

**(2014) 09 CAL CK 0121**

**Calcutta High Court**

**Case No:** W.P. 26986(W) of 2014

Kajal Kumari

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision:** Sept. 25, 2014

**Hon'ble Judges:** Harish Tandon, J

**Bench:** Single Bench

**Advocate:** Tapash Ghosh and Tanmoy Chowdhury, Advocate for the Appellant; Bhaskar Prosad Banerjee, Advocate for the Respondent

**Final Decision:** Disposed Off

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### **Judgement**

Harish Tandon, J.

Even if the petitioner is otherwise found medically fit for an appointment to the post of Constable in the recruitment process, the candidature of the petitioner was rejected as the petitioner failed to submit the Domicile Certificate.

2. The recruitment process, as published, requires several stages and one of such stage is the Detailed Medical Examination (DME). The petitioner was called for DME but was initially found unfit. The terms and conditions enshrined under the said recruitment process permits the candidate to apply for Review Medical Examination, which was invoked by the petitioner and in the Review Medical Examination the petitioner was found fit by the Medical Experts. It would be relevant to quote the dates of the initial medical examination and the review medical examination, which was done on 15th January, 2014 and 26th March, 2014 respectively.

3. The attention of this Court is drawn to Annexure-"P5" of the writ petition where the terms and conditions of the recruitment process are indicated. Paragraph 2 thereof mandates the production of the call letter in original along with the four recent passport size photographs and attested copy of the original photocopies of the documents; the list whereof is appended therein. One of the documents, which is required to be produced is the Domicile Certificate issued by the competent

authority. It was clearly indicated therein that the candidates should not be allowed to appear for the DME, if they failed to bring any of the requisite documents.

4. It is not in dispute that the petitioner applied for the Domicile Certificate prior to the date of the initial DME and a certificate in this regard was produced at the time of the medical examination. The authorities allowed the petitioner to undergo the medical examination and after finding that the petitioner is not medically fit, rejected the candidature. The Review Medical Examination, which was conducted on 26th March, 2014 opined that the petitioner is fit for the appointment. In the meantime, the competent authority issued the Domicile Certificate dated 20th February, 2014, which was applied on 13th January, 2014. The authorities thought that the Domicile Certificate should have been issued prior to the initial DME and not subsequent thereto.

5. Mr. Bhaskar Prosad Banerjee, learned advocate appearing on behalf of the respondents, vehemently submits that there was an express embargo recorded in paragraph 2 of the said letter dated 20th December, 2013 that the DME can only be allowed provided the documents required therein is produced before the authorities. The authorities were satisfied that the Domicile Certificate has been applied and permitted the petitioner to undergo the medical examination. The authorities at that point of time did not take any objection that unless the Domicile Certificate is produced the petitioner shall not be allowed to undergo the medical examination. It is only after the petitioner is found fit in the Review Medical Examination, such objection has been taken so that the petitioner cannot be appointed to the post even emerged successful.

6. Mr. Banerjee is very much vocal in saying that if the wrong is done by the authorities, the Court cannot direct the authorities to perpetrate the wrong for all time to come.

7. He further submits that if the conditions laid down in the said letters are not adhere to, the Court cannot pass an order directing the authorities to relax the said conditions. In support of the same, reliance is placed upon an unreported judgment of the Hon"ble Supreme Court rendered in case Bedanga Talukdar vs. Saifudaullah Khan and others (Civil Appeal Nos. 8343-8344 of 2011, decided on September, 28, 2011). In the said report, the point arose whether the authorities can relax the age limit in absence of any specific powers under the statutory rules or whether the Court can direct the authorities to relax the age limit. It was held that when the rules of the recruitment does not confer any power on the authorities to relax the age bar, neither the authorities nor the Court can pass an order relaxing the age bar.

8. There is no difficulty in the aforesaid proposition of law that if a particular criterion is enshrined in the recruitment notice, which is in conformity with the rules, if there be any, neither the authorities nor the Court should pass an order, which is not in conformity therewith.

9. In the instant case, had it been the condition that at the time of making an application the Domicile Certificate is required to be annexed and/or appended thereto, the ratio laid down in the aforesaid report can be applied and the candidate cannot get an advantage of her own wrong. The condition enshrined in the recruitment notice is the production of the Domicile Certificate at the time of DME. What is indicated in the said notice that at the time of medical examination the candidate must possess the Domicile Certificate and should be produced. It is further incorporated therein that a person has right to apply for Review Medical Examination and if such application is made, the authorities shall permit the candidate to go for a Review Medical Examination. No distinction is made in the said notice that the certificate should be produced before the first medical examination and not in the Review Medical Examination. The DME imbibed within itself, the medical examination to be conducted by an authority and if a certificate is produced at the time of such examination it confirms the conditions laid down therein.

10. Furthermore, the authorities did not take any objection when the petitioner was allowed to go for initial medical examination when the certificate was taken to a sufficient compliance. Admittedly, before the Review Medical Examination the petitioner was handed over the medical certificate, which was applied prior to the initial medical examination.

11. The Review Medical Examination is, in fact, a part of the DME and cannot be segregated and/or taken on independent footing. This Court, therefore, finds that technicalities should not over-weigh the special justice. Since the Medical Experts found the petitioner fit to be appointed to the post for which she offered her candidature and the petitioner having possessed the Domicile Certificate prior to the said medical examination, the authorities have arbitrarily and unreasonably withhold the candidature of the petitioner.

12. Accordingly, the letter of rejection dated 5th August, 2014 is hereby quashed and set aside.

13. This Court, therefore, directs the authorities to treat the petitioner to have submitted the Domicile Certificate in conformity with the said conditions laid down in the notice dated 20th December, 2013 and allow the petitioner to participate in the subsequent stages of the recruitment process.

14. It is further made clear that because of the peculiar fact of this case, the relief, which is granted to the petitioner, shall not be treated as a precedent.

15. With these observations, the writ petition is disposed of without, however, any order as to costs.

16. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.