

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 823/2019

The Municipal Council

..VS..

Shaikh Jabbar Sheikh Chhotu (Dead) Thru LR's

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A. Sambre, Advocate for the petitioner

CORAM : Z.A.HAQ, J.

DATED : 04/02/2019

Heard.

The petitioner – Municipal Council (employer) has challenged the order passed by the Industrial Court upholding the claim of the legal representatives of the employee for service benefits. The order passed by the Industrial Court is challenged mainly on the ground that the Industrial Court, while exercising revisional jurisdiction under Section 44 of the Industrial Disputes Act 1947, could not have re-appreciated the evidence and arrived at a different finding than given by the Labour Court.

After examining the material placed on record and going through the order passed by the Industrial Court, I find that the Industrial Court has rightly appreciated the controversy. The relevant considerations are found in para nos. 22, 23, 24, 25 and 26 of the order passed by the Industrial Court which are as follows:-

“22. The petitioner has testified on oath that he had been to respondent to joint duty alongwith medical certificate on 10.5.2006 but he was not allowed to join. He has placed his application at Exh. 12. The letters Exh. 13 and 14 reveal that the respondent called upon the petitioner to bring medical certificate from Civil Surgeon Amravati and then to appear before Medical Board, Nagpur. The certificate Exh. 15 reveals that the petitioner appeared before the Medical Board, Nagpur and was certified to be fit to resume his duty. Till then, the petitioner was in service and he was not dismissed.

23. The witness examined for the respondent did not depose any thing as to why the petitioner was not allowed to join duty on 10.5.2006. Though petitioner had submitted medical certificate of Civil Surgeon, Amravati and also appeared before the Medical Board, Nagpur which issued certificate showing him fit to resume duty, still no reasons are assigned by the respondent for not allowing the petitioner to join his duty. In fact, the respondent himself had directed the petitioner to appear before the Medical Board vide letter Exh. 14.

24. The witness for the respondent Deepak Rode has admitted in his cross-examination that the petitioner sustained injury to his eye in 2004, he had been to join duty on 10.5.2006 but was not allowed to join. He further admitted that the

petitioner again approached on 29.3.2007 and he was asked to bring certificate from Medical Board, it was received vide Exh. 15 but even then, he was not allowed to join duty. Nothing is submitted by the respondent for not allowing the petitioner to join duty on 10.5.2006 or even after producing medical certificate from Medical Board, Nagpur.

25. As already seen, the petitioner served the respondent since 1976 on temporary basis and since 1994 he was regularized. In the year 2001, the petitioner sustained injury to his left eye during the course of his employment. He was awarded compensation for the same. In the year 2004, he again sustained injury to his eye and for that he was required to take medical treatment at Amravati. He was near the age of superannuation. Considering his long unblemished service with the respondent and loosing left eye during the course of his employment, infact, sympathetic and helping approach towards petitioner from the respondent was expected.

26. The petitioner had issued notice through his advocate calling upon the respondent not to take any coercive action and also requested to deem him retired from service and allow him pension. A person at the age of retirement after loosing one eye during the course of his employment and undergoing medical treatment expects to get retired and to get pension to continue his further life. In the case in hand, it seems that instead of taking the petitioner

sympathetically, the respondent imposed major punishment of dismissal.”

As I find that the Industrial Court has rightly appreciated the material on record, I see no reason to interfere with the impugned order.

The writ petition is **dismissed**. No costs.

JUDGE

Ansari