

(2018) 01 BOM CK 0168
In the Bombay High Court
Case No : 10026 of 2017

Shridhar Mahadeo Pakhare

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 30-01-2018

Acts Referred:

Citation : (2018) 01 BOM CK 0168

Hon'ble Judges : R. M. Borde, R. G. Ketkar

Bench : Single Bench

Advocate : Vijay S. Gharat, Rui Rodrigues, Dushyant Kumar

Judgement

1. Heard.

2. Rule. With the consent of the parties, Petition is taken up for final disposal at admission stage.

3. The petitioner tendered an application in response to an advertisement issued by a Central Industrial Security Forces (C.I.S.F.) for the post of "constable / driver". The petitioner was called for interview and was found eligible for the post of "constable / driver". He was referred for medical examination to the Medical Board. The Medical Officer, who examined the petitioner, found him medically unfit for the reason that there appeared a tattoo mark on the outer aspect of right arm. The petitioner is challenging the medical opinion and is also praying for issuance of directions to the respondents to consider him eligible for the post applied for. It is pointed out by the petitioner that in view of Note (iii) contained in the advertisement which prescribes that the candidates having permanent tattoo on any part of the body would be debarred for recruitment in C.I.S.F., the petitioner is not being considered. It is further the contention of the petitioner that in fact he made efforts to remove the tattoo by undergoing laser treatment and the tattoo, which is located on the forearm of the petitioner has been removed upto 90%. Thus, the petitioner is making efforts to remove it completely. It is also contended that the tattoo in question is a religious symbol

and it, in any manner, does not interfere with the duties assigned to the constable or a driver. The petitioner contends that the decision holding him unfit for employment is unreasonable and tends to interfere with the religious sentiments of the petitioner. The petitioner contends that the tattoo that has been carved out on the forearm, is a matter of religious practice and the petitioner cannot be compelled to remove the religious symbol carved out on the body. It is further contended that in Armed Forces certain exceptions are made in respect of tattoos, which depict religious symbol or figures and the name and similar exceptions deserve to be made by the employers. It is further contended that Indian Army as well as C.I.S.F. are the Disciplined Forces and the parameters, which are applied by the Indian Army, can very well be made applicable by C.I.S.F. The petitioner further contends that in fact the employer has adopted discriminatory practices in holding candidates eligible for various posts. So far as the post of Sub-Inspector in C.I.S.F. is concerned, a Note contained in the advertisement issued in 2017 records thus,. "It is noticed that during medical examination, the candidates having "tattoos" in various parts of their body are appearing for medical examination. In this regard, ministry of Home Affairs vide its letters No.I-45020/7/2012/Pers-II dated 12.01.2017 and 30.01.2017 issued the following guidelines regarding candidates having tattoos applying for SI in Delhi Police, CAPFs and CISF examination:-

(a) Content: Being a secular country, the religious sentiments of our countrymen are to be respected and thus, tattoos depicting religious symbol or figures and the name, as followed in Indian Army are to be permitted.

(b) Location: Tattoos marked on traditional sites of the body like inner aspect of forearm but only left forearm, being non saluting limb or dorsum of the hands are to be allowed.

(c) Size: Size must be less than ? of the particular part (Elbow or Hand) of the body.

The above clause is not applicable in respect of Sub-Inspector in Delhi Police for the present."

4. That so far as the post for which the petitioner tendered application completely debars a candidate and holds him medically unfit if any tattoo mark is found on his body, merely because the post claimed by the petitioner is subordinate to the post of Sub-Inspector, different parameters in respect of medical fitness cannot be applied. The religious sentiments of a citizen shall have to be given a due weightage and specially while making recruitment to a higher post such exceptions are made, there was no reason for the employer to apply the same parameters and hold the petitioner ineligible. Apart from this, there is no dispute that the tattoo in question has been removed to the extent of 90%. It is fairly admitted by the Counsel appearing for the respondent that petitioner is otherwise eligible to secure employment and could have been considered except for the reason assigned by the Medical Board.

5. In our opinion, it would not be permissible for the employer to treat the class of employees differently and apply different parameters. As has been recorded above, the religious sentiments of the individual need to be respected. For the reasons recorded above, we are of the opinion that the claim of the petitioner for employment needs to be considered. The petitioner is otherwise found fit by the Medical Board, except on account of carving out the tattoo which has also been removed admittedly to the extent of 90%. We are of the opinion that the respondents need to be directed to consider the claim of the petitioner for employment since he has been found otherwise fit. The Writ Petition is thus allowed. The respondents are directed to consider the claim of the petitioner for employment to the post of "constable / driver" in C.I.S.F. and the medical opinion holding the petitioner ineligible on account of tattoo mark shall not be construed as an impediment for issuing an order of appointment in favour of the petitioner. Rule is accordingly made absolute. There shall be no order as to costs.