



C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 25TH DAY OF AUGUST 2023 / 3RD BHADRA, 1945

WP(C) NO. 29693 OF 2022

PETITIONER:

SHAIK ZAKIR AHMED

BY ADVS.
ARUN CHANDRAN
HARIMOHAN

RESPONDENTS:

- 1 THE FERTILIZERS AND CHEMICALS TRAVANCORE LIMITED
REGISTERED OFFICE AT ELOOR, UDYOGAMANDAL,
KOCHI, PIN CODE: 683 501.
REPRESENTED BY ITS MANAGING DIRECTOR.
- 2 THE DEPUTY GENERAL MANAGER,
HUMAN RESOURCES DEPARTMENT, THE FERTILISERS AND
CHEMICALS TRAVANCORE LIMITED, REGISTERED OFFICE
AT ELOOR, UDYOGAMANDAL, KOCHI, PIN CODE-683501.
- ADDL.3 THE UNION OF INDIA,
DEPARTMENT OF FERTILIZERS,
MINISTRY OF CHEMICALS AND FERTILIZERS,
SHASTRI BHAVAN, NEW DELHI - 110001
(SUO MOTU IMPEADED AS PER ORDER DATED 16-08-
2023 IN WPC)
BY ADVS.
M.GOPIKRISHNAN NAMBIAR
K.JOHN MATHAI
JOSON MANAVALAN



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KURRYAN THOMAS
PAULOSE C. ABRAHAM
RAJA KANNAN
JAI MOHAN

SRI.K.S.PRENJITHKUMAR[CGC]

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
25.08.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



**HIGH COURT OF KERALA
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JUDGMENT

It will be a rather sad day if, in this age and era, a Public Sector Undertaking like the 'Fertilizers and Chemicals Travancore Ltd.' (FACT) should deny employment to a candidate solely on the ground that he is suffering from Hepatitis-B infection.

2. The petitioner applied to be appointed as an Assistant (General) in the services of the FACT, pursuant to Ext.P1 recruitment notification. He asserts that he has all the essential qualifications and credentials, thus making him deserving for the said post; but that he has been denied it solely for the reason that he is battling Hepatitis-B virus, as evident from Ext.P22 issued by the 'FACT'. He showed me that the said document records that he has been found medically unfit for employment, because a Medical Board constituted by them has certified that he is suffering from the afore infection. He thus prays that Ext.P22 be set aside and that 'FACT' be directed to appoint him, adverting to his credentials to the post in question, without any further delay.



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3. Smt.Anjali.T.A - learned counsel for the petitioner, explained that her client has never been informed of the specific findings of the Medical Board, mentioned in Ext.P22; and therefore, that even when he filed this writ petition, he was oblivious to the same. She added that, however, pending this lis, 'FACT' has produced the said Medical Report on record as Ext.R1(a), along with their counter pleadings, which confirms her client's apprehension that he has been singled out solely because he is suffering from Hepatitis-B. She argued that when the world is moving towards the imperative requirement of inclusivity, discrimination meted to a person solely because of a disease, is not merely untenable but rather disturbing. She thus reiteratingly prayed that Ext.P22 be quashed and 'FACT' be directed to consider her client for appointment, without any avoidable delay; and concluded saying that, the afore request is being made, not because her client requires any empathy or sympathy, but because he is fully qualified for the post, possessing all necessary credentials, as are prescribed.

4. Before I move forward, I must record that, noticing the facts presented in this case and hearing the rival



contentions of the parties, when this matter had been heard earlier on 09.08.2023, I had passed the following order, which is self speaking. For the purpose of its full reading, I extract it under:

“The report of the Medical Board - a copy of which has been produced as Ext.R1(a) - says that the petitioner is suffering from chronic Hepatitis B infection, which “is a communicable disease through blood and body fluids”(sic)and is also “a progressive pathological condition”(sic).

2. *Prima facie, in this era, when inclusiveness of persons who are suffering from such diseases, including HIV, are paradigm, a report of the afore nature is, prima facie, not tenable.*

3. *This Court is, therefore, of the view that the petitioner must be assessed through a different Board because, the mere factum of Hepatitis B being able to be transmitted through blood or body fluids, cannot be ipso facto a reason for the petitioner to be denied employment. This, of course, is only a prima facie view.*

4. *I, therefore, direct Sri.Jai Mohan - learned Standing Counsel for the FACT, to obtain specific instruction in this regard and as to whether they are ready to constitute a different Board, so that the petitioner can be properly evaluated again.”*

5. However, on 16.08.2023, when this matter was again called, the learned Standing Counsel for ‘FACT’ reaffirmed that his client cannot appoint the petitioner on account of the medical report, namely Ext.R1(a); and hence,



this Court passed a further order on the said day, which is *ut infra*:

“Even though this Court had issued an interim order on 09.08.2023, it is now stated by the respondents that they cannot abide by the suggestions contained therein because, they are bound by the earlier opinion of the Medical Board.

2. Prima facie, to keep a person away from employment merely because he is suffering from Hepatitis B infection, does not augur well with the public policy.

3. Since the respondents are under the control of Union of India, I deem it appropriate that they be brought on record suo motu. I, therefore, suo motu implead “The Union of India, Department of Fertilizers, Ministry of Chemicals and Fertilizers, Shastri Bhawan, New Delhi - 110 001”; and record that the learned Deputy Solicitor General of India - Sri.S.Manu has taken notice on their behalf.

4. The Registry will make consequential incorporation in the cause title. The petitioner will serve a copy of this Writ Petition on Sri.S.Manu today itself.

6. Since the respondents say that they are bound solely by the impugned medical report and that a person with Hepatitis B infection cannot be offered employment, I deem it appropriate to direct the additional 3rd respondent to offer their comments on this aspect. The Deputy Solicitor General of India - Sri.S.Manu sought time for this.”

6. The learned Deputy Solicitor General of India(DSGI) - Sri.S.Manu, in response to the afore order, submitted before me today that the Government of India has made it limpid and beyond doubt that no person can be denied Civil/Public



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employment, solely because they are suffering from blood borne diseases like “Hepatitis B” or “HIV”. He added that, though Government of India has a Policy with respect to ‘HIV’ infected persons, no such has been evolved for persons suffering from Hepatitis B, since it is generally not even acceptable that such persons can be kept away from employment solely for that reason. He, however, clarified that the physical condition of a person, on account of the infection, certainly would be a criterion to be kept in mind by the Public Sector Undertaking because, if such a candidate is unwell or incapable of taking up the responsibility attached to the post, then it will surely be available to them to inform him/her appropriately and to decline appointment.

7. The afore explanation by the learned DSGI renders the position luculent; and in fact, fortifies the angst expressed by this Court in the prefatory paragraph of this judgment.

8. One can certainly not countenance, particularly in this age and time, that a person be kept out of Civil/Public employment solely because he is suffering from “Hepatitis B” or “HIV” infection. This is contrary to ethos of the times and militates against the collective conscience of the civilised



world. This Court is also fully aware that the Government of India has placed protocols in operation, with respect to persons who are suffering from “HIV” infection, making it apodictic that no such person can be discriminated in being considered for Civil/Public employment; and I fail to understand how a person suffering from “Hepatitis B” could be considered differently or on a lesser basis.

9. That being said, I am cognizant that the stand of the FACT is rather ingenuous because, they say that they have nothing against a person infected with “Hepatitis B”, but that they are incapacitated from appointing the petitioner because of Ext.R1(a) Medical Report.

10. I have, therefore, examined the said Medical Report and it records as under, with respect to the petitioner’s condition:

“The Board notes that the viral load of Shri Shaik Zakir Ahmed has increased, that too substantially in the last 2 years and liver function tests and consistency of liver is showing pathological involvement of the organ. Hence the Board is of the opinion that Chronic Hepatitis B Infection is confirmed for this candidate, which is a communicable disease through blood and body fluids, and also a progressive pathological condition.”



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11. I notice that the Medical Board in question is comprised of the Chief Manager of Medical Services of the “Bharath Petroleum Corporation Ltd.”; the Assistant Medical Superintendent of the ‘FACT’ and a Gastroenterologist of a Private Hospital in Kochi. When one reads Ext.R1(a) closely, it would become rather obvious that what the Medical Board has recorded therein are only those what doctors would, in normal circumstances, say about a patient suffering from Hepatitis B infection. This is indubitable because, the Board has held that Hepatitis B is a communicable disease - but only through blood and body fluids - which is common knowledge and accepted by the Medical Community without any dispute. The certificate then says that, Hepatitis B infection is a “progressive pathological condition”, which perhaps, in its technical sense, is also true.

12. But the question is not this, but whether the petitioner’s condition, when he was examined by the Medical Board, was such that it would make him ineligible or incapable of being entrusted to the tasks associated with the post to which he has applied. However, Ext.R1(a) Report, even on a close reading, does not deal with this aspect at all, rather than



recording in an abstract manner that "*Chronic Hepatitis B Infection is confirmed for this candidate, which is a communicable disease through blood and body fluids, and also a progressive pathological condition*"(sic). **Needless to say, this opinion of the Medical Board is with respect to the infection and not with respect to the petitioner who is suffering from it.**

13. One, therefore, fails to comprehend how the 'FACT' can now say that they are bound by Ext.R1(a) Report to deny appointment to the petitioner, without a proper assessment as to his physical condition and whether the progress of his infection mentioned therein would impede his capacity or ability to discharge the obligations of the post to which he has applied.

14. This Court is certainly anxious because, if Public Sector Undertakings are allowed to deal with candidates in this manner, it will lead to a situation where any of them can be denied opportunities solely on account of the attributes of the disease, but without any assessment of its effect on the person concerned.



15. To paraphrase, even when it can be taken as medically accepted information, that “Hepatitis B” is a “*communicable disease through blood and body fluids and is a progressive pathological condition*”(sic), the acme question is, if a person can be denied opportunity solely on account of this; and the unmistakable answer of the civilised world to this is an affirmative “NO”.

16. When the Medical Board itself records a pharmacological opinion, that Hepatitis B is a “*communicable disease through blood and body fluids*”(sic), it is clear that it cannot be spread, except in that manner; and not by touch, saliva, sharing of food, etc. This is why, even in the case of ‘HIV’ infected persons, the internationally adopted protocols prohibit discrimination solely because a person is so infected; and hence, one fails to fathom how the ‘FACT’ takes a contrary stand. Similar is the further opinion of the Board reflected in Ext.R1(a), that Hepatitis B Infection “*is a progressive pathological condition*”(sic). As an abstract notion, this may be true - as also which is part of the normal aging process - but a person can be placed to detriment on account of this only if it is justified statutorily or forensically; and the yardstick for this



can only be that such a person, on account of the disease, as any other, is incapacitated from discharging responsibilities attached to the post.

17. That said, there is another aspect that concerns this Court in Ext.R1(a) Report. After examining the requirement of “Pre Employment Medical Examination” (PEME) - the procedure stipulated by the FACT, a copy of which is also on record as Ext.R1(b) - the Medical Board in question declares that petitioner has been diagnosed with chronic Hepatitis B Infection and that he is unfit to hold the post in question, since it is not a “temporary/short term sickness”. No amount of thought into such a rather general statement by a Medical Board, which is consisting of Medical Experts, discloses how they recorded so; and further, how they could declare a person to be unfit solely because he is suffering from “Hepatitis B” Infection. This is exacerbated by the fact that the said report contains precious little about the health condition of the petitioner; and obviously, therefore, this Court cannot grant imprimatur to the decision taken by the FACT in Ext.P22, which exclusively relies on Ext.R1(a).



18. There is no doubt that the views of this Court as afore, runs in tandem with the policy of Government of India, as has been disclosed by the learned DSGI; and he confirms this unreservedly.

19. That said, however, since Ext.R1(a) was a report settled by the Medical Board as early as on 21.10.2021, I deem it apposite to leave liberty to the FACT to cause further examination of the petitioner's present condition and to act in terms of such opinion, to be obtained from an independent Medical Board, preferably attached to a Government Hospital or Government Medical Colleges.

In the afore circumstances, I allow this writ petition and set aside Ext.P22; with a consequential direction to the FACT to subject the petitioner to a further medical examination as above, which shall be completed within a period of two months from the date of receipt of a copy of this judgment. Thereupon, and depending upon the opinion to be so obtained, the FACT will consider the petitioner for appointment to the post in question, subject to his qualifications and credentials.

Before I close, this Court deems it necessary to suggest that Government of India look into and decide upon apposite



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Protocols with respect to “Hepatitis B” infected persons also, particularly because, as has already been affirmed by the learned DSGI, though specific protocols with respect to “HIV” infected persons hold the field, no such has been settled for the former. Of course, this is a request, and not a command.

Sd/-

DEVAN RAMACHANDRAN, JUDGE

ACR/SAS



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APPENDIX OF WP(C) 29693/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE RECRUITMENT NOTIFICATION DATED 30.04.2019
- Exhibit P2 TRUE COPY OF THE APPLICATION SUBMITTED THROUGH ONLINE MODE.
- Exhibit P3 TRUE COPY OF THE ADMIT CARD ISSUED BY THE 1ST RESPONDENT.
- Exhibit P4 TRUE COPY OF THE LIST PUBLISHED ON 02.08.2019.
- Exhibit P5 TRUE COPY OF THE CALL LETTER DATED 08.08.2019 REQUIRING THE PETITIONER TO APPEAR FOR THE DOCUMENT VERIFICATION ON 19.08.2019.
- Exhibit P6 TRUE COPY OF THE MERIT LIST OF CANDIDATES PUBLISHED ON 30.04.2019.
- Exhibit P7 TRUE COPY OF THE OFFER LETTER ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER THROUGH E- MAIL.
- Exhibit P8 TRUE COPY OF THE TEST RESULT DATED 23.10.2019.
- Exhibit P9 TRUE COPY OF THE FITNESS CERTIFICATE ISSUED BY THE GASTROENTEROLOGIST ATTACHED TO RENAL MEDICITY. PALARIVATTOM DATED 31.10.2019.
- Exhibit P10 TRUE COPY OF THE COMMUNICATION ATTESTED BY THE 2ND RESPONDENT DATED 04.11.2019.
- Exhibit P11 TRUE COPY OF THE MEDICAL CERTIFICATE DATED 22.11.2019 ISSUED BY THE ASIAN INSTITUTE OF GASTROENTEROLOGY HOSPITAL IN HYDERABAD.
- Exhibit P12 TRUE COPY OF THE PHYSICAL FITNESS AND HEALTH CERTIFICATE DATED 05.12.2019.
- Exhibit P13 TRUE COPY OF THE REQUEST DATED 09.12.2019.
- Exhibit P14 TRUE COPY OF THE COMMUNICATION DATED 13.04.2020 RECEIVED BY THE PETITIONER VIA E- MAIL ON 15.04.2020.
- Exhibit P15 TRUE COPY OF THE RELEVANT PAGES OF THE NOTIFICATION DATED 01.01.2020.



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- Exhibit P16 TRUE COPY OF THE LIST OF CANDIDATES SHORT LISTED.
- Exhibit P17 TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT DATED 22.09.2020.
- Exhibit P18 TRUE COPY OF THE INTERIM ORDER DATED 17.06.2021 IN WRIT PETITION [CIVIL] NO. 12311 OF 2021.
- Exhibit P19 TRUE COPY OF THE JUDGMENT DATED 11.08.2021 IN WRIT PETITION [CIVIL] NO. 12311 OF 2021.
- Exhibit P20 TRUE COPY OF THE COMMUNICATION DATED 07.10.2021, ISSUED BY THE 2ND RESPONDENT, FOLLOWING THE DIRECTIONS CONTAINED IN EXHIBIT P19 JUDGMENT.
- Exhibit P21 TRUE COPY OF THE TEST REPORT ISSUED BY MEDICAL TRUST HOSPITAL, ERNAKULAM DATED 22.10.2021.
- Exhibit P22 TRUE COPY OF THE COMMUNICATION DATED 15.12.2021, WHICH WAS SERVED ON THE PETITIONER BY THE 2ND RESPONDENT.
- Exhibit P23 TRUE COPY OF THE LITERATURE ON HEPATITIS B OF THE WORLD HEALTH ORGANISATION DATED 27.07.2020.
- Exhibit P24 TRUE COPY OF THE JUDGMENT REPORTED IN AIR 1997 BOM. 406.
- RESPONDENT EXHIBITS
- Exhibit R1(a) A true copy of the report of the Medical Board dated 16.11.2021 without enclosures
- Exhibit R1(b) A true copy of the FACT pre-employment Medical Examination Procedure dated Nil