

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10443 OF 2015

MAHARASHTRA STATE ROAD TRANSPORT CORPORATION, DHULE
VERSUS
DIVISIONAL SECRETARY, MAHARASHTRA S.T.KAMGAR SANGHATANA

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Advocate for Petitioner : Shri Bagul D.S.
Advocate for Respondent : Shri Patil Shrikant S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 21, 2015
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PER COURT :-

1. The petitioner is aggrieved by the impugned order dated 16.7.2015, by which, the Industrial Court has allowed application Exhibit U/2 in Complaint (ULP) No.10 of 2015 and has directed the petitioner to allow the Complainants to resume the duties as Security Guards till disposal of the main complaint.

2. Shri Bagul, learned Advocate submits as under:-

(a) The respondents were working as Drivers after having been appointed as such for about 15-20 years.

(b) In 2012, the Civil Surgeon, in one stroke, declared 29 Drivers as being colour blind.

(c) The petitioner accepted the report and promptly appointed the respondent / employees as Watchmen from 2012.

(d) Subsequently, the petitioner realized that the then Divisional Controller, Dhule had referred these 29 persons to the Civil Surgeon and each of them was granted unfit certificate on the ground that all of them are color-blind.

(e) An FIR has also been filed before the concerned Police Station.

(f) There are certain circulars, dated 12.4.2006 and 10.9.2008, with regard to assessing the physical fitness of the employees.

(g) Despite direction by the petitioner, since the concerned employees were not subjecting themselves to a medical test with the J.J.Hospital, it was decided to stop allotting them duties as Watchmen so as to ensure that they would subject themselves to the medical examination.

(h) The respondents filed Complaint (ULP) No.10 of 2015 and by an interim order dated 16.6.2015, the Industrial Court directed the petitioner to allow the complainant / employees to resume their duties as watchmen.

(i) The J.J.Hospital has submitted the relevant certificates by which 27 persons out of the said 29 are held to be medically fit and not suffering from colour blindness.

(j) The report of the J.J.Hospital has been delivered after the Industrial Court has passed the impugned order.

(k) Final relief, at an interim stage, has been granted by the Industrial Court on the presumption that depriving a workman of duties will amount to suspension and for effecting suspension, the employer has to prima facie prove that he has committed a misconduct.

(l) Since the petitioner desires that the medically fit employee should work, the impugned order be modified so as to enable the petitioner to allot work to those persons who are medically fit and who were working as Drivers for the last 20 years.

3. Shri Patil, learned Advocate appearing on behalf of the respondent / Union, which is espousing the cause of 25 workmen, strenuously supports the impugned order. He submits that none of these circulars were placed before the Industrial Court. 29 workers were undisputedly held to be colour blind by the concerned Civil Surgeon.

4. After the petitioners directed these persons to undergo medical examination with the J.J.Hospital, they have undergone such examinations. It is now revealed through their medical certificates that 27 out of the 29 are medically fit and are not colour blind.

5. He submits on instructions from his client, present in the Court, that out of the 25 complainants, 16 have joined as Drivers after knowing that they are not colour blind vide the medical reports of the J.J.Hospital and 9 have not joined.

6. Shri Patil submits that these 9 persons are not willing to rejoin on their original appointed posts as a Driver, since they consider themselves to be colour blind. They do not agree with the medical report submitted by the J.J.Hospital. Despite the medical report, indicating that they are not colour blind, these 9 persons state that they are colour blind.

7. In the light of the above, I hold that since the 16 complainants have reported for duties as Drivers, owing to the medical report of the J.J. Hospital, they would continue to work as Drivers without prejudice to their rights in the complaint.

8. In so far as these 9 persons are concerned, who are questioning the sanctity of the medical reports, submitted by the J.J. Hospital, the impugned order of granting interim relief to work as Security Guards deserves to be set aside. I find from the submissions of Shri Patil, which are based on instructions from his client, present in the Court that these 9 persons do not desire to work as Drivers and desire to continue as Watchman despite being declared fit by the J.J.Hospital.

9. In the light of the above, this petition is partly allowed. The impugned order delivered by the Industrial Court amounting to granting final relief at an interim stage is quashed and set aside. Nevertheless, the 16 complainants, who have joined duties shall be at liberty to continue to work without prejudice to their rights involved in the complaint.

10. Looking at the peculiarity of the cause of action and the peculiar facts involved, though the complaint has been filed in 2015, I am inclined to direct the Industrial Court to give preference to this complaint and decide the same as expeditiously as possible and preferably on/or before 27.10.2016.

(RAVINDRA V. GHUGE, J.)

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