

(2023) 02 J&K CK 0038

In the Jammu And Kashmir High Court

Case No : Latters Patent Appeal No. 53 Of 2021, Civil Miscellaneous No. 2062, 4382 Of 2021

Syed Amjid Hussain

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 15-02-2023

Acts Referred:

Citation : (2023) 02 J&K CK 0038

Hon'ble Judges : Rajnesh Oswal, J; Mohan Lal, J

Bench : Division Bench

Advocate : M. M. Khan, Tahir Majid Shamsi

Final Decision : Dismissed

Judgement

Rajnesh Oswal, J

1. The Appellant is aggrieved of Judgment dated 11th of October, 2017 passed by the learned Writ Court in SWP No. 1648/2015, whereby the Writ Petition filed by the Appellant; challenging the action of the Respondents in not appointing him as Constable on account of him being medically unfit; has been dismissed.

2. The case of the Appellant is that he qualified the written examination and trade test conducted by the Respondents for the post of Constable (Technical/ Trade), but was, thereafter, declared unfit for the said post during the medical examination on 29th of April, 2015. Feeling aggrieved thereby, the Appellant preferred an appeal against the declaration of the aforesaid medical unfitness before the competent authority, pursuant to which the Appellant was again examined by the Review Medical Board which, too, declared him unfit on account of defect in colour vision on 22nd of June, 2015. Thereafter, the Appellant assailed the said Order before the learned Writ Court on the ground that the colour vision of the Appellant was normal in both the eyes as per the certificate issued by the Medical Board of District Hospital, Baramulla and that, on 22nd of June, 2015, the Appellant, in fact, was not subjected to any physical

examination, but one of the Doctors asked certain questions about the unrest of Kashmir Valley and participation of particular community against the interest of the country.

3. The Respondents filed their Response in opposition to the Writ Petition filed by the Appellant, wherein it was stated that the Appellant had applied for the post of Constable (Cook) and, after qualifying the initial written test, he appeared for medical examination on 29th of April, 2015, wherein he was declared medically unfit due to colour blindness. It was contended that, thereafter, on the appeal preferred by the Appellant, the Appellant was again examined by the Review Medical Board at Group Centre, CRPF, Allahabad, Uttar Pradesh, where, again, the Appellant was found medically unfit due to defective colour vision. It was also stated by the Respondents that the appeal filed by the Appellant was accepted by the competent authority as the Appellant had produced the medical certificate and it was only thereafter that the Review Medical Examination of the Appellant was ordered. It was also pleaded that since the Appellant had levelled serious allegations against the Review Medical Board, as such, he should have arrayed the said Medical Board as party Respondent in the Writ Petition which he did not choose to do.

4. After considering the pleadings on record and hearing the learned Counsel for the parties, the learned Writ Court, vide its Judgment dated 11th of October, 2017, dismissed the Writ Petition filed by the Appellant.

5. Being aggrieved of the aforesaid Judgment dated 11th of October, 2017, the Appellant has challenged the same through the medium of the instant appeal, inter alia, on the ground that the learned Writ Court has not appreciated the contentions raised by the Appellant in their true and correct perspective and without foreseeing the consequences of the Judgment, the Appellant has been declared as unfit and a stigma has been cast upon the very personality of the Appellant.

6. Mr M. M. Khan, the learned Counsel appearing for the Appellant, vehemently argued that the Appellant does not have any defect in colour vision and that there are contradictions between the original opinion of the Medical Officers of the CRPF and the opinion of the Medical Officers during the Review Medical Examination of the Appellant. The learned Counsel further argued that the learned writ Court has virtually declared the Appellant as handicapped.

7. Per Contra, Mr Tahir Majid Shamsi, learned Deputy Solicitor General of India (DSGI), appearing on behalf of the Respondents, argued that the Appellant was twice examined by different Medical Officers and, during both examinations, it was found that the colour vision of the Appellant was not normal.

8. Heard and perused the record.

9. The Appellant was declared unfit being colour blind as is evident from the perusal of communication dated 29th of April, 2015, whereafter, pursuant to the

appeal filed by the Appellant, the Appellant was, again, examined by the Medical Officers during Review Medical Examination wherein also the Appellant was found unfit on account of defect in colour vision. The contention of the Appellant is that, on 22nd of June, 2015, the Appellant was never examined by any Doctor, but only certain questions were posed to him. Perusal of the result of the Review Medical Examination Board dated 22nd of June, 2015 duly signed by three Medical Officers of CRPF Centre Allahabad, Uttar Pradesh reveals that the Appellant was declared unfit on account of defect in colour vision. Further, the Appellant has received the said result and has appended his signature on the said memorandum dated 22nd of June, 2015. It is not understandable that when the Appellant was not physically examined by any Medical Officer on 22nd of June, 2015, as alleged by him, then how he received the said result of the Medical Examination and appended his signature thereon. In such circumstances, it was expected from the Appellant to have refused the acceptance of the said result of the Review Medical Examination Board.

10. It is pertinent to note here that during the course of recruitment process, it is for the Respondents to examine the suitability as well as the eligibility of the candidates and, for that purpose, the Respondents have got the Appellant examined not only once but twice from the Medical Officers and, during both these examinations of the Appellant, he was found to be unfit due to defect in colour vision. That being so, we do not find any merit in the contentions raised by the Appellant.

11. In view of above, we do not find any illegality in the impugned Judgment dated 11th of October, 2017 passed by the learned Writ Court. Resultantly, the same is upheld and the appeal is dismissed, along with the connected CM(s). We do not see any reason to infer that the Judgment of the learned Writ Court is stigmatic in nature as the Appellant is well within his right to get his health status verified in accordance with law.

12. Interim direction(s), if any subsisting as on date, shall stand vacated.

13. There shall, however, be no order as to costs.