

Sh. Sushil Kumar Vs. Mcd and anr.

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Court : Delhi

Decided On : Jul-21-2008

Reported in : 2008(105)DRJ55

Judge : S.N. Aggarwal, J.

Appeal No. : WP (C) No. 8413/2007

Appellant : Sh. Sushil Kumar

Respondent : Mcd and anr.

Advocate for Def. : Sanjeev Sabharwal, ; Neeta Deep Rastogi and ; Alok Singh

Advocate for Pet/Ap. : Puneet Verma, Adv

Judgement :

S.N. Aggarwal, J.

1. The petitioner belongs to reserve category and he is a handicap person, his left leg below knee having been amputated on account of injuries sustained by him in a train accident suffered by him in the year 2000. The petitioner worked for 16 days from 09.11.1996 to 25.11.1996 and again for four months from 21.07.2006 to 30.11.2006 as Domestic Breeding Checker on contractual basis with the Municipal Corporation of Delhi, the respondent herein. He was denied contractual appointment as Domestic Breeding Checker in the year 2007 on the ground that

he was not capable of performing the duties required to be performed by a Domestic Breeding Checker, he being a handicapped person.

2. The petitioner, in this writ petition, has prayed for a writ of mandamus to the respondent directing it to appoint him as Domestic Breeding Checker in the next season commencing in the month of March-April, 2008 and in future seasons as well on the basis of his seniority. The prayer made in this writ petition is strongly opposed by the counsel appearing on behalf of the respondent inter-alia on the ground that the petitioner who was appointed on contractual basis on two earlier occasions has no vested right to seek appointment. The prayer made in this writ petition is also opposed by Mr. Sabharwal, learned Counsel appearing on behalf of the respondent on the ground that the petitioner being a handicapped person is not capable of performing the duties required to be performed by a Domestic Breeding Checker. The contention of Mr. Sabharwal is that a Domestic Breeding Checker has to physically check 50 collars and 50 overhead tanks daily to arrest the Aedes breeds. It is contended that since the petitioner is presently having bi-lateral knee amputation with 100% disability and if he tries to reach the overhead tank, there are maximum chances for him to fall down and sustain fatal injuries. It is submitted that for that reason, the petitioner was not given contractual appointment to the post of Domestic Breeding Checker during the year 2007. Mr. Sabharwal has also submitted that since the petitioner has not made any application for his appointment to the post of Domestic Breeding Checker in the current session i.e. 2007-2008, directions for his appointment may not be given by the Court.

3. It is not denied on behalf of the respondent that the petitioner had worked to the satisfaction of his superiors even after he had suffered the alleged disability. It is not denied that the alleged disability was suffered by the petitioner in the year 2000 and that he has worked to the satisfaction of his superiors on the post of Domestic Breeding Checker for four months from 21.07.2006 to 30.11.2006. It is not the case of the respondent in its counter affidavit that the petitioner was denied appointment to the post of Domestic Breeding Checker, though on contractual basis, because he could not perform his duties of the said post while he was appointed in the year 2006 as referred above. From this it may be inferred that the

petitioner though is handicapped is capable of undertaking the responsibilities required to be performed by a Domestic Breeding Checker. This Court is of the view that a person who has once been appointed on contractual basis does not acquire a vested right for his appointment in future against a regular post that may fall vacant. The regular posts that fall vacant have to be filled up by the employer strictly as per recruitment rules. A person appointed on contractual basis, if otherwise is eligible to be considered against a regular post, may make an application for his such appointment to the employer. The petitioner, if eligible for such appointment as per recruitment rules, at best can only have a right for his consideration for appointment along with other eligible candidates. However, so long the respondent being the employer, does not fill up the vacant posts on regular basis and continues making appointment on contractual basis in exigencies of service, the respondent may consider the petitioner also along with other eligible persons for his appointment on contractual basis to the post of Domestic Breeding Checker till the time he is capable of performing the duties required to be performed by a Domestic Breeding Checker. If at any time, the respondent would find that the petitioner has become so disabled that he is no longer in a position to take up the responsibilities of a Domestic Breeding Checker, the same should be specifically mentioned as a ground for rejecting his candidature for contractual appointment in any particular year.

4. Mr. Sabharwal, learned Counsel appearing on behalf of the respondent has informed the Court that Domestic Breeding Checkers are not appointment by the respondent on regular basis and there are no recruitment rules framed for making appointment of Domestic Breeding Checkers. According to Mr. Sabharwal, appointments of Domestic Breeding Checkers are made by the respondent every year for a short period of 4-6 months on contractual basis under a program for eradication of malaria. If that is the position, then the respondent may consider the petitioner for his appointment to the post of Domestic Breeding Checker on contractual basis for the year 2008 on such terms as the appointments are offered to other people. The petitioner may make an application for his such appointment for the year 2008 to the respondent within a period of 10 days from today and the respondent is directed to take a decision on his application within a period of two weeks from the receipt of the application from him without taking into account the

alleged disability from which he is suffering at present and review his case for appointment on contractual basis in the succeeding years as per its policy and rules to be framed from time to time.

5. In view of the above, this writ petition stands disposed of leaving the parties to bear their own costs.

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