

(2002) 11 KAR CK 0043

In the Karnataka High Court

Case No : Writ Appeal No's. 4289 and 4697 of 1997

M. Dinesan

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 25-11-2002

Acts Referred:

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

Citation : (2003) 1 KarLJ 512 : (2003) 2 LLJ 70

Hon'ble Judges : Kumar Rajaratnam, J;K. Bhakthavatsala, J

Bench : Division Bench

Advocate : P.S. Rajagopal, for the Appellant; Sundarswamy, Ramdas and Anand, for the Respondent

Final Decision : Dismissed

Judgement

K. Bhakthavatsala, J.—The State Bank of India and the candidate for the post of Law Officer in Senior Management Grade, Scale IV in the State Bank of India have preferred W.A. Nos. 4289 and 4697 of 1999 respectively, challenging the order dated 23-6-1998 passed in M. Dinesan v. State Bank of India, Bhubaneswar, Orissa, 2000(3) Kar. L.J. 369 : ILR 1999 Kar. 3411 on the file of learned Single Judge of this Court. Thus, both the writ petitioner and respondent in the writ petition are before us.

2. In view of the fact that these two writ appeals are directed against the one and the same order, we proceed to dispose of both the writ appeals by common order.

3. For the purpose of convenience and better understanding, the parties are hereinafter referred to as the petitioner and respondent-Bank as arrayed in the writ petition.

4. The brief facts of the case are as under:-

That the petitioner, who fulfilled the prescribed qualifications for the post of Law

Officers in Senior Management Grade, Scale IV applied in pursuance of an advertisement in the Employment News dated 18-24th of November, 1995. After interviewing the petitioner, the Central Recruitment Board selected the petitioner for appointment as Law Officer in Senior Management Grade, Scale IV post. In pursuance of it, the respondent-Bank (local head office of the Bank at Bhubaneswar) issued a letter of offer of appointment dated 12-7-1996, stating that the appointment was subject to completion of necessary pre-appointment formalities, like the medical examination, verification of antecedents etc. The respondent-Bank by letter dated 12-7-1996 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 report at an early date, and a copy of the said letter was also endorsed to the petitioner, requiring him to contract the Assistant Manager (Personnel and HRD) at the Bank's local head office, Bangalore, for medical examination. Accordingly, the petitioner appeared before the Bank's 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 in good and normal in all respects. The petitioner also underwent several other tests and submitted the records. On 5-8-1996, the Senior Medical Officer submitted a report stating that the left eye of the petitioner was normal; the right eye was removed by surgery in 1975, and therefore vision was not normal and unfit for efficient discharge of his duties in service, in which he is a candidate, and as against column 16 of the report, the Medical Officer has reported that the candidate was unfit on account of total blindness in right eye. 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. Therefore, the petitioner sent representations dated 4-4-1997 and 28-4-1997 stating that as per the decision taken by the respondent-Bank in June 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 supervisor's 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 respondent-Bank sent reply dated 17-5-1997, stating that the Chairman of the Bank had considered the matter and conveyed his decision reiterating his earlier decision dated 15-2-1997. Feeling aggrieved, the petitioner filed the writ petition in W.P. No. 15846 of 1997 on the file of learned Single Judge of this Court, urging the following important grounds.-

(i) that 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) of the Constitution of India;

(ii) that applying different criteria for the promotees and direct recruits by the respondent-Bank is discriminatory and violative of Articles 14 and 16(1) of the

Constitution of India;

(iii) that the respondent-Bank's policy that one-eyed person should not be appointed as Law Officer is opposed to well-settled principles and law.

5. Therefore, the petitioner had prayed for the following reliefs in the writ petition.-

(a) to quash the order bearing No. PER and HRD/CO/7721, dated 24-3-1997 (under Annexure-H) by issue of a writ in the nature of certiorari or such other appropriate writ, order or direction and direct the respondent by issue of a writ in the nature of mandamus to appoint the petitioner to the post of Law Officer in Senior Management Grade, Scale IV pursuant to the offer of appointment dated 12-7-1996 (under Annexure-C) and grant all consequential benefits including seniority and monetary benefits in the interest of justice and equity;

(b) to declare 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;

(c) to issue such other writ, order or direction as this Hon''ble Court deems fit in the facts and circumstances of the case including award of costs of this writ petition.

6. The respondent-Bank entered appearance through his Advocate in the writ petition and filed statement of objections denying violation of Articles 14 and 16 of the Constitution of India, and prayed for dismissal of the writ petition.

7. The learned Single Judge after hearing arguments of the learned Counsels for the parties, formulated the following three points 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 recruiters, 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?

8. For the reasons mentioned in the impugned order, the learned Single Judge answered points (i) and (ii) in the negative, in favour of the respondent-Bank and against the writ petitioner, while answering point (iii) in the negative, in favour of the writ petitioner, holding that the policy of the Bank not to employ one eyed persons to supervisory cadre by direct recruitment, irrespective of their medical fitness, was declared to be illegal and arbitrary, and therefore unenforceable. The learned Single Judge has further observed in the impugned

order that the selected candidate has not been impleaded, and therefore there cannot be a direction to appoint the petitioner to that post, and the petitioner perused the writ petition to prevent such injustice being perpetuated against one eyed persons. However, the learned Single Judge ordered that if the petitioner applied 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, and 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. Thus, the writ petitioner is before us on the ground that though the learned Single Judge held point (iii) in his favour, he did not direct the respondent-Bank to appoint the writ petitioner as Law Officer. The respondent-Bank is also before us on the ground that the learned Single Judge erred in declaring the policy of the Bank not to employ one eyed persons to supervisory cadre by direct recruitment, irrespective of their medical fitness, as illegal and arbitrary, and therefore unenforceable.

9. Heard Sri P.S. Rajagopal, learned Advocate for the writ petitioner and Sri Ramdas, Advocate for the respondent-Bank.

10. At the very outset, Sri Ramdas submitted that the respondent-Bank relied on the guidelines formulated by the Bank (contained in Chapter 84 of the Reference Book on Service Conditions and its Circular bearing No. 27/95-96), which provide that one eyed candidates are unfit for appointment or promotion to supervisory cadre. It is also submitted that as per subsequent Circular bearing No. 66/96-97, dated 21-9-1997 one eyed persons with normal vision (6/6 without glasses) are now considered medically fit for promotion to supervisory cadre. Thus, as per policy decision of the Bank and the medical guidelines, one eyed candidates are not fit for direct recruitment to supervisory cadre and therefore the learned Single Judge erred in answering point (iii) in the negative in favour of the petitioner, contrary to the decisions of the Apex Court. While answering point (iii) in the negative, in favour of the writ petitioner, the learned Single Judge has referred to the following decisions:

- (i) Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, ;
- (ii) G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others, ;
- (iii) Krishnan Kakkanth v. Government of Kerala and Ors.

After making a detailed discussion and observation, the learned Single Judge has held that 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, and therefore answered point (iii) formulated" by the learned Single Judge in the negative in favour of the writ petitioner. We see no good ground to interfere with the finding of the learned

Single Judge with reference to point (iii) formulated for consideration, and therefore writ appeal filed by the respondent-Bank in Writ Appeal No. 4289 of 1999 is liable to be rejected.

11. Now, we refer to the contention of the petitioner in the Writ Appeal No. 4697 of 1999.

12. At the cost of the repetition, we must mention that the bone of contention of the writ petitioner is that the learned Single Judge having held that the policy of not employing one eyed person to Supervisor post is bad, illegal and unenforceable, ought to have directed the respondent-Bank to appoint the petitioner either to the post notified in the advertisement dated 18-24th November, 1995 for which he was selected or to the post advertised on 11th November, 1997 or to any other future post of Law Officer in Senior Management Grade, Scale IV without requiring the writ petitioner to go through the selection process all over again.

13. Admittedly, as observed by the learned Single Judge in paragraph 22 of the impugned order, the learned Single Judge has made an observation that the post offered to the writ petitioner was filled up and the same was no longer available and apart from that the selected candidate had not been impleaded in the writ petition, and therefore, there could not be a direction to appoint the petitioner to the post.

14. We feel that the view of the learned Single Judge is perfectly correct, and we find no good ground to interfere with the impugned order in respect of the contention taken by the petitioner in the above said writ appeal. Therefore, the writ appeal filed by the petitioner in W.A. No. 4697 of 1999 is also liable to be rejected.

15. Hence, for the foregoing reasons, we pass the following order:

Both the writ appeals fail and they are hereby dismissed. No costs.