

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 2671 OF 2015

M.S.R.T. Corporation,
Vahatuk Bhavan, Dr.A.Nair Marg,
Mumbai-8.

... Petitioner

v/s

Shri Namdeo Ramdas Patil,
At-Post Dolvi, Tal. Pen, Dist. Raigad.

... Respondent

Mr.G.S. Hegde along with C.M. Lokesh for the petitioner.

Mr.Shaikh Mohammed Aslam for the respondent.

CORAM: N.M. JAMDAR, J.

DATED : 7 SEPTEMBER 2015

ORAL ORDER:

By this petition, the Petitioner Corporation challenges the order passed by the Industrial Court, dated 12 September 2014 directing the Petitioner Corporation to provide alternate employment to the Respondent by protecting his last drawn salary and pay the arrears.

2 The Respondent joined the services of the Petitioner Corporation some time in the month of May 1985 and he was absorbed on regular time scale in the year 1988. The Respondent

was working as a driver with the Petitioner Corporation. When he was on duty on 20 December 2010, he suffered giddiness and slowed down the bus which he was driving and brought the bus to the depot. Upon entering the depot, he fell unconscious and he was admitted to the hospital. Thereafter the Respondent was examined and the Civil Surgeon, Raigad, issued a medical certificate wherein it was mentioned that the Respondent was suffering from spontaneous right occipital hemorrhage with visual defect on left half of visual field. The Petitioner Corporation terminated the services of the Respondent on the basis of the medical certificate on 13 July 2010 with retrospective effect from 29 April 2010. The Respondent applied for an alternate employment for his son on compassionate ground, which request was not granted by the Petitioner Corporation, and thereafter he filed the present Complaint (ULP) No.203 of 2011, contending that the Petitioner Corporation has violated the rules and regulations and the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. It was the contention of the Respondent that, by adopting the above mentioned course of action the Petitioner Corporation has committed unfair labour practices.

3 The Corporation opposed the complaint on the ground that the Respondent was rightly dismissed as he was medically unfit to work and there was no breach of provisions of the Persons with Disabilities Act, 1995. The Industrial Court, after holding that the

Petitioner Corporation committed breach of the provisions of Persons with Disabilities Act, 1995, by the impugned order dated 12 September 2014 directed reinstatement of the Respondent on an alternate post by protecting his pay and other benefits.

4 Mr.Hegde, learned counsel for the Petitioner submitted that the Respondent was declared unfit by the Civil Surgeon and based on the medical certificate he was terminated from service as the rules provide for termination of service on the ground of being medically unfit. He submitted that the Respondent was not suffering from 40% disability and therefore Section 47 of the Persons with Disabilities Act, 1995 was not applicable. He further submitted that the Service Rules of the Petitioner Corporation do not provide for appointment on compassionate basis to the kin of the employee who is dismissed from service for being medically unfit. He submitted that, having made an application to consider his son on compassionate basis, the Respondent had accepted the order of termination. Mr.Hegde submitted that since the action of the Corporation was within the rules and the Persons with Disabilities Act, 1995 was not applicable, there was no question of any unfair labour practice and consequent directions. Mr.Hegde contended that the Industrial Court did not have jurisdiction to entertain the complaint and also that the back wages have been granted without considering the fact that the Respondent has not produced any documentary evidence to show that he was working elsewhere.

5 The Industrial Court, after considering the medical certificate and the case of the Petitioner itself, concluded that the Respondent had acquired disability as defined under Section 2(i) of the Act of 1995. Section 2(i) of the Act of 1995 reads as under :

“Sec.2(i): 'disability' means -

- (i) blindness;
- (ii) low vision;
- (iii) leprosy-cured;
- (iv) hearing impairment;
- (v) locomotor disability;
- (vi) mental retardation.

Therefore, the disability as defined including the blindness and low vision blindness, the blindness has been defined in Section 2(b) as under :

Sec.2(b): “blindness” refers to a condition where a person suffers from any of the following conditions, namely:-

- (i) total absence of sight; or
- (ii) visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses; or
- (iii) limitation of the field of vision subtending an angle of 20 degree or worse.

The persons with disability has been defined under Section 2(t) of the Persons with Disabilities Act. Section 2(t) reads as under :

Sec.2(t): “person with disability” means a person suffering from not less than forty per cent of any disability as certified by a medical authority.

6 The main contention of Mr.Hegde is that, Section 47 of the Persons with Disabilities Act, 1995 is not attracted as the Respondent No.1 was not a 'person with disability'. However, Section 47 does not use the phrase 'Persons with disability'. It places an embargo on the employer not to dispense with services or reduce the rank of an employee who acquires 'disability' during his service. The employee who acquired his disability during his service is different than the 'person with disability'. The phrase, 'person with disability' is used in Chapter XII of the Act for which special commissionerate has been established. The Act lays down certain welfare measures for 'persons with disabilities' and guarantees their rights. Therefore, the contention that to qualify for protection under Section 47, the Respondent should have established that he was a 'person with disability' is not correct and it is rightly rejected by the Industrial Court.

7 Mr.Hegde then submitted that even to come to the conclusion that the Respondent suffered from a disability, there were no particulars, and the medical certificate was a general certificate. This contention cannot be accepted. The Petitioner Corporation has terminated the services of the Respondent on the ground that he was unable to perform his duties on the ground of being medically unfit. The Industrial Court, taking note of this stand and also the documents, such as, the medical certificate produced on record, came to the conclusion that the Respondent suffered from disability as defined under Section 2(t) of the Act. Further, the

Petitioner who terminated the services of the Respondent on the ground that he is totally unfit to perform his duties on the ground that he is medically unfit on the ground of impaired vision, must be able to show that he is not entitled to the protection of Act of 1995, which is a welfare legislation. Otherwise the very fact that the Petitioner found the blindness of the Respondent sufficient enough to terminate the services, will be considered as good enough ground for extending the benefit of Section 47 of the Act of 1995, unless contrary material is produced. If the stand taken by the Petitioner Corporation is allowed, it will totally defeat the purpose and object of the Persons with Disabilities Act, 1995. In fact the Petitioner Corporation has flouted the mandate of Section 47 of the Act of 1995 and the learned Industrial Court was right in coming to the conclusion that the act of the Petitioner constituted unfair labour practices. Further more, the Petitioner Corporation did not even consider the application of the Respondent for appointment of his son on compassionate basis and simply dispensed with the services of the Respondent.

8 The argument that the Industrial Court did not have jurisdiction to decide the complaint, is raised for the first time in this writ petition and it was not taken up in the Industrial Court. It is only upon the complaint having been decided against the Petitioner Corporation that the stand is being taken. Learned counsel for the Respondent has rightly objected to the same.

9 The Petitioner Corporation, which is a public body, instead of giving effect to the beneficial provisions of the Act of 1995, has sought to raise merely technical objections with a view to deprive the Respondent of the benefit of the Act. It must be kept in mind that the Petitioner Corporation is invoking equitable jurisdiction of this Court and in view of the above facts, is not entitled to invoke the same.

10 The writ petition is rejected. No order as to costs.

(N. M. JAMDAR, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.