

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.**

924. WRIT PETITION No. 5195 of 2001

Abdul Aleem S/o Abdul Kader,
age 48 years occupation nil
R/o Naikwadi Mohalla Tal. Kallamnuri Dist. Hingoli
...Petitioner

VERSUS

1. The Divisional Controller,
Maharashtra State Road Transport Corporation,
Parbhani Division, Parbhani
2. The State of Maharashtra. ...Respondents

Mrs. Kalpalata Bharaswadkar, Advocate for petitioner
Mr. A.D. Wange, Advocate for respondent No.1
Mr. S.P. Tiwari, Asstt. Govt. Pleader for respondent No.2

CORAM : RAVINDRA V. GHUGE, J.

DATE : 27th June, 2019

ORAL JUDGMENT:

1. The petitioner is aggrieved by the refusal of the respondent - M.S.R.T.C. in granting him an alternate employment, vide communication dated 5th July, 1986. He is also aggrieved by the judgment of the Industrial Court, Jalna, dated 17th December, 1996, by which, Complaint (ULP) No. 272 of 1988 filed by the petitioner seeking alternate employment, has been dismissed.

2. I have considered the strenuous submissions of the learned Advocates for the respective sides on 20th June, 2019 and today. I have perused the default-sheet produced by the MSRTC pertaining to 1980.

3. The petitioner had approached the Industrial Court, Jalna, with the case that he was held medically unfit to the post of Driver by an order dated 29th March, 1986. The unfitness was declared by the Medical Board, who examined him. The issue of alternate employment arose in the light of the scheme circulated by the Corporation vide circular dated 10th September, 1975. The contention of the petitioner is that he had a clean and unblemished past service record and the ground for disqualifying him that he has indulged in an accident, was not sufficient.

4. The Industrial Court has considered the evidence recorded before it and noticed that the petitioner had indulged in an accident involving the bus driven by him, which was termed by the Corporation as being a major accident and the damage caused to the bus was estimated at Rs. 400/- as in 1980, which is almost 40 years old. The Industrial Court was convinced that the accident could be termed as being a major accident and, therefore, dismissed the complaint.

5. When this matter was heard on 20th June, 2019, I

found that the learned Advocate for the Corporation was unable to produce any record to indicate that the contention of the petitioner that he was only declared unfit on medical grounds and was not guilty of any accident, would be incorrect. Today, the learned Advocate for the Corporation produced a sheet extracted from a register maintained by the Corporation dating back 1980. The entry dated 16th April, 1980 indicates that the petitioner was the Driver of a bus, which met with a major accident and the Corporation had to spend Rs. 400/- for the damages caused to the bus. No doubt, the amount of Rs. 400/- today would be a trifle amount, but it cannot be ignored that the said expenditure was incurred by the Corporation for the damages to the bus in 1980.

6. The circular, by which the Rules for an alternate employment was circulated all over the State indicates from clause 1(A) that the Driver, whose service record is free from major accident and if he has been taken on time scale, he could be accommodated in an alternate employment. The option of engaging his son on compassionate basis was also available. As a guideline to the Corporation for taking a decision, clause 2 indicates that in all cases of such a nature, a comparative accident free record is a major consideration.

7. The petitioner has joined service on 1st April 1980 and the accident occurred on 11th April, 1980. The Corporation had

taken a stand in its written statement, supported with an affidavit, that the petitioner had met with a major accident on 11th April, 1980. A departmental enquiry was conducted and he was held responsible for the accident. The entry taken in the default card datd 16th April, 1980, as stated in the written statement, matches with the entry produced before the Court today, which is taken on record and marked as 'X' for identification.

8. Considering the above, I do not find that the Industrial Court has committed any error in holding that the petitioner was not eligible for an alternate job. In view of the same, this petition, being devoid of merit, is therefore, dismissed.

9. Rule is discharged.

(RAVINDRA V. GHUGE)
JUDGE

Madkar