

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4961 OF 2017

Thane Municipal Transport Undertaking and another ...Petitioners

Vs.

Rajendra Vithal JadhavRespondent

Mr. N.R. Bubna for the Petitioners.

Mr. Rahul Oak for the Respondent.

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CORAM: S. J. KATHAWALLA, J.

DATE: 12th October, 2017

P.C.:

1. Petitioner No. 1 is the Thane Municipal Transport Undertaking and Petitioner No. 2 is the Transport Manager of Petitioner No.1. The Petitioners were originally opponents in Complaint (ULP) No. 140 of 2016 filed by the Respondent – Rajendra Vithal Jadhav before the Industrial Court, Thane. By the present Writ Petition, the Petitioners have impugned the interim order passed by the Industrial Court, Maharashtra at Thane directing the Petitioner No.1 Undertaking to give alternate employment to the Respondent on a suitable post rather than stand booking duty at Satis Bridge till the final disposal of his complaint.

2. Rule is issued and by consent made returnable forthwith.

3. On 8th June, 2016, the Respondent-Complainant filed a complaint before the Industrial Court at Thane being Complaint (ULP) No. 140 of 2016 alleging unfair labour practice against the Thane Municipal Transport Undertaking and the Transport Manager of the Undertaking (Petitioners herein) under Section 28 read with items (v), (ix) and (x) of Schedule IV of the MRTU & PULP Act, 1971.

4. In his complaint, the Respondent has stated that he was recruited by the Petitioners as a Conductor on 22nd July, 1996 and at the time of filing of the complaint, he was posted at TMT Kalwa Depot. In the month of August, 2014, he was not feeling well and upon examination was declared unfit for the post of Conductor and he was referred to the Medical Board. The Medical Board declared that he had a paralytic stroke and cannot walk without the help or support of a helper. The Respondent was therefore put off the duty. The Respondent has further stated in his complaint that he requested the Petitioners to give him any light duty and with great difficulty, the Petitioners vide their letter dated 4th July, 2015 allowed him to report for stand booking at Satis Bridge on and from 10th September, 2014. However, when the Respondent reported on duty, he was not given any duty. He has submitted in his complaint that though with great difficulty he was allotted one light duty, he was not given any duty from 12th September, 2014 till the date of filing of the Complaint and therefore he was entitled to wages for the same. The Complainant has in his complaint

further stated that the Petitioners have given alternate employment to many employees in the undertaking who have faced disabilities. In clause (g) of his complaint, the Respondent has categorically stated that he has requested the Petitioners to allot him permanent duty of stand booking till he is declared medically fit. Clause (g) of his complaint is reproduced here under:

“(g) The Complainant states that in the present physical condition, the complainant cannot walk without the support of assistant or stick and therefore the complainant cannot perform a duty of a conductor independently. The Complainant has therefore requested to Respondents to allot him the permanent duty of stand booking till he is declared medically fit, however, the Respondents are not taking any decision on the same.” (Emphasis supplied)

5. The Petitioners filed their written statement dated 9th August, 2016 to the Complaint stating that the Transport Committee of the Petitioners by its Resolution No.132 dated 13th September, 2007 resolved that the Respondent would be given light duty initially for three months; by an order dated 18th September, 2007, the Respondent was given light duty for a period of three months; thereafter he had been doing light duty and continues to be assigned light duty till now; at no point of time the Petitioners have withdrawn the assignment of light duty of the Respondent; however, the attendance sheet shows that the Respondent is not reporting for his duty of stand booking at Satis

Bridge, Thane; he is demanding the duty as per his preference which the Petitioners cannot give as the Petitioners do not have many light duty jobs available since they are required to assign light duty jobs to more than 40 to 50 employees by virtue of the provisions of the Disability Act.

6. In the said Complaint, the Respondent made an application before the Industrial Court, Maharashtra at Thane seeking interim relief in the nature of directions to the Petitioners not to terminate the services of the Respondent and direct the Petitioners to assign the Respondent light duty permanently, that is till he is declared fit. Interestingly the Respondent who has in clause (e) of his complaint filed on 8th June, 2016 stated that the Petitioners had assigned light duty to him that is to report for stand booking at Satis Bridge, and in clause (5) of the Complaint has sought permanent duty of stand booking till he is declared medically fit, and has not made any grievance qua the duty of stand booking at Satis Bridge as not being light duty, has without making any application or any affidavit, for the first time through his Advocate made a grievance at the time of hearing of the interim application that the duty at Satis Bridge for stand booking is not suitable since there is a rush of public and heavy traffic at Satis Bridge. The Learned Advocate appearing for the Petitioners correctly pointed out to the Industrial Court that there is no mention/prayer in the interim relief application that the duty which is assigned to the Respondent at Satis bridge i.e. stand

booking is not a light duty and due to physical condition of the Respondent, he is prevented from doing the said duty. However, the Learned Member of the Industrial Court has, after reproducing Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1985 held that prima facie the Respondent has not complied with the provisions of Section 47 of the said Act by providing the Respondent with any alternative employment. Section 47 (1) of the said Act is reproduced hereunder:

“47 (1). No establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service. Provided that, if an employee, after acquiring disability is not suitable for the post he was holding could be shifted to some other post with the same pay scale and service benefits;

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.’’

7. The words “alternative employment” are not used in the said Section. Section 47 of the said Act only states that if an employee after acquiring disability is not suitable for the post he was holding, he could be shifted to some other post. The medical certificate issued to the Respondent states that ‘the patient is unfit for any job in a moving vehicle’. In view thereof, the Petitioners have offered the Respondent a job of light duty that is of stand booking at Satis

Bridge qua which, as stated earlier there is no complaint made by the respondent. In fact in clause (g) of his complaint he has specifically submitted that he should be permanently given the duty of stand booking till he is declared fit. Though it is submitted on behalf of the Respondent that the Respondent travels a distance of 90 kilometres to reach Thane and again travels 90 kilometres back to his home and has only made an incorrect excuse before the Industrial Court that since there is a lot of rush on Satis Bridge, he is unable to do the stand duty at Satis Bridge, the Petitioners have offered stand duty to the Respondent at Vrindavan Bus Station, Mulund Bus Station or Lokmanya Nagar Bus Station.

8. The learned Advocate appearing for the Petitioners has given me a list of 40 employees at TMT Wagle Estate, 15 employees at TMT Security Department and a list of 5 employees of TMT Kalwa depots who are all required to be assigned light duty under the provisions of the Disability Act since they suffer from paralysis, brain injury, coronary disease, Luekemia, mental disorder, HIV, leg gangrene due to diabetes, ophthalmic disease, coronary artery disease, etc. In view thereof, the Petitioners cannot assign light duties to any such employee as per his preference. However, in the present case, the Petitioner did assign job of stand booking to the Respondent as per his choice. However, in the course of arguments he expressed his preference not to do the duty of stand booking at Satis bridge and without making a whisper of a grievance in his

Complaint qua the stand booking duty at Satis bridge, succeeded in obtaining an order from the Industrial Court. Since the Petitioners have offered stand booking duty to the Respondent at any of the three Bus Stations mentioned above and the respondent is not co-operating in accepting the duty at any of the three bus stations, I pass the following order:

- (1) The impugned order of the Industrial Court is set aside and substituted by the following order :
 - (i) The Petitioners shall give light duty of stand booking to the respondent at Mulund Bus Station.
 - (ii) The Respondent shall be provided a wheel chair to carry out his duties of issuing tickets to the persons who have queued up to avail of bus services at the Mulund Station.
 - (iii) The Industrial Court, Thane shall dispose of Complaint (ULP) No. 140 of 2016 within a period of 16 weeks from today, without being influenced by the observations made hereinabove.
 - (iv) Rule is accordingly made absolute with no order as to costs.

The Petition is accordingly disposed off.

(S.J. KATHAWALLA, J.)