

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

WRIT PETITION NO.11236 OF 2017

Maharashtra State Road Transport
Corporation

.. Petitioner

Vs.

Suresh Ambadas Wagare

.. Respondent

Mr. G. K. S. Hegde a/w C. M. Lokesh for the petitioner.

Mr. Suhas S. Inamdar for the respondent.

CORAM : A.K. MENON, J.

DATED : 16TH JANUARY, 2018.

P.C. :

1. The petitioner challenged the judgment and order dated 1st April, 2016 passed in Complaint (ULP)No.11 of 2014 whereby the complaint came to be allowed by declaring that the respondent-corporation has been engaged in unfair labour practice and directing the corporation to treat the service period of complainant as continuous with pay protection and back wages from 29th April, 1999 till 1st April, 2002.

2. The facts leading to the present petition are as follows:-

The petitioner was engaged as a driver with the respondent-corporation since about 13th May, 1982. Sometime in the year 1999, the petitioner developed difficulty with his vision. The respondent-

corporation got him examined by the corporation's Medical Officer Dr. Birajdar on 21st April, 1999. The Medical Officer found him medically unfit since his vision had deteriorated. The services of the petitioner were discontinued by an order dated 5th May, 1999 with effect from 29th April, 1999. This act of the corporation is assailed as an unfair labour practice under the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act (MRTU & PULP Act).

3. It is contended that the corporation was bound to continue the services of the complainant because upon getting knowledge that the complainant was suffering from the disability during his employment and it was necessary to follow the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The petitioner contended that the corporation had itself issued several circulars by which his service could have been continued without any break yet the corporation did not abide by those circulars.
4. Mr. Inamdar, the learned counsel appearing on behalf of the respondent-complainant contended that in some other cases including that of one Dattatray Varde who had also suffered incapacity on medical ground, he was continued in service with back wages. In the present case, however, the service of respondent-complainant was

discontinued with effect from 29th April, 1999.

5. Mr. Inamdar contended that on 2nd April, 2002 the respondent was engaged as a Peon without payment of salary from 29th April, 1999. Salary was paid to him only from 2nd April, 2002. Mr. Inamdar submitted that in view of the provisions of Section 47 of the said Act, the petitioner is entitled to protection of service and pay. In the course of hearing before the Industrial Court, the respondent was found to be suffering from ambylopia on the left side which resulted in his being declared unfit. In his complaint, he submitted that he was entitled to wages for the period during which he was not permitted to serve the corporation. In fact till 2nd April, 2002 he was not allotted any duties. It was contended by the corporation that the appointment as a peon was made only on 2nd April, 2002 because there was no vacant post and the complainant was kept on waiting list and finally posted as a peon. It is also contended that the said Act is not applicable to the complainant.
6. Issues were framed, all of which have been answered in favour of the complainant-respondent. It was admitted that the respondent was a driver since 1982 and the disability of his vision was suffered during the course of his employment resulting in the service of the

respondent-complainant being discontinued and thereafter in 2002 he was appointed as peon. Section 47 of the Persons with Disabilities Act, 1995 reads as follows:-

“47. Non-discrimination in Government employments – (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.

(2) No promotion shall be denied to a person merely on the ground of his disability.

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

7. On a plain reading of Section, it is evident that an employee in government service/establishment under the control of government who acquires disability during his service, resulting in his being not suitable for the post he was holding, is required to be shifted to another post on the same pay scale and with the same service benefits. In the event of such employee not being absorbed in a different post, he is required to be retained in a supernumerary post till a suitable post is

vacant or till the date of superannuation whichever is earlier. Furthermore, promotion cannot be denied to such a person. The impugned order refers to various judicial pronouncements.

8. In support of his contentions, Mr. Inamdar relied upon decision of this Court in the case of the very same corporation and one Diwakar Madhukarrao Malkapure. In that case the respondent was a driver in the employment of the corporation and was declared unfit to drive vehicles resulting in termination of his service in February 2002. After removal from service it was contended by the corporation that there was no question of providing him with any alternate employment since according to the corporation the respondent employee in question have not submitted any certificate on the basis of which he could be found suitable for another post.
9. Having considering the submissions and the record in that case, this Court came to the conclusion that the corporation was bound and obliged by virtue of Section 47 to provide alternate employment and on the same terms. Reference was made to the fact that the objects and reasons of the Act itself indicates that the intention was to provide suitable legislation and to spell out of the responsibility of the State towards protection of persons with disabilities and create an

environment bereft of barriers for persons with disabilities, free of discrimination, exploitation and inter alia make provisions of integration of such persons into the social main stream. Reliance was placed on the decision of the Supreme Court in the case of ***Union of India and another v/s. National Federation of the Blind and others*** and the observations of the Supreme Court in that behalf. In the instant case, Mr. Inamdar submitted that the various amounts due to the petitioner should be paid along with interest.

10. Mr. Hegde, the learned counsel appearing for the corporation while opposing the petition, does not dispute the fact that Section 47 would apply to the corporation as well. There is a statutory duty cast upon the corporation to ensure that its employees suffering disabilities during the course of their employment would have to be provided a suitable post wherein he/she can render service unaffected by such disabilities and on condition that the pay scale or service benefits would not be revised to their detriment. On the aspect of interest. Mr. Hegde contended that assuming while denying that the petitioner was entitled to be paid back wages, there was no occasion to pay interest. According to Mr. Hegde the corporation is required to conduct its activities in a commercially relevant manner and if every employee suffering disability is to be accommodated, the corporation may find

itself in difficulty and in the circumstances, there was no question of paying any interest to all such persons. He submitted that despite such financial constraints, the petitioner has been accommodated in a post of peon and he has been paid salary from the date of his appointment. Mr. Hegde sought to contend that this is not a case of continuation of service but a fresh appointment and therefore he submitted that the decision in the case of Malkapure (supra) would not apply and that the petitioner should have no grievance since he is gainfully employed with the corporation.

11. I am unable to agree with the submissions of Mr. Hegde. Commercial considerations cannot be cited for avoiding compliance with the obligations of the Corporation under the Act. The Act seeks to ensure that employees of the Government and such corporations are not put to disadvantages on account of disabilities suffered during their service. These are not disabilities which are self-inflicted but as seen in the instant case, this is a case of impaired vision which was obviously not attributable to any act on the part of the petitioner. It is well known that drivers of transport vehicles endure long hours in hot and humid, sometimes cold and wet conditions. The call of duty often causes great strain on their health. It is in recognition of magnitude of the health issues that the legislature has thought it fit to make

appropriate provisions for employees of the State. The corporation thus has social responsibility to fulfill. It is for the corporation to manage its affairs in a manner providing for such eventualities if necessary by setting up a fund for such purpose and in accordance with law. This is not a matter which the corporation ought to contest in an adversarial manner especially since the petitioner is still employed with them and he is rendering useful service. It is not case of the corporation that the petitioner is required to be paid without his rendering services during the tenure of his employment with the corporation. No doubt salary and other benefits will have to be paid. The question that arises for consideration is that whether the corporation could have discontinued/terminated his service on 3rd May, 1999 and having admittedly placed him on the waiting list for the post of peon, the wages for the period during which his services were discontinued must be paid. The stand of the corporation is contradictory. The corporation denies that it is bound to compensate the petitioner for the period on the basis of continuity of service. On the other hand, it states that the petitioner was placed in a waiting list for the post of peon. This contention overlooks the fact that the waiting list status is in the recognition of the obligation of the corporation to grant him alternate employment. Furthermore, the stand of the corporation that this is a fresh appointment and therefore

cannot be treated as one with continuity of service also cannot be accepted. Even otherwise, the obligation of the Act under Section 47 is absolute. This Court has already held so in the case of Malkapure(supra). In the circumstances, the petitioner is entitled to succeed and he must be paid his dues in accordance with his entitlement for the period 29th April 1999 till 1st April, 2002.

12. In view of the fact that the petitioner has been deprived of his rightful dues in violation of provisions of Section 47 it is the duty of the corporation to remit the petitioner's dues and to continue him in service till he was posted as peon including for the period he was placed on the waiting list by virtue of the operation of Section 47. The direction to pay interest @ 10% however is liable to be modified. Therefore, I pass the following order:-

(i) The petition is dismissed. The impugned order is confirmed but with the modification that the petitioner shall pay the amount of back wages along with interest @ 6% p.a.

(ii) Let such payment be made within a period of eight weeks from today.

(A.K. MENON,J.)