

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

Writ Petition No.4475/2019

Sidheshwar s/o. Wamanrao Ganorkar

...Petitioner

Versus

Maharashtra State Road Transport Corporation,

Division Office, Post-Shivaji Nagar, Amravati-441603, ...Respondent
through Divisional Controller.

Shri Sanjay A. Nerkar, Advocate for the Petitioner.

Shri Anil D. Sonak, Advocate for the Respondent.

**CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.**

DATED : 21 JANUARY 2021

P.C.

Since it is an admitted position that the case of the Petitioner is covered by the decision of the Division Bench of this Court as modified by the Order passed by the Supreme Court, it is not necessary to state the fact in detail.

2. The Petitioner was appointed on 9 August 2011 as a driver to the Respondent Maharashtra State Road Transport Corporation. While he was working with the Respondent, he was posted at Badnera Depot. On 21 December 2017, the Petitioner was on duty, an accident occurred

which led to the Petitioner suffering a disability of the right leg. The Petitioner was examined by the Medical Officer and the Civil Surgeon who opined that the Petitioner was not fit for driving. The Petitioner's services came to be terminated on 8 April, 2019. The Petitioner thereafter filed a present petition, making a grievance that the Respondent had contravened the Provisions of Section 20 (4) of the Rights of the Persons with Disabilities Act, 2016.

3. A batch of Petitions filed by the drivers of Respondent Corporation, who were terminated from service as drivers on the ground of disability came up for consideration of Division Bench of this Court (Principal Seat) in Writ Petition No.9762 of 2019 and others. The Division Bench after considering the provisions and the object of the Act of 2016, allowed the petition directing as under:

“20. Keeping in line with the mandate of Section 20 of the 2016 Act, we order and direct MSRTC to provide each one of the Petitioners with alternative posts having the same pay scale and service benefits as their earlier position. This exercise must be completed within a period of 4 weeks from the date of this Order.

21. As a result of the aforesaid decision, we order and direct MSRTC to pay back wages to each of the Petitioners from the date that their respective services were discontinued until the date that they have been provided with an alternative position in compliance with Section 20 of the 2016 Act. These wages must be credited to the Petitioner's accounts within a period of 6 weeks from the date of pronouncement and uploading of this Order. However, whilst computing the amount of back wages to be paid to the Petitioners, we grant liberty to MSRTC to

ascertain whether or not any of the Petitioners were otherwise employed during this intervening period and if so, MSRTC would be at liberty to deduct the amount of wages that the Petitioners may have earned from their alternative employment whilst paying out the back wages. In the event MSRTC wishes to undertake this exercise, such exercise should be completed within a period of 4 weeks from the date of pronouncement and uploading of this order”.

6. The Division Bench also issued certain general directions in respect of other employees in paragraph 23 as under:

“23. Whilst parting, we anticipate that the Impugned Circular albeit in the absence of Clause 11 which we have struck down hereinabove, may still give rise to grievances suffered by various other persons employed by MSRTC who may be diagnosed with disabilities in the future. In order to prevent their suffering, we propose the following measures which could be taken into consideration when MSRTC implements the Impugned Circular:

i. Upon an employee acquiring a disability, the medical examination and disability certification ought to be completed within a period of 4 weeks of such disability coming to the notice of MSRTC;

ii. Within 4 weeks from the aforesaid medical examination and disability certification, the employee shall be provided with an alternative position with MSRTC in accordance with Section 20 of the 2016 Act;

iii. The time elapsed in conducting the medical examination, certifying the disability and providing an alternative position shall be treated as part of the persons’ employment and the employee shall be paid back wages for this entire period expeditiously;

iv. MSRTC will be at liberty to test the veracity or otherwise of disability certificates that may be furnished. However, this exercise of ascertaining the truthfulness of these disability certificates must in any event be completed within a period of 2 weeks from the date of submission of such disability certificates. In the event that MSRTC fails to find any fault with the said disability certificates, the principles enumerated hereinabove ought to apply.

7. The State of Maharashtra has challenged the said decision in the Hon'ble Supreme Court by Civil Appeals No.3607-3620 of 2020 and the decision of the Division Bench was confirmed with the modification. The order of the Apex Court reads thus:

"Leave granted.

Learned counsel for the respondents/caveator accepts notice.

We have heard learned counsel for parties.

We are broadly in agreement with the view taken by the Bombay High Court in the impugned order except on two aspects which we enumerate as under:

1)The first aspect is as discussed in paragraph 21 of the impugned judgment requiring the appellants to pay the respondents the back wages within six weeks from the pronouncement and the uploading of the order. Liberty has been granted to the appellants to ascertain whether or not any of the respondents who were otherwise employed during the intervening period for that period deduction of the amount of wages was held as permissible.

It has been rightly pointed out by the learned counsel for the appellants that this burden cannot be shifted on to the appellants and the information would be within the knowledge of the respondents. Learned counsel for the respondents cannot seriously dispute the aforesaid position.

We thus, direct that the respondents will file the relevant material along with their affidavits before the appellants within two weeks from today and the appellants can verify the position within a period of six weeks thereafter. Subject to the aforesaid verification, we grant four weeks' time thereafter to credit the account of the respondents dependent on the fate of the verification and the right of the appellants to deduct the amount in case the respondents are found having alternatively employed.

2)The second aspect arises from the observations towards the end of para 19 whereby Clause (11) of the impugned circular has been struck down. The said Clause reads as under:

“11. The period which elapses after the employee’s disability is advanced and he is promoted to alternative posts should be considered as normal unpaid leaves. Also the leaves in credit to his account should be carried forwarded to his alternate position.”

Learned counsel for the appellants has also drawn our attention to Clause (9) of the same Circular which reads as follows:

“9. After obtaining the certificate of disability and completing other matters, it will be appropriate to try to resolve the issue of alternative employment within three months so that the question of payment of previous service will not arise. As per the provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, it will be necessary to comply with the previous salary protection, continuity of service & promotion.”

We are of the view that the learned counsel for the appellant is correct in contending that a conjoint reading of the two Clauses does not make it an open-ended exercise for the appellants and the issue of an alternative employment has to be resolved within a span of three months. We are thus, of the view that it would not be appropriate to quash the Clause (11) in this behalf. It appears that what weighed with the learned Judges while passing the impugned order was the fact that this Circular having come on 23rd January, 2020, it may be used to deprive the respondents of their back wages. That issue is taken care of by the order which we are passing now and upholding the backwages for the respondents as directed in the impugned order.

We thus, strike out the sentence in the impugned order setting aside the Circular which will hold good. The import of this for the other employees will be that the alternative

employment would have to be located within the period of three months as set out in Clause (9) of the Circular.

The appeals are allowed to the limited extent in the aforesaid terms, leaving the parties to bear their own costs.”

8. The direction issued by the Division Bench as modified by the Hon'ble Supreme Court shall be the order passed in this Petition as well. These directions are clear. The Respondent Corporation will take necessary decision within the time stipulated in the above referred direction, which shall commence from today.

9. The Writ Petition is accordingly disposed of in above terms.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]