

"(B1) By a writ of certiorari or any other appropriate writ, order or direction the impugned termination order dated 26.09.2013, issued by Respondent No.2 i.e. Divisional Controller, M.S.R.T.C. Latur be quashed and/or set aside and for that purpose, necessary orders be issued.

(C) By writ of mandamus or any other writ order or directions, respondents 2 and 3 be directed to protect the service of petitioner by giving alternate job to him, considering his disability and pay him regular monthly salary available to the post of driver as per the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995."

3. Learned counsel appearing for petitioner invited our attention to the impugned order 26.09.2013 by which the services of petitioner have been terminated with the reason that the petitioner has acquired visual disability. It is submitted that on the said ground, no services could have been terminated. The learned counsel for the petitioner, on further instructions, submitted that petitioner is ready to work on the post of cleaner, in case the same is available. Counsel for the petitioner invited our attention to the relevant provisions of The Persons with Disabilities (Equal

Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as "the said Act") and also judgment of the Apex Court in **Kunal Singh Vs. Union of India and another, reported in (2003) 4 SCC 524** and submits that it was impermissible for the respondents to terminate the services of the petitioner. Therefore, the counsel appearing for the petitioner, relying on the pleadings in the petition, annexures thereto and relevant provisions of the said Act and the aforesaid judgment of the Apex Court, submits that petition may be allowed.

4. On the other hand, learned counsel appearing for respondent No.2 and 3 invited our attention to the affidavit in reply filed of those respondents and submitted that if medical certificates produced on record are carefully perused, then it is not possible to accept that petitioner has incurred disability as contended by petitioner. It is further submitted that respondents 2 and 3 were ready to absorb petitioner on the post of cleaner, however, the petitioner declined to accept the appointment on said post and therefore, services of the petitioner as driver were terminated. Learned counsel also invited our attention to the relevant Circulars which are placed on record and submits

that the petition is devoid of any merit and therefore the same may be dismissed.

5. We have heard learned counsel appearing for the petitioner, learned AGP for respondent No.1 State and learned counsel appearing for respondents 2 and 3. With their able assistance, we have perused the pleadings in the petition, grounds taken therein, annexures thereto and replies filed by respective respondents, documents placed on record so also the relevant provisions of the said Act and the judgment cited by the learned counsel for the petitioner.

6. For the purpose of just decision of this petition, it would be necessary to refer to section 2(i) and 2(t) of the said Act, which reads thus:

"2. In this Act, unless the context otherwise requires,-

(i) "Disability" means-

- (i) Blindness;
- (ii) Low vision;
- (iii) Leprosy-cured;
- (iv) Hearing impairment;
- (v) Loco motor disability;
- (vi) Mental retardation;
- (vii) Mental illness;

(t) "Person with disability" means a person suffering from not less than forty per cent. of any disability as certified by a medical authority;"

7. If contention of the petitioner that he has incurred disability is considered in the light of certificate issued by the Board of Referees, Department of Ophthalmology, Grant Medical College and Sir J.J. Group of Hospital, Byculla, Mumbai (Exh.20) then there is no room for the slightest doubt that the petitioner has incurred 100% visual disability as contemplated under the provisions of the said Act. It is mentioned in the said certificate that the petitioner is unfit to perform duties of driver "due to high plus number with poor vision in both eyes".

8. As already discussed above, the petitioner has incurred vision disability and therefore he is covered under section 2(t) of the said Act. It is also relevant to mention that petitioner was referred for medical examination to the Board of Referees of the aforesaid mentioned Hospital by respondents 2 and 3 themselves.

In the light of discussion herein above and the fact that the petitioner was referred by respondent Nos. 2 and 3 to the said Board of Referees for medical

examination, there is no doubt that the petitioner has acquired disability as contemplated under the provisions of the said Act and therefore, in view of the provisions of Section 47 of the said Act, the services of the petitioner could not have been terminated by respondents 2 and 3. In that view of the matter, impugned order dated 26.09.2013 (Exh.E) is quashed and set aside.

9. The petitioner, in prayer clause (C) of the petition, has sought direction to respondents 2 and 3 to protect services of the petitioner by giving alternate job to him, considering his disability and pay him regular monthly salary available to the post of driver as per Section 47 of the said Act. In view of contention in reply filed by respondents 2 and 3 on 8.10.2015 that as per clause 2(1) of Circular No.8/08 dated 10.09.2008, in view of settlement 2004-2008, clause -29, the petitioner will be given pay protection (previous) by giving pay scale of the alternative job. It is also stated that in view of the said circular, no payment would be given to the petitioner till he joins on the alternate job. However, the contention that respondents 2 and 3 will not give payment of earlier pay scale is devoid of merit and contrary to the provisions of Section 47 of the said Act.

10. Since we have already quashed and set aside the order of termination, respondents 2 and 3 shall pay all the back wages to the petitioner as if the petitioner is in continuous service till the date he is given alternate job. As already observed, the petitioner is ready to accept the job of cleaner and therefore respondents 2 and 3 can appoint petitioner giving him job the post of cleaner by protecting his pay scale and other benefits which were available to his earlier post as driver. However, as and when there will be vacancy in class III/equivalent post, respondents 2 and 3 shall offer the said post to the petitioner keeping in view the suitability of the petitioner to work on the said post.

11. Rule is accordingly made absolute in above terms. Writ petition stands disposed of. No costs.

(A. M. BADAR)

(S. S. SHINDE, J.)

JPC