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Court : Chennai

Decided On : Nov-21-2012

Reported in : 2013(1)MLJ77

Judge : K. Chandru

Appeal No. : W.P. No. 14508 of 2012 & M.P. Nos. 1 & 2 of 2012

Appellant : B. Suresh

Respondent : Assistant General Manager (Hr and Ic), Bharat Heavy Electricals Limited and Another

Advocate for Pet/Ap. : For the Petitioner: Balan Haridas, Advocate. For the Respondents: B.T. Seshadri, Advocate.

Judgement :

(Prayer: This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the concerned records from the second respondent, quash the order of the second respondent dated 22.5.2012 bearing No.TP:HR:R:ET2012 and consequently direct the respondents to conduct Standard Blood Sugar Tolerance Test as contemplated under the Medical Examination Rules of the respondents and consider the appointment of the petitioner as Engineer Trainee pursuant to the provisional

appointment, dated 31.01.2012.)

1. The petitioner has filed the present writ petition seeking to challenge an order dated 22.5.2012 rejecting his case for employment on the ground that he was medically unfit for being employed in the respondents company at Tiruchirappalli on the basis of the existing rules.

2. When the writ petition came up on 7.6.2012, this court directed notice to be served on the respondents. Pending notice, an interim direction was granted to keep one post of Engineering Trainee vacant. The respondents subsequently entered appearance and has filed a counter affidavit, dated 25.7.2012 sworn to by the General Manager (Human Resource), BHEL.

3. Heard the arguments of Mr.Balan Haridas, learned counsel for the petitioner and Mr.B.T.Seshadri, learned Standing Counsel for the BHEL.

4. The petitioner pursuant to the advertisement made by the respondents BHEL had applied for the post of Engineer Trainee. He belonged to Scheduled Caste Community. He became successful in the written test conducted by the respondents. Subsequently, he was called for an interview on 17.11.2011. Even in the interview, he was successful and the merit list was published in the internet. His name found a place as Serial No.49. He was selected even under the open category. A provisional offer for appointment was given on 31.01.2012. Thereafter, he was directed to report for duty at Trichy. He was sent for the medical examination. The medical examination was done by the company Doctors. He was disqualified from being given appointment on the ground that he was diabetic. The petitioner went back to his native place at Vellore and got his blood test done again both for fasting and post parandial. In both reports, he was found to be normal. Therefore, he had applied for reconsideration of the decision taken by the respondents. The Personnel Manual Rule 10 provides for reconsideration of the decision at the discretion of the General Manager and it reads as follows :

"10. To determine the medical fitness or otherwise of a person for appointment in the service of the Company is the sole and exclusive discretion of the management. However, in exceptional cases, where on an appeal and on the

basis of evidence produced before him the General Manager is satisfied that there might have been an error of judgement in the decision of the Authorised Medical Officer as countersigned by the Competent Medical Authority, he may, at his discretion, refer the case for reconsideration/re-examination within 4 weeks from the date of the medical examination by the Authorised Medical Officer, by a Medical Board consisting of the Chief Medical Officer / Head of the Department of his Unit / establishment and two other Company Doctors not below the rank of Senior Medical Officer from any other Unit/ Units of the Company, subject to the following conditions:"

(Emphasis added)

5. Exercising the power under the said Rule, the Deputy General Manager (HR), by a communication, dated 28.04.2012 directed the petitioner to appear before the medical board. The relevant portion of the order reads as follows :

".....The competent authority has now decided to refer your case to a Medical Board for re-examination as per the prevalent rules.

Based on the decision, you are required to present yourself for medical examination before the duly constituted Medical Board on 07.05.2012. You are accordingly instructed to :-

1. Report at the Office of the Medical Superintendent, BHEL Main Hospital, Tiruchirapalli-14, at 8.00 A.M. on 07.05.2012 on an empty stomach."

6. It is pursuant to the said direction, the petitioner appeared before the Medical Board. However, the Medical Board, instead of conducting medical examination afresh, went through the existing records and opined that they have no reason to disagree with the earlier findings. The communication sent by the respondents based upon the medical board report reads as follows :

"Based on the appeal dated 08.03.2012, the competent authority had constituted a medical board to reexamine your case and ascertain your fitness for employment. You appeared before the duly constituted Medical board on 10.05.2012. The medical board conducted a detailed hearing of your case and also examined your

request, Lab records and all relevant documents. After a detailed hearing and verification of Lab records and other documents, the Medical Board has confirmed the earlier finding of the pre-employment medical examination and hence it is concluded that you are suffering from Diabetes Mellitus.

We regret to inform you that you are medically unfit for employment with BHEL, Tiruchi as per the extant rules."

7. It was contended that the medical board did not conduct any test as required under law. Without doing any test and based upon the earlier findings of the company Doctor, the impugned order has been passed. The Board had abdicated its power in terms of paragraph 10 of the Personnel Manual referred to above. Hence the writ petition came to be filed

8. In the counter affidavit, the stand of the respondents is sought to be justified. In paragraphs 10 and 11 of the counter it was stated as follows :

"10. ...it is submitted that on 08.02.2012, when blood sugar test was conducted the Petitioner's blood sugar was 181 mg. which is not the permissible level. Hence, the Petitioner was required to undergo Glucose Tolerance Test otherwise known as Standard Blood Sugar Tolerance Test. Accordingly, the petitioner has undergone the glucose tolerance test on 09.02.2012. Procedure involves ascertaining the sugar level in empty Stomach as well as two hours after applying glucose. Such results showed that the petitioner is suffering from Diabetes mellitus.

11. ..... The Medical Board however thought it fit to go through the Laboratory reports in respect of the test conducted and also examined the Private Medical Reports. After, going through the reports the Committee of the five Doctors unanimously, decided not to conduct any test as the earlier test proved positive for Diabetics Mellitus beyond doubt. The Petitioner cannot question those findings and cannot insist that the Review Committee should again conduct the test again."

9. However, this court is not inclined to accept the stand of the respondents. When the relevant rules talks about re-examination and the forwarding letter dated 28.4.2012 sent by the respondents showed that he should be subjected himself for

medical examination by the duly constituted Medical Board, it requires examination afresh and not the opinion of the Board on the basis of the earlier report. The very purpose of the appellate body being constituted is lost by the stand taken by the respondents. Hence the impugned order is liable to be rejected.

10. Mr.Balan Haridas, learned counsel for the petitioner placing reliance upon a judgment of the Supreme Court in Mohd. Masaud Alam Vs. State of Bihar and others reported in (2012) 4 SCC 144, pleaded that this court can direct the petitioner to appear before the competent specialist for ascertaining the views and thereafter to decide the question.

11. Mr.B.T.Seshadri, learned counsel for the BHEL opposed any such direction being given by contending that the court cannot deviate from the Personnel Manual prescribed by the BHEL. If for some reason, the existing action of the medical board was not proper, this court can direct them to conduct a fresh examination in accordance with law and by no circumstances, the matter can be sent to some other outside authority, thereby taking away the company's power in deciding such matters.

12. Per contra, Mr.Balan Haridas, the learned counsel for the petitioner submitted that since the medical board comprises of the same senior Doctors and they are having taken the decision that the petitioner is suffering from Diabetic, they are not inclined to apply their mind independently and they will be only in a position to reiterate their views having rebuked by the order of this court. Hence there must be an independent examination of the petitioner's condition of health.

13. To avoid this controversy, this court is of the view that the petitioner will be subjected himself to the medical examination by the medical board by giving a fresh blood sample and indicating GTT test as well as post parandial test as per the medical manual. The medical board will take two blood samples and seal the one blood sample in the presence of the petitioner. While they will be conducting an independent test on the blood sample given by the petitioner, the other sample will be sent to a specialised agency at Chennai, preferably in Dr.Mohan's Diabetes Specialities Centre, No.6B, Conran Smith Road, Gopalapuram, Chennai-600 086 and thereafter, produce both results before the respondent General Manager. If

there is no difference of opinion between the medical board and the outside specialist agency, the respondents can act upon the said report and decide the matter accordingly. In case, there is strong variance between the company medical board and outside specialist agency, then they should accept the report of specialist agency and decide the matter. If the report is in favour of the petitioner, they should provide employment to the petitioner. This exercise shall be carried out within a period of three weeks from the date of receipt of copy of this order.

14. This writ petition is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petitions stand closed.

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