

BDP-SPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2524 OF 2019**

Maharashtra State Road Transport
Corporation
Through its Divisional Controller,
Sangli Division, Sangli

..... Petitioner.

V/s

Iswar Dattatraya Khandekar

..... Respondent.

Mr. Y.D. Deshmukh for the Petitioner.

Mr. B.G. Tangsali i/b Mr. Omkar G. Nagwekar for Respondent No.1.

CORAM: NITIN W. SAMBRE, J.

DATE: OCTOBER 15, 2019

P.C.:-

1] Respondent-employee was working as a driver whose services were terminated by issuing order dated 03/05/2010 w.e.f. 15/04/2010 on the ground that he has defective eye sight and is unable to discharge his duty. I am informed that in July, 2012, he is provided with alternative employment with Petitioner-Corporation. Since for a period from 18/02/2010 to 19/07/2012, wages were not paid in view of his termination, the complaint was initiated by the Respondent before the Industrial Court under Item-9 Schedule IV of

MRTU and PULP Act. 1971. The said complaint is allowed by the order impugned dated January 2, 2017.

2] The submissions are, in view of settlement of the recognized Union and Regulation governing providing of alternative employment to a technical person, the period from 18/2/2010 to 19/07/2012 should have been termed as waiting period without pay. In other words, he would urge that while recording a finding that the action of termination and non-payment of wages for the aforesaid period is contrary to Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [hereinafter referred to for the said of brevity as “the said Act, 1995], Industrial Court lost sight of the fact that there was no disability certificate certifying degree of such disability. As such, according to him, the order impugned is not sustainable.

3] The learned Counsel for the Respondents supports the impugned order.

4] It is not in dispute that the Petitioners have provided

alternative light employment to the Respondent-employee, having accepted the disability i.e. vision impairment.

5] In the aforesaid backdrop, if evidence which is produced on record is appreciated, the doctor of the Petitioner-Corporation Mr. .B. S. Joshi has issued a Medical Certificate, thereby certifying that the Respondent-employee is not fit to perform duty of driver as his eye sight has gone weak. The Respondent-employee thereafter was referred to Civil Surgeon, Sangli and thereafter to Sasoon Hospital and J.J. Hospital who certified his degree of disability. Once the Respondent-employee was in the employment of the Petitioner-Corporation and their own medico has certified that the Respondent was not fit to discharge duty as driver because of his eye sight deformity, it was bounden duty of the Petitioner which is a statutory Corporation to act strictly in accordance with the provisions of the said Act, 1995. The termination order dated 03/05/2010 and reinstatement on 19/07/2012 as such, is rightly viewed by the learned Industrial Court against the Petitioner-Corporation, as an act contrary to the provisions of Section 47 of the said Act, 1995.

6] In the aforesaid backdrop, the finding recorded by the Industrial Tribunal that the act on the part of the Petitioner in terminating services of Respondent-employee and not paying salary to the Respondent-employee for a period from 18/02/2010 to 19/07/2012 amounts to unfair labour practice, is just and proper. No interference is therefore warranted in the order impugned. Petition fails and stands dismissed.

7] However, considering the fact that Petitioner-Corporation is facing breach of order proceedings before the Labour Court, it will be appropriate to give time of eight weeks as is undertaken for compliance of the order of Industrial Court.

(NITIN W. SAMBRE, J.)