IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 778 of 2006
In
SPECIAL CIVIL APPLICATION No. 9274 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GITABEN DASHARATHLAL BAROT - Appellant(s)
Versus
LIFE INSURANCE CORPORATION OF INDIA & 1 - Respondent(s)

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Appearance :
GIRISH PATEL ASSOC for Appellant(s) : 1,
NOTICE NOT RECD BACK for Respondent(s) : 1,
MR AK CLERK for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 28/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

1. Being aggrieved by the judgment delivered in Special Civil Application No. 9274/97, the appellant-original petitioner has filed this appeal.

2. We have heard Sr. Advocate Shri Girish Patel appearing for the appellant and learned advocate Shri Abhilash Clerk for the respondents.

3. The facts giving rise to the present litigation, in a nutshell, are as under:

3.1 The appellant was selected for appointment to the post of Clerical Assistant by respondent No. 1 – Life Insurance Corporation of India, but she was not offered appointment due to her medical unfitness. Upon being selected for appointment, as per normal practice and in view of the provisions of the Life Insurance Corporation of India (Staff) Regulations, 1960 (hereinafter referred to as 'the Regulations') of respondent No.1-Corporation, which have been framed under clause (b) and (bb) of sub-section (2) of sec. 49 of the Life Insurance Corporation Act, 1956, the appellant was sent for medical examination. According to the said regulations, no person can be appointed to the service of the respondent Corporation unless he/she has been certified by an approved and qualified medical practitioner to be of sound constitution and medically fit to discharge his

or her duties.

3.2 The appellant was first examined by a medical examiner of respondent No. 1 Corporation on 21.9.1995. As the medical examiner had some doubt about the medical fitness of the appellant, it was advised to the Corporation that ECG and X-ray of chest of the appellant should be obtained. The report had been then referred to specialist doctors approved by the respondent Corporation. From the reports it was found that the appellant was medically unfit and, therefore, the case of the appellant had been referred to the Zonal Medical Referee and the Zonal Medical Referee had referred the matter to the Central Underwriting Section. The Central Underwriting Section had a panel of doctors and the said panel of doctors had also perused the relevant reports and it was found by them that the appellant was medically unfit for appointment. In the circumstances, the appellant was not offered appointment, though she had been selected for being appointed.

3.3 In the meantime, upon knowing the fact with regard to her medical unfitness, the appellant had got herself examined by a private doctor at Karnavati Hospital, who found her to be medically fit and gave a certificate to that effect. Thereupon, the appellant had made a representation alongwith certificate of fitness issued by the doctor of the private hospital. The representation made by the

appellant had been rejected by the respondent Corporation for the reason that the panel of doctors approved by the respondent Corporation had found the appellant to be medically unfit for appointment.

3.4 In view of rejection of her case for appointment, the appellant filed Special Civil Application No. 9274/97 praying that the respondent Corporation be directed to give appointment to the appellant to the post of clerical assistant. By the impugned judgment, the said petition has been rejected and being aggrieved by the said judgment, the appellant has filed this appeal.

4. At the outset, Sr. Advocate Shri Girish Patel appearing for the appellant has submitted that he is not challenging the action of the respondent Corporation on the ground of mala fides and he is also not challenging the regulations, which require the selected candidates to be medically fit for appointment.

5. Sr. Advocate Shri Patel has mainly submitted that the appellant, at the relevant time, was suffering from rheumatic heart disease and the said disease was not such that the appellant could not have done work of clerical nature. It has been submitted by him that fitness is a subjective issue. A person who has certain disease cannot be said to be unfit for all purposes and for all the time. In spite of a particular disease, if a person can

discharge his normal duties, the person cannot be said to be medically unfit. A person may be fit to do clerical work with certain disease, but the same disease may not make that person fit for some other job done by the security personnel. He has further submitted that standard of fitness varies from time to time. For example, a person afflicted by TB was not considered to be fit to do any work in the past, whereas today TB has become curable and, therefore, it cannot make a person unfit for certain jobs. By virtue of the aforesaid submission, he has attempted to make out a case that a person suffering from rheumatic heart disease can be very well treated and cured and he/she can very well perform the work of a clerk, which does not cause much stress or strain. It has been submitted that the appellant is a well qualified person and upon being selected for the post in question after undergoing all the required selection procedure, she should not have been denied appointment on the ground of medical unfitness. Moreover, she had also delivered a child in the meantime. According to him, the said fact reveals that the appellant is having sound health and is otherwise quite fit medically. In the circumstances, the appellant could not have been denied appointment to the post in question.

6. So as so substantiate his case, the Sr. Advocate has relied upon the judgment delivered in the case of **MX of Bombay Indian Inhabitant v. M/s. ZY and anr.**, AIR 1997 BOMBAY 406. In that case, a person,

who was found to be HIV+ve was not found medically fit by the employer for regular appointment and, therefore, a petition was filed by him challenging denial of employment to him. The Hon'ble Bombay High Court ultimately allowed the petition by observing that the said petitioner was not likely to develop symptoms of AIDS for 8-10 years and he was not likely to harm any other person at the work place. The senior advocate has submitted that in a welfare state, when the State is encouraging employment of disabled persons in government jobs by having special enactments, the respondent Corporation, being a public body, ought to have sympathetically considered the case of the appellant by offering appointment to her.

7. On the other hand, learned advocate Shri Abhilash Clerk appearing for the respondents has supported the reasons stated by the learned Single Judge in his judgement and has submitted that in view of the provisions of the Regulations governing appointments, the appellant was rightly not given appointment. He has further submitted that it is for the employer to decide as to whether a person having a particular ailment should be considered fit for appointment in the organisation. He has relied upon the judgment delivered in the case of **State Bank of India v. G.K. Deshak**, AIR 2003 SC 2447 to substantiate his argument. The Hon'ble court has observed in the said judgment that if a candidate is found to be medically unfit as per its norms, such an

unfit person has no right to be appointed.

8. We have heard the learned advocates at length. It is pertinent to note that the regulations, which make it obligatory on the part of the selected candidates to undergo medical examination and which provide for offering appointment to only medically fit persons, have not been challenged in this appeal. Moreover, there are no allegations with regard to mala fides as the appointment had been denied only on the ground of medical unfitness of the appellant.

9. Looking to the facts of the case, and in view of the fact that, the appellant was suffering from heart disease at the relevant time, and as there was a concurrent opinion of medical officers, including a panel of experts in the field of Cardiology, in our opinion, it cannot be said that the appellant has a right to be appointed to the post for which she had been selected.

10. It is a settled legal position that simply because a person has been selected, the said person has no right to be appointed. If there is any legitimate reason to deny appointment to such a selected person, it cannot be said that the employer has done anything wrong or illegal or has acted arbitrarily.

11. In the instant case, medical fitness was a *sine-qua-non* for offering appointment to the post in

question in view of the regulations referred to hereinabove. If the appellant had been found to be medically unfit by all the physicians, including a panel of expert doctors, in our opinion, it cannot be said that the respondent Corporation had wrongfully deprived the appellant of appointment as clerical assistant.

12. So far as the judgment in the case of **MX of Bombay Indian Inhabitant v. M/s. ZY and anr.**(supra), which has been referred to by Sr. Advocate Shri Patel is concerned, it is clear that according to medical opinion, the petitioner in the said case was found fit for his normal duties. In the circumstances, the said judgment would be of no help to the appellant in the present case as the facts here are different. In the instant case, the appellant had been positively declared to be unfit by the medical experts and in the circumstances, according to the law laid down by the Hon'ble Supreme Court in the case of **Indian Council of Agricultural Research and anr. v. Smt. Shashi Gutpa**, AIR 1994 SC 1241, it would not be proper for this court to direct the respondent Corporation to give appointment to the appellant. In the case of **Indian Council of Agricultural Research** (supra), the Central Administrative Tribunal, New Delhi, had quashed the medical report and had directed ICAR to appoint Smt. Shashi Gupta to the post of Scientist Grade 'S'. When the decision rendered by the Tribunal had been challenged before the Hon'ble Supreme Court, the Hon'ble Supreme Court

had quashed and set aside the order of the Tribunal by observing that the Tribunal had out-stepped its jurisdiction and had acted with utter perversity by quashing the medical reports. The Hon'ble Supreme Court also observed that it is the inherent right of an employer to be satisfied about the medical fitness of a person before offering employment to him/her.

13. In the circumstances, in our opinion, it would not be proper to give direction to the respondent Corporation to appoint the appellant. Once the Regulations framed by the respondent Corporation have been held to be valid, and particularly when it has not been challenged, in our opinion, it would be for the respondent Corporation to decide as to what sort of medical fitness is required from the selected candidates. Looking to the opinion of all physicians, including the medical experts, when the appellant was found to be having some serious ailment, which would not allow her to perform her duties properly, and when the said opinion had been accepted by the respondent Corporation, in our humble opinion, it would not be open to this court to sit in appeal over the judgment of the Corporation in the matter of giving employment to someone. We reiterate that medical fitness is a *sine qua non* for appointment and if the employer, who nowadays has to spend sizeable amount towards medical treatment of its employees, does not consider a candidate to be medically unfit, it would be most unjust to direct the employer to appoint a person who is not found

medically fit as per its norms.

14. In view of the aforesaid facts of the case, in our opinion, the learned Single Judge has rightly rejected the petition. We are in agreement with the views expressed by the learned Single Judge and the impugned judgement does not call for any interference. We, therefore, dismiss the appeal. Notice is discharged with no order as to costs.

(Anil R. Dave, J.)

(H.N. Devani, J.)

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