

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

26 WRIT PETITION NO.14095 OF 2019

**BALU RAMBHAU AUTI
VERSUS
THE STATE OF MAHARASHTRA THROUGH MINISTRY OF PUBLIC
TRANSPORT DEPARTMENT AND OTHERS**

...
Advocate for Petitioner : Mr.Shaikh Mazhar A. Jahagirdar
AGP for Respondent No. 1-State : Mr.A.S.Shinde
Advocate for Respondent Nos.2 & 3 : Mr.Deshmukh Bhausahab S.
...

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 10.08.2022.

PER COURT :

1. By way of the present petition, the petitioner challenges the order dated 07.03.2018, by which the services of the petitioner have been terminated, with effect from 20.01.2018 on the ground that the petitioner has been found permanently unfit for the post of driver, in the findings recorded by the Medical Board, Pune.

2. The grievance of the petitioner is that upon being found medically unfit for the post of driver his services ought not to have been terminated but he ought to have been provided with suitable alternate job by the respondent Corporation.

3. The issue is no more res integra and is covered by the judgment and order dated 16.07.2020 passed by this Court at Principal Seat in **Writ Petition No. 9762 of 2019 in Vikas and Anr. etc. Vs. State of Maharashtra and Ors.** The said order has been upheld by the Hon'ble Supreme Court, albeit, with certain modifications by the order dated 03.11.2020. The Hon'ble Supreme Court has directed that, the respondent Corporation would be under an obligation to consider the case of the medically unfit employees for an alternate employment. So far as, the issue of back wages is concerned, the Hon'ble Supreme Court has directed that the concerned employees must submit the relevant material along with their affidavits, as to whether the concerned employees were in employment during the relevant time or not.

4. In these circumstances, we find that the termination order is unsustainable and the respondent Corporation is under a statutory obligation to provide alternate job to the petitioner.

5. We accordingly passed following order :

ORDER

(i) The impugned order dated 07.03.2018 terminating the services of the petitioner is quashed and set aside.

(ii) The respondent Corporation is directed to consider the case of the petitioner for suitable alternate appointment, within a period of three months from today.

(iii) So far as, the intervening period from the date of termination, till the date of offering alternate appointment is concerned, the petitioner to file affidavit along with relevant material, to prove as to whether he was in gainful employment during the intervening period or not. Depending on the material so produced, the respondent Corporation to decide the issue of payment of back wages.

(iv) In the event, if it is found that the petitioner was not in gainful employment, during the intervening period, the respondent Corporation shall pass necessary order in respect of the back wages and pay the same to petitioner within 3 months of filing affidavit and material.

(v) The petition accordingly is disposed of. No costs.

(SANDEEP V. MARNE)
JUDGE

(MANGESH S. PATIL)
JUDGE