

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3772 OF 2019

Vishnu s/o Shahurao Bangar,
Age-45 years, Occu-Service,
R/o Mauli Nagar, Manjarshumbha Road,
Back side of MSEB, Patoda,
Tq.Pathoda, Dist. Beed

– PETITIONER

VERSUS

1. The Divisional Controller,
Maharashtra State Road
Transport Corporation, Beed,

2. The Chief Controller,
Maharashtra State Road
Transport Corporation, Patoda,
Tq.Patoda, District Beed

3. The Chairman/Hon'ble Minister,
Maharashtra State Transport
Department, Mantralaya, Mumbai

– RESPONDENTS

Mrs.S.M.Sonpethkar, Advocate for the petitioner.
Mr.A.B.Dhongade, Advocate for respondent Nos. 1 and 2.
Mr.S,R,Yadav, AGP for respondent No.3.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 26/09/2019

ORAL JUDGMENT :

1. Leave to add the Chairman of the MSRTC, who is the Hon'ble Minister for Transport, State of Maharashtra, as respondent No.3.

Addition be carried out forthwith. The learned AGP causes an appearance on behalf of the added respondent.

2. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

3. This case is an example of the MSRTC showing insensitivity and apathy towards an employee, who has suffered an accident while on duty, arising out of and in the course of his employment, squarely covered by the Employee's Compensation Act, 1923, the Rights of Persons with Disabilities Act, 2016 and the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996).

4. The petitioner is before this Court challenging the judgment and order passed by Labour Court-2, Aurangabad, by which his application (IDA) No.2/2012 filed u/s 33(C)(2) of the I.D.Act, has been rejected.

5. I have considered the submissions of the learned Advocates for the respective sides and the undisputed factors are as under :-

[a] On 10/11/2002, the petitioner Bus Conductor, was conducting

the bus journey and an accident took place on the Beed-Parali segment.

[b] The petitioner, though was a Bus-Conductor, having been appointed in 1998, suffered serious injuries and despite extensive medical treatment, he lost his 2 legs.

[c] The petitioner paid for the medical treatment and after being discharged from the hospital, was issued with a medical certificate by the Civil Surgeon, Beed declaring his loss of earning capacity to the extent of 55%.

[d] He was issued with a certificate by the Medical Supdt. Pune that he was not physically fit to perform the duties of a Conductor and that he would be suitable to do table work.

[e] He presented the said certificate issued by the Medical Supdt. Pune dated 06/06/2006 and the certificate issued by the Civil Surgeon dated 27/07/2006 to the MSRTC Management.

[f] By communication dated 24/01/2008, the MSRTC Management concluded that the petitioner was unfit to perform duties and he was terminated.

[g] Thereafter, the MSRTC issued a letter dated 02/02/2009 concluding that the petitioner would be considered to be on leave without pay from 25/01/2008 to 13/01/2009 and he would be re-employed by the said order to work as a Peon.

[h] It is after the said communication dated 02/02/2009 that the petitioner was considered to be in employment w.e.f.14/02/2009.

[i] The petitioner approached the Labour Court in 2012 contending that he has not been paid the adequate compensation and he has not been continued in employment and has not been paid wages for the period 24/03/2006 till 24/01/2008 and from 24/01/2008 till 13/01/2009.

[j] By the impugned judgment dated 26/12/2018, the Labour Court has concluded that the claim of the petitioner was not maintainable as there was no pre-existing right and there was no pre-adjudication.

6. I find from the record that the MSRTC has taken a stand that the petitioner would be entitled for permanent partial disability compensation as is prescribed by the Employee's Compensation Act, for the period 11/11/2002 up to 24/01/2008. It was admitted that the employee was not paid wages from 24/01/2008 till 13/01/2009 on the ground that though he had joined as a Peon on 14/01/2009, the earlier period would be considered as being leave without pay. With these pleadings before the Labour Court, I find that the Labour Court could have entertained the proceedings keeping in view that the payment of wages is not only a continuous cause of action, but is

a part of the contract between the employer and the employee.

7. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996) defines a disability u/s 2(t), by which a person, who is suffering from a disability not less than 40% shall be considered eligible for an alternate employment. The provisions of the said Act clearly indicate that an employee, as like this petitioner, should have been immediately granted alternate employment, the date on which he had reported for duties after being discharged from the hospital and declared to be fit to undertake an alternate suitable employment. This being the law and an obligation on the part of the MSRTC, could have been considered by the Labour Court purely for calculating the non-payment of wages.

8. The learned Advocate for the Corporation strenuously submits on instructions that the Corporation has a circular dated 10/09/2008 and which provides at Clause 3 on internal page No.3 that an employee who has suffered disability, would be deemed to be on leave without wages for the period for which he was out of employment. The learned Advocate for the Corporation further submits on the basis of instructions that from 11/11/2002 till

24/01/2008, the petitioner can be deemed to be suffering permanent partial disablement and would be entitled for compensation u/s 4(1) (c) of the Employee's Compensation Act. His last drawn average salary was taken at Rs.4,000/- and his relevant age factor was 207.98. He would therefore be entitled for 55% compensation amount after calculating the compensation amount u/s 4(1)(b). I find that the said amount is about Rs.2,74,534/- (Rs.2,74,533.60).

9. The learned Advocate for the Corporation submits that the respondent was paid an amount of Rs.1,24,231/- in a staggered manner and Rs.75,429/- by a pay order. The learned Advocate for the petitioner concedes that he has received the pay order, but is not able to state as to whether he received Rs.1,24,239/-.

10. This issue can be put to rest by an order which I would pass in the later part of this judgment. The issue is that the petitioner was admittedly fit to join duties on an alternate job on 24/01/2008. The Corporation did not allow him to join on the ground that he did not have a fitness certificate. Strangely, the Corporation terminated his services on 24/01/2008, which order was recalled by the subsequent communication dated 02/02/2009.

11. It is, therefore, obvious that the Management has refused to give work to the petitioner for the period 24/01/2008 till 13/01/2009 and he was deemed to have been reinstated on 14/01/2009. He would be entitled for his last drawn wage as would have been payable to him as a Bus Conductor, had he been in employment in January 2008. Under the 1996 Act, his last pay has to be protected. This also was lost sight of by the Labour Court.

12. In view of the above, **this petition is partly allowed.** Application (IDA) No.2/2012 is partly allowed. The respondent/Corporation is liable to pay an amount of Rs.2,74,534/- by way of compensation for the period 11/11/2002 up to 24/01/2008, by adjusting the amounts which have already been paid to the petitioner. This amount shall be paid within 8 (eight) weeks from today.

13. In so far as his termination from 24/01/2008 and subsequent re-employment is concerned, it would presume that there is continuity of service and he is entitled to his salary as was payable to him in January 2008. The respondent/Corporation shall therefore calculate his salary from 24/01/2008 till 13/01/2009 and shall pay the said amount within 8 weeks from today, failing which, the Vice

Chairman and Managing Director, Mumbai/respondent No.2 shall pay interest @ 6% from January 2009 till the amount is paid, from his own salary account, since he is the sanctioning authority.

14. Before I part with this matter, I am recording my anguish about the Corporation having relied upon a circular dated 10/9/2008. The policy devised by the Corporation, concerning the unfortunate employees who have suffered disabilities on account of the act of nature or by way of an accident and for which they cannot be held personally liable, demonstrates insensitivity on the part of the Corporation. I can understand a case wherein an employee is a drunkard or is addicted to vices and on account of his own conduct, has invited illness. He can be treated differently without showing any sympathy. However, the employees who have suffered disabilities for no fault on their part or have suffered an accident leading to disabilities, will have to be treated with more sensitivity and a human touch.

15. Considering the above, the learned Registrar (Judicial) of this Court is directed to place a copy of this judgment before the Hon'ble Cabinet Minister for Transport in the State of Maharashtra, who is ex-officio Chairman of the MSRTC, to adopt steps to ensure that the

said policy is properly devised in order to take care of such employees, who have suffered accidents and disabilities, more so, keeping in view the Rights of Persons with Disabilities Act, 2016.

(Ravindra V.Ghuge, J.)