

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11519 OF 2016

THE GENERAL MANAGER, MSRTC AND ANR
VERSUS
VASANT MOTIRAM PAWAR

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Advocate for Petitioners : Smt. Reddy Ranjana D.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: November 28, 2016

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PER COURT :-

1. A peculiar case has been brought before this Court by the petitioner - Corporation, which has led to the failure of the petitioner in implementing the judgment of the Labour Court dated 19.11.2013, which it has accepted and has attained finality. The employee is kept out of employment without giving him any benefit of the said judgment.

2. The petitioner has challenged the judgment of the Industrial Court dated 22.6.2016, by which Complaint (ULP) No.48 of 2015 filed by the respondent / employee has been partly allowed and the petitioner is directed to extend monthly wages to the respondent from 20.11.2013, as the judgment of the Labour Court dated 19.11.2013 has not been complied with.

3. Learned Advocate for the petitioner has strenuously criticized the impugned judgment. Contention is that though the Labour Court has allowed the Complaint (ULP) No.14 of 2012 filed by the respondent, and though the petitioner desired to implement the same, it was unable to do so as the respondent suffered from 30% visual disability. He was reinstated pursuant to the order of the Labour Court and since he was held to be visually disabled in the medical examination that was performed, the petitioner could not keep him in employment since its Rules render no assistance to such employees, who have developed a disability while being out of employment.

4. It is further submitted that Section 2(t) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996) ("the 1995 Act") enables the employer to grant alternate employment to an employee only if he has suffered disability of any manner which is 40% or more. As such, the respondent could not be reinstated and the judgment of the Labour Court could not be implemented.

5. It is further submitted that the petitioner had filed a detailed written statement dated 6.7.2015 in Complaint (ULP) No.48 of 2015 filed by the respondent and had brought it to the notice of the Industrial Court that the MSRTC could not take the risk of reinstating

the respondent, when he was a Driver, as it would have resulted in risking the lives of the passengers as well as the people on the streets. He could not be appointed elsewhere due to the bar of Section 2(t). Yet the Industrial Court has erroneously granted relief to the respondent.

6. I have considered the submissions of the learned Advocate for the petitioner and have gone through the petition paper book with her assistance.

7. The directions issued by the Labour Court in its order dated 19.11.2013 are as under:-

“(1) Complaint is partly allowed.

(2) It is declared that the respondents are indulged in unfair labour practice as defined under Sch. IV, Item 1(g) of MRTU & PULP Act and they are directed to cease and desist from practicing any such unfair labour practice in future.

(e) The complainant be reinstated in service with continuity in service.

(4) The complainant is given punishment of stoppage of 3 consecutive annual increments permanently instead of punishment of dismissal.

(5) Relief of back wages are denied.”

8. It is apparent that the punishment of dismissal awarded to the respondent was modified by the Labour Court with stoppage of three consecutive annual increments. Continuity was granted. As such, it presupposes that the respondent was in continuous service in view of the order of the Labour Court and there is no break in service. Judgment of the Labour Court has not been challenged by the petitioner.

9. Section 2(t) and 2(u) of the 1995 Act read as under:-

“2(t) “person with disability” means a person suffering from not less than forty per cent of any disability as certified by a medical authority,

“2(u) “person with low vision” means a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of task with appropriate assistive device;”

10. There seems to be no dispute that the respondent was suffering from a disability which is less than 40%. However, his case could fall under Section 2(u) where he can be said to be a person with a low vision. Notwithstanding this position, the petitioner was obliged to implement the order of the Labour Court with pragmatism

since it had accepted the said verdict. The record reveals that the respondent prayed for being appointed as a Peon instead of a Driver. If the post of Peon was not available, the petitioner could have created a supernumerary post only to accommodate the respondent so as to ensure that the judgment of the Labour Court is implemented. It requires no debate that with the introduction of the 1995 Act, employees who have suffered disabilities are not to be rendered to starvation by being removed from service.

11. By the impugned judgment, the Industrial Court has passed the following order:-

“(A) The complaint is partly allowed

(B) It is hereby held and declared that the respondents are engaged in and engaging in unfair labour practice as per Item No.9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 by not providing alternate employment, or failure in not keeping complainant on supernumerary post and by not making monthly wages payment since from 20.11.2013.

(C) The respondents are directed to cease and desist from such unfair labour practices.

(D) The respondents are directed to comply the order of learned Judge, Labour Court, Nanded passed in Complaint (ULP) No.14 of 2012 of reinstatement of complainant in service

with continuity in service and also comply the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

(E) The respondents are directed to pay monthly wages of complainant due from 19.11.2013.

(F) The respondents to comply order within two months from today.

(G) Parties to bear their respective costs.”

12. It is stated that the respondent would retire from service by the end of December 2016. I do not find that the Industrial Court has committed any error in directing the petitioner to pay the monthly wages of the respondent from 19.11.2013. This order can be extended till the date of retirement of the respondent as little time is left for the petitioner to take a decision of extending the work of a Peon or of an alternate employment to the respondent, though he has been reinstated while being sent for the medical test. Nevertheless, whether he was reinstated or not, the petitioner was obliged to accommodate him on any such work, which the respondent could perform without the visual disability creating any hurdles.

13. In the light of the above, this petition being devoid of merits, is dismissed. Needless to state, the petitioner is duty bound to

comply with the directions of the Industrial Court as expeditiously as possible and within a period of two months from today. The respondent would be entitled for all retiral and pensionary benefits considering the fact that he has been granted reinstatement with continuity of service by the Labour Court.

(RAVINDRA V. GHUGE, J.)

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