

(2012) 09 DEL CK 0349
In the Delhi High Court
Case No : LPA 633 of 2012

State Bank of India

APPELLANT

Vs

Anil Kumar

RESPONDENT

Date of Decision : 17-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 132 DRJ 383

Hon'ble Judges : Rajiv Sahai Endlaw, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Rakeesh Munjal with Mr. Anil Kumar Sangal and Mr. Siddarth Sangal, for the Appellant; Tariq Adeeb, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, Acting Chief Justice

Caveat 940/2012.

Since the counsel for the respondent/caveator has appeared, the Caveat stands discharged.

LPA 633/2012.

1. Pursuant to advertisement dated 19th July, 2008 issued by the appellant State Bank of India (SBI), the respondent applied for the post of Probationary Officer (PO). After undergoing the selection process the respondent was declared qualified for the said post. The appointment was subject to medical fitness for which the respondent was supposed to undergo the medical examination. As the respondent is suffering from Haemophilia B, the appellant SBI wanted to have an opinion of a medical expert as to whether the said disease would come in the way of the respondent in discharging his duties for the post of PO. On 20th April, 2009 he was referred to All India Institute of Medical Sciences (AIIMS). One Dr. Pravas Mishra of AIIMS examined the respondent and gave the opinion that his

medical condition "is not an impediment to this job as Probationary Officer in SBI". Notwithstanding the aforesaid opinion, the appellant SBI did not offer the job of PO in as much as SBI's Chief Medical Officer still declared the respondent medically unfit for Bank's service. Feeling aggrieved therefrom, the respondent filed W.P.(C) No. 11579/2009 which was disposed off on 10th September, 2009 with a direction to the appellant SBI to consider the matter in the light of the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995.

2. The appellant SBI however vide order dated 20th January, 2010 still denied appointment to the respondent. The respondent then filed W.P.(C) No. 2923 of 2010. In the said writ petition an order dated 23rd May, 2012 was passed inter alia directing the respondent to appear before the Director, AIIMS on 1st June, 2012 and the Director, AIIMS was asked to constitute a Medical Board. It was further directed by the Court that the Medical Board shall examine the physical fitness of the respondent and would give the opinion as to whether the respondent was fit to perform the duties of PO in SBI. In the said order, the Court further directed the Medical Board to specifically look into the order passed by the appellant SBI on 20th January, 2010 declaring the respondent medically unfit for duty. The stand of the appellant SBI and the opinion of its own Chief Medical Officer were also to be placed before the Medical Board of the AIIMS. The Medical Board was constituted which consisted of three senior doctors of AIIMS. It held its meeting on 5th June, 2012 and after examining the respondent gave the following report:-

As per available medical records, it is deducted that Mr. Anil Kumar is a patient with Haemophilia B Disease with bilateral knee joint involvement as target joints. Haemophilia B is a hereditary disorder, which can be prevented by prophylactic factor support. There is no record of any joints involvement of Mr. Anil Kumar or the frequency of his bleeding episodes or whether he is on any prophylaxis. Therefore, in reference to earlier opinion of Doctor from AIIMS as quoted in the Hon'ble Court order, this Board is in concurrence to the fact that there is no impediment for Mr. Anil Kumar to join his job as Probationary Officer in State of Bank of India.

3. It is clear from the aforesaid report that the opinion of the Medical Board, AIIMS is that the illness of the respondent is no impediment to his joining the job as PO in SBI.

4. Accordingly, W.P.(C) No. 2923/2010 has been allowed by the learned Single Judge vide order dated 1st August, 2012. After taking note of the aforesaid facts, the learned Single Judge has directed to give appointment to the respondent as PO with all consequential benefits without any salary for the intervening period. Challenging the said order the present appeal has been preferred by the appellant SBI.

5. The first contention of the learned senior counsel appearing for the appellant

SBI is that the Medical Board has not examined the sickness of the respondent in the context of the Rules of the appellant SBI and therefore such an opinion of the Medical Board was of no consequence.

6. After going through the record and the medical report submitted by the Medical Board, relevant portion whereof is extracted above, we are unable to accept the same. We have been shown the relevant Rules which inter alia provide that the candidate should not only be fit at the time of his/her appointment/promotion but should also remain reasonably fit to perform the duties in future. This belief of ours got strengthened from the fact that the Medical Board, before giving its opinion, was also supposed to take into consideration the earlier order passed by the appellant SBI on 20th January, 2010 and all the medical records of the respondent were also sent to the Medical Board. The said order dated 20th January, 2010 is annexed with the appeal and reading thereof gives the reasons because of which the Chief Medical Officer of the appellant SBI rendered his opinion to the effect that the respondent was not medically fit to perform the duties. Thus these reasons were very much before the Medical Board and the Medical Board chose not to agree with the opinion of the appellant SBI's Chief Medical Officer and on its own independent examination of the respondent, came to the conclusion that the disease in question with which the respondent is suffering "IS NOT AN IMPEDIMENT FOR MR. ANIL KUMAR (RESPONDENT) TO JOIN HIS JOB AS PROBATIONARY OFFICER IN SBI"

7. It is also to be kept in mind that the respondent is to be given fresh appointment at this stage; he would remain on probation for some time. During this period it can always be decided/tested as to whether the disease with which the respondent is suffering, comes in the way of performance of his duties or not and depending thereupon further course of action would still be available to the appellant SBI.

8. Another submission of Mr. Munjal, Sr. Advocate for the appellant SBI is that this Court did not have the territorial jurisdiction to entertain the petition in as much as in the advertisement Clause 13 was inserted which categorically stipulated that legal proceedings in respect of any matter of claim or disputes arising out of the said advertisement would be instituted only in Mumbai which shall have the sole and exclusive jurisdiction. In the first instance it is to be kept in mind that it was not a Civil Suit where the aforesaid Clause was to be kept in view but the proceedings were under Article 226 of the Constitution of India. Further, the order dated 20th January, 2010 vide which the case of the respondent was rejected as medically unfit, was passed by the General Manager in Delhi. It is otherwise not in dispute that this Court has jurisdiction. In exercise of its extraordinary power it is the discretion of the Court, to entertain the petition or not. No doubt, keeping in view the aforesaid Clause, the Court could have exercised its discretion not to entertain the petition. However once the petition is entertained and the matter is decided on merits, at the appellate stage, we are not going to be influenced by the aforesaid clause. It is also to be

kept in mind that on an earlier occasion the respondent had filed writ petition in the year 2009 in this Court which was decided and disposed of on 10th September, 2009.

In view of aforesaid, the appeal is accordingly dismissed.

No costs.