
(2022) 03 TEL CK 0093
In the Telangana High Court
Case No : Writ Petition No. 6951 Of 2021

Manthani Sudhakar

APPELLANT

Vs

State Of Telangana And 5 Others

RESPONDENT

Date of Decision : 31-03-2022

Acts Referred:

Citation : (2022) 03 TEL CK 0093

Hon'ble Judges : P. Madhavi Devi, J

Bench : Single Bench

Advocate : Kalvala Sanjeev

Final Decision : Allowed

Judgement

1. This writ petition is filed by the petitioner seeking Writ of Mandamus declaring the impugned order dt.22.05.2019 in Ref.No.APA/GDK.10/19/W/014/Dep/184 passed by the 6th respondent declaring the petitioner as unfit for employment on the ground that the petitioner is suffering from HBsAg (Reactive) positive, i.e., Hepatitis B positive, as illegal and arbitrary.

2. Learned counsel for the petitioner, Sri K. Sanjeev, submitted that the petitioner is the son of the employee who worked in the respondent company as Multi Job Worker at GDK 10 Incline, Ramagundem-III Area, Peddapally District vide the Employee Code No.1154802 and had rendered unblemished service of 32 years. Since Manthana Rajaiah, the said employee, suffered with PIVD C5-C6, C6-C7 with nerve root compression, he was unable to discharge his duties and was declared as medically invalidated. Thereafter, his services were terminated vide Memo dt.04.10.2018. Thereafter, the said ex-employee submitted an application dt.23.10.2018 to provide appointment to his younger son, i.e., the petitioner herein as his dependent. In accordance with the said application, the petitioner was directed to attend to medical test and the petitioner attended the medical test on 26.02.2019 at Area Hospital, Ramagundem. During the course of medical examination, the petitioner was found to be HBsAg (Reactive) positive,

i.e., he was suffering from Hepatitis chronic infection, and therefore he was held to be not fit for appointment in Singareni Collieries, i.e., respondent organisation. The petitioner was therefore denied the opportunity of appointment and the ex-employee was advised to opt for compassionate appointment to any of his other eligible dependents or apply for monthly monetary compensation / lump sum amount payment. Aggrieved by the order of denial dt.22.05.2019, the petitioner has filed W.P.No.6951 of 2021.

3. Learned counsel for the petitioner submits that the Hepatitis B infection is a blood infection and is detected only in a blood test. He submitted that the petitioner is otherwise physically fit to discharge the duties of Badli Workers and had no complaint of any illness earlier. He submits that in similar circumstances, this Court in W.P.No.1178 of 2019 has directed the respondents therein to consider the case of the petitioner therein for appointment as Badli Worker on surface duty and pass appropriate orders within a period of three months from the date of receipt of a copy of the said order and before giving the above direction, the Court has considered that there is no prescription in the Regulations of the respondent company that a person suffering from Hepatitis B shall be debarred from consideration for employment under the Dependant Employment Scheme. He submits that though the Hon'ble High Court has held that the said order shall not be a binding precedent in future cases of the same nature, the ratio laid down by the said Court is applicable and the petitioner is also eligible for similar relief.

4. Learned Standing Counsel for the Singareni Collieries Company, Sri J. Sreenivasa Rao, however refutes the said submissions of the petitioner. He submits that the respondent company has directed the petitioner to attend before the Medical Board and the Medical Board, after examining the petitioner, has come to the conclusion that the petitioner is not fit for employment and hence, the ex-employee was directed to submit any of his other eligible alternative dependents for appointment or to apply for monthly monetary compensation / lump sum amount payment. He submits that the vacancies of Badli Workers on surface duty are very few and every medically unfit person cannot be accommodated on surface duty in underground mines. He submits that this Court in the cases cited by the learned counsel for the petitioner has clearly held that the said directions are applicable to those petitioners only and therefore, they cannot be followed in the cases before this Court.

5. The learned counsel for the petitioner, in rebuttal, submits that even in the case of a HIV positive candidate, this Court has taken a similar view and has directed for appointment of the petitioner therein on surface duty as Badli Worker. He submits that in the present case, the petitioner is physically fit and has no objection to work as Badli Worker in the underground mines and that he is not insisting for appointment on surface duty only.

6. The learned Standing Counsel for the respondent company, on the other hand, submits that the petitioner was examined in the year 2019 and in similar

circumstances, this Court was pleased to direct the petitioners therein to resubmit themselves for re-medical examination and if it is found that the petitioners are not suffering from severe case of Hepatitis B, then their cases would be considered favourably.

7. Having regard to the rival contentions and the material on record, it is noticed that the respondent Corporation or any other authority has not specified any particular diseases/medical conditions as conditions unfit for a worker in the post of Badli Worker in underground mine or even on surface mine. In this case, the medical condition is of Hepatitis B. Without any specifications and without any reasons as to how the said disease, i.e., Hepatitis B, is adversely affecting the employee who is going to work as Badli Worker in an underground mine, denial of employment to the petitioner only on such ground on the basis of the medical certificate issued by the Medical Board is not justified. Learned Standing Counsel for the respondents has not been able to point out as to how a person who is affected by Hepatitis B is unfit for the job as Badli Worker in underground mines that he is supposed to perform. Though there is an observation by this Court that the order in W.P.No.1178 of 2019 shall not be treated as a precedent in other similar cases, this Court is of the opinion that there is no prescription in the Regulations of the respondent company that a person suffering from Hepatitis B shall be debarred from consideration for employment under the Dependent Employment Scheme.

8. In view of the above and also in view of the fact that there are no other objections of the respondents, this Court deems it fit and proper to direct the respondents to consider the case of the petitioner herein for appointment as Badli Worker even in underground mines after taking an undertaking from the petitioner that he has no objection to his posting in underground mines and the respondents shall pass a speaking order within a period of three (3) months from the date of receipt of a copy of this order.

9. The Writ Petition is accordingly allowed. No order as to costs.

10. Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed.