

(2001) 11 CAL CK 0018
In the Calcutta High Court
Case No : Writ Petition No. 5438 (W) of 2001

Md. Elias Khan

APPELLANT

Vs

S.A.I.L. and Others

RESPONDENT

Date of Decision : 28-11-2001

Acts Referred:

Apprentices Act, 1961 — Section 22

Citation : (2003) 96 FLR 57 : (2002) 1 LLJ 723

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Debjani Sengupta and Sandipan Banerjee, for the Appellant;

Judgement

D.K. Seth, J.—The petitioner having been successful in All India Trade Test was supposed to join Durgapur Steel Plant as a trade apprentice. But he was found unfit on account of poor vision. He was declared fit in non-work area. According to the petitioner, he was denied engagement even in non-work area though three other persons who were found unfit in work area but fit in non-work area on account of colour blindness, were given same opportunity. Petitioner moved a writ petition before this Hon'ble Court pursuant to the order passed in the said writ application, the petitioner was allowed to join as a trade-apprentice in the work area on October 22, 1996. He successfully completed the apprenticeship on October 21, 1999. On the ground that he was appointed apprentice after October 15, 1996, being the cut off date, he was denied opportunity to appear in the trade test. Petitioner moved another writ application being Writ Petition No. 17126 (W) of 1999 and A.S.T. 40383/1999. This was disposed of on, June 19, 2000 by this Court. Pursuant thereto, the petitioner was allowed along with some other persons to appear in the trade test. The said other persons were the persons who were declared unfit on account of colour blindness for work area. In the trade test the petitioner as well as the said three persons were successful. The other three persons were given appointment and were absorbed. But the petitioner was not given appointment on the ground of poor vision. By means of

this writ petition, the petitioner has challenged the said decision denying opportunity.

2. According to the learned counsel for the petitioner, the petitioner was one of the 56 candidates who were selected for being appointed as a trade apprentice. Ultimately, out of these 56 candidates 55 candidates have been given appointment after completion of apprenticeship. It is only the petitioner who has been left out. This group related to 1994 Batch. Because of the intervening legal battle the petitioner was allowed to join as apprentice in the 1996 Batch. In the reply the petitioner has contended that one Utpal Das who was also found to have poor vision has since been given appointment in non-work area. But the said Utpal Das was a member of 1991 Batch. Thus, his appointment cannot be equated with that of the 1994 or 1996 Batch. Then, again, admittedly as contended in the writ petition, the said Utpal Das was absorbed in non-work area.

3. The petitioner claims appointment in the work area but this is being denied on the ground, as contended by the learned counsel for the respondents, that it involves the safety not only of the petitioner but also of the other persons employed in the works. Admittedly, poor vision would be a hindrance for performance of work in the work area, which may not only endanger the life of the petitioner and property of the respondents but also of the lives of other co-workers.

4. Unless one possesses the standard of health and is medically fit, one cannot claim appointment. At the same time, Section 22 of the Apprentices Act prescribes that such apprenticeship does not ensure employment. It does not create a right in favour of the workman nor an obligation on the part of the employer. The offer of apprentice itself contained a clause which provides that the petitioner by reason of said apprenticeship "cannot claim employment. The position in law is well settled. In any event, a training of apprentice does not entitle a workman to be absorbed nor it confers a right of appointment in favour of the workman. Neither it creates any obligation on the part of the employer to give appointment to the petitioner after successful completion of apprenticeship.

5. But this question is to be viewed from the facts and circumstances of the present case. It is alleged that out of 56 candidates so selected of which petitioner was one of the 55 not having been absorbed and thereafter some having also been absorbed who were in 1996 Batch. Therefore, there cannot be any earthly reason on the part of the employer to refuse employment to a person of 1996 Batch who was not allowed to be appointed as apprentice in 1994 Batch but by the Court's order was appointed in 1996 Batch could not be denied such an opportunity. But the fact remains that he was declared unfit for the work area but fit for non-work area. Therefore, the petitioner could have been engaged in the non-work area. The petitioner contended that he was denied opportunity to be engaged in non-work area. But the respondents contend that the petitioner did not agree to join in the non-work area but for the orders of the Court he was allowed in the work-area.

6. Be that as it may, in the present case, considering the peculiar facts, the petitioner's case ought to have been considered for being engaged in non-work area but the same having not been done and he having undergone the training in the work-area and having successfully completed, is being denied, appointment on the ground of poor vision. In paragraph 8 of the writ petition the petitioner has pointed out that his poor vision is confined only to his right eye. But his vision of the left eye is normal. This paragraph has been dealt, with in the affidavit-in-opposition in paragraph 6. This statement of having perfect vision in one eye has not been dealt with in the affidavit-in-opposition.

7. In the circumstances, in case the petitioner has perfect vision in one eye, in that event, whether it will be a disqualification, is a question to be gone into. Therefore, the petitioners case should be referred for medical examination by a Medical Board to be constituted in the Burdwan Medical College & Hospital. The respondent authority shall request the Burdwan Medical College & Hospital to constitute a Medical Board for the examination of the petitioner as to whether he has perfect vision in one eye and he is capable of doing the job in work-area. Such steps shall be taken by the respondent authority within one month from the date of receipt of communication of this order. Medical Board shall be constituted within one month from the date of receipt of communication from the respondent authority and the petitioner shall be examined within one month from the date of constitution of the Medical Board. On the basis of the report, which must be forwarded to the respondent authority by the Burdwan Medical College & Hospital within one month from his examination, the respondent authority shall consider the case of the petitioner in the work-area or non-work-area, as the case may be. Such decision is to be taken within three months from the date of receipt of the Medical Report. In case, the respondent authority finds any difficulty in giving appointment to the petitioner, in that event, they must disclose specific reason therefore and communicate the reason to the petitioner within the said period.

8. With these observations, this writ-application is disposed of.

9. There will be no order as to costs.

10. Let Xerox plain copies of this order, duly countersigned by the Assistant Registrar (Court) be supplied to the learned advocates appearing for the parties on usual undertaking.

11. Since at least one month's time for constitution of the Medical Board is allowed, therefore, it is wholly unnecessary to grant any stay of operation of this order, as prayed for by the learned counsel on behalf of the respondents.