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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision : February 5, 2009

+ W.P.(C) 737/2009

THE CHIEF COMMISSIONER OF INCOME TAX Petitioner
Through Mr. Ashwani Bhardwaj with Mr.
Jitender Chaudhary, Advocates

versus

RAM JANMA SINGH Respondent
Through Mr. Anshuman Sinha , Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K.SIKRI, J (ORAL)

Rule DB.

Learned counsel for the respondent accepts notice and waives service of rule. He further submits that no counter affidavit is required to be filed



and he is ready to argue the matter finally at this stage itself. In these circumstances, we have heard learned counsel for the parties.

The respondent herein had applied for post of Tax Assistant for which selection was made through the Staff Selection Commission. He appeared in the written examination and viva voce test and was recommended for appointment by the SSC. However, when he appeared for medical test before a Civil Surgeon at Ram Manohar Lohia Hospital, he was declared medically unfit. Because of this reason he was not given the appointment. The doctor opined that respondent was suffering from rheumatic heart disease, 'CAS' 'CAR'. On the request of the respondent who sought re-examination, the Board was constituted at Dr. Ram Manohar Lohia Hospital consisting of two senior Cardiologists. The said Board after examining him again declared him medically unfit.

The respondent feeling aggrieved against his non-appointment on the aforesaid grounds approached the Tribunal and filed OA under Section 19 of the Administrative Tribunal Act. This application has been allowed by the Tribunal vide impugned judgment dated 25.11.2008. Perusal of the judgment shows that the learned Tribunal has discussed in detail about the disease namely rheumatic heart disease and has also opined that when a heart valve of such a patient is replaced, his condition improves and he is fit



only to live but to perform all his functions, including functions attached to the post held by him, which do not require any strenuous activity. It was also observed that when in such a condition where pacemakers have been implanted persons have been found and are to be considered fit for Government service in the matter of appointment as stipulated in OM dated 17.3.1988. On this basis the Tribunal opined that even if the respondent was suffering from rheumatic heart disease he was competent to discharge the duties of the post and therefore should be given an appointment. The Tribunal also referred to the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and pointed out that under the said Act even a blind person can be appointed to such a post and therefore fairness demanded that the respondent should not have been denied the appointment. Referring to the judgment of the Supreme Court in **Amita v. Union of India and another, (2005) 13 SCC 721** and extensively therefrom which was a case under Disability Act, the Tribunal held that the respondent was remitted out discriminatory treatment and such an act of the petitioner herein was in violation of Article 16(1) of the Constitution. The observation in this respect are made in para 14 which reads as under :

“In the instance case, though we cannot act as a medical expert without a qualification, yet applying the test of a reasonable prudent man, logic and rationale, applicant, who is in prime of his youth having suffered from rheumatic



fever, which has affected his heart. Rheumatic heart disease at present from external appearance of the applicant and also from his condition does not suggest that in any manner he is incapable and unfit to perform the duties attached to the post of TA, which is a ministerial post does not deal with any physical exertion or any sort of duties for which the condition of heart is an impediment for performance. In such view of the matter, when the applicant has qualified on his own merit and was offered appointment, denial only on the ground of his being suffering from rheumatic heart disease, which is curable on operation and a stand of the respondent that on appointment if the candidate dies the family pension is due after one year is a pessimistic approach, which is not only actuated with arbitrariness but also unreasonableness, which certainly offends Article 16(1) of the Constitution of India.”

We are of the opinion that in a matter like this where fresh appointment is to be given to a person, provision of Disability Act shall not be applicable. If the fresh appointment is offered to those who suffer from certain disabilities, there are certain requirements to be fulfilled. Such a Person has to be disabled as per Section 2(i) of the said Act and should be suffering from a particular disability of a certain magnitude It is Section 14 of the Act which stipulates that in case a person who is already in employment suffers from disability, such disability would not render him unemployed and he has to be given duties which he is in a position to discharge notwithstanding the said duty and is also protected. But the fresh appointment of the nature with which we are concerned in the present case would not fall in any of these categories. Therefore, reference to those



provisions and observing that non-offering the employment amounts to any discrimination is clearly uncalled for.

No doubt when the Medical Board was constituted at the instance of the respondent herein, the Income Tax Department had made a specific request to the Board to examine the respondent with reference to the duties which respondent would be supposed to discharge on his appointment as Tax Assistant. Therefore, the Medical Board was required to examine the disease with which the respondent is suffering namely rheumatic heart disease and to opine that even with such a heart disease whether the respondent would be in a position to discharge the duties of Tax Assistant. Duty chart and duty roster of Tax Assistant which includes desk work but no physical activities or outer activities were forwarded to the Medical Board. In these circumstances, the Medical Board was supposed to give its opinion taking into consideration the said duties and the disease of the respondent. The Medical Board was supposed to give its opinion as to whether with proper treatment, as indicated by the Tribunal also the respondent would be in a position to discharge the duties. This exercise was not done by the Tribunal and to that extent finding by the Board that the respondent was unfit to perform the duties was not valid and wanted interference.



At the same time we are of the view that in such a situation appropriate course of action for the Tribunal was to direct fresh examination by the same Medical Board or another Medical Board. Keeping in view the aforesaid aspects it was not within the province of the Tribunal to go into the disease and give its own opinion holding that the respondent was in a position to perform the duties of the Tax Asstt. and issue direction to the petitioner to offer appointment to the respondent to the post of Tax Assistant.

Therefore, we set aside the direction given by the Tribunal and modify the impugned order by substituting the following direction : "the opinion of the Medical Board declaring the respondent as unfit is set aside. The petitioner shall get the respondent examined by a Medical Board of some other hospital i.e. AIIMS or Safdarjung Hospital. *within 15 days from the date of receipt of copy of this order*"

The said Medical Board shall examine the respondent including the extent of the rheumatic heart disease of which the respondent is suffering, specifically with reference to the duty chartor duty roster of the Tax Assistant and give opinions as to whether the respondent is medically fit to discharge those duties even when he was suffering from the aforesaid disease. Based upon that report further action shall be taken by the petitioner herein. In case the Medical Board opined that the respondent is fit



to discharge the duties, the petitioner shall offer him the appointment to the post of Tax Assistant within one month from the date of such an application is made.

With the aforesaid observations, the writ petition is disposed of.


A.K.SIKRI, J


SURESH KAIT, J


FEBRUARY 05, 2009
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