

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

WRIT PETITION NO.803/2019

Deepak s/o Wamanrao Rane,
aged about 56 years, Occ. Service,
r/o S.T.Quarter, Ghat Road, Nagpur **PETITIONER**

...V E R S U S...

Maharashtra State Road Transport
Corporation, through its Divisional
Controller, MSRTC, Nagpur. ...**RESPONDENT**

Mr. C. V. Jagdale, Advocate for petitioner
Mr. R. O. Chhabra, Advocate for respondent.

CORAM:- V. M. DESHPANDE, J.
DATED :- 23.02.2021.

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for the parties. The petitioner-Deepak is represented by Mr.Jagdale, learned counsel and respondent-Maharashtra State Road Transport Corporation (hereinafter referred to as 'Corporation' for the sake of brevity) is represented by Mr. Chhabra, learned counsel.

2. This writ petition is filed before this Court with following prayer:

“(b) The judgment and order passed by Hon’ble Member, Industrial Court, Nagpur (Annex.-I) in Complaint (ULP) 300.2009 on 21.08.2012 may kindly be modified by directing respondent to pay full back wages to the petitioner from 4.5.2006 till July, 2013 with all consequential benefits.”

3. According to Mr.Jagdale, learned counsel for petitioner, in view of Section 47 of the Persons With Disabilities Act, 1995 and in the light of the decision of this Court in Writ Petition Nos.4365/2010 and 4484/2011 dated 06.09.2018, the learned Judge of the Industrial Court has committed error in not giving benefit of back wages. He, therefore prayed that the petition be allowed.

Per contra, Mr.Chhabra, learned counsel for the respondent supported the judgment of the Industrial Court.

4. The petitioner was in employment of the Corporation as Driver. In the year 2006, he was required to undergo Lambs Spine surgery. Due to the said surgery, the petitioner was not in a position to discharge his duty as driver. He was referred to the Civil Surgeon and the Civil Surgeon, vide his order dated

15.04.2006, certified that he is completely and permanently incapable for further service as driver.

The Corporation, in view of the letter of the Civil Surgeon, removed the name of the petitioner from the muster roll in CBS-II Nagpur (as driver). Thereafter, on 04.05.2006, he was discharged from service with retrospective effect from 15.04.2006.

5. Request of the petitioner to consider for providing alternate employment was also not accepted by the Corporation. Therefore, the petitioner approached to the Industrial Court by filing the Complaint (ULP) No.300/2009 under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act. According to the complaint, the Corporation has indulged in unfair labour practice as envisaged under Item 9 of Schedule IV of the MRTU & PULP Act. The complaint was contested by the Corporation. Though the relations between the petitioner and Corporation as employer and employee were not denied or not in dispute. Learned Member of the Industrial Court, Nagpur vide judgment dated 21.08.2012, partly allowed the complaint, thereby declaring that Corporation has engaged in unfair labour practice by not providing alternate

employment to the petitioner and also directed to provide alternate employment as a Peon.

6. Learned counsel for the petitioner has made a statement that in view of the judgment dated 21.08.2012, the petitioner is being given work of Peon and subsequently on attaining the age of superannuation on 20.09.2020, he stood retired from service. Further, the said judgment is not at all challenged further and thus has attained finality.

7. The present petition is filed seeking back-wages from 04.05.2006 i.e. date of order of termination till July-2012 when the petitioner was reinstated by the Corporation though as a Peon.

8. Admittedly, the petitioner was a driver and it is also admitted that in the year 2006, the petitioner was required to undergo Lambs Spine surgery, which made him incapable of discharging his duties as driver. It is also not in dispute that there is a settlement between Corporation and recognized union in the year 1999 and as per clause 46 of the said settlement, an employee is entitled to get alternate employment.

9. It is also not in dispute that when the petitioner found that he is unable to discharge his duties as driver, he moved an application to the Corporation for providing him alternate job which was not given. Section 47 of the Persons With Disabilities Act, 1995 reads thus:

“Section 47. Non-discrimination in Government employments.-(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 shift 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."

10. Services of the petitioner were never terminated because of any misconduct on his part. The petitioner was unable to discharge his duties as driver because of his surgery. It was the

duty of the Corporation, therefore, in view of Section 47 to provide alternate job to the petitioner. The Corporation has failed to discharge the obligation on it put by the Act. Therefore, in my view, the learned Member, Industrial Court has committed error in not granting back-wages for the period from 04.05.2006 to July-2013 when the petitioner was provided alternate employment.

In view of above, I pass the following order.

ORDER

- (i) The writ petition is allowed.
- (iii) It is held that the petitioner is entitled to back-wages along with consequential benefits, from 04.05.2006 till July-2013 when the petitioner was provided with alternate employment as Peon.
- (iv) The respondent-Corporation is directed to pay back-wages for this period to the petitioner along with consequential benefits, within two months from today.

Rule is made absolute in the above terms. No order as to costs.

JUDGE

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