IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

&

THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

MONDAY, THE 3RD DAY OF MARCH 2025 / 12TH PHALGUNA, 1946

WA NO. 406 OF 2025

AGAINST THE ORDER/JUDGMENT DATED 27.01.2025 IN WP(C) NO.35315 OF 2024 OF HIGH COURT OF KERALA

APPELLANT:

[redacted]
AGED 33 YEARS
[redacted]

BY ADVS.
ARUN CHANDRAN
AMRITA ARUN
ASWATHY S MENON
HARIMOHAN

RESPONDENTS:

1 **THE FERTILIZERS AND CHEMICALS TRAVANCORE LIMITED REGISTERED OFFICE AT ELOOR, UDYOGAMANDAL, KOCHI REPRESENTED BY ITS MANAGING DIRECTOR., PIN - 683501**

2 **THE DEPUTY GENERAL MANAGER HUMAN RESOURCES DEPARTMENT, THE FERTILISERS AND**

CHEMICALS TRAVANCORE LIMITED, REGISTERED OFFICE AT ELOOR, UDYOGAMANDAL, KOCHI, PIN - 683501

**3 THE UNION OF INDIA
DEPARTMENT OF FERTILIZERS, MINISTRY OF CHEMICALS AND FERTILIZERS, SHASTRI BHAVAN, NEW DELHI, REPRESENTED BY THE SECRETARY., PIN - 110001**

OTHER PRESENT:

SRI JAI MOHAN, SRI T C KRISHNA DSGI IN CHARGE

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"CR"

JUDGMENT

K.V. JAYAKUMAR, J.

Dissatisfied with the judgment of the learned Single Bench in W.P(C) No.35315 of 2024, dated 27.01.2025 the writ petitioner preferred this writ appeal.

2. The writ petitioner, [redacted], was an applicant for the post of Assistant General in the Fertilizers and Chemicals Travancore Limited (hereinafter referred to as "the FACT" for short).

3. The FACT published Ext.P1 notification for the post of Assistant General from candidates who had secured graduation with 50% marks and having sound knowledge in office automation systems/computer knowledge. In response to Ext.P1 notification, the appellant/petitioner submitted Ext.P2 application through online mode. After completing the selection process, Ext.P6 rank list was published on 23.9.2019, wherein, the petitioner secured Rank No.2 for the post of Assistant General. Thereafter, a medical examination was conducted in

which, the appellant/petitioner was found unfit by the medical officer of the FACT. The appellant preferred the writ petition against the decision of the medical officer and also challenged the rejection of his candidature before this Court preferring W.P(C)12311 of 2021.

4. This Court vide judgment in W.P.(C) 12311 of 2021 dated 11.08.2021, directed the FACT to examine the petitioner by constituting a Medical Board as per Clause 11 of the FACT Pre-Employment the Medical Examination Procedure within a period of two weeks. In that order it was made clear that if the medical board so constituted finds the petitioner to be medically fit, the petitioner should be granted employment.

5. In compliance with the judgment of this Court in W.P(C) No.12311 of 2021, the appellant/petitioner was examined by the medical board consisting of three members. Ext.R1(b) is the report of the Medical Board, in which the Board opined that, the petitioner has Chronic Hepatitis B Infection and the said disease is a communicable disease through blood and body fluids and also a progressive pathological condition.

6. Dissatisfied with the report of the Medical Board the appellant/petitioner preferred W.P(c) 29693 of 2022. This Court vide judgment dated 25.08.2023 (Ext.P23), allowed the writ petition and set aside the report of the Medical Board and directed the petitioner to a further Medical examination by the Medical Board to be constituted preferably by a Government Hospital or a Government Medical College.

7. Accordingly, the medical board consisting of two members was constituted and examined the petitioner. Ext.R1(c) is the report of the Medical Board and again found him medically unfit.

8. As per the impugned judgment, the learned single bench dismissed the writ petition holding that, the petitioner was found medically unfit by R1(b) and R1(c) reports and therefore, the Court could not exercise its jurisdiction under Article 226 of the Constitution of India, so as to substitute the opinion of the expert committee.

9. The learned standing counsel for the FACT

Adv.M.Gopikrishnan Nambiar supported the judgment of the learned Single Bench. The learned counsel further submitted that the impugned order is legally sustainable, and no interference is warranted in this matter.

10. On the other hand, Adv.Arun Chandran, submitted that the learned Single Bench ought not have dismissed the writ petition. It was submitted that the learned Single Bench merely accepted selective fragments of the sequential events leading to Ext.P27 letter of rejection.

11. The respondent/FACT, while issuing Ext.P27 communication, cancelling the offer of appointment to the appellant, failed to make available a copy of the Medical Report which was relied on by the respondent while rescinding the offer letter of the appellant. Since the copy of the Medical Board report was not made available to the appellant, he was deprived of his right to prefer an appeal, as prescribed in the Pre- Employment Medical Procedure of the FACT.

12. Adv. Arun Chandran, learned counsel for the

appellant further submitted that, this Court in Ext.P23 judgment, issued specific directions to the Government of India to formulate protocols with respect to persons afflicted with Hepatitis B, similar to protocols promulgated for persons afflicted with HIV. The very intention of such a direction was to place persons afflicted with Hepatitis B on a similar footing as that of persons afflicted with HIV, and to uphold non-discriminatory practices. It was argued that the pith and substance of Ext.P23 judgment of this Court was to ensure that, the persons who are similarly placed as the appellant/petitioner are to be absorbed in the service of the Central Government, State Government and Public Sector units, thus the learned Single Bench while dismissing the writ petition has failed to consider this vital aspect.

13. Adv.Arun Chandran further submitted that Ext.P27 order of the respondent rejecting the offer letter of employment of the appellant is violative of the Right to Equality granted under Article 14 of the Constitution of India and therefore, Ext.P27 is liable to be quashed.

14. Adv. Arun Chandran placed reliance on the judgment in **MX of Bombay Indian Inhabitant V. M/s ZY and Others reported in [AIR 1997 BOM. 406] that;**

> "no person can be deprived of his right to livelihood except according to procedure established by law. Obviously, such procedure established by law has to be just, fair and reasonable. In other words, such procedure also must pass the rigour of Art. 14. The rule providing that person must be medically fit before he is employed or to be continued while in employment is, obviously, with the object of ensuring that the person is capable of or continues to be capable of performing his normal job requirements and that he does not pose a threat or health hazard to the persons or property at the workplace."

15. It was next contented that the appellant herein was certified to be fit in spite of the infliction of the disease of Hepatitis B. The Medical Board reports would only indicate that, at the time of infliction of the disease, the presence of virus was there in the blood stream of the appellant.

16. The disease of Hepatitis B can be categorized as 'acute' or 'chronic' in case of Chronic Hepatitis B disease virus

will be in the blood stream for a period of six months or more. Before further discussions it will be worth while to extract the relevant portions of Ext.P23 judgment, R1(b) Medical Board report and R1(c) Medical Evaluation report, relevant paragraphs of Ext.P23 Judgment are extracted hereunder.

> "8. One can certainly not countenance, particularly in this age and time, that a person be kept out of Civil/Public employment solely because he is suffering from "Hepatitis B" or "HIV" infection. This is contrary to ethos of the times and militates against the collective conscience of the civilised world. This Court is also fully aware that the Government of India has placed protocols in operation, with respect to persons who are suffering from "HIV" infection, making it apodictic that no such person can be discriminated in being considered for Civil/Public employment; and I fail to understand how a person suffering from "Hepatitis B" could be considered differently or on a lesser basis.
>
> 9. That being said, I am cognizant that the stand of the FACT is rather ingenuious because, they say that they have nothing against a person infected with "Hepatitis B", but that they are incapacitated from appointing the petitoner because of Ext.R1(a) Medical Report.
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> 10. I have, therefore, examined the said Medical Report and it records as under, with respect to the petitioner's condition:
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> > "The Board notes that the viral load of Shri [redacted] has increased, that too substantially in the last 2 years and liver function tests and consistency of liver is showing pathological involvement of the organ. Hence the Board is of the opinion that Chronic Hepatitis B Infection is confirmed for this candidate, which is a communicable disease through blood and body fluids, and also a progressive pathological condition."
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> 11. I notice that the Medical Board in question is comprised of the Chief Manager of Medical Services of the "Bharath Petroleum Corporation Ltd."; the Assistant Medical

Superintendent of the 'FACT' and a Gastroenterologist of a Private Hospital in Kochi. When one reads Ext.R1(a) closely, it would become rather obvious that what the Medical Board has recorded therein are only those what doctors would, in normal circumstances, say about a patient suffering from Hepatitis B infection. This is indubitable because, the Board has held that Hepatitis B is a communicable disease - but only through blood and body fluids - which is common knowledge and accepted by the Medical Community without any dispute. The certificate then says that, Hepatitis B infection is a "progressive pathological condition", which perhaps, in its technical sense, is also true.

12. But the question is not this, but whether the petitioner's condition, when he was examined by the Medical Board, was such that it would make him ineligible or incapable of being entrusted to the tasks associated with the post to which he has applied. However, Ext.R1(a) Report, even on a close reading, does not deal with this aspect at all, rather than recording in an abstract manner that "Chronic Hepatitis B Infection is confirmed for this candidate, which is a communicable disease through blood and body fluids, and also a progressive pathological condition"(sic). **Needless to say, this opinion of the Medical Board is with respect to the infection and not with respect to the petitioner who is suffering from it**.

13. One, therefore, fails to comprehend how the 'FACT' can now say that they are bound by Ext.R1(a) Report to deny appointment to the petitioner, without a proper assessment as to his physical condition and whether the progress of his infection mentioned therein would impede his capacity or ability to discharge the obligations of the post to which he has applied.

14. This Court is certainly anxious because, if Public Sector Undertakings are allowed to deal with candidates in this manner, it will lead to a situation where any of them can be denied opportunities solely on account of the attributes of the disease, but without any assessment of its effect on the person concerned.

15. To paraphrase, even when it can be taken as medically accepted information, that "Hepatitis B" is a "communicable disease through blood and body fluids and is a progressive pathological condition"(sic), the acme question is, if a person can be denied opportunity solely on account of this; and the unmistakable answer of the civilised world to this is an affirmative "NO".

16. When the Medical Board itself records a pharmacological opinion, that Hepatitis B is a "communicable disease through blood and body fluids"(sic), it is clear that it cannot be spread, except in that manner; and not by touch, saliva, sharing of food, etc. This is why, even in the case of 'HIV' infected persons, the internationally adopted protocols prohibit discrimination solely because a person is so infected; and hence, one fails to fathom how the 'FACT' takes a contrary stand. Similar is the further opinion of the Board reflected in Ext.R1(a), that Hepatitis B Infection "is a progressive pathological condition"(sic). As an abstract notion, this may be true - as also which is part of the normal aging process - but a person can be placed to detriment on account of this only if it is justified statutorily or forensically; and the yardstick for this can only be that such a person, on account of the disease, as any other, is incapacitated from discharging responsibilities attached to the post.

17. That said, there is another aspect that concerns this Court in Ext.R1(a) Report. After examining the requirement of "Pre Employment Medical Examination" (PEME) - the procedure stipulated by the FACT, a copy of which is also on record as Ext.R1(b) - the Medical Board in question declares that petitioner has been diagnosed with chronic Hepatitis B Infection and that he is unfit to hold the post in question, since it is not a "temporary/short term sickness". No amount of thought into such a rather general statement by a Medical Board, which is consisting of Medical Experts, discloses how they recorded so; and further, how they could declare a person to be unfit solely because he is suffering from "Hepatitis B" Infection. This is exacerbated by the fact that the said report contains precious little about the health condition of the petitioner; and obviously, therefore, this Court cannot grant imprimatur to the decision taken by the FACT in Ext.P22, which exclusively relies on Ext.R1(a).

18. There is no doubt that the views of this Court as afore, runs in tandem with the policy of Government of India, as has been disclosed by the learned DSGI; and he confirms this unreservedly.

19. That said, however, since Ext.R1(a) was a report settled by the Medical Board as early as on 21.10.2021, I deem it apposite to leave liberty to the FACT to cause further examination of the petitioner's present condition and to act in terms of such opinion, to be obtained from an independent Medical Board, preferably attached to a

Government Hospital or Government Medical Colleges.

In the afore cirucmstances, I allow this writ petition and set aside Ext.P22; with a consequential direction to the FACT to subject the petitioner to a further medical examination as above, which shall be completed within a period of two months from the date of receipt of a copy of this judgment. Thereupon, and depending upon the opinion to be so obtianed, the FACT will consider the petitioner for appointment to the post in question, subject to his qualifications and credentials.

Before I close, this Court deems it necessary to suggest that Government of India look into and decide upon apposite Protocols with respect to "Hepatitis B" infected persons also, particularly because, as has already been affirmed by the learned DSGI, though specific protocols with respect to "HIV" infected persons hold the field, no such has been settled for the former. Of course, this is a request, and not a command."

The contents of Ext.R1(b) Medical Board Reports are extracted here under;

"Shri. was offered appointment as Assistant General (Andhra Pradesh) in the Company, subject to being found medically fit by the Medical Officer of the Company. Accordingly he had undergone per-employment medical examination (PEME) on 23.10.2019 to ascertain his medical fitness. He was declared medically unfit by the Company Medical Officer based on the report of the gastroenterologist of a panel hospital of the Company to whom he was directed to, by the Company Medical Officer as part of the PEME. As per the report from the panel hospital dated 31.10.2019 (Annexure 1), he was confirmed with chronic Hepatitis B infection and initiated on treatment Shri. challenged the decision in the Honourable High Court of Kerala and the Honourable Court ordered to constitute a competent medical board as per the provisions in the FACT PEME procedure and the candidate be subjected to a proper examination leading to an apposite opinion to be recorded by them.

During the examination, Shri. submitted certain records before the Board. After

deliberating on the details of the case including the medical records of the candidate at the time of PEME and the Annexure 2 records submitted by the candidate, the Board decided to conduct certain investigations for a proper examination of the candidate, for which the candidate was directed to Medical Trust Hospital, another panel hospital of the Company The resultant reports dated 21.10.2021 from Medical Trust Hospital (Annexure 3) were also analysed by the board.

The Board noted that the value of Viral DNA at the time of PEME in 2019 as per the Annexure I report of the Gastroenterologist, Renai Medicity, was 16,34,235 IU/ml. Its present value when tested on 21.10.2021 is 1,24,00000 IU/ml, as per the Annexure 3 report, revealing that the viral load has substantially increased by more than 7 times to the present value from the time of his PEME in October 2019. The Board after careful examination of all records is of the opinion that Shri. [redacted] is having Chronic Hepatitis B Infection and needs regular follow up.

The Board also observed that while his ultra sound scan of abdomen showed normal study in 2019, in 2021, the report shows Grade 1 Fatty liver and rise in liver enzymes. Chronic Hepatitis B Infection can lead to chronic liver disease and even Carcinoma of Liver. The Board noted Chronic Hepatitis B infection is transmitted through blood and body fluids to other people coming in contact with the person carrying the viral load.

Dr.Anil Jose Kokkat, Board member, was of the opinion that the candidate is having reasonable degree of health to perform the duties of the post he was offered. However, Dr.Indulekha Lathika opined that the well being of other employees in the Company too is to be taken care of, and stated that the PEME procedure of the Company formulated also ensures this element, among other factors.

The Board also went through the PEME procedure of the Company (Annexure 4). The following relevant points in the procedure were noted.

- As per the Objective of PEME in Clause 2.2. is to select for a particular post/position, a person who must be in good physical and mental health and free from any physical defect or disability that is likely to interfere with efficient performance of the duties and/or safety of plants, machinery or co-employees during the course of

his service/engagement with FACT.

- One of the guiding Principles of PEME (cause 4.1.2). Is to determine the presence of medical condition or risk factors, that increase the likelihood of aggravating/precipitating any injury or disease in future.
- As per clause 8.23, under the indicative and not exhaustive list of criteria for disqualification, 'any progressive pathological condition', is included.
- Also, per Clause 6.1.2 read along with Clause 9, those candidates suffering from infectious diseases that they are likely to communicate to other persons with whom they may have to work, should be declared provisionally UNFIT from appointment. The period laid down for determining fitness of such a candidate is maximum of 3 months from 1st examination (refer clause 9.1.11). As per clause 9.2, candidates who have been declared Provisionally Unfit, have to be re-tested to determine fitness and an expert opinion to be established on whether the above applicable conditions, would not result in complications leading to reduced ability (in meeting the minimum standard) to perform the assigned tasks. Clause 5.6 also deals with provisionally unfit cases, and provides that a re-examination is to be conducted after the specified periods by the Company medical officer in order to satisfy himself that the short-term reason for unfitness is rectified, and if found that the sickness of the candidate is not cured, the candidate is to be declared medically unfit. Here Shri [redacted] having been diagnosed with chronic Hepatitis B Infection, was declared unfit as it was not yet a temporary/short term sickness.

  The Board noted that the viral load of Shri [redacted] has increased that too substantially in the last 2 years and liver function tests and consistency of liver is showing pathological involvement of the organ. Hence the Board is of the opinion that Chronic Hepatitis B Infection is confirmed for this candidate, which is a communicable decease through blood and body fluids, and also a progressive pathological condition.

  After careful consideration of all the above, the Board finds Shri. [redacted] unfit for the employment".

Ext.R1(c):-Evaluation Report of Medical Board consisting of two doctors of

general hospital, Ernakulam is extracted here under;

"Gastroenterology Evaluation (DR. ANOOP PAULOSE)

❖ The patient is found to have a Case of chronic HBV infection as His HbsAg is positive for more than 6 months (first diagnosed in 2019)

❖ At present he is not having any cirrhosis according to available Ultrasound scan and Blood investigations. He is in chronic HBV infection state.

❖ All patients with chronic HBV infection are at increased risk of progression to cirrhosis and Hepatocellular carcinoma (HCC). Depending on Host and viral factors - EASL (European Association for the study of Liver Disease -2018).

❖ The risk of progression to cirrhosis and HCC is variable and is affected by Host immune Response - EASL 2018.

❖ The 5 yr cumulative incidence of cirrhosis ranges from 8% to 20% in untreated CHB (Chronic HBV) patients-EASL 2018

❖ Treatment at designated point of time improve survival and quality of life by preventing disease progression and prevention of HCC development. - EASL 2018

❖ Patient viral load is of 10 lakh (9/12/2023) and he is contagious due to high level of DNA - EASL 2018

❖ HBV infection alone should not disqualify infected person from the practice or study of surgery, dentistry, medicine or allied health field -CDC (Centre for Disease Control and Prevention)

❖ So the patient can participate in all his activities/training/job.

❖ He has to practice universal precautions

❖ As Chronic HBV is a dynamic disease, he has to be assessed regularly whether an indication for treatment has developed.

❖ At present the patient is not having any cirrhosis

according to available blood reports and USG scan.

❖ So the present condition he is able to join for work and he has to practice universal precautions in work. The employer should be aware that in future he has possibilities of progression to cirrhosis/HCC that depends on host and viral factors which we can't predict now.

I Dr. Anoop Paulose, MBBS, MD General Medicine, DrNB (Gastroenterology), I am in Asst. Surgeon in Health Service on Working Arrangement from Taluk Hospital, Palluruthy. There is no Hepatologist / Gastroenterologist by post available in Govt. Health Service, only available in Govt. Medical Colleges. Hence, a panel of Hepatologist and Gastroenterologist Opinion may be obtained from Govt. Medical Colleges."

17. On perusal of paragraph 8 and paragraph 15 of Ext.P23 judgment of the learned single bench in W.P.(C) No.29693 of 2022 dated 25.08.2023, it is made clear that a person cannot be denied opportunity in public employment solely on the ground that he is/was suffering from Hepatitis B infection.

18. In compliance of the directions of Ext.P23 judgment of this Court the Medical Board consisting of two doctors of the General Hospital, Ernakulam was constituted and R1(C) report was submitted after the Medical Evaluation of the appellant/petitioner. R1(c) medical report would categorically

state that the appellant can participate in all activities/ training including job. Further R1(c) made it clear that the appellant Shri. [redacted] is able to join for work, but has to practice universal precautions in work.

19. On perusal of Ext.R1(C) report, we do not find any incapacity for the appellant to take up the job in the FACT.

20. However the respondent without properly appreciating R1(C) medical evaluation report, issued Ext.P27 communication to the appellant confirming the rejection of employment offer. The relevant portion of Ext.P27 communication is extracted here under for easy reference.

> "We refer to the judgement rendered by the Hon'ble High Court of Kerala in W.P(C) No.29693/2022 setting aside the order dated 15.12.2021 issued by the company intimating that you are unfit for employment and directed to subject you to a further medical examination by an independent medical board preferably attached to a Government Hospital or Government Medical College and there upon depending upon the opinion to be so obtained, FACT will consider you for appointment to the post in question, subject to your qualification and credentials.
>
> As per the directive of the Hon'ble High Court, a medical examination was conducted by the Medical Board attached to the General Hospital, Ernakulam, on 04.12.2023, in response to our request dated 12.10.2023. The Medical Bard evaluation report, dated 04.01.2024, has found you with Chronic Hepatitis B Infection. As per the evaluation report of the Physician

> contained in the report, you have been certified medically unfit for joining duties in FACT having been diagnosed with Hepatitis B infection. The Gastroenterology evaluation underscores that individuals with Chronic HBV infection face an increased risk of progressing to Cirrhosis and Hepatocellular carcinoma (HCC). Also, it states that your viral load is assessed at 10 lakh and is contagious due to a high level of DNA. It is also stated that you are to undergo regular assessments to determine any indication for treatment. Additionally, the report highlights the employer is to be aware of of the potential future progression to cirrhosis/Hepatocellular carcinoma, contingent upon various host and other factors that cannot be currently predicated.
>
> It is noted that the medical report has confirmed your diagnosis of Hepatitis B infection, nothing its contagious stage, which mandates the practice of universal precautions at the workplace to prevent transmission to persons coming into contact. As a company engaged in the manufacture and marketing of fertilizers and chemicals, ensuring the health and safety of all our employees is paramount. Our pre-employment medical examination procedure aims to select individuals in good physical and mental health, free from any condition that could impede their ability to perform duties efficiently. Therefore, upon careful consideration of the medical report in consultation with the Company Medical Officer, It has been determined that your current health condition renders you unfit for employment at FACT. Consequently, we are to inform you that the cancellation of the officer of appointment dated 04.11.2023 stands confirmed".

21. On perusal of the records and upon hearing the submissions of the learned counsel for the parties we are of the considered opinion that the impugned judgment of the learned single bench is liable to be set aside. The learned single bench has failed to note the pith and substance of Ext.P23 judgment

and also the observations in R1(C) evaluation report of General Hospital, Ernakulam that the appellant is fit to take up employment. The only rider to Ext.R1(C) medical evaluation report was that the appellant has to practice universal precautions at work place.

22. Denial of public employment to a candidate/aspirant solely on the ground that the person was inflicted with hepatitis B virus or such infection is violative of Article 14 of the Constitution of India. Such denial is against the spirit of the judgment in **Bombay Indian Inhabitant** case (supra). We are unable to fathom why employment was denied to the appellant/petitioner in the year 2024 on the reason that the appellant was inflicted with Hepatitis B virus in the year 2019. It is pertinent to note that such denial of employment was ordered ignoring the findings of the medical board, R1(c) of general hospital, wherein, it was categorically stated that the appellant could take up all activities including job.

23. Therefore, we hold that the denial of employment to the appellant, job aspirant solely on the reason that, once he

was inflicted with Hepatitis B virus is illegal unfair and unjustifiable.

In the result the impugned judgment of the learned Single Bench is set aside. The Writ Appeal is allowed. Ext.P27 order is hereby quashed. The respondent is directed to issue appointment letter to the appellant /petitioner as expeditiously as possible, but not later than one month from the date of receipt of the certified copy of this judgment.

Sd/-

AMIT RAWAL
JUDGE

Sd/-

K. V. JAYAKUMAR
JUDGE

saap

APPENDIX OF WA 406/2025

PETITIONER EXHIBITS

Exhibit P24	**English translation of Exhibit P24**

//True copy//PA to Judge