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DENIAL OF PUBLIC EMPLOYMENT ON THE GROUND OF HEPATITIS B ILLEGAL

The Kerala High Court (**HC**) observed in the *FACT* case¹ that denial of public employment on the grounds of Hepatitis B was held to be *illegal, unfair, and unjustifiable* and constitutes a violation of the Right to Equality under Article 14 of the Constitution of India.

Brief Facts.

- The petitioner X² (**X**) preferred this writ appeal against the judgment of the single bench.
- X applied for Assistant General post at the Fertilizers and Chemicals Travancore Limited (**FACT**). He qualified for the post, having secured the second rank.
- A medical examination was conducted, and X was found unfit by FACT's medical officer.
- He preferred writ petition against the decision and challenged the rejection of his candidature in 2021.³
- The HC directed FACT to examine X by constituting a medical board.⁴ The board opined that:
 - X has chronic Hepatitis B (**Hep B**) infection;
 - It is a communicable disease through blood and body fluids; and
 - Is also a progressive pathological condition.
- Dissatisfied with the board's report X challenged the same before the HC in 2022.⁵ The HC set aside board's report and directed X to further medical examination by the medical board constituted by the General Hospital, Ernakulam (**GH**). This report too, found X to be medical unfit.⁶
- In 2024, the writ was dismissed on grounds that X was found unfit by two reports. Dissatisfied with the judgement, X filed this writ appeal.

Question of Law.

Can an individual be lawfully denied public employment solely on the ground of being diagnosed with Hep B infection?

¹ *X v. FACT and others*, 2025 LiveLaw (Ker) 298.

² Name withheld by HC.

³ W.P (C) 12311 of 2021.

⁴ Clause 11 of the FACT Pre-employment the Medical Examination Procedure.

⁵ W.P (C) 29693 of 2022.

⁶ R1(C) report.

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X's Contentions.

- The bench ought not to have dismissed the writ. It had accepted selective fragments of the events leading up to the letter of rejection.
- Courts had issued specific directions in respect of persons afflicted with Hep B, which is like the protocols to be followed for HIV. This was to uphold non-discriminatory practices.⁷
- Rejecting the offer of employment was violative of Article 14⁸ of the Constitution.
- *Bombay Indian Inhabitant* case held that no person is to be deprived of his right to livelihood except according to procedure established by law⁹

HC's Decision & Reasoning.

The HC:

- Observed from the medical reports that the while Hepatitis B is a communicable disease through blood and bodily fluids, it cannot be spread except by that manner and very clearly cannot be spread by saliva, sharing of food *etc.*
- Noted that Hep B is a progressive condition and the patient can be placed on the detriment only if on account of the disease, they are incapacitated from discharging responsibilities attached to a job post.
- Observed that the medical board made very generic comments on Hep B and does not give reasons as to why a person suffering from it is unfit to do work or anything on X's health condition.
- Observed that the report¹⁰ clearly stated that X may join for work but must exercise precautions there.¹¹
- Held that there is no incapacity on part of X to take up the job at FACT. *A person cannot be denied opportunity in public employment solely on the ground that he was suffering from Hepatitis B infection. Such a denial is violative of Article 14 of the Constitution – it is against the spirit of the Bombay Indian Inhabitant case*¹².
- Set aside Single Judge Bench's judgment and directed FACT to issue an appointment letter to X within a month.¹³

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⁷ Paragraph 12 of the judgment.

⁸ Article 14 – Right to equality.

⁹ *X of Bombay Indian Inhabitant V. M/s ZY and Others* AIR, 1997 BOM. 406.

¹⁰ R1(C) report.

¹¹ Paragraph 21 of the judgement.

¹² Paragraph 22 of the judgement.

¹³ Paragraph 23 of the judgement.