

(1993) 01 SC CK 0035

In the Supreme Court Of India

Case No : Civil Appeal No. 243 of 1993, (arising out of S.L.P. (C) No. 7430 of 1989)

State Bank of India

APPELLANT

Vs

G.K. Deshak

RESPONDENT

Date of Decision : 21-01-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1993 SC 2447 : (1993) CriLJ 1995 : (1993) 1 CTC 368 : (1993) JT 451 Supp : (1994) 1 LLJ 368 : (1994) 1 SCC 70 Supp

Hon'ble Judges : L. M. Sharma, C.J.;B.P. Jeevan Reddy, J;A. S. Anand, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

1. Special leave is granted.
2. In response to an advertisement inviting applications for appointment to the posts of Clerks, the respondent applied, and was selected after holding written test followed by an interview, subject to the result of the medical examination. It appears that he has been suffering from some serious eye trouble and he was subjected to more than one medical test in March and April, 1987. On 22-4-1987 he was asked to go back to his native place and wait for further communication and on 1st of July, 1987 he received a regret letter, informing him that he was found medically unfit. The respondent approached the High Court with a writ application under Article 226 of the Constitution, asserting that he was medically fit and was entitled to appointment. The writ petition was allowed in September, 1988 by the impugned judgment.
3. We have heard the learned Counsel for the parties at length. The medical opinion, which is on the records of the case, clearly indicates that the defect in his eyes is very serious and he is unfit for the post. He was allowed to join in obedience to the writ issued by the High Court. The reasons given in the impugned judgment indicate that the High Court took upon itself to decide the

question of medical fitness of the respondent and on reaching a conclusion in favour of the respondent, preferred the same as against the medical opinion of the specialist doctor. It is significant to note that it is not suggested on behalf of the respondent that the authorities of the appellant State Bank of India have acted mala fide or with any malice against the respondent. In the circumstances, we do not approve of the approach adopted by the High Court in allowing the writ petition.

4. However, on behalf of the appellant State Bank, it has been stated that since the respondent has been in the service of the Bank for a number of years and may be rendered unemployed if his services are terminated forthwith, the appellant is prepared to retain him in service on humanitarian grounds and fix him up in some other post with pay protection. It has been made clear by the learned Counsel for the appellant that by this concession the respondent shall not be entitled to claim for being permanently absorbed in the post or a right of promotion, and the appellant should have the right to get him medically re-examined after some time to find out whether he is able to discharge the duties of the new post or not. Similarly, the question of promotion also will be within the discretion of the Bank authorities, to be exercised fairly in accordance with the rules. We think that the attitude taken on behalf of the State Bank is reasonable and accordingly, we set aside the impugned order and direct the appellant State Bank to appoint the respondent in any other appropriate post subject to the conditions stated by the appellant and mentioned above. The appeal is accordingly disposed of in the above terms. There will be no order as to costs.