

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

WRIT PETITION NO.3227 OF 2021

Kacharu Kakasaheb Pandit
VERSUS
The State Of Maharashtra And Others

**WITH
WRIT PETITION NO.12565 OF 2021**

Rajaram Hhausarao Waghmare
VERSUS
The State Of Maharashtra And Others

**WITH
WRIT PETITION NO.3231 OF 2021**

Jaysingh Lahu Chavan
VERSUS
The State Of Maharashtra And Others

**WITH
WRIT PETITION NO.3247 OF 2021**

Sakharam Uddhav Ingale
VERSUS
The State Of Maharashtra Thr Its The Principal Secretary And
Others

**WITH
WRIT PETITION NO.3270 OF 2021**

Ramdas Vitthal Gaikwad
VERSUS
The State Of Maharashtra And Others

WITH
WRIT PETITION NO.3241 OF 2021

Dattatray Digambar Raut
VERSUS
The State Of Maharashtra And Others

...
Advocate for the Petitioners : Shri Shermale K. N.
AGP for Respondent 1 : Shri P.K. Lakhotiya
Advocate for Respondents 2 to 4 : Shri A.B. Dhongade
...

CORAM : RAVINDRA V. GHUGE
&
S.G. DIGE, JJ.

DATE :- 28th March, 2022

Per Court :-

1. In all these petitions, the petitioners are identically placed. They were declared to be “both eyes colour vision defective” (colour blindness). The MSRTC accepted the medical certificates issued by M/s Vision Next Foundation Hospital, Pune, to whom these petitioners were referred to for medical examination.

2. Prior to their termination, on 16.07.2020, the learned Division Bench of this Court at the Principal Seat in Writ Petition Nos.9762/2019 (*Vikas Khanderao Keng vs. The State of*

Maharashtra and others) and group of matters, concluded that those petitioners could not have been terminated from their services and as such, they were all granted reinstatement in service with continuity and back wages. Further direction was issued that the MSRTC will be at liberty to test the veracity of the disability certificates and such exercise shall be completed within two weeks.

3. For sake of brevity, we are reproducing paragraph 23 of the said judgment 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."*

4. The MSRTC approached the Honourable Supreme Court by preferring Civil Appeal Nos.3607-3620/2020. By order dated 03.11.2020, the appeals were allowed only to the limited extent of striking out the sentence from the judgment of the learned Division Bench as regards setting aside the circular. Consequentially, the circular was held to be good in law. To the extent of back wages, the Honourable Supreme Court directed that these petitioners would tender their individual affidavits declaring that they were not gainfully employed during the period of termination.

5. The learned advocate for the MSRTC submits, on instructions, that the termination orders of these petitioners would be withdrawn forthwith and within three months, the

petitioners would be accommodated on alternate jobs. The wages for these three months as per the last drawn wages would be paid.

6. Though we are disposing off the writ petitions in the light of the statement made by the learned advocate for the MSRTC on instructions, we find it astonishing that the Divisional Controller, MSRTC, Beed, had terminated these petitioners after the Division Bench of this Court at the Principal Seat delivered the judgment on 16.07.2020 in ***Vikas Keng (supra)*** on identical grounds. It is not possible that the Divisional Controller may not be aware of the said judgment. The MSRTC was the respondent in the said petitions and was the appellant before the Honourable Supreme Court.

7. So also, this is not the first time that this Court has delivered orders against the MSRTC in matters of disability when the MSRTC had shown it's undue eagerness in dismissing the services of the disabled employees. In a similar case, in the matter of ***Arvind Shankarrao Khodke vs. The Regional Director of Municipal Administration, Nagpur Division, Nagpur***, in Writ Petition No.3496/2007 decided on 10.01.2017, the termination of this type had been set aside. In case of ***Vishnu Shahurao Bangar***

vs. The Divisional Controller, Writ Petition No.3772/2019, the MSRTC was saddled with costs for having terminated the services of an employee without accommodating him on a lighter job.

8. In view of the above, these Writ Petitions are allowed with the following directions :-

(a) The termination orders impugned in these petitions, stand quashed and set aside.

(b) The petitioners shall tender individual affidavits declaring that since the date of their termination till today, they have not been in gainful employment. Thereafter, the MSRTC shall initiate steps for payment of salaries to those petitioners, who have given such declarations.

(c) The MSRTC shall initiate appropriate steps as are permissible in law and allot the work to these petitioners on any alternate job, within four months from today.

(d) Salaries of these petitioners from today till the decision is taken by the MSRTC within four months, shall be paid on month to month basis as per their last drawn salary.

(e) Since the Divisional Controller, MSRTC, Beed has highhandedly issued the termination orders in these matters

despite the judgment delivered at the Principal Seat on 16.07.2020 and the judgment delivered by the Division Bench in ***Vishnu Shahurao Bangar (supra)***, we find it appropriate to saddle the Divisional Controller, MSRTC, Beed, occupying the position on the date of termination of these petitioners, to pay costs of Rs.5000/- (Rupees Five Thousand) per petitioner, from his salary account, to the petitioners in two equated monthly installments beginning from April, 2022 and ending with the salary payable in May, 2022.

kps

(S.G. DIGE, J.)

(RAVINDRA V. GHUGE, J.)