

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Writ Petition No. 4011 of 1999

District : Parbhani

Jabbarkhan s/o. Mirkhan Pathan,
Age : 52 years,
Occupation : Nil,
R/o. Zakir Hussain Nagar,
Khoja Colony, Parbhani,
District : Parbhani.

.. Petitioner.

versus

1. The State of Maharashtra.
2. The Vice-Chancellor,
Marathwada Agriculture University,
Parbhani, District : Parbhani.
3. The Registrar,
Marathwada Agricultural University,
Parbhani, District : Parbhani.

.. Respondents.

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Mr. A.G. Kanade, Advocate, for the petitioner.

*Mr. V.H. Dighe, Asst. Government Pleader, for
respondent no.1.*

*Mr. S.G. Sangle, Advocate, for respondent
nos.2 and 3.*

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**CORAM : S.V. GANGAPURWALA &
A.M. BADAR, JJ.**

DATE : 3RD MARCH 2016

ORAL JUDGMENT (Per S.V. Gangapurwala, J.) :

1. Mr. Kanade, the learned Counsel for the petitioner, states that the petitioner was appointed as a Driver on temporary basis with the respondent - University in the year 1975. Thereafter, the Selection Committee selected the petitioner and the petitioner was given regular appointment order on 25th July 1978. The petitioner was continued in service. The service of the petitioner was unblemish. On 8-8-1997, the respondent issued transfer order to the petitioner transferring the petitioner from Parbhani to Latur. The petitioner was suffering from Asthma, as such, gave an application to cancel the transfer on the ground that the petitioner is suffering from Asthma. The respondent referred the petitioner to the Medical Board. The Medical Board issued the certificate that the petitioner is unfit for the post of Driver. Thereafter, on 23-3-1999, the petitioner was compulsorily retired on medical grounds. The learned Counsel for the petitioner further submits that the petitioner also made a representation on 15-4-1999 to give him alternate job. The same is also not considered. Eventually, the present Writ Petition is filed.

2. The learned Counsel for the petitioner further submits that if the petitioner is medically unfit to do the job which he was doing, it is responsibility of the employer to provide alternate job protecting his pay scale. The respondent failed in its duty and obligation. The learned

Counsel relies on judgment of the Hon'ble Apex Court in the case of ***Narendra Kumar Chandla Vs. State of Haryana and others***, reported in ***AIR 1995 SC 519***. According to the learned Counsel, the petitioner is entitled for back wages from the date of order of compulsory retirement till age of superannuation i.e. 14-1-2005 along with all other consequential benefits.

3. Mr. Sangle, the learned Counsel for respondent nos.2 and 3 - University, submits that the contention of the petitioner that his services were unblemish is incorrect. There were various complaints of insubordination, misbehaviour and neglect in duties against the petitioner. As such, on administrative grounds, the petitioner was transferred. According to the learned Counsel, the Medical Board found the petitioner unfit for the job of Driver. The petitioner himself had made a grievance of his medical problems, as such, was referred to the Medical Board. Upon finding the petitioner to be unfit for the job of Driver, the petitioner was compulsorily retired on medical ground. He had completed 20 years of his service and the pension is also given to him accordingly. The learned Counsel submits that no other alternate jobs are available. As such, the petitioner could not be provided with alternate job.

4. We have considered the submissions canvassed by the respective parties. The dates narrated above about date of appointment of the petitioner, date of transfer, petitioner being found medically unfit and having been compulsorily retired are all undisputed. The only point of dispute is about the respondent not being able to provide alternate job on account of non-availability of the same.

5. The Hon'ble Apex Court in the case of **Narendra Kumar Chandla**, referred supra, has observed that if employee is unable to perform duties of the post he was holding, every endeavour must be made to adjust him in a post where he could suitably discharge his duties, protecting his last drawn salary. In the present case, the petitioner was holding the post of Driver when he was found unfit to perform his duties as a Driver. The petitioner could have been accommodated in any other job protecting his pay scale. It has not come on record as to the reason given by the Medical Board finding the petitioner unfit. In absence of the same, it is not possible to come to a definite conclusion as to the reason due to which the petitioner was medically unfit to perform duties on his transfer. It is also not case of the respondents, in the affidavit filed by them, that the petitioner was not fit to perform any other job apart from the work of a Driver. The case of the respondent is that the respondent did not have any other alternate job available with them. The respondent is a University employing large number of employees. The respondent could have found some alternate job for the petitioner.

6. It was responsibility of the respondent to consider the petitioner for the alternate job. It appears that no efforts were made by the respondent to accommodate the petitioner in any other alternate job.

7. There is no averment in the petition or subsequently that during all this period, the petitioner was not gainfully employed elsewhere. As such, we cannot come to the conclusion of awarding back wages to the petitioner.

8. In the result, the Writ Petition is partly allowed.

The impugned order dated 23-3-1999 [Exhibit "F"], passed by respondent no.3, thereby compulsorily retiring the petitioner on medical grounds, is set aside. The petitioner is deemed to be reinstated in service from the date of his compulsory retirement i.e. 1-2-1999 till the date he attains superannuation i.e. 14-1-2005. The petitioner is entitled for the continuity in service with all other consequential benefits arising therefrom, except back wages.

9. Rule is made absolute in the above terms. No costs.

(A.M. BADAR)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

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