promotions, is arbitrary, discriminatory, opposed to the Articles 14 and 16(1) of the Constitution of India, and consequently non est and unenforceable.

6. The petitioner contends that any prescription of a condition that one eyed person is not suitable for the post of Law Officer is arbitrary and discriminatory. He also contends that differentiating between the promotees and direct recruits in this behalf by providing that one eyed persons are medically fit for promotions and providing that one eyed persons unfit for direct recruitments, is discriminatory. Relying on the decision of this Court in Gururaja Rao v Reserve Bank of India., the petitioner contended that applying any criteria or conditions of eligibility (in this case, treating one eyed candidates as unfit for appointment) without disclosing the same to the candidates would be arbitrary and opposed to Articles 14 and 16. It is lastly contended that even assuming that refusing appointment to one eyed persons is a policy of the Bank, the same being totally arbitrary, it should be held to be invalid.

7. The Bank, on the other hand, has contended that the notification inviting applications for the post made it clear that the appointment of any candidate was subject to the candidate being declared medically Dt as per the requirements of the bank and therefore it was unnecessary and in fact impractical to indicate in detail, in the advertisement, the standards of the fitness that are required; that as per the bank''s policy and guidelines, a person should have vision in both the eyes and being blind in one eye was a disqualification for appointment; that it was for the bank, as the employer, to decide and impose the standards of medical fitness expected of a person who is to be appointed and a Court cannot sit in judgment over such standards of fitness fixed by the bank and the matter is not justiciable. The bank has pointed out that where it has choice of selection between a one eyed person and a two-eyed person, it can certainly prefer the person with vision in both the eyes, so that it can have the services of a person, who is physically better. Reliance is placed on the guidelines contained in Chapter

84 of the Banks Reference Book on Service Conditions, which contain the guidelines to be followed by the Medical Officers and bank''s authorised doctors to carry out medical examination of candidates for appointment/promoted in the bank. Reliance is also placed on the following provision relating to physically handicapped candidates:

"The following categories of candidates may be considered for clerical appointment as per rules laid down:

(i) Loss of sight in one eye, provided the other eye has normal vision or is corrected to normal with glasses with maximum hypermetropia or myopia for 4.00 D. Shp. An undertaking should be obtained from one eyed candidates to the effect that in case of any deterioration in the eyesight, his/her services would be liable for termination. One eyed candidates are unfit for appointment/promotion to supervisory cadre".

The Bank also contends that Staff Circular No. 66 dated 21-1-1997 (Annexure-K) giving relaxation/exemption to persons with only one eye, made it clear that such persons could be considered medically fit only for the purpose of promotion and the exemption/relaxation did not apply to the direct recruitments/ appointments. It is contended that the eligibility criteria for promotion can be different from the eligibility for appointment by direct recruitment and there is nothing wrong in making a classification between the direct recruits and the promotees in this behalf. Relying on the decisions of the Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, , and Roop Chand Adlakha and Others Vs. Delhi Development Authority and Others, , it is contended that unless the policy is shown to be arbitrary, capricious or to bring about grossly unfair results, judicial policy should be one of judicial restraint; and Courts should not substitute their own opinion for that of the Authority as to what policy would best serve the objects and purposes which are sought to be achieved. Relying on the decisions in Fatehchand Himmatlal and Others Vs. State of Maharashtra, , and Tamil Nadu Education Department Ministerial and General Subordinate Services Association and Others Vs. State of Tamil Nadu and Others, , it is also pointed out that any law or policy, having regard to its general character, may hurt a few and once the policy is found to be rational, the fact that in a few cases it may cause hardship will not have the effect of invalidating the policy.

8. On the rival contentions, the following points arise for consideration:

(i) Whether applying criteria or conditions of eligibility, without disclosing them to the candidates who apply for the post, would be an arbitrary action opposed to Articles 14 and 16(1);

(ii) Whether differentiating between promotees and direct re-cruitees, by providing that one eyed persons are medically fit for promotion and one eyed persons are not medically fit for direct recruitment is discriminatory, violative of

Articles 14 and 16(1).

(iii) Whether Bank, as a matter of policy, could prescribe that one eyed person is unfit for appointment as a Law Officer.

Re: Point (i)

9. The petitioner, contends that as the condition of eligibility on which he is now found to be unfit, that is a person should have both eyes, was not disclosed as a condition of eligibility to the candidates while inviting applications, applying such a condition of eligibility to hold him unfit is arbitrary. This contention is based on the decision of a learned Single Judge of this Court in Gururaja Rao''s case, supra, wherein this Court was examining the selection of persons for posts of clerks in Reserve Bank of India. The petitioner therein was selected for the post and thereafter upon medical examination, the petitioner was disqualified on the ground that he was overweight and his appointment was cancelled. The Court found from the certificate issued by the Medical Officer, that the medical opinion was based on the weight-height ratio prescribed by the bank in its circular, which was not made part of the advertisement and which had not been disclosed to the candidates at anytime. The learned Judge held that the instructions regarding medical fitness laid down by the Bank were in the nature of additional criteria or conditions of eligibility and such criteria could not be applied, unless they were made known to all candidates while inviting application for the posts.

10. The decision relied on by the petitioner taken in appeal. The decision of the Division Bench is reported in Manager, Reserve Sank of India v Gururaja Rao . The Division Bench, allowed the appeal in part and modified the order of the learned Single Judge. The Division Bench did not differ with the learned Single Judge that conditions of eligibility should be disclosed to all candidates while inviting applications for the post; but the guidelines that are issued to the Medical Officers to decide whether a person was medically fit, are not qualifications for the post and need not be disclosed to the candidates. The following observations are relevant:

". . . Whether it is in public service or private employment, medical fitness of selected candidates is generally insisted upon. The candidates are subjected to medical examination to find out whether they are physically fit and mentally alert to discharge the duties of the posts to which they are selected. In the disciplined force like Military Service or Police Force, physical fitness is strictly insisted upon, regard being had to the nature of the duties to be performed by the selected candidates. In other services, the discretion to issue medical fitness certificates is usually left to the Medical Board or Medical Officer appointed for the purpose".

"The next question for consideration is whether Gururaja Rao ought to have been intimated in advance about the height-weight standard laid down by the Bank, and for want of such intimation whether his non-selection was illegal. We do not think that this contention has any substance. Firstly, for the reason that we have already stated that it is not a qualification prescribed for any post in the Bank''s service. It is just a general guide to regulate the discretion of Medical Officers. Secondly, Gururaja Rao was specifically intimated in his order of appointment that his appointment was subject to his being found medically fit for service in the Bank by the Bank''s Medical Officer. That intimation to Gururaja Rao, in our opinion, is itself sufficient that he must possess reasonably good health to perform the duties of the post to which he has been selected".

The Division Bench, disposed of the matter with a direction to the bank to have Gururaja Rao examined by the Medical Officer making it clear that though such Medical Examination should be in the light of the guidelines given by the Bank, it was for the Medical Officer to conclude whether the candidates in his existing state of health would be able to perform the duties of the post of which he was selected. The Court further directed that if the Medical Officer certifies that he was medically fit, the Bank shall appoint him to the post to which he was provisionally selected.

11. The correct principle appears to be that while it is necessary to disclose the eligibility criteria, it is not necessary to disclose the method by which fulfilment of such criteria will be assessed by the authority/employer. The eligibility criterion is that the candidate should be medically fit as per the requirements of the Bank. That is disclosed in the notification inviting applications. But, it is unnecessary to specify the tests, guidelines and criteria that are considered or applied to determine whether a candidate is medically fit in the notification inviting applications, nor is it necessary to disclose them to the candidates. So long as the notification discloses that the appointment was subject to candidates being declared medically fit, as per the requirement of the Bank, it is unnecessary for the employer to disclose in the notification the detailed requirements of medical fitness. The first point is, therefore, answered in the negative.

Re: Point (ii)

12. The Staff Circular No. 66, dated 21-1-1997, issued by the Bank is based on the decision of the Executive Committee of the Central Board of the Bank at its meeting held on 17-9-1996. The earlier circular (No. 27 of 1995-96) stated that one eyed candidates are unfit for appointments and promotions to Supervisory Cadre. The guidelines to be followed by the Medical Examiner also clearly stated that one eyed candidates are unfit for appointments/promotions to supervisory cadre. The Circular dated 21-1-1997, made a relaxation to a limited extent and provided that candidates having only one eye with normal vision (6/6 without glasses) could be considered medically fit for the purpose of promotion. Thus, the bar relating to one eyed candidates now applies only to direct recruitments. The question is whether the bank can validly adopt different norms for direct recruits and promotees. The tests regarding classification is now well-settled. There is no bar in regard to the reasonable classification. When any provision is assailed on the ground that it contravened Article 14 of the Constitution, its validity can be sustained if two tests are satisfied. The first test is classification on which it is founded must be based on an intelligible differentia which

distinguishes the persons or things grouped together from others left out of the group. The second is that such intelligible differentia should have a reasonable connection to the object sought to be achieved by the provision - D.S. Nakara and Others Vs. Union of India (UOI), .

13. Labour and service jurisprudence have always recognised that the candidates already in service who seek promotion to a higher cadre, and the candidates to be recruited directly to the said cadre, fall under two different and distinct categories, when recruitment to a cadre is by direct recruitment as well as by promotion. The object of direct recruitment is to attract persons possessing merit, higher qualification and specialised experience. The object of promotions is to fulfil the aspirations of persons in service, so that they can improve their status and emoluments, provided they have a good record of service and possess requisite experience. As promotions and direct recruitments provide distinct and different sources for appointments to the same cadre, and the object of resorting to direct recruitment and object of resorting to promotion to fill the posts in the same cadre are different, there can be different criteria for filling the posts by direct recruitment and filling the posts by promotion.

14. Once it is recognised that there can be different eligibility criteria for filling the posts in a cadre, by promotion and by direct recruitment, it follows that a candidate for direct recruitment cannot question the eligibility criteria, merely on the ground that they are different from the criteria fixed for filling the same post by promotion. Having regard to the service already rendered to the institution and experience in the institution and the need to provide promotional opportunities to the existing employees, there may also be relaxation while prescribing in criteria to promotees. Therefore the contention of the petitioner that the Bank having provided that employees with only one eye are medically fit for the purpose of promotion to a supervisory cadre, should also extend the same criterion for direct recruitment, is liable to be rejected. The second point is also answered in the negative.

Re: Point (iii)

15. There is no statutory prohibition for recruitment of one eyed person for supervisory posts, in particular, the post of Law Officer (SMG-Scale IV). The bank relied on the guidelines formulated by the bank (contained in Chapter 84 of Reference Book on service conditions and its Circular No. 27 of 1995-96), which provides that one eyed candidates are unfit for appointment or promotion to supervisory cadre. In view of the subsequent Circular No, 66 of 1996-97, dated 21-1-1997, one eyed persons with normal vision (6/6 without glasses) are now considered medically fit for promotion to supervisory cadre. The present position as per the medical guidelines and circulars of the Bank is that one eyed candidates are not fit only for direct recruitment to supervisory cadre. The respondent-Bank contends that the said guidelines and the circular contain a policy decision of the bank not to make fresh appointment of one eyed persona to supervisory cadre and the policy decision should not be interfered with by this

Court in exercise of its writ jurisdiction. The bank contended that as the employer, it has absolute discretion in fixing the standards of physical fitness and related matters for appointment to ensure that the candidates selected are physically fit and mentally alert to discharge the duties connected with the post to which they are selected.

16. Strong reliance is placed by both sides on the decisions of the Supreme Court in Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, , G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others, and Krishnan Kakkanth Vs. Government of Kerala and ohters, . Let me refer to the relevant passages from those decisions.

16.1 In Jalgaon Municipal Council''s case, supra, the Supreme Court cited with approval the following passages from the Article of Sir Gerard Brennan''s "The Purpose and Scope of Judicial Review contained in Judicial Review of Administrative Action in the 1980s'' published by the Oxford University Press;

"The Courts are kept out of the lush field of administrative policy, except when policy is inconsistent with the express or implied provisions of a statute which creates the power to which the policy relates or when a decision made in purported exercise of a power is such that a repository of the power acting reasonably and in good faith, could not have made it. In the latter case, ''something overwhelming'' must appear before the Court will intervene. That is, and ought to be, a difficult onus for an applicant to discharge. The Courts are not very good at formulating or evaluating policy. Sometimes when the Courts have intervened on policy grounds, The Courts'' view of the range of policies open under the statute or of want is unreasonably policy has not won public acceptance. On the contrary, curial views of policy have been subjected to stringent criticism. In the world of politics, the Court''s opinions on policy are naturally less likely to reflect the popular view than the policies of a democratically elected Government or of expert administrators. ....".

"The considerations by reference to which the reasonableness of a policy may be determined are rarely judicially manageable.... ".

(emphasis supplied)

16.2 In Krishnan Kakkanth''s case, supra, the Supreme Court observed:

"To ascertain unreasonableness and arbitrariness in the context of Article 14 of the Constitution, it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the State Government. It is immaterial if a better or more comprehensive policy decision could have been taken. It is equally immaterial if it can be demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. Unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing a public- policy in the context of illegality and unconstitutionally, Court should avoid embarking on uncharted ocean of public policy".

16.3 On the other hand in Shrilekha Vidyarthi''s case, supra, the Supreme Court held that:

"It can no longer be doubted at this point of time that Article 14 of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional".

". . . . However, where no plausible reason or principle is indicated nor is it discernible and the impugned State action, therefore, appears to be ex facie arbitrary, the initial burden to prove the arbitrariness is discharged shifting onus on the State to justify its action as fair and reasonable. If the State is unable to produce material to justify its action as fair and reasonable, the burden on the person alleging arbitrariness must be held to be discharged. The scope of judicial review is limited as indicated in Dwarkadas Marfatia case to oversee the State action for the purpose of satisfying that it is not vitiated by the vice of arbitrariness and no more. The wisdom of the policy or the lack of it or the desirability of a better alternative is not within the permissible scope of judicial review in such cases, it is not for the Courts to recast the policy or to substitute it with another which is considered to be more appropriate, once the attack on the ground of arbitrariness is successfully repelled by showing that the act which was done, was fair and reasonable in the facts and circumstances of the case....".

". . . . Non-arbitrariness, being a necessary concomitant of the rule of law, it is imperative that all actions of every public functionary, in whatever sphere, must be guided by reason and not humour, whim, caprice or personal predilections of the persons entrusted with the task on behalf of the State and exercise of all power must be for public good instead of being an abuse of the power".

16.4 Thus, though the Courts may not normally interfere in matters of policy, it may do so, if it is shown that the policy is arbitrary or capricious or not informed by any reason whatsoever or where it suffers from vice of discrimination.

17. The purpose of the policy of selecting persons who are medically fit, is to find the best persons who have physically and mentally fit to discharge their functions and duties attached to the post to which they are appointed. Clause 3 of the Guidelines (Chapter 84 of Reference Book on Service Conditions) state the policy of the Bank thus:

THE AIM OF MEDICAL EXAMINATION

The Medical Examiner is expected to ensure that a candidate in his/her existing state of health will be able to render uninterrupted service to the Bank. Hence Medical Examiner must give a thorough medical check-up. To be passed as fit for appointment, a candidate must be in good mental and bodily health and free from any physical defied likely to interfere with the efficient performance of the duties of his/her appointment.

(emphasis supplied)

There can be no doubt that if the person appointed is not in a position to discharge the functions and duties attached to the post properly, by reason of any physical or mental infirmity, handicap or disability, that would be a good reason for not selecting the person. In this context, the words used ''medically fit'' assume importance. What is medical fitness? It may include physical fitness and mental fitness. Insofar as physical fitness is concerned, what is the requirement? Is it physical appearance, physical health, absence of physical defects, absence of physical disability or absence of physical handicap? The terms ''physical handicap'' and ''physical disability'', normally refer to a problem or condition which makes functioning by such person more difficult, than persons without such problem or condition. In other words, if a person lacks one or more physical abilities either fully or partially, then, it would be a physical disability or handicap. The term physical defect refers to a physical impairment. In some situations a physical defect may lead to a physical disability or physical handicap. There may be several instances where a physical defect will have absolutely no effect on the discharge of functions of any post/job or at least some posts/jobs. Therefore, if there is some physical defect which has absolutely no bearing on the functioning of the person, in relation to the post to which he is appointed, such physical defect cannot be said to have any relevance for ascertaining the physical or mental fitness for the post. When a person is medically examined to consider whether he is medically fit, as provided in the guidelines, the intention is to find out whether the person has any defect which is likely to interfere with the efficient performance of the duties of the post to which he is to be appointed.

18. A physical defect or deformity is not necessarily a physical disability or handicap. To give an example, a person with Myopia is a person who is having a physical defect when compared to a person having normal sight. Such myopic person could not be considered to be physically handicapped or physically disabled, as he can effectively function with corrective glasses (upto a particular limit). If a person has six fingers in the left hand or has four fingers in the left hand, the same is certainly a physical deformity/defect. It is also something that cannot be corrected to normalcy, as contrasted from myopia which can be corrected. But, a person with six fingers or four fingers on the left hand will not be considered as a person with a physical disability which interferes with the efficient performance of the duties and functions of a Law Officer, in view of the fact the deformity or defect does not come in the way of his normal functioning. Therefore, the relevant test is not whether the person is free from defects and deformities, but whether the person has any defect or impediment which will interfere with the normal or efficient functioning of the person in performance of the duties attached to the post.

19. The guidelines states how a person should be systematically examined. Clause 5(g) deals with ophthalmic system and it is extracted below:

"If any candidate is suspected to have any refractive error in either or both eyes organic or progressive disease of any part of the eyes, squint, colour blindness and night blindness or any other ocular condition/disease, a thorough ophthalmic check-up and report from ophthalmic surgeon is essential.

Accurate assessment of the vision is obviously most important for candidates for Bank''s service in view of the nature of their duties.

The standard of near and distance vision with or without glasses are as follows:

Clerical Staff

Below the age of 35 years

6/9

6/12

Above 35 years

6/9

6/18

Near Vision

N6

Officers

Below the age of 35 years

6/6/

6/9

Above 35 years

6/9

6/12

Near Vision

N5

(i) Vision should be capable of correction 6/6 with use of glasses. Total myopia or hypermetropia should not exceed over ''-6.00D+6.00D'' in each eye in the case of candidates below 20 years of age and should not exceed ''-8.00+6.00'' in respect of candidates above 20 years of age.

(ii) Ocular conditions other than visual acuity; any organic disease or a progressive refractive error likely to lower the visual acuity should be considered as a disqualification.

(iii) Refraction, Fundi examination and colour vision is a part of the normal medical examination by the specialist in all cases of visual defects. Colour blindness is not a bar to appointment except in the case of special categories as drivers etc. Any pathological conditions in Fundi should be treated as disqualification. Onset of cataract or Glaucoma should be regarded a bar for fresh appointment as candidates for Award Staff and Probationary Officers. However, in the case of promotions of employees already working in the Bank, Cataract or Glaucoma should be operated before certifying fit for promotion. In case there is damage to the eye after operation, the employee will be disqualified after getting reports of two senior ophthalmic surgeons.

(iv) Normal colour vision is essential for promotion/appointment in any cadre, squint in both eyes would be disqualification. Squint should not be a bar provided the same is non-paralytic and it does not affect the visual acuity as per norms laid down and the other eye is as mentioned above.

The eye should be corrected to 6/6 with glasses and not with contact lenses".

It is significant that having one eye is not considered as medical unfit-ness in the above provision. The bar is contained in the guideline relating to ''Physically Handicapped Candidates'' (extracted in para 7 above). While barring persons who are found medically unfit for appointment may be a valid and reasonable policy, barring all one eyed persons from appointment to supervisory posts by direct recruitment, de hors medical fitness, and without medical opinion as to whether absence of one eye is likely to interfere with the efficient performance of the duties/functions attached to the post, will be an arbitrary and capricious exercise of power by an Authority.

20. A physical defect or deformity which in no way interferes with the normal or efficient functioning should not be considered as an absolute bar to public employment, in regard to posts not associated with physical activity. There can be no doubt that a person with only one eye can be rejected if on medical examination he is found to be unfit to discharge the functions normally associated with a supervisory personnel or managerial personnel. Similarly such a person may also be rejected for the post of a Driver of a vehicle. But, where interference with normal or efficient functioning is not likely, on account of such defect, and medical examination and opinion does not say so, existence of a mere physical defect or deformity by itself cannot be termed as unfitness for a job. The bank is not a private employer. It is an instrumentality of the State. It cannot act arbitrarily, unreasonably and high-handedly or practice discrimination. It owes a public duty to act fairly and reasonably and all its actions must be informed with reason. Therefore, either to formulate or enforce a policy not to consider any person who is having only one eye, for employment, irrespective of whether he is medically unfit or fit, is nothing short of arbitrariness and shows a baseless prejudice against such persons. No authority can formulate a policy

relating to appointment, with such arbitrariness. The Courts will not interfere with the standards fixed by an employer (Authority) to ascertain medical fitness of a person for employment. But Courts will interfere with an arbitrary prohibition to appointment in absolute terms, merely on a physical defect or deformity, which is not shown to have any effect on the normal and efficient functioning of the person in the post. There can be no doubt that different standards of fitness may be required for different types of posts. For example, as noticed by the Division Bench in Gururaj Rao''s case, supra, in regard to military service or police force, a minimum height may be prescribed and a minimum weight may be prescribed and a minimum physical fitness may strictly be insisted upon. But, for a post of Law Officer a minimum height has no relevance. What is required is mental alertness and mental capability and physical fitness which will ensure efficient discharge of his functions. So long as the defect or deformity has no effect on the efficient and normal functioning of the person, the defect by itself cannot be a ground to disentitle the person for being considered for the post.

21. In this case, the petitioner has been found to be medically unfit not because on medical examination any defect is found in his eyesight, which was likely to interfere in the efficient discharge of the duties of a Law Officer, but because of the policy of the Bank not to employ persons with only one eye. The medical examiner''s opinion that petitioner is unfit is based on the guideline that one eyed persons are unfit for selection, even though he found that eyesight was normal. The policy of the Bank that all one eyed persons are wholly unacceptable for employment to supervisory cadres (by direct recruitment) irrespective of the fact that they may be medically and physically fit to discharge efficiently the functions attached to the post, renders the policy and guideline arbitrary, capricious and unreasonable. When statutes and being enacted to provide equal opportunities to disabled and handicapped, to have a policy which treats a physical defect nor having any effect on efficient functioning as a disability and bar for employment is a retrograde step, not expected of an Authority required to act reasonably. The third point is therefore answered in the negative.

22. I am informed that the post, in regard to which the petitioner was offered an appointment, has been filled up and is no longer available. The selected candidate has not been impleaded and therefore there cannot be a direction to appoint the petitioner to that post. The petitioner has pursued this petition to prevent such injustice being perpetuated against one eyed persons.

23. In view of the above, the petition is allowed in part, as follows, moulding the relief suitable.---

(a) The policy of the Bank not to employ one eyed persons to supervisory cadre by direct recruitment, irrespective of their medical fitness, is declared to be illegal and arbitrary and therefore unenforceable.

(b) If petitioner applies to the Bank for any other similar post, his application shall not be rejected by the Bank merely on the ground that he is blind in one eye, if he is otherwise eligible, suitable and fit for employment.

(c) If the Bank has already advertised any post which is yet to be filled up, the petitioner''s application to such post may be received and considered, even if it is filed after the last date.

