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

904 WRIT PETITION NO.5275 OF 2020

SHANKAR SHESHRAO PANCHAL
VERSUS
THE DIVISIONAL CONTROLLER, MAHARASHTRA STATE
ROAD TRANSPORT CORPORATION, PARBHANI

...

Mr S. S. Panale, Advocate for petitioner;
Mr A. D. Wange, Advocate for respondent

CORAM : RAVINDRA V. GHUGE, J

DATE : 24th March, 2022

PER COURT:

1. On 24/02/2022, this Court had passed the following order :-

“1. Heard learned advocates for the parties.

2. Taking into consideration the controversy involved in the present matter, it would be in the interest of justice to refer the petitioner before the medical board at Government Medical College and Hospital (GHATI), Aurangabad for his check up in respect of eye problem as well as heart ailment.

3. The petitioner be referred to the medical board, which shall submit a report after complete physical examination of the petitioner and opine whether the petitioner is fit to perform duty as a driver in MSRTC.

4. The respondent shall issue necessary letter to the petitioner referring him for medical examination before the Medical Board at Government Medical College and Hospital (GHATI), Aurangabad.

5. The entire exercise be completed within a period of three weeks from today.

(2)

6. *Stand over to 17th March, 2022.”*

2. On 17/03/2022, I had passed the following order :-

“1. I have perused the order passed by this court on 04-08-2020. I have considered the submissions of the learned Advocates for the respective sides in the light of the order dated 24-02-2022.

2. The petitioner, according to the medical report, is a heart patient who has undergone angioplasty on three occasions between 2009 to 2020. There are four stents inserted in his heart. It further appears that his heart is functioning at 35% of it's capacity. The respondent- Corporation desires that the petitioner should perform the work of a driver of the ST passenger bus.

3. I find the entire situation to be quite risky. God forbid, if the petitioner suffers any further ailment with regard to his heart when he is in the driver's seat, passengers traveling in the bus will be put to risk and if this happens, it can only make the authority of MSRTC, who has issued this order to the petitioner to start his duties as a driver, solely and wholly responsible. To avert any untoward incident, the MSRTC needs to reconcile the situation.

4. The learned Advocate for the Corporation fairly submits that he would have a conference talk with his client and make a statement on next date.

5. List the matter on 24-03-2022, for passing orders.”

(3)

3. It is informed that the Resident Medical Officers/Doctors, working in Government Medical College and Hospital (Ghati), Aurangabad, are on a strike.

4. I have briefly heard the submissions of the learned Advocates for the respective sides and have perused the impugned interlocutory order dated 15/07/2020. The issue as regards the heart ailment of the petitioner, as recorded in my order dated 17/03/2022, was not raised before the Industrial Court in Complaint (ULP) No.68/2022, while seeking interim relief.

5. By an order dated 04/08/2020, passed by this Court while granting interim relief to the petitioner, it was observed as under :-

“By this Petition filed under Article 227 of the Constitution of India, the petitioner has preferred this Petition challenging the order dated 15.07.2020 passed by the learned Member, Industrial Court, Jalna in Complaint (ULP) No.68/2020. By the impugned order, the application moved by the petitioner seeking interim order i.e. to stay the effect and operation of the order dated 04.06.2020 issued by the respondent to repost the petitioner to the original post of driver has been rejected.

2. In brief, it is the contention of the petitioner that the petitioner was twice declared as unfit to discharge the obligation as driver employed with M.S.R.T.C. On account of medical condition of the petitioner, the petitioner was directed to work as a peon. It is submitted

(4)

that pursuant to the directions, the petitioner appeared before the Medical Board constituted with J.J. Hospital, Mumbai. On the basis of report submitted by the Medical Board, the alleged order to repost the petitioner to the original post of driver has been passed. It is the contention of the petitioner that he is suffering from various ailments. The medical condition of the petitioner is not good. His heart is functioning with 35% capacity. He has undergone angioplasty for three times and 4 stents have been planted. His vision is 40% damaged. He is unable to discharge the obligations of the post of driver and deserves to be continue to work as peon.

3. On due consideration of the submissions advanced, I am of the view, the matter requires consideration. Hence the following order :-

ORDER

(i) Issue notice to the respondents, returnable on 18th August, 2020. In addition to notice through the process of Court, the petitioner is permitted to serve the respondent by Registered Post Acknowledgment Due or any other legally permissible mode and file the affidavit of service by the returnable date.

(ii) Till 18th August, 2020, the status-quo as on today be preserved.

(iii) Stand over to 18th August, 2020.”

6. In view of the above, this petition is disposed off with the following directions :-

(5)

(a) The petitioner would be at liberty to prefer another application for seeking interim relief under Section 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, before the Industrial Court, within four weeks from today.

(b) In the said application, the petitioner shall narrate the illness as regards his heart ailment.

(c) Until the above stated application is decided, the petitioner's services would be protected and he shall not be compelled by the MSRTC to perform duties of a 'Bus Driver'. They are at liberty to deploy the petitioner as a 'Peon' during the pendency of the above stated application.

(d) The respondent/MSRTC is at liberty to produce the medical certificate after the petitioner is medically examined, pursuant to the order dated 24/02/2022, before the Industrial Court, when the above stated application for interim relief is being considered on its own merits.

7. Since the petitioner has been protected by the order of this Court, he shall be entitled for the wages from the date this Court had issued the protective order.

(RAVINDRA V. GHUGE, J.)