

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

WRIT PETITION NO. 9019 OF 2015

Shivaji S/o Pundlik Pophale,
Age : 57 Years, Occu. : Service,
R/o Jai Santoshi Mata Nagar,
Udgir, Tq. Udgir,
Dist. Latur.

.. Petitioner

Versus

01. The State of Maharashtra,
Through its Secretary,
Transport Department,
Mantralaya, Mumbai - 32.

02. The Divisional Controller
Maharashtra State Road
Transport Corporation,
Latur Division, Latur.

03. The Depot Manager,
Maharashtra State Road
Transport Corporation,
Udgir Depot, Udgir,
Tq. Udgir, Dist. Latur.

.. Respondents

Ms. Supriya L. Pansambal, Advocate h/f Shri V. D. Gunale,
Advocate for the Petitioner.

Shri V. S. Badakh, A.G.P. for the Respondent No. 1.

Mrs. Ranjana D. Reddy, Advocate for Respondent Nos. 2 and 3.

**CORAM : S. V. GANGAPURWALA AND
K. L. WADANE, JJ.**

DATE : 22ND AUGUST, 2016.

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

. Rule. Rule made returnable forthwith. With the consent of parties, taken up for final hearing.

2. The learned counsel for the petitioner submits that, the petitioner came to be appointed as a driver with the respondent Nos. 2 and 3 in the year 1980 and worked continuously. In the year 2013 the petitioner suffered disability. He suffered severe sensor neural hearing loss. The petitioner was declared unfit to perform his work as a driver. The petitioner asked the respondent Nos. 2 and 3 to provide any alternate job. Initially the respondents asked the petitioner to perform function of a conductor, but as the petitioner was not holding necessary batch, the respondents did not employ the petitioner on the post of conductor. Even the petitioner was ready to work as a peon, however, respondents stated that, there are already surplus peons and no employment was provided. As per the provisions of the Persons with Disability (Equal Opportunities, Protection of Right and Full Participation) Act 1995, the respondents are duty bound to provide for an alternate employment and protect his pay scale.

3. Mrs. Reddy, the learned counsel for respondent Nos. 2 and 3 submits that, the petitioner has suffered hearing loss. The respondents had offered alternate employment to the petitioner

to work as a conductor, but the petitioner failed to obtain necessary batch, as such the petitioner could not be appointed as a conductor. The petitioner also could not be appointed as a peon, as there was an objection that, there are only fourteen posts meant for peon and twenty two persons are working as peon. Already surplus peons were working, as such benefit could not be accorded. The learned counsel submits that, subsequently the petitioner on 01.06.2015 had given in writing that the petitioner does not want any alternate employment and his amount with the respondents be given. According to the learned counsel, in view of the said letter also, the petitioner had waived his right.

4. We have also heard the learned Assistant Government Pleader.

5. The Persons with Disability (Equal Opportunities, Protection of Right and Full Participation) Act 1995 (for short "Said Act") is a beneficial and social welfare legislation meant for the persons with disability. The provisions of the said Act are also meant for those employees who have sustained disablement during the course of employment. The provisions of the said enactment mandate that the employer is bound to accommodate the employee in another employment with it protecting his pay scale. It appears that, the petitioner was offered job of conductor,

but the petitioner was not possessing necessary batch. The petitioner could have obtained the same, had he made some efforts. We are not much impressed by the letter relied by the respondent dated 01.06.2015, said to have been written by the petitioner. The petitioner was without pay for all these years, as such for getting his amount back, he had no option but to give said letter. Now the petitioner is at the verge of attaining age of superannuation. Hardly three months of service would remain. No purpose would be served by asking the respondents to employ the petitioner for remaining three months. As we have observed, the petitioner did not take pains to get the conductor's batch and join the service, we are not inclined to grant any backwages to the petitioner. However, the period till the date of the petitioner attaining superannuation needs to be considered for whatever retirement benefits the petitioner would be entitled.

6. In the result, we pass following order.

7. The respondent Nos. 2 and 3 shall consider the period upto December 2016 that is the date till the petitioner would attain age of superannuation as a period the petitioner is in service. The same be considered for computing the retiral benefits, pension payable, if any, though we are not giving backwages for the said period.

Rule accordingly is made absolute in above terms. No costs.

Sd/-

[K. L. WADANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/August 16