

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 5252 OF 2015
 Prabhakar Anandrao Bobde Vs. Western Coalfields Ltd. Wani & Ors.

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

Court's or Judge's Order

Shri D. S. Thakur Adv for petitioner.

**CORAM: SMT. VASANTI A. NAIK &
 A. S. CHANDURKAR JJ.**

DATED: 11th FEBRUARY, 2016.

By this writ petition, the petitioner challenges the Office order dated 2/4.05.2010, so far as it reduces the wages of the petitioner. The petitioner seeks a declaration that the respondents were not justified in paying the wages of Helper/General Mazdoor Category II to the petitioner with effect from 05.05.2010.

The petitioner was appointed as a General Mazdoor Category I to work in the under ground mines of the respondents- Western Coalfields Limited on 12.12.1995. According to the petitioner, his services were confirmed after one year and he was promoted to the post of Dozer Operator Category V in due course of time. According to the petitioner, in the year 2003-04 the petitioner was infected with HIV positive/Aids and was treated at

the hospitals. The respondents duly paid the bills for the medical treatment of the petitioner. Since the petitioner was not in a position to perform the duties of Dozer Operator as he had become weak and frail, the petitioner requested the respondent to provide an alternate job to the petitioner in the under ground mines. The request made by the petitioner, by the communication dated 13.09.2009 was accepted by the respondents after getting the petitioner examined from the Apex Medical Board. Since the petitioner was infected with HIV the petitioner was provided with an alternate job and his pay was reduced to a certain extent. Instead of paying the wages of a Dozer Operator to the petitioner, in view of the impugned order dated 2/4.05.2010, the petitioner was paid the wages of a Helper/General Mazdoor Category I. The petitioner has impugned the communication dated 2/4.05.2010 by filing the writ petition on 13.07.2015.

The petitioner has challenged the impugned order so far as it reduces the wages of the petitioner. According to the petitioner, his wages were required to be protected though he was given the alternate job in the mines as per his request. It is submitted that in view of the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights

and Full Participation) Act, 1995, the pay of the petitioner was required to be protected after the petitioner had suffered the disability. It is submitted that under Section 47 of the Act, an employer is liable to protect the services of an employee if he acquires the disability during employment. It is stated that though the petitioner was placed in a suitable post at his request, the respondents were not justified in reducing the wages payable to the petitioner. It is stated that there is no statutory rule or authority under which the respondents could have reduced the wages of the petitioner while providing alternate job. It is submitted that the petitioner was not consulted by the respondents before reducing his wages and a fair opportunity was not granted to the petitioner before the impugned order was passed. The learned counsel for the petitioner relied on an unreported judgment of this Court, dated 02.12.2013 in a bunch of writ petitions bearing *Writ Petition No. 4436 of 2013* and others to substantiate his submission that in view of the provisions of Section 47 of the Act of 1995, the wages of the petitioner could not have been reduced.

On hearing the learned counsel for the petitioner it appears that the writ petition is liable to be dismissed for more reasons than one. Firstly, the petitioner has impugned the order

dated 2/4.05.2010 by filing the writ petition on 13.07.2015. There is no explanation whatsoever for the inordinate delay in filing the writ petition. The delay has not been explained, much less satisfactorily. The petition suffers from laches. We find that though the petitioner had made a representation to the respondent in the year 2012 that his wages were wrongly reduced the petitioner did not do any thing in the matter for more than three years till he filed the Writ Petition on 13.07.2015.

On merits also, the petition is liable to be dismissed. The petitioner has heavily relied on the provisions of Section 47 of the Act of 1995 which provide that an establishment should not dispense with or reduce in rank, an employee who acquires a disability during his service. The petitioner has relied on the said provisions for canvassing that the pay scales of the petitioner could not have been reduced. In the instant case, admittedly the petitioner is infected with HIV/Aids. The said disease would not fall within the ambit of the word 'disability' as defined under the Act. 'Disability' under the Act of 1995, as defined in Section 2(i) means blindness, low vision, leprosy cured, hearing impairment, locomotor disability, mental retardation, or mental illness. The definition clause further defines the terms 'hearing impairment',

'leprosy cured person', 'locomotor disability', 'mental retardation' and 'mental illness'. The petitioner does not suffer from any of these disabilities as could be seen from the definition of the aforesaid terms. The petitioner is infected with Aids/HIV which is neither a 'disability' under the Act of 1995 nor is it a disease acquired by the petitioner due to his service conditions. We find that the petitioner had by the communication dated 13.09.2009, requested the respondent to provide him surface duty in the mines as he had become weak and frail due to Aids. It was stated in the said communication by the petitioner that he was not in a position to work on the Dozer. In view of the request of the petitioner, the respondent sent the petitioner to the Apex Medical Board and provided an alternate job of a General Mazdoor to the petitioner, by the impugned order dated 2/4.05.2010. Since at his own request, the petitioner was provided with the surface duty, we do not find any illegality in the action on the part of the respondents to pay him the wages that were payable for the job in the mines /surface duty. Nothing has been pointed out by the petitioner from the Service Rules or any Circular or Office Memorandum of the respondents that the wages of the petitioner could not have been reduced after he was provided an alternate job in the lower

category as per his own request. Since the petitioner does not have any right to seek protection of his wages after acquiring the disease like Aids the petitioner cannot seek the protection of his wages. The unreported judgment, dated 02.12.2013 in Writ Petition No. 4436 of 2013 and relied on by the counsel for the petitioner to substantiate his submission that wages of an employee who suffers disability under the Act cannot be reduced in view of the provisions of Section 47 of the Act of 1995, cannot be helpful to the case of the petitioner. In the said case the counsel for the respondents-Western Coalfields Limited had not pointed out the relevant provisions of the Act of 1995, specially the definition of the term 'disability' and the other definitions, to this Court. Since Section 47 of the Act would be applicable to an employee who acquires a "disability" during his service and since the petitioner has not suffered "disability" as defined under the provisions of the Act of 1995, the petitioner cannot seek the protection of his wages by relying on the judgment dated 02.12.2013.

Since the writ petition is sans merit, we dismiss the same with no order as to costs.

JUDGE

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