

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4634 OF 2001

Damodar S/o Nathu Kotwal
Age : 63 years, Occu : Nil,
R/o : Kurhe-Panache, Tq : Bhusawal,
Dist : Jalgaon.

... Petitioner

Vs.

The Divisional Controller,
Maharashtra State Road Transport
Corporation, Jalgaon Division,
Jalgaon.

... Respondent

Advocate for Petitioner : Shri. V. Y. Patil

CORAM : RAVINDRA V. GHUGE, J.
DATED : MAY 9, 2019

ORAL JUDGMENT :-

1. The petitioner / employee is aggrieved by the impugned judgment of the Labour Court dated 9.1.2001, by which his Application (IDA) No. 27 of 1999, seeking recovery of unpaid dues from the Respondent employer, under Section 33(C)(2) of the Industrial Disputes Act, 1947 has been rejected.

2. I have heard the learned advocate for the petitioner at length and I have gone through the grounds formulated by him in the memo of the petition. With his assistance, I have perused the record available. None for the Respondent.

3. The petitioner had approached the Labour Court contending that he was on medical leave in between 9.12.1994 to 3.5.1995. He was not paid salary for a period of five months by the employer. The respondent opposed the application by taking a stand that the leave application filed by the petitioner for the said period was rejected and he was not entitled for leave. He had voluntarily remained absent during that period and post fact sanction was also not obtained. He had claimed wages for the said period before the Labour Court, which was a period of unauthorised absenteeism.

4. Learned advocate for the petitioner submits that he had taken some treatment for Tuberculosis at KEM Hospital, Bombay. He retired from service on 31.1.1997 after resuming duties on 4.12.1995.

5. The Labour Court analysed the oral and documentary evidence and concluded that the petitioner had taken treatment in KEM Hospital, Bombay from 4.5.1995 till 2.12.1995. It was treated as a special leave and the same was sanctioned by the employer. He, however, did not have any case-papers or treatment papers, as regards he being admitted for treatment in a hospital in between 9.12.1994 to 3.5.1995. The medical certificate issued to the petitioner by the Medical Superintendent, Tuberculosis Sanatorium, Buldhana dated 19.5.1995 indicates that the petitioner was examined by the said hospital in between 5.12.1994 and 7.12.1994 and was found suffering from

“Inactive Pulmonary Tuberculosis”. He had a frozen shoulder. He was given some medical treatment and was advised to consult an orthopaedic surgeon for his frozen shoulder.

6. Learned advocate for the petitioner strenuously submits that vide letter dated 18.2.1999, the Medical Superintendent, Tuberculosis Sanatorium, Buldhana concluded that the petitioner was diagnosed as being a case of Koch's shoulder joint and he was put on anti Koch's treatment. By this certificate of 1999, the Medical Superintendent recommended to the M.S.R.T.C. that the case of the petitioner be considered as Tuberculosis Special Leave from 5.12.1994 to 19.5.1995. I find that the Medical Superintendent, Buldhana has shown over indulgence in issuing a certificate in 1999, virtually advising the M.S.R.T.C. to grant special leave to the petitioner for the period 5.12.1994 to 19.5.1995. In fact, action needs to be initiated against the said Medical Superintendent for his over indulgence. Learned counsel for the petitioner prays that such an order may not be passed.

7. Considering the above, I do not find that the impugned judgment of the Labour Court concluding that, as the leave application of the petitioner was rejected for the above stated reasons, and since, he was suffering from Inactive Tuberculosis, there was no reason for him to abstain from duties, could be termed as being perverse. This petition, being devoid of merits, therefore, is dismissed. Rule is discharged

8. At this juncture, learned advocate for the petitioner submits that some of his retiral benefits have not been released by the M.S.R.T.C. merely because of the pendency of this petition. It is made clear that the M.S.R.T.C. would promptly clear all those legal dues, to which the petitioner is legally entitled to, preferably within a period of 60 days, if not already paid.

(RAVINDRA V. GHUGE, J.)

SVH