

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO. 7992 OF 2016**

Tanaji Shankar Salunke ... Petitioner  
Versus  
The Divisional Controller,  
Maharashtra State Road Transport Corporation ... Respondent

Mr.S.S.Inamdar for the Petitioner.  
Mr.G.S.Hegde for the Respondent.

**CORAM : S.J. KATHAWALLA, J.**  
**DATED : 4TH DECEMBER, 2017**

**P.C.:**

1. The above Writ Petition is filed by the Petitioner - Tanaji Shankar Salunke against the Respondent - The Divisional Controller, Maharashtra State Road Transport Corporation under Articles 226 and 227 of the Constitution of India inter alia to examine the legality and propriety of the Order dated 30<sup>th</sup> June, 2016 passed by the Labour Court, Solapur in Reference (I.D.A.) No. 20 of 2013 and to allow the Application filed by the Petitioner seeking amendment to his Statement of Claim.
2. Rule is issued.
3. The Advocate for the Respondent waives service and by consent the above Writ Petition is taken up for hearing and final disposal.
4. The facts and circumstances, in which the above Writ Petition is filed, are as follows :

4.1. The Petitioner joined services of the Respondent in 1990 as a Driver. Throughout his period of service his record was unblemished.

4.2. Since the Petitioner continuously worked as a Driver for more than 20 years, his right leg was affected and he was on leave for the period 15<sup>th</sup> February, 2011 to 31<sup>st</sup> May, 2011. Dr. Katikar (Neurologist) examined the Petitioner and declared him **unfit for the post of Driver**. Dr. Katikar has not stated that the Petitioner is unfit for **any type of assignment**. It is only the Medical Board, which issued a certificate dated 1<sup>st</sup> December, 2011 certifying that the Petitioner is unfit to serve the Respondent.

4.3. The Respondent thereafter removed the name of the Petitioner from the Muster Roll with effect from 3<sup>rd</sup> November, 2011.

4.4. According to the Petitioner, he is qualified to do some other work such as Peon, Clerk etc ; the certificate issued by the Medical Board dated 1<sup>st</sup> December, 2011 is incorrect ; he is ready to undergo medical reexamination ; Under the provisions of the Persons with Disabilities Act, 1995, the Respondent is restrained from dismissing an employee, who becomes medically unfit for a particular job ; in fact the Respondent is under an obligation to accommodate such employee in an another post with continuity in service and on the same pay-scale ; the Respondent has not followed the provisions of law and illegally removed his name from the Muster Roll / dismissed him without giving him any hearing.

4.5. Being aggrieved by the said Order dated 2<sup>nd</sup> December, 2011, the Petitioner approached the appropriate authority, who referred the said matter by way of

Reference to the Labour Court, Solapur. The Petitioner appeared in the Reference and has filed his Statement of Claim.

4.6. The Labour Court, Solapur framed the issues on 10<sup>th</sup> June, 2015. The Petitioner tendered his evidence and his cross examination took place on 30<sup>th</sup> September, 2015.

4.7. The Petitioner filed an Application dated 28<sup>th</sup> October, 2015 for amendment of Statement of Claim. In the Amendment Application, the Petitioner submitted that he had given an Application dated 17<sup>th</sup> July, 2015 under the Right to Information Act, 2005 (RTI Act) demanding information regarding the employees, who were declared medically unfit but were absorbed by the Respondent on another post after sending them for medical reexamination. The said information was received by the Petitioner in the month of August-2015. However, the Petitioner submitted an Application dated 27<sup>th</sup> August, 2015 to the Respondent to also send him for medical reexamination. The Petitioner waited for some days and filed an Application for amendment of the Statement of Claim seeking incorporation of the facts and information received under the RTI Act.

5. The learned Judge of Labour Court, Solapur by his order dated 30<sup>th</sup> June, 2016, rejected the Application filed by the Petitioner seeking amendment to his Statement of Claim on the ground that the cross-examination of the Petitioner took place on 30<sup>th</sup> September, 2015 and he had received information under the RTI Act in August, 2015.

6. The Petitioner has submitted that the Labour Court has not considered the fact that he had not filed the Application seeking amendment to his Statement of Claim immediately upon receiving information under the RTI Act because he had submitted an Application to the Respondent to send him for medical reexamination and it is only when he did not receive any response that he moved the Application for amendment of his Statement of Claim. The Petitioner has further submitted before this Court that if the amendment is not allowed, grave harm, injury and prejudice will be caused to him, whereas no harm, injury and prejudice will be caused to the Respondent if the amendment is allowed.

7. The learned Advocate appearing for the Respondent has submitted that the Respondent has filed the Affidavit in Reply on 22<sup>nd</sup> November, 2017 opposing the above Writ Petition. It is submitted that there is considerable delay in making an Application for amendment. The cross-examination of the Petitioner was conducted on 30<sup>th</sup> September, 2015. Under the amended proviso of Order VI, Rule 17 of the Civil Procedure Code, 1908, an amendment cannot be allowed after the trial has commenced unless the Court finds that in spite of due diligence, the party could not have raised the point before the commencement of trial. It is submitted that the Petitioner has filed an Application seeking amendment of his Statement of Claim after the trial had commenced. The Petitioner has not given any reason for not incorporating the facts now sought to be impleaded by way of amendment in his Statement of Claim. The Petitioner has not stated when he got information of the

other employees being sent for medical examination. Even otherwise, no documents are sought to be produced by way of amendment and the proposed amendment is of no consequence.

8. I have considered the submissions advanced on behalf of the parties.

9. The Petitioner has sought to amend his Statement of Claim as follows :

*“The first party herein has sought information relating to employees, who were declared medically unfit but resend them for medical examination as to query whether they are fit for the post of Peon viz. Shri Rajendra Mane, Balasaheb Walekar, Shri Mahadeo Naiknaware, Shri Umakant Bhosale, Ramesh Bakale, Uttam Koli, Navnath Parit, Haribhau Supekar, Baburao Kudage, Nissar Shaikh, Narayan Palase, Shahir Tamboli. Accordingly reexamination of above persons took place and since they were qualified for the post of Peon, they were appointed as Peon. The second party has also applied as to resend him for District Medical Officer for examine him as to whether he is fit for work as Peon and it was applied on 27<sup>th</sup> August, 2015. But the first party has treated second party discriminately and partially and intentionally did not resend him for examination. The said act is illegal and amounts to unfair labour practice. It is necessary in the interest of justice as to send him for medical examination to ascertain whether second party is medically fit to work as Peon.”*

10. The Labour Court, Solapur has rejected the Application for amendment of the Statement of Claim only on the ground that on 27<sup>th</sup> August, 2015 the Petitioner had received the information under RTI Act and the cross-examination was concluded on 21<sup>st</sup> September, 2015 ; since the cross-examination of the Respondent was over, the

amendment to the Statement of Claim cannot be allowed.

11. The Petitioner has served the Respondent for more than 20 years as a Driver. Since his right leg was affected, he was examined by Dr. Katikar, who admittedly declared him unfit only for the post of Driver. The Medical Board has opined that the Petitioner is unfit to serve the Respondent, because of which, he was dismissed from his job w.e.f. 2<sup>nd</sup> December, 2011. The Petitioner has already stated in his Statement of Claim that he is the sole earning member in his family, comprising of his wife and three children, all of them are studying. He has no other source of income. The Petitioner has also stated in his Statement of Claim that the Respondent ought to have continued his employment by giving him the duties of a Peon, Clerk etc. He has also relied on the provisions of the Persons with Disabilities Act, 1995 and the relevant Government Circulars etc. The Petitioner had in July, 2015 applied under the RTI Act for the relevant information pertaining to the Respondent having sent certain employees for medical check up and thereafter giving them other assignments which information was received by him only in the month of August, 2015. The Petitioner on the basis of that information applied to the Respondent to treat him equally and send him for medical reexamination. Since the Respondent did not respond to the same, the Petitioner moved the Court to amend his Statement of Claim. This fact is not at all considered by the Presiding Officer, Labour Court, Solapur in his impugned Order. The strict Rule contained in Order VI, Rule 17 read with its proviso, of the Civil Procedure Code, 1908, cannot be made applicable to the present case. Even

otherwise, grave injustice and prejudice will be caused to the Petitioner, if he is not allowed to amend his Statement of Claim and bring before the Court similar precedents, whereas no harm and prejudice will be caused to the Respondent, if the Petitioner is further cross-examined by the Respondent on a limited issue i.e. to the extent of the amendment carried out in the Statement of Claim. In the circumstances, the following Order is passed :

- i. Rule is made absolute.
- ii. The impugned Order dated 30<sup>th</sup> March, 2016 passed by the Labour Court, Solapur in Reference (I.D.A.) No. 20 of 2013 (Exhibit-U-5) is set aside.
- iii. The Petitioner is allowed to amend his Statement of Claim filed in Reference (I.D.A.) No. 20 of 2013 within two weeks from the date of uploading of this Order i.e. on or before 21<sup>st</sup> July, 2018.
- iv. The further cross-examination of the Petitioner will be recorded by the Labour Court, Solapur on or before 15<sup>th</sup> August, 2018 and Reference (I.D.A.) No. 20 of 2013 shall be disposed off at the earliest.
- v. The above Writ Petition is accordingly disposed off.

**(S.J.KATHAWALLA,J.)**