



G. v. New India Assurance

Writ Petition No. 1562 of 1999

Country: India

Region: Asia

Year: 2004

Court: High Court - Bombay

Health Topics: HIV/AIDS, Infectious diseases, Occupational health

Human Rights: Freedom from discrimination, Right to work

Facts

G, the Petitioner, was the wife of an employee who died while he was employed in New India Assurance Company, the Respondent Company. The Petitioner applied for employment on compassionate grounds in the Respondent Company but was rejected. The Respondent Company's doctor had advised that since the Petitioner had tested positive for HIV, she was unfit to work. By a previous order, the Bombay High Court had directed the Respondent Company to grant her employment and given them the liberty to seek another opinion. A committee of doctors constituted for this purpose recommended the Petitioner for employment as her immunity was intact.

The petition was filed in the Bombay High Court under Article 226 of the Constitution (original writ jurisdiction of High Courts) praying the Court for a direction to the Respondent Company to not deny employment to the Petitioner only due to her HIV status.

Decision and Reasoning

As to whether a person's HIV status could be the sole basis for denying employment, the Court placed reliance on *MX of Bombay Indian Inhabitant v. M/s. ZY and another*, (AIR 1997 Bom 406) to hold that denying employment only on the basis of a person's HIV status violated Articles 14 (right to equality), 16 (equality of opportunity in matters of public employment) and 21 (right to life).

As relief, the Court directed the Respondent Company to appoint the Petitioner on compassionate ground in her present post or find another post for her within four weeks of the judgment.

Decision Excerpts

“HIV positive status cannot be a ground for rejection for employment as it would be discriminatory and violative of the principles laid down in Articles 14, 16 and 21 of the Constitution.” • Para. 7