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

**934 WRIT PETITION NO.13375 OF 2017**

Shri. Shaligram Dhansing Patil,  
Age: 58 years, Occu: Pensioner,  
R/o. Patil, Gadhi, Teli, Wada,  
Chopada, Tq. Chopda, Dist. Jalgaon

...PETITIONER

VERSUS

1. The Divisional Controller  
M.S.R.T.C., Jalgaon Division,  
Jalgaon

2. The Depot Manager,  
S.T. Stand Chopda,  
Tq. Chopda, Dist. Jalgaon

...RESPONDENTS

Mr B. R. Waramaa, Advocate for petitioner;  
Mr M. K. Goyanka, Advocate for respondent No.1

**CORAM : RAVINDRA V. GHUGE, J**

**DATE : 23rd February, 2021**

**ORAL JUDGMENT:**

1. Rule. Rule made returnable forthwith. Heard with the consent of the parties.

2. By this petition, the petitioner has challenged the judgment of the Industrial Court, Jalgaon, dated 24/08/2017, vide which, Complaint (ULP) No.55/2016, seeking wages for the period of his unemployment due to his disengagement on the ground of physical disability, has been rejected.

3. I have heard the learned Advocates for the petitioner and on behalf of the respondent No.1 – Corporation.

4. There is no dispute that the petitioner was appointed as a Diver with the respondent – MSRTC Corporation since 1989. On 24/02/2014, he was directed to appear before a panel of Doctors at J.J. Hospital, Mumbai for an Eye examination. After his examination, the concerned Doctors declared him unfit to perform the duties of a driver, vide certificate dated 07/05/2014. In pursuance to the said certificate, the respondent – MSRTC terminated the services of the petitioner w.e.f. 26/03/2014 and granted him the liberty to approach the Director of Public Health, State of Maharashtra at Mumbai, to challenge the said certificate. The petitioner preferred an appeal, which was dismissed on 31/07/2014.

5. It was the contention of the petitioner before the Industrial Court that no duty was allocated to him since 12/12/2013 till his termination on 26/03/2014. He was in employment and there is no charge of absenteeism levelled upon him for this period. After the complainant pursued his case with the Corporation, he was granted an alternate employment as a Sweeper w.e.f. 23/04/2015, which was about 13 months after his termination. His pay as a driver was protected.

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However, his salary for the period of 12/12/2013 till 12/01/2015 was not paid as he was treated as being on 'leave without pay'.

6. Aggrieved by the said act of the MSRTC, the petitioner had approached the Industrial Court by filing the above mentioned Complaint, which was registered on 15/12/2016. By the impugned judgment, the Industrial Court concluded that as he had a weak eyesight and he was not fit to continue as a driver, he was not provided any work from 12/12/2013 till 12/01/2015. Hence, he was not entitled for the salary for 293 days, on which he was treated to be on leave.

7. It is apparent from the impugned judgment that the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'the 1995 Act'), have not been considered by the Industrial Court.

8. The learned Advocate for the MSRTC has strenuously opposed this petition contending that the principle of "No Work – No Pay" is squarely applicable to this case. It is submitted that, as the petitioner was having a weak eyesight and was not suitable to be a driver of the Corporation buses, the Corporation had no option, but to dispense with his services, as continuance of the petitioner as a driver would have been a risk to the passengers as well as the public at large, on the roads.

9. I find that the submissions of the Corporation may appear to be philosophically impressive since the Corporation wanted to avoid a mishap and wanted to protect the lives of it's passengers as well as the public on the streets, since the petitioner would not have been able to perform his duties as a driver with perfection, due to failing eyesight. However, the Corporation has lost sight of the provisions of the 1995 Act, which were applicable to the case of the petitioner as his case dates back to 12/12/2013.

10. This Court has delivered several judgments on the issue of such employees being entitled for an alternate employment on the ground of being medically unfit and it is now a crystallized position in law that such employees should not be compelled to face starvation on the ground of being physically unfit. Such persons have to be given an alternate employment and it is also crystallized law that their salary for the position which they held at the time of being accommodated in an alternate employment, has to be protected.

11. In **Mahesh Sanjayrao Bahad Vs. Maharashtra State Road Transport Corporation, Yavatmal, 2020 (2) Mh.L.J. 900**, this Court has held in paragraph Nos. 10 to 15 as under :-

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*“10] We find it appropriate to record that, on the one hand, the deceased had suffered partial paralysis and on the other hand, the M.S.R.T.C. treated the deceased in the most inhuman manner by terminating his services and rendering him unemployed at such a stage in life when he desperately required an earning and especially for sustaining his medical treatment, which is quite costly. He has passed away on 01.05.2016, a dejected man.*

*11] Section 47 of the 1995 Act, which was applicable to the deceased as in 2012, reads as under:-*

*47. Non-discrimination in Government employment.—(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:*

*Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:*

*Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.*

*(2) No promotion shall be denied to a person merely on the ground of his disability:*

*Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification,, exempt any establishment from the provisions of this section.*

12] We find it advantageous to rely upon the following judgments delivered by the Hon'ble Apex Court and by this Court:-

[I] *Union of India v. Om Prakash Roy*, LPA No.1190/2015 in Civil Writ Jurisdiction Case No.7390/2014 decided on 27.02.2018.

[ii] *Assaram Raibhah Dhage v. Executive Engineer, Sub Divisional, Mula*, 1988(4) Bom. C.R.=1987(2) CLR 231.

[iii] *Ramnagina Thug v. Chief Personnel MGR, Chandrapur Area,, Western Coal Fields Ltd.*, 2017 CLR (2) 302 = 2007 LLJ (3) 530.

[iv] *Kunal Singh v. Union of India and another*, (2003) 4 SCC 524.

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

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

13] It is therefore, not only a legitimate expectation of an employee, but a legal right flowing under Section 47, of being continued in employment on an alternate job which can be termed as light work. The second proviso to Section 47(1) takes care of the helplessness of such litigants, by providing that if it is not possible for an employer to adjust an employee against a post or allocate any alternate job to him, he should be kept on a supernumerary post until a suitable post is available or till he attains the age of superannuation, whichever is earlier.

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14] It is quite obvious that the M.S.R.T.C. has not only acted in a stone hearted manner, but has shown scant respect for life and the law applicable. What is shocking, is that the M.S.R.T.C. kept the medical board report under wraps and has maintained utmost secrecy about the said report since the Medical Board had recorded that the deceased should have been continued in employment on a light post. Such behaviour of the M.S.R.T.C. cannot be countenanced, keeping in view the judgment delivered by this Court at the Aurangabad Bench (Coram: R.V. Ghuge, J.) in *Divisional Controller, Maharashtra State Road Transport Corporation, Latur v. Dhananjay Sudhakar Dixit* reported in 2019(3) Mh.L.J. 108, wherein a similar act of the M.S.R.T.C. was noted by this Court and strictures were passed against it.

15] In *Sudarshan Rajpoot (supra)*, the Hon'ble Apex Court has concluded in paragraph 32, 33 and 34 as under:-

32. Further, it is important for us to examine another aspect of the case on hand with respect to reinstatement, backwages and the other consequential benefits to be awarded in favour of the appellant-workman. In the case of *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya*, 2014(2) Mh.L.J. (S.C. 480 = (2013) 10 SCC 324, after referring to three Judge Bench Judgments with regard to the principle to be followed by the Labour Courts/Industrial Tribunals to award backwages if order of termination/dismissal is set aside, the law has been laid down in this regard by this Court as under: (SCC p.344, para 22)

“22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms

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*of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full backwages. If the employer wants to deny backwages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of backwages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay backwages including the emoluments.”*

*Therefore, keeping in mind the principles laid down by this Court in the above case, we are of the opinion that the appellant workman should be paid full backwages by the respondent Corporation.”*

*33. Since the order of termination is set aside, having regard to the finding of fact recorded by the Workmen's Compensation Commissioner while determining the claim under the Workmen's Compensation Act, the appellant workman sustained grievous injuries to his legs which is an employment injury suffered during the course of employment in the respondent Corporation. In the matter of the rights and protection of the appellant workman we refer*

to the decision of this Court in *Bhagwan Dass v. Punjab SEB*, (2008) 1 SCC 579:

“4. It may further be noted that the import of Section 47 of the Act was considered by this court in *Kunal Singh v. Union of India*, [2003 (4) SCC 524] and in paragraph 9 of the decision it was observed and held as follows: (SCC pp.529-30)

“9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of disability and person with disability. It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employee shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a social beneficial enactment that too dealing with disabled

*persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service."*

*34. Therefore, the respondent Corporation is statutorily obliged under Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 to provide alternate equivalent job to the appellant-workman in place of the post of driver. Therefore, we direct accordingly."*

12. A similar view has been taken by this Court in **Divisional Controller, MSRTC, Latur Vs. Dhananjay Sudhakar Dixit, 2019 (3) Mh.L.J. 108.**

13. The record placed before the Court, would indicate that the Corporation was ill-advised to dispense with the services of the petitioner. It was justifiable on the part of the Corporation in being proactive when it noticed that the petitioner had a failing eyesight. He was, therefore, disengaged from discharging his duties as a driver so as to protect the lives of the passengers as well as the public at large, which is appreciable. However, he was made to sit idle from 12/12/2013 till his termination on 26/03/2014.

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14. The principle “No Work – No Pay” cannot be made applicable in a situation, where the worker is available for work, he offers himself for work and the employer refuses to provide work or the employer declines to allot work. The petitioner, therefore, cannot be deprived of his salary for this period. Moreover, the termination of the petitioner on 26/3/2014 and his subsequent absorption by way of an alternate employment on 23/04/2015, would indicate that the Corporation has retracted from its position and had decided to grant an alternate employment to the petitioner.

15. The learned Advocate for the Corporation clarifies that there has been a confusion about the date of re-employment. The petitioner was actually re-engaged on 12/01/2015. He resumed work as a Sweeper on that date and has been paid salary from the said date on-wards. As such, the issue of continuity and non-payment of salary is for 293 days.

16. Considering the above, it is obvious that the respondent-Corporation has failed to abide by the dictum of law, as set out in Section 47 of the 1995 Act, which was applicable to the case of the petitioner. As was held in **Kunal Singh Vs. Union of India & anr.**, **AIR 2003 SC 1623**, a person suffering the disability while in employment and who is capable of being allocated an alternate work,

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which he can perform by overcoming his disability, shall have to be protected. Section 47 is mandatory in nature.

17. In view of the above, this petition is allowed. The impugned judgment of the Industrial Court, dated 24/08/2017, is quashed and set aside. Complaint (ULP) No.55/2016 stands allowed.

18. The petitioner shall be granted continuity in service from 26/03/2014 till 12/01/2015. As such, there shall be no break in his service. He shall be entitled for the payment of salary for 293 days as per his last month's salary as in January 2015 and the said amount shall be paid to him within two months with interest @ 6% p.a. w.e.f. February 2015 till February 2021. If this amount is not paid within two months, the interest shall be paid @ 10% p.a. for the said period, until it is paid.

19. Rule is made absolute in the above terms.

**(RAVINDRA V. GHUGE, J.)**

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