

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

WRIT PETITION NO.823 OF 2003

**THE SUP. M S E B THERMAL POWER STATION
VERSUS
SUBHASH EKNATH NAFADE**

...
Advocate for the Petitioner : Shri V. Y. Patil
Advocate for the Respondent : Shri L. V. Sangit
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CORAM : RAVINDRA V. GHUGE, J.

DATED : 20th JUNE, 2019.

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PER COURT :

1. The petitioner has challenged the judgment of the Industrial Court dated 12/08/2002, vide which, complaint ULP No. 749/1999 (old No. 530/1992) has been allowed and the respondent has been granted an alternate employment in the Class -IV category as a peon/ward boy or messenger with salary and other service benefits w.e.f. 20/11/1990.

2. I have heard the learned Advocates for the respective sides at length.

3. There is no dispute that the respondent had suffered a

serious accident while on duty and had suffered hundred percent loss of earning capacity. It is also not disputed that he was granted compensation under the then Workmen Compensation Act, 1923. It is also not in dispute that an identically placed employee by name Shri V. B. Mahajan had also suffered a similar accident while on duty, was paid workmen's compensation and was given an alternate appointment as per the decision taken by the petitioner in accordance with the concerned circulars applicable.

4. Though the learned Advocate for the petitioner has strenuously canvassed the grounds formulated in the memo of the petition, I find that the Industrial Court has dealt with every contention raised by the petitioner while opposing the complaint filed by the respondent/employee. The Industrial Court has analyzed the evidence in details and in doing so, has considered the circular of 1961 which is applicable to the respondent. His eligibility for an alternate employment is clear from the said circular. The Industrial Court also considered the case of the respondent on the touchstone of favoritism. It is noted that an identically placed employee by name V. B.

Mahajan, was selected for an alternate appointment as a Messenger by the competent authority, which is the Chairman of the petitioner exercising powers delegated to him. Shri Mahajan was granted compensation under the Workmen's Compensation Act and had also been granted an alternate deployment.

5. The Industrial Court also noticed that the petitioner had issued a letter dated 08/11/1979 calling upon the employee to return the compensation amount which was awarded to him under the Workmen's Compensation Act. This was apparently against the rules. In my view, an employee who had suffered misery on account of a serious accident while on duty, resulting in hundred percent loss of earning capacity, is further tortured by the petitioner by asking him to refund the compensation amount, which was granted to him by Law.

6. It is noteworthy that the respondent had not approached the Industrial Court for seeking reinstatement in service or for seeking the quashing of his non employment occasioned by the refusal of the petitioner in granting him an alternate

deployment. He had approached the Industrial Court seeking a direction to the petitioner to implement the circular applicable to him and consider him at par with Shri Mahajan. It is equally noteworthy that the Civil Surgeon had declared the respondent fit to perform the work of a peon or a ward boy and had observed that if he is able to get the "Jaipur Foot", he would also be able to walk normally.

7. Considering the above, this petition, being devoid of merit, is therefore, dismissed. Rule is discharged.

8. The learned Advocate for the respondent/employee submits that during the pendency of this petition, the respondent has lost the opportunity of getting an alternate deployment. The Industrial Court had directed his deployment as a Peon/Ward Boy/Messenger and to pay him the salary with service benefits w.e.f. 20/11/1990. He, therefore, prays that as he was past the age of superannuation, he should be paid his salary and other benefits.

9. I do not find that this Court is required to pass such an

order since the Industrial Court has already directed the petitioner to pay the salary and other service benefits to the employee w.e.f. 20/11/1990. It is however, expected that the petitioner would calculate the said amounts as well as retiral benefits and make the payments expeditiously and in any case, on or before 31/08/2019, failing which, the amount would carry interest @ 6 % p.a. from the date of retirement of the worker.

(RAVINDRA V. GHUGE, J.)

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