

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 2916 of 2022

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BHAVESH KHIMABHAI PANDIT
Versus
STATE OF GUJARAT

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Appearance:

MS SHUBHA B TRIPATHI(5597) for the Petitioner(s) No. 1

for the Respondent(s) No. 2,3

MR KURVEN DESAI, ASST GOVERNMENT PLEADER/PP for the
Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV

Date : 11/02/2022

ORAL ORDER

1. In this petition, under Article 226 of the Constitution of India, the prayer of the petitioner is that his unfit certificate dated 25.01.2022 be quashed and set aside.

2. The facts would indicate that the petitioner applied for the post of Electrical Assistant. The petitioner was sent for medical examination at Jamnagar Civil Hospital where the Board declared him unfit on the ground of colour vision blindness. Thereafter, he was sent to the Civil Hospital, Ahmedabad, and on examination at Ahmedabad, the impugned certificate was issued stating that he is colour blind and therefore unfit for the post in question.

3. Having heard Mr. Kashyap Tripathi, learned advocate for the petitioner and Mr. Dipak Dave, learned advocate for respondent no. 2 as well as Mr. Kurven Desai, learned AGP for State on advance copies, it is

borne out that the issue involved in the present petition is squarely covered by the decision of this court rendered in **Special Civil Applications No. 6217 of 2021 with 8611 of 2020 on 08.02.2022**. The relevant portion of the said decision reads as under:

“7 Considering the submissions made by the learned counsels appearing for the petitioners, which for the reasons hereunder is misconceived, deserves to be dismissed:

7.1 It is misconceived on the part of the petitioners to rely on a Certificate of the year 2014 produced by the petitioner while the petitioner was appointed as an Apprentice Line-man with the Electricity Company. Nowhere in the certificate does it talk about colour blindness and that even if it is so in the case of the petitioner, the certificate of an appointment as an Apprentice Line-man cannot give a due claim to appointment to the regular post of Electrical Assistant which has to be done in accordance with the rules in question.

7.2 During the course of hearing of these petitions, in order to see that no injustice is done to the petitioner and the apprehension of the petitioner is addressed, this Court had on 28.09.2020 passed the following order :

“1. Heard Mr. K.B. Pujara, learned advocate appearing with Mr. Vicky Mehta, learned advocate for the petitioner, Mr. Dipak Dave, learned advocate for UGVCL and Mr. K.M. Antani, learned AGP through video conferencing.

2. On the last occasion, Mr. Pujara had drawn the attention of this court to the certificate dated 18.06.2020 issued by GMERS Medical College and Hospital, Sola, Ahmedabad certifying that the petitioner was unfit for duty as an Electrical Assistant as declared by the letter of the Ophthalmology Board dated 18.06.2020. The contention of the petitioner is that if with the same handicap, the petitioner was found fit for carrying out his duties as linesman that should not have been a disqualification for being

appointed as an Electrical Assistant. At the request of learned advocates for the respective parties, Mr. K.M. Antani, learned AGP through whatsapp had produced a copy of the opinion of the Board No. 432/2020 which reference is made in the certificate at page 39. Mr. Antani would submit that on examination, the petitioner was found to be colour vision defective.

3. In order to resolve the issue, the Director, M & J Institute of Ophthalmology, Civil Hospital, Ahmedabad is requested to arrange for reexamination of the petitioner. The petitioner shall present himself before the concerned board of the M & J Institute of Ophthalmology, Civil Hospital, Ahmedabad on 06.10.2020 on which date the board shall reexamine the petitioner on his fitness with regard to colour vision and issue a fresh certificate and opinion. Stand over to 08.10.2020.

4. Registry to communicate the order through email to Mr. Mehta, learned advocate for the petitioner and Mr. Antani, learned AGP for onward communication.”

7.3 Pursuant to this, the learned AGP had informed the M&J Ophthalmology Institute, which carried out re-examination of the petitioners. A Certificate dated 18.10.2020 was issued certifying that the petitioner had been examined by the Board of Reference of the Ophthalmology Institution and the petitioner was declared unfit as an Electrical Assistant.

7.4 Judicial notice can be taken of the expertise of the Board of the Ophthalmology Institute and this court in exercise of powers under Article 226 of the Constitution of India, would not adjudicate or get into the veracity and legality and / or genuineness of expert bodies for the “Certificate” issued to the petitioner, wherein, the petitioner has specifically been declared as unfit as an Electrical Assistant.

8 There is more reason to not entertain the petition. From the affidavit-in-reply filed by the Board and on the basis of the annexure which is reproduced to the establishment circular, it is clearly evident that the petitioner has to satisfy not only the General Standards of fitness but also the visual tests in

terms of having normal colour vision. Relevant para of the Physical Fitness Standards reads as under:

“1. General Standard of Physical Fitness :

(a) The general examination as to the physical fitness of candidates for appointment to the service of the Board shall consist of routine examination into the health and bodily condition of the candidates with reference to the points noted below

i) General Confirmation

ii) Presence of otherwise of haemorrhoids or fistula

iii) presence of otherwise of hernia or weakness of the inguinal rings and canals.

iv) presence of varicocele, or other affections of the testicle

v) presence of pyorrhoea alveolaris

vi) Any evidence of venereal disease

vii) Presence of trachoma.

Viii) Any investrate skin disease.

ix) Any Tubercular disease

X) A neurotic temperament. (b) In the case of chowkidars and Watchman who have to grapple and deal with intruders and trespassers and heamals and others such as mazdurs who have to do manual work including lifting of heavy weights, higher standard of vision, physique and general conditions of health than those who have to do desk work or those such as peons who have to do light manual work is necessary.

II. Visual Test :

(1) For posts requiring a very high degree of visual acuity with glasses and moderate degree without glasses.

(i) Visual activity 6/24 each eye without glasses 6/6 each eye with +2.50 with correction

ii) Normal colour vision as tested with Eshihara test.

iii) No evident signs of infectious conditions of the external eye eg. Erachoma. These posts will normally be in class I and II and also such of the Artisan groups such as a Line Staff Drawing staff and such other categories whose nature of duties call for high standard vision, as may be specified by the competent authority

(2) For posts requiring a high degree of visual acuity

with glasses.

Visual activity

6/6 each eye + 4 OD after correction. The rest as in (1) above. Chowkidars, Watchmen and Machine Workers such as Mechanics, Fitters, Machine Operators, Machine attendants, Chargemen, Welders, Employees handling inflammable substances and such other employees as may be specified by the competent authority, will come under this category.”

8.1 Reading the physical fitness standards, it categorically provides that the same applies to the Line Staff. The submission of Mr.Pujara, learned advocate, therefore, that the colour blindness is not a disqualification included in the standards of physical fitness, more so for an Electrical Assistant, is a submission which does not merit consideration.

9 Looking to the nature of duties which are onerous and when the Electrical Assistant has to deal with live wires, especially during the installation where the colour of the wires is of prime importance, the nature of duties that he has to discharge, if an expert body like the Ophthalmology Institute has also opined that the petitioner is colour blind and therefore unfit to be appointed as an Electrical Assistant, this Court cannot find fault with the Corporation's decision in issuing a Certificate of 18.06.2020 which stands justified by a subsequent certificate issued by the Ophthalmology Institute and denying the appointment to the petitioner to the post of Electrical Assistant of the Electricity Company.

10 For all these reasons, both these petitions are not entertained and are dismissed accordingly.”

4. In view of the above, looking to the nature of duties which are onerous and when the Electrical Assistant has to deal with live wires, especially during the installation where the colour of the wires is of prime importance, the nature of duties that he has to discharge, if an expert body like the Ophthalmology Institute has also opined that the petitioner is colour blind and therefore unfit to be appointed as an Electrical Assistant,

this Court cannot find fault with the Corporation's decision in issuing the impugned certificate which stands justified by a subsequent certificate issued by the Ophthalmology Institute and denying the appointment to the petitioner to the post of Electrical Assistant of the Electricity Company.

5. Petition is accordingly dismissed.

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(BIREN VAISHNAV, J)

