

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

WRIT PETITION NO. 9033 OF 2015

Maharashtra State Road Transport
Corporation,
Bombay Central, Bombay-400 008.

... Petitioner

v/s

Shri Ragho Dharma Daroda,
At-Mahuli (Awale), Post – Savaroli,
Tal. Shahapur, Dist. Thane.

... Respondent

Mrs.G.S. Hegde along with Ms.PM.Bhansali for the petitioner.

None present for the respondent.

CORAM: N.M. JAMDAR, J.

DATED : 7 OCTOBER 2015

ORAL ORDER:

By this writ petition, the Petitioner Corporation challenges the order passed by the Industrial Court, Thane, dated 27 September 2012 holding that the action of the Petitioner of not granting disability leave to the Respondent and terminating his services, in spite of the Respondent suffering a disability to the extent of 42% while on duty, as illegal and granting relief to the Respondent.

2. The Respondent was working as a driver with the Petitioner

Corporation. He filed Complaint (ULP) No.270 of 2012 in the Industrial Court, Thane. According to the Respondent, while on duty, he developed a nerve problem and for that reason applied for leave. Thereafter he was examined by the Medical Officer and the Medical Officer declared him unfit and advised him light duty. He was directed to get himself examined from the Civil Surgeon, Thane. Respondent was declared to have suffered 42% disability. He applied for the disability leave which was not granted and he was informed that such leave is not available for the post of driver. He was thereafter declared unfit for the post of driver. The Respondent applied for an alternate employment in the post of peon. He was told that there was no vacant post and he was asked to collect his legal dues with an assurance that, where there is a vacancy, he will be considered or his son will be considered on compassionate basis. Respondent's services were brought to an end on 5 December 2011. Since nothing was done, the Respondent approached the Industrial Court with a complaint.

3. The Petitioner contested the complaint contending that, after the Respondent was declared unfit being 42% disability, the Respondent applied for collection of his legal dues and he accepted the same and, therefore, did not want to remain in the services of the Petitioner Corporation. It was submitted that, there was no such provision whereby compassionate appointment could be sought for the son as a right. The Industrial Court came to the conclusion that, after that the Respondent has suffered 42%

disability, provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, became applicable. The Tribunal held that, since the Petitioner Corporation did not comply with the provisions of Section 47 of the Act, by accommodating the Respondent or his son by protecting his pay and instead of his services were discontinued, the action of the Petitioner Corporation was bad in law. As regard the contention that the Respondent had collected his legal dues, the Industrial Court held that the details of legal dues were not available and, therefore, it was difficult to ascertain whether the Respondent was paid the monetary benefit of leave balance at his credit at the time of his termination. The Tribunal held that the amount of legal dues, which stated to have been paid, need to be adjusted from monetary benefits as per the order. Accordingly, the complaint was allowed by the impugned order dated 27 September 2012.

4. Mr.Hegde, the learned counsel for the Petitioner submitted that the Respondent had voluntarily relinquished his claim under the Act of 1995 and has instead sought for monetary compensation which was paid and, therefore, he is not entitled to claim the benefits of the Act and any amount. Mr.Hegde submitted that the Respondent was told that he will be given post with light duty as and when the same is available but instead of accepting the same, the Respondent collected his dues and left the service.

5. Section 47 of the Act mandates an employer not to dispense with or reduce any rank, any employee who acquires a disability during the service. It lays down that if it is not possible to adjust the employee against any post, he should be kept on supernumerary post until suitable post is available. Section 47 confers a right and protection to an employee who suffers a disability during his service. If this right is to be denied on the ground that the employee has waived the right, such waiver will have to be clear and unambiguous, if at all the right can be waived. The letter dated 17 February 2012 which is relied upon by the Petitioner, does not in terms state that the Respondent is waiving his right under the Act of 1995. It only refers to alternate work and disability leave. The Respondent has only mentioned about disability leave and his accounts to be finalized. This letter was in response to the stand of the Petitioner that the post of peon will be given to the Respondent as and when available. The Petitioner, in view of Section 47 of the Act, could not have taken such a stand as it was incumbent upon the Petitioner to place the Respondent on supernumerary post till suitable post was available or till he reached the age of superannuation. There was no question of not giving any work on the ground that there was no vacancy. If that was the stand to which the reply was given by the Respondent on 17 February 2012, it cannot be said that the Petitioner had waived his rights.

6. As regard the direction that the son of the Respondent may

be considered on compassionate ground, the Industrial Court has clarified the same by stating that it should be as per the rules and regulations. The Industrial Court has also observed that any legal dues if paid earlier shall be adjusted from the benefits given by the impugned order. These two directions also cannot be faulted with. No right is given to the son of the complainant for appointment on compassionate basis, and application if made, is to be considered as per the rules and regulations.

7. It is unfortunate that a public body, instead of acting on its own as an model employer in terms of a beneficial legislation, has chosen to contest the litigation imputing relinquishment of the rights by the Respondent.

8. No interference is warranted. The writ petition is dismissed with costs of Rs.5,000/-.

(N. M. JAMDAR, J.)