

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

WRIT PETITION NO. 696 OF 2020

1. Forest Development Corporation
of Maharashtra Ltd., F.D.C.M. Bhavan,
Ambazari, Hingana Road, Nagpur – 440 036
Through its Managing Director
2. Regional Manager,
Forest Development Corporation
of Maharashtra Ltd., Arnya Sankul,
Trimbak Naka, Malika Mandir Road,
Nashik – 422 002
3. Divisional Manager
Forest Development Corporation
of Maharashtra Ltd., Vanvikas Bhavan

**... PETITIONERS
(Orig. Respondents)**

Versus

Sharad Jagappa Barjibhe
Age:58 years, Occu. Retired Employee,
R/o Near Jalgaon District Central Cooperative
Bank Ltd., Yawal, Dist. Jalgaon

**... RESPONDENT
(Orig. Complainant)**

....

Mr. Pradeep Shahane, Advocate for petitioners
Mr. Parag V. Barde, Advocate holding for Mr. A. D. Sonar, Advocate
for the respondent

....

CORAM : R. G. AVACHAT, J.

**JUDGMENT RESERVED ON : 11th JANUARY, 2021
JUDGMENT PRONOUNCED ON : 19th JANUARY, 2021**

JUDGMENT :-

. Rule. Rule made returnable forthwith and heard finally with consent of learned counsel for the parties.

2. The challenge in this writ petition is to the judgment and order dated 02.05.2016 passed by the Labour Court, Dhule in Complaint ULP No.27/2014 and affirmed by the Industrial Court, Dhule, by judgment and order dated 27.08.2019 in Revision ULP No.16/2016.

3. The respondent was in the employment of petitioner No.1 as a Forest Guard. He met with railway accident on 19.03.2007, as a result of which, both of his legs have been amputated below the knees. The petitioner No.1, therefore, retired him on medical ground in view of the service rules on 16.08.2010. The respondent took exception to his retirement by approaching the Labour Court. It is his contention that the petitioner No.1 indulged in unfair labour practice and in colourable exercise, passed a punitive order compulsorily retiring him from service. Pending the claim before the Labour Court, the respondent attained the age of superannuation. The Labour Court, therefore, directed the petitioner

– employer to pay the respondent – complainant full wages from 16.08.2010 till 03.06.2015 with interest at the rate of 12% per annum till the realization of the said amount. The respondent is also held to be entitled to the increments, wage revision and all consequential benefits from 16.08.2010 till 03.06.2015 with continuity of service.

4. The petitioners challenged the order of Labour Court in revision before the Industrial Court, but have been unsuccessful. Hence, the present petition.

5. Shri Shahane, learned counsel for the petitioners would submit that the respondent has been retired on medical ground. The service rules authorise the petitioners to retire its employee, who is found to be unfit to discharge his duties on medical ground. The respondent has neither been dismissed nor discharged from the service. The action of the petitioner, therefore, could not be branded to be an unfair labour practice. He took me through Item 1 of Schedule IV of the Maharashtra Recognition of Trade Union & Prevention of Unfair Labour Practice Act, 1971 (MRTU & PULP Act, 1971). Learned counsel further submits that in case of retirement on medical ground the concerned employee was not required to be

heard. There is, therefore, no question of violation of principles of natural justice. The service rules do not require to give a notice before retiring an employee on medical ground. According to the learned counsel, the respondent is a court-bird. He initiated various proceedings before various forums, such as, Labour Court, Industrial Court, Maharashtra Administrative Tribunal, the Commissioner appointed under the Physically disabled Act, 1995 and the High Court, as well. According to the learned counsel, the Labour Court ought not to have granted relief of backwages with all consequential benefits. He took me through the impugned order to contend it to have been silent to give reasons in support of granting such a relief. Learned counsel has relied on the following authorities:

- (i) MANU/SC/1023/2018=2018(11)SCALE 353
(The Management of Regional Chief Engineer vs. Their Workmen)
- (ii) 2020 I CLR 526 (SC)
(Om Pal Singh vs. Disciplinary Authority & ors.)
- (iii) MANU/SC/0741/2007=2007(2)SCC 433
(J.K. Synthetics vs. K. P. Agrawal and ors.)
- (iv) MANU/SC/0584/2002=2002(6) SCC 41
(Hindustan Motors Ltd. vs. Tapan Kumar Bhattacharya and ors.)
- (v) MANU/SC/7346/2007=2007(9)SCC663
(State of Punjab vs. Anil Kumar)

- (vi) MANU/SC/0447/1992=1992(2)SCALE 663
(State of U.P. vs. Atal Behari Shastri)
- (vii) 2020 I CLR 728
(Canara Bank vs. Appellate Authority)

According to the learned counsel, when the respondent had approached the Commissioner, he ought not to have approached the Labour Court. There was a considerable delay in approaching the Labour Court. The Limitation Act has no application. There is no provision for condonation of delay in preferring an application to the Labour Court. According to the learned counsel, the orders impugned in this writ petition are inconsistent with settled legal propositions and are therefore liable to be set aside.

6. Shri Parag Barde, learned counsel for the respondent would on the other hand, submit that the petitioners victimised the respondent. They made the respondent to run *pillar to post*. He had, therefore, no option but to approach various judicial forums. The learned counsel took me through the impugned orders to submit them to have been in consonance with legal provisions.

7. I have considered the submissions advanced by the respective learned counsel, also perused the impugned orders.

Both the Courts below have passed concurrent findings of fact, I see no reason to disagree therewith in exercise of writ jurisdiction under Article 227 of the Constitution of India.

8. The respondent was in employment of petitioner No.1 as a Forest Guard. He met with a railway accident. As a result thereof, his both the legs have been amputated below the knees. Necessarily, he became disabled to discharge duties as a Forest Guard. The Medical Board, on examination of the respondent, found him to be fit to discharge sedentary job. Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of rights and Full Participation) Act, 1995 (for short, ' the Act of 1995')reads thus:

“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 any establishment, by notification and subject to such condition, if any, as may be specified in such notification,

exempt any establishment from the provisions of this section.”

9. The aforesaid provision makes amply clear that if an employee after acquiring disability, is not suitable for the post he was holding, he has to be shifted on some other post with the same pay scale and service benefits. In case of non availability of a suitable 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. Even, promotion cannot be denied merely on the ground of his disability.

10. It is true that Rule 5 of the Forest Development Corporation of Maharashtra Limited Service Conditions (Retirement) Rules, 1988 (Amended in 2001), empowers the competent authority to retire its employee, if he is declared to be unfit for further service by the competent Medical Authority of the Government, at any time with immediate effect.

Here, although the respondent held to be unfit to discharge duties as a Forest Guard, he has been found fit to do sedentary job. The Apex Court, in the case of ***Kunal Singh vs. Union of India and Anr.***, reported in ***AIR 2003 SC 1623*** has observed that the Disabilities Act is a special legislation and overrides the

provisions of the Central Civil Services (Pension) Rules. As such, in case of conflict between provisions of Section 47 of the Act of 1995 and Service Rules, the latter shall yield to the former.

11. The respondent, on his request, was transferred to Taloda, District Nandurbar. Placing reliance on the Government Resolution/Circular, he had requested to allot him disabled friendly Government accommodation. The lavatory block in a Government quarter provided to him was not suitable for him, since both of his legs have been amputated below knees, necessarily he was required western lavatory block. His request to allow him to acquire disabled friendly accommodation on rent, was turned down. Instead of complying with the provisions of Section 47 of the Act of 1995, the petitioner No.1 retired the respondent on medical ground. When the respondent was entitled to be continued in service, his retirement on medical ground has rightly been observed by both the authorities below, to be an unfair labour practice in colourable exercise of power.

12. The Labour Court directed the petitioners to pay the respondent full wages from the date of his retirement to the date of his superannuation. The respondent is also held to be entitled for

increments, revision of wages and all consequential benefits.

13. Learned counsel for the petitioners relying on the authorities referred to herein above, submitted that the Labour Court did not give any reason for grant of back wages and all consequential benefits.

14. The gist of the authorities relied on by the learned counsel for the petitioners is :

Back wages could not be awarded by the Court as of right to the workman consequent upon setting aside of his dismissal/ termination order. A workman has no right to claim back wages from his employer as of right. There has to be pleadings and production of evidence to prove the material facts required for award of back wages. It is for the workman to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed.

15. In the case of *J. K. Synthetics (supra)*, it has been observed thus:

“17. There is also a misconception that whenever reinstatement is directed, ‘continuity of service’ and ‘consequential benefits’ should follow, as a matter of course. The disastrous effect of granting several

promotions as a 'consequential benefit' to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualized while granting consequential benefits automatically. Whenever Courts or Tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances to decide whether 'continuity of service' and/or 'consequential benefits' should also be directed."

16. There can be no two views about the observations or what has been held in the cases (supra) relied on by the petitioners. Each case is however, required to be decided on its own facts.

The Labour Court has observed that retirement of the respondent was illegal and therefore he was entitled for grant of back wages and consequential benefits. Although, the Labour Court did not state reasons in so many words for grant of such a relief, it was justified to grant the same in the facts and circumstances of the case. Due to amputation of both of his legs below knees, the respondent was necessarily rendered unfit to get gainfully employed. Section 47 of the Act of 1995 mandates, in case of non availability of the suitable post, to create a supernumerary post and be paid the same pay scale and service benefits. Even the employee cannot be denied promotion,

merely on the ground of disability. Both the courts below were justified in granting the respondent back wages and all other consequential benefits. No interference is therefore, warranted with the impugned orders.

17. The writ petition, thus, fails. The same is therefore, dismissed.

18. Civil application No.6941 of 2020 (for withdrawal of amount) filed by the respondent, is allowed in terms of prayer clause (B).

[R. G. AVACHAT, J.]

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