

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

WRIT PETITION NO. 7979 OF 2016

The Maharashtra State Road Transport
Corporation, Dhule, District Dhule.
Through its Divisional Controller.

...PETITIONER

-VERSUS-

Jitendra s/o Ashok Bhavsar,
Age : 44 years, Occupation : Service,
R/o Nijampur, Tq.Sakari,
District Dhule.

...RESPONDENT

WITH
WRIT PETITION NO.7980 OF 2016

The Maharashtra State Road Transport
Corporation, Dhule, District Dhule.
Through its Divisional Controller.

...PETITIONER

-VERSUS-

Khandu Motiram Gardare,
Age : 45 years, Occupation : Service,
R/o Gangapur, Tq.Sakri,
District Dhule.

...RESPONDENT

WITH
WRIT PETITION NO.7981 OF 2016

The Maharashtra State Road Transport
Corporation, Dhule, District Dhule.
Through its Divisional Controller.

...PETITIONER

-VERSUS-

Deepak Bhikanrao Sonawane,
Age : 50 years, Occupation : Service,
R/o Rupai Nagar, Sakri, Tq.Sakri,
District Dhule.

...RESPONDENT

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

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st September, 2016

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 This Court, while passing an ad-interim order on 01.08.2016 in these three petitions, has recorded in the order as under:-

“1 The Petitioner/ MSRTC is challenging the orders of the Industrial Court dated 07.04.2016 by which the applications below Exhibit U/6 filed by the Respondents/ Employees in Complaint (ULP) Nos.34/2015, 35/2015 and 36/2015 have been allowed.

2 I have heard Shri Bagul, learned Advocate for the Petitioner/ MSRTC. Shri Patil, learned Advocate appearing on behalf of the three Employees in these matters, prays for time since he has appeared only on Advocate's notice and he is not in receipt of the petition paper books.

- 3 *Shri Bagul points out that in another complaint before the Industrial Court, these very Respondents had prayed through their Union for interim relief to work as Security Guards and not as Drivers. It is pointed out that these three Respondents were actually Drivers and they claimed to be colour blind. They were referred to the J.J.Hospital for medical examination and the J.J.Hospital delivered the reports declaring these three Respondents as not being colour blind and fit to work as Drivers. The Industrial Court had granted interim relief permitting these Respondents to work as Security Guards and not as Drivers.*
- 4 *By the judgment of this Court dated 21.12.2015 delivered in Writ Petition No.10443/2015, this Court has stayed the interim relief granted by the Industrial Court to these Respondents along with others, for the reason that though they were declared to be fit to work as Drivers and their pretence of being colour blind has been exposed by the medical reports of the J.J.Hospital, the Industrial Court has granted them interim relief to work as Security Guards.*
- 5 *Shri Bagul submits that in the present three ULP Complaint Nos.34/2015, 35/2015 and 36/2015 filed by these three Respondents, they had challenged certain circulars issued by the Petitioner/ MSRTC. One circular issued on 09.09.2015 by the Petitioner directing these three Respondents to report for training, was challenged below Exhibits U/6 in all the three complaints. The Industrial Court, by the impugned orders dated 07.04.2016, has concluded that though the medical certificates of the Hospital indicate that the Respondents are not colour blind, yet it will not be proper to allow them to drive the Bus since there is possibility that they may be colour blind.*
- 6 *Prima facie, I find it astonishing that the learned Member of the Industrial Court, Dhule, has granted interim relief despite the order of this Court dated 21.12.2015 in which this Court had concluded that the medical reports of the J.J.Hospital have sanctity and hence, these drivers, who pretended to be colour blind, should not be given alternate postings as*

Security Guards. The view of this Court appears to have been disregarded by the Industrial Court.

7 Issue notice to the Respondents, returnable on 20.08.2016.

8 Shri Patil, learned Advocate, waives service of notice on behalf of the Respondents/ Employees.

9 Considering the fact that the learned Member of the Industrial Court, Dhule has passed the orders dated 07.04.2016 by disregarding the observations and directions of this Court in it's judgment dated 21.12.2015, the impugned orders dated 07.04.2016 below applications Exhibit U/6 in all these three matters shall stand stayed until further orders.”

3 The Petitioner/ MSRTC submits that the impugned order of the Industrial Court below application Exhibit U/6 dated 07.04.2016 has resulted in staying the notice dated 09.09.2015 by which the Respondents/ Employees were directed to undergo training as drivers. As a consequence of the impugned order, the said notice has been stayed.

4 These three Respondents/ Employees were parties to Complaint (ULP) No.10/2015, which is filed by the Divisional Secretary, Maharashtra S.T. Kamgar Sanghatana on behalf of 29 Drivers who claimed to be colour blind. This Court by it's order dated 21.12.2015 has set aside the interim order of the Industrial Court dated 16.07.2015 and directed 27 drivers, who had been declared medically fit after medical examination by the J.J.Hospital, Mumbai, to report for duties as Drivers. It is stated that out of these 27 drivers, 24 drivers have reported for duties and are

performing their duties. It is only these three Respondents who still insist that they are colour blind and hence, are medically unfit.

5 After this Court passed the order on 21.12.2015 in Writ Petition No.10443/2015, the writ of this Court was served upon the learned Member, Industrial Court, Dhule on 14.01.2016. Complaint (ULP) No.10/2015 has, therefore, been expedited and the same is to be decided on or before 27.10.2016. By order of this Court, interim relief granted by the Industrial Court in other complaint permitting these Drivers to work as Security Guards has been set aside.

6 Shri Patil, learned Advocate for the Respondents/ Employees, has strenuously submitted as under:-

- (a) The MSRTC issued the circular on 21.07.2012 by which those drivers, who were suffering from sight problems or eye problems (eye deformities), were directed to approach the Civil Surgeon for medical examination.
- (b) The Civil Surgeon declared all 29 drivers as being colour blind.
- (c) All these drivers were referred to the J.J.Hospital at Mumbai for medical examination.
- (d) Without conducting proper medical examination, the Medical

Board of the J.J.Hospital declared 27 drivers fit and only two drivers were noticed with eye sight problem/ colour blind.

- (e) These three Respondents are amongst 27 drivers who are declared to be fit by the J.J.Hospital.
- (f) These three Respondents are still suffering from eye sight problem and are willing to be referred to the J.J. Hospital for proper detailed medical examination.
- (g) By office orders dated 12.09.2013 placed on record at pages 46, 47, 48 and 50, the Respondents were redeployed as Security Guards as an alternate employment pursuant to the certificates of the Civil Surgeon that they are medically unfit to drive the buses.
- (h) On 19.09.2013, these Respondents have reported for duties as Security Guards and have worked as such till 30.06.2015.
- (i) From 01.07.2015 onwards, no work has been allotted to them.
- (j) By notice dated 09.09.2015, these Respondents are directed to undergo training as Drivers.
- (k) No notice of change was given under Section 9-A of the Industrial Disputes Act, 1947 considering the change in the nature of duties under the fourth schedule.
- (l) Without notice of change, the Petitioner/ MSRTC could not

have directed the Respondents to undergo training as Drivers.

7 Having considered the peculiar facts of these cases as above, it is apparent that as on date, these three Respondents are amongst 27 drivers who have been declared as medically fit and not suffering from colour blindness by the J.J.Hospital, Mumbai. The report of the J.J.Hospital was delivered to the Industrial Court after it had passed its order dated 16.07.2015 in the other Complaint (ULP) No.10/2015.

8 Contention of the Respondents/ Employees is that they are willing to sit idle without wages as they seriously find themselves handicapped from driving the buses and especially while discharging duties in the night shift. They are also willing to be subjected to a fresh medical examination individually with the same J.J.Hospital, Mumbai and they undertake to accept the report of the J.J.Hospital as may be submitted on a fresh examination.

9 Considering this position and the contentions of the Respondents/ Employees that they are willing to sit idle, the effect of the notice dated 09.09.2015 shall not lead the Petitioner/ MSRTC to initiate disciplinary proceedings against these Respondents. Nevertheless, since these Respondents are voluntarily refusing to work as Drivers despite

being held fit by the earlier report of the J.J.Hospital, the Industrial Court shall note that these Respondents shall be deprived for their wages for the period of their refusal to work while deciding Complaint (ULP) Nos.34, 35 and 36 of 2015.

10 Insofar as the notice of change under Section 9A is concerned, it cannot be ignored that the nature of duties of these Respondents was changed owing to their misrepresentation that they are colour blind. After they were exposed by the medical report, they have been restored to their original position as drivers. It is only on account of their conduct that the Petitioner is required to revert them back to their original positions. As such, in my view, there is no applicability of Section 9A in these circumstances.

11 As such, these Writ Petitions are partly allowed in the following terms:-

- (a) The impugned orders dated 07.04.2016 passed by the Industrial Court in Complaint (ULP) Nos.34, 35 and 36 of 2015 stand quashed and set aside.
- (b) In the light of the directions issued in this order, the Petitioner/ MSRTC is restrained from initiating disciplinary proceedings against the Respondents for having not complied

with the notice dated 09.09.2015.

- (c) The Petitioner/ MSRTC shall take an appointment with the J.J. Hospital, Mumbai (Ophthalmic Department) in order to refer these three Respondents, namely, Jitendra Ashok Bhavsar, Khandu Motiram Gardare and Deepak Bhikanrao Sonawane, for a fresh medical examination.
- (d) The Petitioner shall inform these three Respondents about the date, time and place of the medical examination and these three Respondents shall thereafter, present themselves to the Medical Board of the J.J.Hospital, Mumbai for individual medical examination.
- (e) Needless to state, the Medical Board of the Ophthalmic Department of the J.J.Hospital, Mumbai shall minutely examine these three Respondents and submit the medical report in a sealed envelope to the Divisional Controller, Maharashtra State Road Transport Corporation, Dhule, District Dhule.
- (f) The statement of the Respondents that they would not dispute the said medical report as it may be, is accepted as a statement made to this Court.
- (g) Needless to state, the Petitioner/ MSRTC will also be bound by the said report so as to balance the equities.

- (h) Complaint (ULP) Nos.34, 35 and 36 of 2015 shall stand stayed till the report from the J.J.Hospital, Mumbai is presented before the Industrial Court by the Petitioner/ MSRTC.
- (i) After the Industrial Court peruses the said report, it shall proceed to decide the said complaints in accordance with the said report and these directions.
- (j) Considering the peculiar facts in which the Petitioner/ MSRTC had deployed these three Respondents as Watchmen on their misrepresentation and has then issued the notice on 09.09.2015 for restoring them as Drivers, the issue of notice of change under Section 9-A of the Industrial Disputes Act, 1947 shall not survive and the Industrial Court shall not consider the same as an issue for adjudication.

12 Rule is made partly absolute in the above terms.