

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.6921 OF 2014

Devidas Ramaji Tobare and another

-vs-

Divisional Controller, Mah.State Road Transport Corporation, Akola

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.Khan, counsel for the petitioner.
Mr.V.G.Wankhede, counsel for the respondent.

CORAM : SMT. VASANTI A. NAIK &
A.M.BADAR, JJ.

DATE : 07.05.2015.

By this petition, the petitioner challenges the action of the respondent-Corporation in terminating the services of the petitioner with effect from 17/11/2006 on the ground that the same is violative of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

The petitioner was appointed by the respondent-Corporation on the post of Conductor on 19/12/1976. While in service, the petitioner was medically examined and it was certified by the Doctor on 09/06/2006 that the petitioner was not in a position to discharge the duties of a Conductor. The petitioner appeared before the Civil Surgeon and the Civil Surgeon expressed a similar opinion as expressed by the Doctor on 09/06/2006. The petitioner was restrained from discharging his duties from 09/06/2006. The petitioner was then asked to appear before the Medical Board by the respondent-Corporation and in view of the report of the Medical Board, the services of the petitioner were terminated with effect from 17/11/2006.

It is submitted on behalf of the petitioner that the services of the petitioner could not have been terminated by the Corporation, in view of the provisions of Section 47 of the Act of 1995. It is stated that if the petitioner was not able to perform his duty as a Conductor, it was necessary for the respondent-Corporation to protect the pay of the petitioner and provide him some other duty till he attained the age of superannuation. It is stated that the petitioner made several representations to the respondent-Corporation against the termination of his service, but the representations were not decided till 10/08/2011, when the petitioner was informed that he was not entitled to any relief. It is stated that the petitioner is entitled to the provisions of Section 47 of the Act of 1995 and it would be necessary to hold that the respondent has committed an illegality in terminating the services of the petitioner from 17/11/2006. The petitioner has sought the arrears of wages/salary for the period from the date of his termination till the date, he attained the age of superannuation i.e. 13/03/2010.

Shri Wankhede, the learned counsel for the respondent-Corporation, denied the claim of the petitioner and submitted that the writ petition is liable to be dismissed on the ground of laches. It is stated that a petition was filed by the petitioner, bearing Writ Petition No.2662 of 2012, six years after the date of his termination. It is stated that though the petitioner may be entitled to the protection of his services and pay in view of the provisions of Section 47 of the Act of 1995, the petitioner would not be entitled to the arrears of salary for the period from 17/11/2006 till 13/03/2010, as the petitioner had filed Writ Petition No.2662 of 2012 on 03/03/2012.

On hearing the learned counsel for the parties and on a perusal of the impugned order, it appears that the respondent-Corporation could not have terminated the services of the petitioner only because the petitioner was not in a position to perform his duties as a Conductor in view of his ailment. In view of the provisions of Section 47 of the Act of 1995, it was necessary for the respondent- Corporation to protect the pay of the petitioner and ask the petitioner to perform certain other duties which the petitioner was competent to perform. However, instead of protecting the pay of the petitioner and assigning some other duties to the petitioner, the Corporation illegally terminated the services of the petitioner before the petitioner attained the age of superannuation. Though the termination of the services of the petitioner, dated 17/11/2006 is liable to be set aside, the petitioner would not be entitled to the arrears of salary for the period from 17/11/2006 till 13/03/2010. The first petition was filed by the petitioner on 03/03/2012. The petitioner would, therefore, be entitled to the salary for a period of only three years preceding the date of filing of the previous petition. Hence, the petitioner would be entitled to the arrears of salary from 03/03/2009 till 13/03/2010. If the petitioner's services were wrongly terminated and the petitioner was entitled to the relief sought, the petitioner ought to have approached this Court within a reasonable time from the date of his termination. The petitioner has approached this Court belatedly on 03/03/2012 by filing Writ Petition No.2662 of 2012 and hence, the petitioner would be entitled to salary only for the period of three years preceding the date of filing of the petition i.e. from 03/03/2009 till the date, he attained the age of superannuation. Since the termination, dated 17/11/2006 is

liable to be set aside, the petitioner would be entitled to the other benefits by considering that the petitioner was continued in service till he attained the age of superannuation on 13/03/2010.

Hence, for the reasons aforesaid, the writ petition is partly allowed. The impugned termination, dated 17/11/2006 is quashed and set aside. The petitioner would be entitled to the service benefits by considering that the petitioner was in service till he attained the age of superannuation on 13/03/2010. Though the petitioner would be entitled to the other consequential benefits, the petitioner would not be entitled to the arrears of salary from the date of his termination and would be entitled to the same with effect from 03/03/2009 till 13/03/2010. The arrears of salary and the other benefits, if any, should be released in favour of the petitioner as early as possible and positively within a period of four months.

Order accordingly. No costs.

JUDGE

JUDGE