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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6546 OF 2016**

Vinod Sitaram Pawar ...Petitioner
Versus
The Chief Secretary & Ors ...Respondents

**WITH
WRIT PETITION NO. 1449 OF 2017**

Maharashtra State Road Transport Corporation ...Petitioner
Versus
Vinod Sitaram Pawar ...Respondent

Mr Vishal Dushing, *with Vaibhav Salvi, i/b Sulesh Karnik, for the
Petitioner in WP/6546/2016 & for Respondent in
WP/1449/2017.*

Ms Pinky Bhansali, *i/b GS Hegde, for Respondent in WP/6546/2016
& for Petitioner in WP/1449/2017.*

Mr RP Kadam, AGP, *for Respondent-State in WP/6546/2016.*

Mr KS Thorat, AGP, *for Respondent-State in WP/1449/2017.*

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**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.**
DATED: 7th March 2022

PC:-

1. In both Petitions, Rule. Respondents waive service. By consent, Rule is made returnable forthwith and the Petition is taken up for hearing and final disposal.
2. Writ Petition No. 6546 of 2016 is filed by an individual Vinod Sitaram Pawar. It is directed principally against the 2nd and 3rd Respondents, officers of the Maharashtra State Road Transport Corporation (“MSRTC”). We will take it as directed against MSRTC.
3. Writ Petition No. 1449 of 2017 is filed by MSRTC against Pawar.
4. Pawar says that he is a person with a disability. He has a 100% permanent blindness. This fact is not disputed at all.
5. Pawar was appointed to the post of junior sweeper by MSRTC. This was a reserved post in the sense that one of the total number of 10 posts was exclusively reserved for blind persons. The advertisement issued by MSRTC is at Exhibit “A” at page 10. It does not anywhere say that only persons with a certain percentage of visual disability will be considered, nor does it say that those who are 100% disabled will be excluded. On the contrary, it says that for availing of the reservations, a minimum 40% visual disability is the necessary criteria. This was the only post so reserved of the total 10 posts in the advertisement.

6. Pawar submitted his original application. It was scrutinized. On 22nd February 2012, the Pawar was called for an interview with the 3rd Respondent. He appeared at the interview on 12th March 2012 before the 3rd Respondent. On 24th March 2012, Pawar actually received a letter of appointment. A copy of this is at Exhibit “D”. It says that Pawar was selected and appointed to this post of junior sweeper. The appointment letter also said that the general medical condition of Pawar was that he was fit.

7. The 3rd Respondent apparently sent Pawar to the Sassoon General Hospital’s Board of Referees, Pune for an examination and medical check-up. Following this, on 23rd June 2012, the 3rd Respondent issued a letter permanently *cancelling* Pawar’s appointment. A copy of this letter is at Exhibit “E” to Pawar’s Petition.

8. The letter says that the medical board had declared him ‘unfit’ and therefore his name was deleted from the list of selected candidates.

9. The Pawar obtained a copy of the Sassoon General Hospital’s Board of Referees report under the Right to Information Act (“**RTI**”). A copy is at Exhibit “F”. It says that since the Pawar is 100% blind, he is unfit for the job of junior sweeper.

10. We are quite unable to understand this approach. Indeed, the record itself indicates that there is no basis whatsoever for the Sassoon Hospital’s declaration of unfitness. Between the time that

the Pawar was appointed on 24th March 2012 and the cancellation of his appointment on 23rd June 2012, the Pawar actually served a junior sweeper. There is nothing on record to indicate that he was unable to do his work satisfactorily or, more importantly, that his visual disability was any kind of impediment to the performance of his duties.

11. The letter of cancellation of MSRTC is based on, and only on, the Sassoon General Hospital's certificate of unfitness. If that medical certificate goes, the MSRTC's cancellation cannot possibly stand.

12. But this is not all. The Pawar approach the Disabilities Commissioner under the Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participations) Act 1995. The Disabilities Commissioner heard both sides. Apparently, MSRTC argued that Pawar's appointment was not cancelled because of his 100% blindness but because the Sassoon Hospital declared him "unfit". This is sheer casuistry. The only reason for the declaration of unfitness is the blindness. The Sassoon Hospital's report has no other reason for Pawar to be declared unfit. The Disabilities Commissioner allowed Pawar's application partly on 18th June 2015 and directed MSRTC and to carry out a re-examination of Pawar in Mumbai at the Sir JJ Group of Hospitals. If the Pawar was found fit, he was to be appointed within 15 days of receipt of that report. A copy of this order is at Exhibit "H".

13. MSRTC directed Pawar to undergo a complete medical check-up at the Sir JJ Group of Hospitals in Mumbai. MSRTC marked a copy to the Sir JJ Group of Hospitals and actually went to the extent of asking for a check of Pawar's "functional capability".

14. Pawar went to the Sir JJ Group of Hospitals. He underwent the medical tests on 13th and 14th July 2015. Once again, Pawar had to follow the RTI route to obtain a copy of the report from Sir JJ Group of Hospitals. He finally got this on 22nd December 2015. A copy of this report in the form of a disability certificate is annexed at page 36. It clearly notes the 100% blindness. But then it specifically notes that Pawar is *fit* for working as a sweeper in the blind category.

15. On 9th March 2016, the Commissioner of Disabilities wrote to MSRTC to immediately have Pawar to re-join his duties.

16. MSRTC has done nothing since. Hence this Petition.

17. We have no manner of doubt that Pawar's Petition must be allowed fully. MSRTC has no cause whatsoever to refuse to appoint the Pawar to the post of junior sweeper. His 100% blindness is not demonstrated to be an impediment to the performance of his duties as a junior sweeper. No further discussion is really required except perhaps to note that this conduct of MSRTC is wholly irrational, unreasonable, capricious, arbitrary and possibly perverse. It is a through-and-through violation of Articles 14 and 19(1)(g) of the Constitution of India. We do not except instrumentalities of the State to act in this fashion. Most especially when there is a clear

advertisement preserving one post out of ten for a particular position, and there is a minimum requirement to qualify for that reservation, MSRTC cannot possibly then indirectly impose a further condition by saying that if a candidate meets the minimum but has also got the maximum possible disability he stands disqualified. If there was to be any such disqualification, it ought to have been in the advertisement itself. That is well settled law of several decades. Such a disqualification condition cannot be added by later administrative action, let alone administrative *inaction*.

18. We also do not see how it is open to MSRTC to wholly ignore the directions of the Disabilities Commissioner. He is a statutory authority. It is not possible for MSRTC to ignore those directions.

19. Finally, we do not believe that MSRTC has any authority in law to sit in appeal over the final certification and test report of the Sir JJ Group of Hospitals. It cannot decide which of the two reports to prefer. The record shows that because the report from the Sassoon Hospital was found unsatisfactory by the Disabilities Commissioner, that authority required a second report from the Sir JJ Group of Hospitals. Once that was received, it was that report that would undoubtedly govern. The Sir JJ Group of Hospitals' report is diametrically contrary to that of the Sassoon Group of Hospital. Notably, MSRTC itself asked the Sir JJ Group of Hospitals to assess Pawar's functional ability. This is precisely what Sir JJ Group of Hospitals did but which the Sassoon Hospital did not. In these circumstances, it was simply impermissible for MSRTC to claim — whether directly or by necessary implication —

that it would prefer the earlier report of Sassoon Hospital over the one directed to be obtained by the statutory authority.

20. We believe that Pawar is correct in pointing out that the finding of the Sassoon Hospital and the action of MSRTC is contrary to two Government Resolutions of the State of Maharashtra. But we need not delve further into that aspect of the matter in the view that we have taken.

21. Accordingly, Pawar's Writ Petition No. 6546 of 2016 will succeed. Rule is made absolute in Writ Petition No. 6546 of 2016.

22. MSRTC's Petition Writ Petition No. 1449 of 2017 will have to be dismissed and Rule is discharged in that Petition.

23. There is one other aspect to this matter. Pawar should have been reinstated in late 2015 or at least early 2016 with no break in service and full back wages. In fact, we find no cause whatsoever for Pawar to have been driven to the streets and to beggary as he claimed before us. We exercise our discretionary jurisdiction and direct MSRTC to reinstate Pawar with continuity of service and payment of 50% back wages from June 2012 when he was terminated, until date. The entire amount will be paid into his account within one week from today. Both Writ Petitions are disposed of accordingly.

24. The Right of Persons with Disabilities Act 2015 also requires inter alia under Section 38 special provisions to be made for persons

with disability with high support. This applies to anybody who has a bench mark disability. It is only because MSRTC has now taken the line and the stand that Pawar was found by the Sassoon Hospital to be unfit and incapable for the job that we now require MSRTC to provide any and all services and support that Pawar may need for properly discharging his duties, even though, as we noted, Pawar has a past record of having been able to do his job without such support. But the intervening decade from 2012 to today cannot have been kind to Pawar. Hence this direction.

(Madhav J. Jamdar, J)

(G. S. Patel, J)