

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

951 WRIT PETITION NO.5034 OF 2020

RAMESH LIMBRAJ GHOLVE DECEASED THROUGH LRS.
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH

WRIT PETITION NO.5228 OF 2020

MAHARASHTRA STATE ELECTRICITY DISTRIBUTION CO.LTD.
AND ANOTHER
VERSUS
RAMESH LIMBRAJ GHOLVE DECEASED THROUGH LRS. AND
ANOTHER

...

Advocate for Petitioners : Mr. Santosh S. Jadhavar.
AGP for Respondents-State : Mr. S. R. Yadav.
Advocate for Respondent Nos.2 & 3 : Mr. U. S. Malte.

...

**CORAM : RAVINDRA V. GHUGE, AND
S. G. MEHARE, JJ.**

DATE : 30.11.2021

PER COURT : (Per Ravindra V. Ghuge, J.) :-

1. By the first petition filed by the employee, who has passed away on 25.09.2020 and whose L.Rs are on record, prayer clauses "B" to "F" read as under :

"B) By issuing writ of mandamus or any other appropriate writ order or direction, the respondent No.1 to 3 may kindly be

directed to comply with and execute the directions issued by the respondent No.4 vide its Judgment and Order dated 27.12.2019 passed in Case No.51/2019 forthwith."

"C) By issuing writ of mandamus or any other appropriate writ order or direction, the respondent No.1 to 3 may kindly be directed to reimburse medical bills claimed by the petitioner in toto including period after 31.03.2017."

"D) By issuing writ of mandamus or any other appropriate writ order or direction, the respondent No.1 to 3 may kindly be directed to pay interest @ 18% p.a. on the amount of backwages, arrears of salary and amount of reimbursement of medical bills for delayed payment."

"E) By issuing appropriate order, exemplary cost may kindly be imposed on the respondents for causing delay in executing and complying with the directions issued by respondent No.4 vide Judgment and Order dated 27.12.2019 passed in Case No.51/2019."

"F) Pending hearing and final disposal of the present Writ Petition respondent No.1 to 3 may kindly be directed to forthwith reinstate petitioner in service in compliance with Judgment and Order dated 27.12.2019 passed in Case No.51/2019."

2. By the second petition filed by the Company, prayer
Clauses "B" and "C" were put forth, which read as under :

"B) The impugned judgment and Order dated 27.12.2019, passed by the Competent Tribunal cum Commissioner, Disability Welfare Commission, Maharashtra State, Pune; vide O.W. No.AKAA/TANIK/NYAY/PRA.KRA.51/2019/GHOLVE /2019-20/

7520, may kindly be quash & set aside & for that purpose issue appropriate writ, orders;"

"C) Pending hearing and final disposal of this Writ the execution & implementation of impugned Judgment & Order dated 27.12.2019, passed by the Competent Tribunal cum Commissioner, Disability Welfare Commissionerate, Maharashtra State, Pune; vide O.W. No.AKAA/TANIK/NYAY/PRA.KRA.51/2019/GHOLVE/2019-20/7520, may kindly be stayed & kept in abeyance;"

3. Having considered the strenuous submissions of the learned advocates on 25.11.2021 and today, we find that the petition filed by the company needs to be decided first, as the result of the said petition would impact the petition filed by the employee.

4. The deceased employee had joined the company on 10.01.1999 as a "Technician". He was confirmed in employment and there is no dispute as regards his selection and appointment on the said post. At the age of about 44 years, he suffered paralysis on 04.11.2014. He is said to have made several representations to the employer in between 2017 to 2019. He was terminated from service on 05.01.2018 on the ground that the employer could terminate his services in

the light of Clause-17 (Note-1) (i) and (ii) of the M.S.E.D.C.L. Employees Service Regulations, 2005.

5. On 02.02.2017, he approached the company with the application along with a fitness certificate issued by the SP Institute of Neuro Sciences, Solapur dated 30.01.2017. The treating doctor Mr. Ashwin S. Valsangkar with specialization in Neurology (M.D., D.M., D.N.B.), expressed a medical opinion that the employee was fit for lighter job. The employee once again approached the company with a representation dated 20.09.2017, wherein he has detailed his difficulties in almost four pages and has stated that as he had incurred expenses towards treatment in multiple lakhs, he needed employment and taking into account Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, which is similar to Section 20 of the Rights of Persons with Disabilities Act, 2016, which is introduced by repealing the 1995 Act, he prayed for an appointment.

6. Even thereafter, the company is said to have ignored the representations and has issued a notice dated 07.12.2017

calling upon the employee to explain as to why he should not be terminated from service. The employee replied to the said notice on 11.12.2017 explaining his condition and the requirement of an employment to sustain himself and his family. By order dated 05.01.2018, the employee was terminated by the company. Even thereafter, the employee chose to forward representations and also tendered a medical certificate dated 06.02.2019 issued by the District Civil Surgeon, Osmanabad indicating that he was physically not in a condition to perform the duties on the post that he was occupied. The employee then approached this Court by preferring Writ Petition No.436 of 2018. This Court recorded submissions of the learned AGP that the petitioner can challenge his termination before the Commissioner under the 2016 Act. By granting such liberty, this Court disposed off the petition by order dated 19.03.2019.

7. The employee then approached the State Commissioner for Persons with Disabilities, State of Maharashtra at Pune by filing application No.51 of 2019 under Section 80 of the 2016 Act. By the judgment dated 27.12.2019 impugned by the company, the competent authority directed the company to

reinstate the employee with continuity and to absorb him an alternative light job by protecting his salary. The employee was directed to submit necessary medical documents and after scrutiny of the same, the company was directed to reimburse the medical expenses incurred by the employee. His absence from duties was directed to be considered as "special disability leave" and his wages for the said period with interest to be paid to him. All the orders of termination, First Appellate Authority and the Second Appellate Authority were quashed and set aside.

8. The learned counsel for the company has strenuously canvassed that the employee was not physically able to be continued in employment. He was 100 % medically unfit. One medical certificate tendered by him dated 31.03.2017 indicated that he was physically and mentally unfit. Regulation 17 referred to above enabled the company to terminate the services of the employee if he was found to be permanently, medically unfit. The company has not committed any illegality in issuing notice to the employee and terminating him from employment. When he was not physically able to perform duties on a particular post, he could have been

accommodated on any other available post. However, no such post was available, inasmuch as, he was permanently unfit and was not capable of doing any work. When the regulations permit the company to terminate his services, no illegality was committed by the company and no fault can be attributed to the employer.

9. He then submits that the petitioner was informed that compassionate appointment could be offered to an eligible member of a family, which was not accepted by the employee. With such conduct, the employee himself gave up the chance of compassionate appointment. No blame can be levelled upon the employer in these circumstances.

10. He further draws our attention to the 10 grounds formulated in the memo of the petition and submits that the competent authority had failed to apply its mind to the regulations and has erroneously granted reinstatement with continuity and back wages to the employee.

11. He draws our attention to the order dated 21.03.2018 passed by the First Appellate Authority thereby rejecting the first appeal preferred by the employee. He further draws our

attention to the order dated 17.05.2018 vide which the Second Appellate Authority also dismissed the appeal.

12. We find from the record that the employee was neither completely, permanently, medically unfit, nor was he mentally unfit. The employee had suffered a paralytic attack at the age of 44 on 04.11.2014. He died on 25.09.2020, which is almost after six years. The first medical certificate was issued by the SP Institute of Neurosciences dated 30.01.2017 narrating his illness as under :

"30/01/2017

CERTIFICATE

This is to certify that Gholave Ramesh Limbraj, age 48 years, A/p Osmanabad has been under my care for Ischemic stroke- Complete MCA, Ischemic heart disease Hypertension and Diabetes Mellitus.

He was seen as an outpatient today. He is fit for lighter job.

Diagnosis : Ischaemic Stroke-Anatomic-Anterior circulation-
Complete MCA-Surgery done Ischemmic heart
disease
Hypertension
Diabetes Mellitus
Septicemia.

Dr. Ashwin Valsangkar.
MD DM, DNB (Reg.No.2003-083254)
Neurologist."

13. This was sufficient to indicate the nature of his illness. If the company was not interested in the said certificate, it should have referred the employee to a Medical Board of a Government Hospital and upon acquiring a certificate as regards the overall fitness of the employee, should have arrived at a decision as to whether he should be continued in employment on a lighter job or could be disengaged.

14. The petitioner approached this Court in Writ Petition No.436 of 2018 and after this Court passed the order dated 19.03.2019, he had approached the State Commissioner. During the course of the hearing before us, the employee produced a disability certificate dated 09.04.2019, which is titled as “Disability Certificate (Issuing Medical Authority, Osmanabad, Maharashtra)”. The Medical Authority was functioning under the Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India. The said certificate indicates as under :

"Department of Empowerment of Persons with Disabilities, Ministry of
Social Justice and Empowerment, Government of India

Disability Certificate

Issuing Medical Authority, Osmanabad, Maharashtra

Date: 09/04/2019

Certificate No.: MH2920619690016071

This is to certify that I/We have carefully examined Shri Ramesh Limbraj Gholave Son of Shri. Limbraj Ramling Gholve Date of Birth 12/09/1969 Age 49 Year(s) Male, Registration No.2729/00000/1903/1423978 resident of House No. Umbare Kotha, Near D. Pharmacy College, Osmanabad - 413501 Sub District Osmanabad District Osmanabad State / UTs Maharashtra

Whose photograph is affixed above, and I/We satisfied that:

(A) He is a case of Locomotor Disability

(B) The diagnosis in his case is Rt sided hemiplegia

(C) He has 65% (in figure) Sixty Five percent (in words) Temporary in relation to his (part of body) as per guidelines (to be specified).

This certificate recommended for 5 year(s), and therefore this certificate shall be valid till 09/04/2024

The applicant have been submitted the following document(s) as proof of residence

Nature of Document(s): Aadhaar card

Signature/Thumb impression of the Person With Disability

Signatory of notified Medical Authority Member"

15. The employee approached the Appellate Authority, Commissioner at Pune and tendered an application dated 10.04.2019 along with the above reproduced certificate dated 09.04.2019. Having submitted the medical certificate to the competent authority, he presented his case and which was finally allowed by the Appellate Authority.

16. We find from the record that after this Court passed an order on 23.01.2019 in Writ Petition No.436 of 2018, the Civil Surgeon, Osmanabad issued a medical certificate on 06.02.2019 declaring the employee unfit for any office related work. Taking the facts situation into consideration, the competent authority delivered the impugned order granting the prayers put forth by the employee.

17. We are of the view that in such cases, wherein a hapless employee unfortunately suffers a disabling ailment, his first worry and anxiety is as to who would feed his family. In some cases, huge medical expenditure is incurred. In the present case, the widow of the employee has several medical documents to indicate an expenditure of about Rs.12,85,199/-. There are several instances wherein employers have shown the magnanimity and a humane approach in considering the unfortunate situation of such employees and have ensured that the employee is offered sufficient medical aid, inasmuch as, the salary is continued so as to enable him to survive.

18. The learned counsel for the company relies upon the second medical certificate dated 31.03.2019, wherein the Civil

Surgeon, Osmanabad has noted that the employee was unfit for Technician post. While granting such a certificate, the Civil Surgeon has not scored out the words “मानसिक दृष्ट्या” which are found in the printed form suffixing “शारीरिक दृष्ट्या”. The company, therefore, contends that the employee was mentally unfit. We are unable to accept this contention for the reason that the SP Institute of Neuro Sciences found the employee to be suffering from paralysis and it opined that he was fit for a lighter job. The first medical certificate dated 06.02.2019 issued by the Civil Surgeon indicated that the employee was physically unfit and would not perform office related work. It is noteworthy that when the company terminated the employee on 05.01.2018, it had the medical certificate of SP Institute of Neuro Sciences as well as of the Civil Surgeon, Osmanabad indicating that the employee was fit for a lighter job and that he was unfit for a Technician post, respectively.

19. Considering the above, we are of the view that terminating an unfortunate employee is the last resort to an employer. The employer should get such an employee well examined by a Medical Board or, in view of the 2016 Act by a

Medical Authority, which is created under the Department of Empowerment of persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India. Only after being fully convinced that the employee has been reduced to an immobile patient and is purely physically in existence and confined to the bed without being able to move any limb, that Rule 17 (note-1)(ii) could be pressed in service. No employer can behave in a ruthless manner and with a stone heart. Instead of showing sympathy and compassion towards such an employee, the company before us has acted without any sympathy or a humane touch.

20. Regulation 17 (note-1)(i) and (ii) read thus -

"17.

Note:1. (i) Notwithstanding the medical test specified in Regulation No.12, the appointing authority if considered necessary may, at anytime during the course of an employee's service cause him to undergo afresh medical examination to determine his physical fitness and mental alertness to continue in the service of the Company. The fee for such medical exam ination should be borne by the Company.

(ii) In case such an employee is declared permanently medically unfit to continue in the service of the Company, his services shall be terminated after

giving him notice as prescribed under Regulation No.24 hereinafter."

21. During the course of the submissions before us, the learned advocate representing the deceased employee placed before us the above reproduced Disability certificate dated 09.04.2019 issued by the competent authority constituted by the Department of Empowerment of Persons With Disabilities. Since this certificate was produced during the oral submissions, we wanted to be fully sure that the said certificate is genuine.

22. We, therefore, called upon the widow of the employee to file an affidavit indicating the source of the certificate and the circumstances in which it was procured. She filed an affidavit dated 29.11.2021 and explained that the employee had submitted an online application on 25.03.2019 to the Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India. A print out of the online application is annexed to the affidavit. The photograph of the employee as well as details of his Aadhar Card were mentioned in the online form. The print out of the receipt generated by the department is also placed before us. Subsequently, he received the disability certificate,

dated 09.04.2019 reproduced above, which indicates that he was a case of locomotor disability and he was suffering from Hemiplegia. He suffered 65 % temporary disablement to a portion of his body on the right side. This certificate was produced by the employee before the Appellate Authority (The Commissioner Disablement Welfare Commissionerate, Pune), after he preferred his appeal, pursuant to the directions of this Court dated 23.01.2019.

23. The learned advocate for the company has strenuously contended that there is nothing wrong in terminating an employee in these circumstances. We are unable to accept the said contention taking into account the documents referred to and discussed herein above, which clearly established that the employee suffered locomotor disability, which was temporary and to the extent of 65 % in relation to a part of his body on the right side. When the company terminated the employee, there were documents available indicating that he could have been accommodated on a light work. We have relied upon the disability certificate dated 09.04.2019 after considering the affidavit of the widow dated 29.11.2021 along with the print out from the official website of the department of

Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India.

24. Section 20 of the 2016 Act is almost identical to Section 47 of the 1995 Act. There are catena of judgments delivered under the two Acts, which lay down the law that an employee in such a situation should be treated differently and it should be the endeavour of the establishment to ensure that there is no discrimination as against an employee, who has suffered disability. It has been held in the following judgments that an in service employee should be accommodated on a lighter job and should be continued in employment by protecting his pay structure and is deemed to be in service :-

- [i] Union of India Vs. Om Prakash Roy, LPA No.1190/2015 in Civil Writ Jurisdiction Case No.7390/2014 decided on 27.02.2018.
- [ii] Mahesh S/o Sanjayrao Bahad Vs. Maharashtra State Road Transport Corporation, Yavatmal, 2020 (2) Mh.L.J. 900.
- [iii] Ramnagina Thug Vs. Chief Personnel MGR, Chandrapur Area, Western Coal Fields Ltd., 2017 CLR (2) 302 = 2007 LLJ (3) 530.
- [iv] Kunal Singh Vs. Union of India and another, (2003) 4 SCC 524.

[v] Sudarshan Rajpoot Vs. Uttar Pradesh State Road Transport Corporation, (2015) 2 SCC 317.

[vi] Divisional Controller MSRTC Latur Vs. Dhananjay Sudhakar Dixit, 2019(3) Mh.L.J. 108 (S.J. Bom)

25. The statement of objects and reasons of the 1995 Act have been reproduced under the statement of objects and reasons for the 2016 Act. The intent of the legislature is, therefore, clear and calls for no debate. The company before us is the erstwhile Maharashtra State Electricity Board. Pursuant to its trifurcation in early 2000, three companies were floated by the Government of Maharashtra viz. Maharashtra State Electricity Distribution Company Limited, M.S.E. Generation Company Limited and M.S.E. Transmission Company Limited. These are State Instrumentalities and cannot be said to be private sector undertakings. Such an employer should have acted as a model employer and before terminating the service of the employee, should have ensured that there was no scope at all to accommodate him anywhere in employment and that his termination was the last and the only option available, being inevitable. Though the company had before it a certificate of the Neuro Science Institute

indicating his fitness for a lighter job and though the employee repeatedly approached the company for accommodation on a light job with the fitness certificate, the company preferred to rely on the certificate of a Civil Surgeon, which did not indicate that the employee was permanently and completely disabled from doing any work. The remark of the Civil Surgeon “Unfit for Technician Post” dated 31.03.2017, was relied upon on 05.01.2018 for terminating his service.

26. The employee was only 44 years of age when he suffered a paralytic attack. He died on 25.09.2020, being distraught and frustrated. It is in these circumstances and considering the catena of judgments, that we find that the company had unnecessarily terminated the employee and such termination cannot be justified. The competent Appellate Authority, which delivered the impugned order, has arrived at a right conclusion. We do not find any factor worth considering to brand the impugned order as being unsustainable, muchless perverse or erroneous.

27. In view of the above, Writ Petition No.5228 of 2020 filed by the company is dismissed. Consequentially, Writ Petition

No.5034 of 2020 filed by the deceased employee, succeeds. We direct the company to comply with the directions set out in the impugned judgment dated 27.12.2019, as expeditiously as possible and in any case, on or before 31.12.2021.

28. Insofar as the pending application seeking compassionate appointment filed by the daughter of the deceased, we leave it to the wisdom of the company to consider it as per its policies and vacancies available and to be decided within three months, on or before 28.02.2022.

29. No order as to costs.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

...

vmk/-