IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 4th OF APRIL, 2025

WRIT PETITION No. 22228 of 2023

ARPIT KUMAR BHANA

Versus

UNION BANK OF INDIA AND OTHERS

Appearance:

Shri Sunil Jain- Senior Advocate with Ms. Nupur Rao- Counsel for the petitioner.

Shri Anand Singh Bahrawat- Advocate for the respondent Nos.1 and 2.

Shri Manish Nair- Advocate for the respondent No.3.

ORDER

Heard.

2] This petition has been filed by the petitioner under Article 226 of the Constitution of India, against the order dated 18.08.2023, passed by the Deputy General Manager of Union Bank of India, whereby, the petitioner has been informed that as per the documents submitted by him, it is found that he is having temporary disability (and not the permanent), and thus, his candidature for the post of IT Officer has been rejected.

3] In brief, the facts of the case are that the petitioner, a physically challenged person and a resident of Bhanpura, District Mandsaur applied for the post of I.T. Officer, as advertised by the respondent No.3 in the month of October, 2022. The petitioner's application was scrutinized and he also appeared in the preliminary examination, and was also shortlisted for the mains, and was subsequently also shortlisted for the interview, and finally,

he was also selected for the post of IT Officer (Scale-I), and also got provisional offer of appointment dated 17.05.2023 (Annexure-P/9).

4] After the provisional appointment, the petitioner also submitted his original documents, and on 09.06.2022, at the time of verification of the aforesaid documents, the petitioner was also asked to get the Disability Certificate certifying that his disability is permanent in nature, and thus, the petitioner also submitted subsequent certificates issued by the Medical Board, Mandsaur dated 23.10.2020 and 21.07.2023. However, even after submission of the aforesaid subsequent documents, the impugned order dated 18.08.2023 has been passed by the respondents on the ground that the petitioner has suffered temporary disability only and not the permanent, which was a prerequisite. Thus, this petition.

5] Shri Sunil Jain, learned senior counsel for the petitioner has submitted that there was no reason for the respondents to reject the petitioner's candidature only on the ground that in his initial disability Certificate, which he had already submitted and the subsequent certificates also, it was mentioned that the petitioner suffers from 40% mental illness which was temporary in nature. It is also submitted that such certificates are always issued for a limited period of time, and in the present case it was for five years, and that is why in his disability Certificates it is mentioned that they are temporary in nature. Counsel has also submitted that even in the advertisement, it is not provided that the disability has to be permanent in nature. What is provided is that it should not be less than 40%.

6] Learned senior counsel has also drawn the attention of this Court to the decision rendered by the Division Bench of the Delhi High Court in the case of ***Bhavya Nain Vs. High Court of Delhi,*** passed in ***W.P. (C) No.5948/2019*** dated ***08.05.2020***, in which, while considering the

candidature of a candidate for the post of Judicial Officer, the Delhi High Court, after going through the various provisions of law, as also the other decisions, has set aside the notice dated 21.05.2019, insofar as it declares the petitioner's disability to be not permanent. Thus, it is submitted that in the present petition also, the same endorsement is made in the disability certificate, i.e., it is temporary, and is such circumstances, the impugned order deserves to be quashed.

7] On the other hand, learned counsel for the respondent Nos.1 and 2, has opposed the prayer, and it is submitted that the petitioner has suppressed his earlier disability certificate filed as Annexure-R/1 while filing the petition, which clearly proves that the disability was temporary in nature. It is also submitted that the subsequent certificates are also temporary in nature, as it is clearly provided in them that they are valid for a period of five years only.

8] So far as the decision relied upon by the senior counsel for the petitioner in the case of ***Bhavya Nain (Supra)*** is concerned, it is submitted that the certificate of Bhavya Nain is also reproduced in the aforesaid order, which is distinguishable from the Certificate issued in the present case, and thus, it is submitted that no case for interference is made out. It is also submitted that even otherwise, the respondent had also took care to get the clarification from the Department of Empowerment of Persons with Disabilities (Divyangjan), wherein, the aforesaid Department has also found that since the certificate of disability of Shri Arpit Kumar Bhana, the petitioner herein, states that it is temporary in nature, and it is nowhere mentioned that if the condition is progressive/not likely to improve, hence, it is not appropriate to treat his certificate of disability as permanent certificate.

9] In rebuttal, learned senior counsel for the petitioner has also drawn the attention of this Court to the Certificate of ***Bhavya Nain (Supra)***, in which, it is also mentioned that his condition is likely to improve, meaning thereby, that his disability was also not permanent.

10] Whereas, Shri Manish Nair, learned Counsel for the respondent No.3 Institute of Banking Personnel Selection, has submitted that the petitioner has wrongly arrayed the respondent No.3 as a party respondent despite the fact that no relief has been sought from it. Apart from that, the respondent No.3 is not the 'State' as defined under Article 12 of the Constitution of India, as it is only a public trust registered under the Bombay Public Trust Act, 1950 and also a society registered under the Societies Registration Act, 1860. Learned counsel has also drawn the attention of this Court to the various judgements delivered by various Courts to this effect that respondent No.3 is not the 'State'.

11] Shri Sunil Jain, learned senior counsel for the petitioner has also submitted that no relief has been sought against the respondent No.3, and it is only a formal party.

12] Heard counsel for the parties and perused the record.

13] So far as the *locus* of the respondent No.3 is concerned, this Court finds force with the submissions as advanced by Shri Manish Nair, learned counsel for the respondent No.3, and is of the considered opinion that the respondent No.3 has been wrongly made a party in this petition, as has also been held by the High Court of Judicature at Bombay in ***W.P.(L) No.1042/2014 (Mohan Laxman Gamare Vs. IBPS)*** that respondent No.3 Institute of Banking Personnel Selection is not a 'State' within the meaning of Article 12 of the Constitution of India, as it does not have any public function.

14] From the record, it is found that so far as the impugned order dated 18.08.2023 is concerned, it has been informed to the petitioner that since the document submitted by him provides for temporary disability only, and since the benefit of reservation to PWD (Persons With Disability) candidates can be extended to persons with permanent disability only, hence his candidature for the said post is being cancelled.

15] So far as the disability certificate submitted by the petitioner along with his application is concerned, the same has been filed by the respondent, along with the reply as Annexure-R/1, and on a bare reading of the same, it would reveal that although, it provides for 40% disability of the petitioner, but the disability is stated to be temporary in nature, and it is also stated that this Certificate would be valid for a period of five years and ten months, till 23.08.2026. A close scrutiny of the disability certificate (Annexure-R/1) would also reveal that nowhere in this Certificate it is mentioned that this disability is likely to improve in the near future, or whether it is progressive or non-progressive.

16] So far as the disability of the petitioner is concerned, he is suffering from Schizophrenia, and as per the disability certificate issued by the District Medical Board, Mandsaur, filed as Annexure-P/10, the nature of the disease is moderate, although it is also mentioned that this Certificate is valid for a period of five years. In this disability certificate also nowhere it is mentioned that this disability is likely to improve in the near future, or whether it is progressive or non-progressive.

17] So far as the clarifications and memorandums which have been filed by the respondent along with the reply are concerned, they do provide that the disability has to be permanent in nature, so as to give the benefit of PWD under the Act of 2016.

18] So far as the judgment relied upon by the counsel for the petitioner rendered by the Division Bench of Delhi High Court in the case of ***Bhavya Nain (Supra)*** is concerned, the relevant paras of the same read as under:-

> **"11.** The final results were published vide impugned notice dated 21.05.2019, whereby the candidature of the petitioner was rejected on the ground that his disability was not found to be permanent as per the Disability Certificate submitted by him. Accordingly, the petitioner has preferred the present petition challenging the said notice dated 21.05.2019.
>
> **12.** The Disability Certificate issued by the Department of Psychiatry, AIIMS, certified the petitioner of having the disability i.e. Mental Illness - Bipolar Affective Disorder, i.e., BPAD, to the extent of 45%, and stated that his condition is *"currently in remission"*. Further, the said certificate states that the condition of the petitioner is "likely to improve". The relevant extract of the said Disability Certificate reads as follows:
>
> *"Department of Psychiatry*
> ***All India Institute of Medical Sciences, Ansari Nagar, New Delhi-110029***
>
> PHOTO
>
> ***Form-IV***
>
> ***DISABILITY CERTIFICATE***
>
> *Certificate No. 133/2018*
>
> *Date : 12/12/2018*
>
> *This is to certify that I have carefully examined*
>
> *Shri/Smt/Kum BHAVYA NAIN son/~~wife/daughter~~ of Shri KAWAL NAIN Date of Birth (DD/MM/YY) 16-11-1985 Age 33 years, male/~~female~~ MALE Registration No. 104162703, C-2664/18 Permanent Resident of House No. F-48, GROUND FLOOR Ward/ Village/ Street LAJPAT NAGAR Post Office L. NAGAR, PART-2 District SOUTH DELHI State DELHI-24 whose photograph is affixed above, and I am satisfied that he/she is a case of MENTAL disability.*
>
> *His/her extent of percentage disability has been evaluated as per guidelines*
>
> *(IDEAS - Indian disability Evaluation Assessment Scale and is shown below:*
>
> | | |
> |---|---|
> | ***Mental Illness-Diagnosis*** | ***F31.7(BPAD, currently in Remission)*** |
> | ***Mental disability (in%)*** | ***45%*** |

The above condition is ~~progressive/non-progressive~~/likely to improve/~~non-likely to improve.~~

Reassessment of disability is:

Not necessary Or

Is recommended/after 5 years___ months, and therefore this certificate shall be valid till (DD/MM/YY) 12-12-2023

The applicant has submitted the following documents as proof of residence:

Nature of document	*Date of Issue NUMBER*	*Details of authority issuing certificate*
AADHAAR CARD	*728680040910*	*GOVT. OF INDIA*

Sd/-
(Authorised Signatory of notified Medical Authority)
(Name and Seal)

Sd/-
Signature/thumb impression
Of person in whose favour
Disability Certificate is issued

Sd/-
Counter Signature
Medical Superintendent"

13. The impugned notice/result dated 21.05.2019 issued by the respondent rejecting the petitioner's candidature, in so far as it is relevant, is extracted hereunder:

> *"Note 1-The candidature of Mr. Bhavya Nain as a Person with Disability Category has been rejected for the reason that his disability was not found to be permanent as per the Disability Certificate."*

14. The issue that arises for our consideration is whether the petitioner - who is certified to have been suffering from the mental illness i.e. BPAD - which is in remission and is likely to improve, is entitled to the benefit of Reservation provided to PwD under the RPwD Act.

xxxxx

63. The intent and object of the RPwD Act is to protect and preserve the rights of disabled persons, and employment is an essential aspect of utmost importance and the RPwD Act has to be read liberally, keeping in mind that it is a beneficial and social welfare legislation which has to be

given effect to in order to protect the rights of the PwD, and not to defeat their rights. In *LIC of India* (supra), the Learned Single Judge observed in the context of Persons with Disabilities (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995 as follows:

> *"22. The Act, being a beneficial legislation, required some affirmative action to be taken on the part of LIC and other authorities. V. Finkelstein and S. French, as quoted in* "Disability : Challenges *v.* Responses" *by Ali Baquer and Anjali Sharma have said that:—*
>
> > *"Disability is the loss or limitation of opportunities that prevents people who have impairments from taking part in the normal life of the community on an equal level with others due to physical and social barriers."*
>
> *23. It is for this reason that one of the great world leaders, Nelson Mandela said (as quoted in Disability:* Challenges *v.* Responses)-
>
> > *"All countries today need to apply affirmative action to ensure that the women and the disabled are equal to all of us.""*
>
> xxxxxx
>
> **66.** In the light of the aforesaid discussion, we allow this writ petition and set aside the notice dated 21.5.2019 insofar as it declares the petitioner's disability to be not permanent. We accordingly direct the respondent to declare the petitioner as selected to the Delhi Judicial Service without any further delay, since, undisputedly, he is the only qualified candidate in the 'mental illness' category. Upon his appointment, the petitioner would retain his notional seniority along with his other batchmates and he would be deemed to have joined his post along with his other batchmates, though he would not be entitled to any back wages. It goes without saying that the respondent shall issue necessary orders regarding the petitioner's Induction training for Judicial Officers."

(Emphasis Supplied)

19] On perusal of the aforesaid decision, it would reveal that the in the aforesaid case, the mental disability of the petitioner was "bipolar", and although in that case the disability was said to be likely to improve, however whereas in the present case, the petitioner is suffering from "Schizophrenia" and it is also not mentioned that his condition is likely to improve, thus, the case of the petitioner is on a better footing. It is also found that the respondents have also not come out with any document that the mental

disability in the form of Schizophrenia can improve in future or is non-progressive.

20] In such facts and circumstances of the case, this Court is of the considered opinion that the disability of the petitioner, which is mentioned as temporary in the disability certificate, and is valid only for five years, cannot be treated as temporary disability, and resultantly the petition stands allowed, and the impugned order dated 18.08.2023 is hereby quashed, and the respondents are directed to issue the appointment letter to the petitioner, with effect from 18.08.2023, with all the consequential benefits except the monetary benefits.

21] With the aforesaid, the petition stands ***allowed*** and ***disposed of.***

(SUBODH ABHYANKAR)
JUDGE

Bahar