

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6078 OF 2004

Syed Taherulla Hussaini s/o Syed Vikaytulla
Hussaini, Aged 57 years, Occupation Nil,
Resident of Shivaji Nagar, Nanded [Ultra Time
Centre] **Petitioner**

V E R S U S

[1] The State of Maharashtra **Respondents**

[2] The Divisional Controller Maharashtra
State Road Transport Corporation, Nanded, Near
Srinagar Nanded

Mr. D.R. Bhadekar, Advocate for the petitioner
Mrs. S.A. Dhumal, AGP for respondent no.1/State
Mr. M.K. Goyanka, Advocate for respondent no.2

**CORAM : A. V. NIRGUDE AND
V. K. JADHAV, JJ.**

DATE : 10th September, 2015

ORAL JUDGMENT [Per: A.V. Nirgude, J.] :-

1. The cause of action for this petition arose in 1994 and the petitioner is probably getting redressal today after 25 years.

2. *The facts leading to this litigation, in short, can be stated as under:-*

In 1969, the petitioner joined service as Bus Conductor with respondent no.2. He was made permanent in service in 1971. In 1998, after completing about 28 years of service, he started suffering from pain in left knee. On 10th August, 2010, the petitioner was sent for medical examination. The Civil Surgeon certified that the petitioner was unfit for duty as Bus Conductor. Instead of giving less laborious work to the petitioner, respondent no.2 issued termination order on 5th October, 1990. On the very next day, the petitioner started making representations seeking alternate work, but in-vain. In 1994, he filed Writ Petition No.1284 of 1994 and prayed for reinstatement, setting aside of termination order etc. The Persons With Disabilities [Equal Opportunities, Protection of Rights and Full Participation] Act, 1995 [hereinafter referred as '**the Act**'] came into force. In the light of the provisions of the Act, on 25th September, 2002, this Court disposed of Writ Petition No.1284 of 1994 directing respondent no.2 to re-consider its decision of termination of petitioner and consider his representation/s sympathetically. At such moment, respondent no.2 was under obligation to follow provisions of the Act. Section 47 of the Act reads as under:-

"47. Non-discrimination in Government employment — [1] No establishment shall

dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a superannuation, whichever is earlier.

[2] No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

3. Way back in 1996, the petitioner stood protected atleast in terms of the provision of the Act, and yet respondent no.2 did not provide any relief to him though they admitted that the representation of the petitioner was pending with them and they were directed by the Court to consider the representation sympathetically.

4. What happened next is more surprising. The representation was rather unceremoniously considered on 24th October, 2005. As per the statement made by respondent no.2 in reply, respondent no.2 asked the petitioner to come to their office and after having discussion with him, the officers orally told him that his representation could not be considered favourably. No order in writing was passed even on that day. On that day, the petitioner had already reached the age of superannuation in 2004.

5. Learned counsel for respondent no.2 made two submissions; first, placing reliance on the petitioner's application dated 15th August, 1990, he pointed out that the petitioner himself requested for termination. He said, if the petitioner himself wanted termination, the order of terminating him without offering him alternate work, was justifiable. The second submission is that in 1990 or even in 1994, the provisions of the Act were not applicable. Both these submissions are untenable. No doubt, the petitioner stated that since he was unable to perform his duty as Bus Conductor, his services might be terminated. Still he added that he was ready and willing to do less laborious work suitable for him. There is no order on record to show that in 1990 or so, respondent no.2 considered this representation and came to a conclusion that no alternate work was available with them, and therefore, the termination

was the only solution available with them. The situation in 1990 was not as bad as respondent no.2 trying to paint. The petitioner at that time had completed 28 years of service. He had still left about 14 years service before reaching age of superannuation. The petitioner was an experienced employee of respondent no.2.

6. In 1990, respondent no.2 was big establishment of good business. Number of jobs, less laborious than a Bus Conductor were available. They could have easily accommodated the petitioner. But, the order of 1990, terminating the petitioner, appears to have been passed without having regard to the petitioner's precarious position. At that stage, the petitioner could not have secured any alternate job elsewhere. The situation was such that the employer ought to have been accommodated an employee who had suffered some physical disorder. It seems that the order of termination came as a bolt to the petitioner. On the very next date, he started making representation and requests for re-employment. The fact that the petitioner accepted the dues would not deter us from making these observations. Receiving such dues was of no consequence. Had respondent no.2 offered the petitioner alternate job, he would have happily join without accepting the dues. He would have even return the dues. In the light of these facts, one must see the effect of the order dated 25th

September, 2002, passed by this Court in earlier Writ Petition No.1284 of 1994. From the said order, it appears that the learned counsel for respondent no.2 volunteered that his client would consider representation sympathetically and on its merits. This statement was made in the year 2002 at a different significance. This was a period of post 1996 when the provisions of the said Act had already come into operation. In view of this statement, respondent no.2 was under obligation to act as per mandate of Section 47 of the Act. There was no other alternative for them. Despite of this clear position, respondent no.2 still acted very casually and at no point of time they referred provisions of the Act.

We are inclined to rely on the judgment of Supreme Court in the case of **Kunal Singh v. Union of India and another**, reported in **AIR 2003 Supreme Court 1623**. The Supreme Court in paragraph no.9 observed as under:-

"9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. **Section 47**, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind

that [Section 2](#) of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under [Section 47](#) of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of [Section 47](#) clearly indicate its mandatory nature. The very opening part of Section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The Section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the

age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of [Section 47](#). [Section 47](#) contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of [Section 47](#) is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service."

In view of this situation, we are constrained to pass following order:-

O R D E R

[1] The orders of respondent no.2 dated 5th October, 1990 and oral order dated 24th October, 2005 are set aside.

[2] The petitioner deemed to be reinstated on 10th August, 1990 and shall be entitled to back wages till the date of his retirement and shall get all retirement benefits thereon.

[3] The compliance of the order be made within 24 weeks from today.

[4] Respondent no.2 shall pay costs of this petition to the petitioner.

Oral request made by learned counsel for the respondent no.2 for stay to this judgment and order is rejected.

(**V.K. JADHAV, J.**)

(**A.V. NIRGUDE, J.**)