

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 331 of 2022

In R/SPECIAL CIVIL APPLICATION NO. 6217 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE N.V.ANJARIA

and

HONOURABLE MRS. JUSTICE MAUNA M. BHATT

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

TUSHAR KARSANBHAI VINZUBHAI

Versus

PACHSIM GUJARAT VIJ CO.LTD.

Appearance:

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

MR DHAWAN JAYSWAL, AGP for the Respondent(s) No. 3

MR DIPAK R DAVE(1232) for the Respondent(s) No. 1

NOTICE SERVED for the Respondent(s) No. 2

CORAM:HONOURABLE MR. JUSTICE N.V.ANJARIA

and

HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 23/09/2022

CAV JUDGMENT
(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)

Heard learned advocate Mr. Kashyap Tripathi, for the appellant, learned advocate Mr. Dipak Dave for respondent no.1 and learned Asst. Government Pleader Mr. Dhawan Jayswal for respondent no.3.

2. The present Letters Patent Appeal under Clause 15 of the Letters Patent filed by the original petitioner, is directed against the common judgment and order dated 08.02.2022 passed by the learned Single Judge in two Special Civil Applications, insofar as the judgment and order relates to Special Civil Application No. 6217 of 2021.

2.1 Learned Single Judge dismissed the Special Civil Application of the appellant-petitioner. The stand of the respondent authorities in treating the petitioner ineligible for the post of Electrical Assistant, on the ground of petitioner had been suffering from colour blindness, came to be upheld.

2.1 What the petitioner prayed in his Special Civil Application was to set aside the Certificate dated 03.03.2021 issued by respondent no.3 medical board declaring the petitioner to be unfit as Vidhyut Sahayak-Electrical Assistant.

3. The case of the petitioner inter alia was that

he belonged to Scheduled Caste category and passed ITI examination. Upon issuance of advertisement dated 01.07.2019-20, for direct recruitment to the post of Vidhyut Sahay, Class-IV, by respondent, he applied and came to be selected. He was placed in the select list at serial no. 98.

3.1 The petitioner was given appointment letter dated 30.12.2020. Thereafter, he joined the services at Porbandar. He was sent for medical examination before the Medical Board, Porbandar Civil Hospital, on 04.01.2021. The board gave certificate that the petitioner was unfit for the post of Vidhyut Sahayak. Thereafter, he was further examined by the Board of Referees at Civil Hospital, Ahmedabad. The Medical Board, Civil Hospital, Ahmedabad, confirmed the deficiency and also gave certificate on 03.03.2021 that the petitioner was unfit on the ground of colour blindness for the post in question. This led the petitioner to file the petition.

3.2 It was the case of the petitioner in the petition that for the post of Electrical Assistant, Class-IV, the only requirement was eyesight and the said requirement was fulfilled. It was submitted that the colour recognition was needed only in the case of Class-I and Class-II such as Superintendent and Police Sub-Inspector. It was further the case of the petitioner that the Rules provided for only medical examination to be undergone by the candidate

and never provided that on account of colour vision blindness, candidate would incur ineligibility of disqualification.

4 On behalf of the petitioner, it was submitted that the Chief Medical Officer had given certificate of unfitness when the petitioner was appointed as Apprentice Lineman and that now he came to be selected as Electrical Assistant and therefore, the issuance of medical certificate declaring him unfit at that stage was of no avail and was misconceived. It was submitted that the certificate issued by the Medical Board of M & J Ophthalmology Institute was vague and was not supported with any reasons. It also the case that general conditions of service were mere guidelines and nowhere colour blindness was mentioned as impediment in giving appointment to the candidate as Electrical Assistant. It was also contended that the general standard of fitness did not provide for disqualification on the ground that candidate was colour blind.

4.1 The learned advocate for the petitioner relied upon the decision of this Court in Bharatbhai Kadevbhai Raval Vs. Director General of Police being SCA No. 4775 of 2020 and allied matters, in which in respect of post of Lok Rakshak, this Court held that colour blindness was not disqualification for the post.

4.2 On the other hand, the stand of the respondent Electricity Company was that the post of Electrical Assistant was regular post and after undergoing successful apprenticeship, the petitioner was required to undergo departmental and physical examination for the purpose of qualifying to be appointed as Electrical Assistant. It was stated that the candidate had to undergo medical examination and the certificate issued by the medical authority was never challenged by the petitioner.

5. The learned Single Judge, along with the case of the petitioner, dealt with another Special Civil Application No. 8611 of 2020, wherein the facts were similar and Special Civil Application was identical. It appears that respondents had filed affidavit-in-reply in the other petition, commonly dealt with by the learned Single Judge.

5.1 It is relevant to note that in the course of hearing of the petition, order dated 28.09.2020 was based to allay the apprehension of the petitioner and to see that no room for injustice remains. In the order, it was inter alia observed that,

"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."

5.2 The Court issued following directions,

"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."

5.3 It may be noted that accordingly, the medical examination of the petitioner along with the petitioner in other similar case was carried out by the M & J Institute of Ophthalmology, Civil Hospital, Ahmedabad. The petitioner was again declared unfit as Electrical Assistant on the very consideration that he suffered from colour blindness. The petitioner was again certified to be not fit as he was colour blind. The learned Single Judge rested his decision on other cogent reasons also.

5.4 The learned Single Judge with regard to such certification by M & J Institute of Ophthalmology, Civil Hospital, Ahmedabad, observed in paragraph 7.4 of the order,

"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."

5.5 General standards of fitness were noticed and considered in paragraph 8 of the judgment. The relevant paragraph about physical fitness standards to be applied to the candidate are reproduced herein also,

"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 inveterate 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 scuh other employees as may be specified by the competent authority, will come under this category."

5.6 It was noticed and observed that reading the physical fitness standard above, it inter alia provides that they are applicable to Line Staff also. It cannot be said that colour blindness was not a

criteria included in the standard of physical fitness.

6. The weighty reason for not appointing candidate suffering from color blindness as Electrical Assistant, was observed in paragraph 9 of the order,

"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."

6.1 There is no gainsay that the aspect of nature of duties attached to the post of Electrical Assistant is also decisive. An Electrical Assistant is required to handle and work with live electrical wires, which may be of different colours. The person working as Electrical Assistant must have the capacity of clearly distinguishing the colour of the wires. A person who is colour blind and has to work with live wires of different colours used for different purposes, would mean invitation to grave risk. Noticing and identifying red, blue or green

colour of wires, as the case may be, is a necessary requirement for any person who may work as Electrical Assistant. The case of the Bharatbhai Kadevbhai Raval (supra) relied upon by the petitioner of Lok Rakshak is distinguishable as regards nature of duties.

7. In above view, the judgment and order of the learned Single Judge dismissing the petition could not be said to be booking any error whatsoever. The Letters Patent Appeal is meritless and stands summarily dismissed.

(N.V.ANJARIA, J)

(MAUNA M. BHATT, J)

BIJOY B. PILLAI

