

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2176 OF 2021

The Nashik Municipal Corporation]
Through it's Commissioner.] ... Petitioner

Vs.

Shankar Mogal Salve] ... Respondent

...

Mr. Sandeep V. Marne for the petitioner.

Dr. Uday P. Warunjikar for the respondent.

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 28TH JANUARY, 2022.

P.C. :-

1. Rule. Rule made returnable forthwith and, heard finally, by the consent of the parties.
2. Th petitioner – Nashik Municipal Corporation has put forth prayer clause 20(a) and (b), which read as under:

“20. *The petitioner therefore prays that:*

- a. *This Hon’ble Court may graciously be pleased to call for the records of the case*

from the Ld. Industrial Court, Nashik and after examining the same, issue a writ of Certiorari or a writ in nature of Certiorari or any other appropriate writ, order or direction and quash and set aside the impugned Order dated 05.03.2021 passed passed by the Industrial Court, Nashik in Complaint (ULP) No.04 of 2021.

- b. Pending the hearing and final disposal of the present Petition, the operation, implementation and effect of the order dated 05.03.2021 passed by the Industrial Court, Nashik in Complaint (ULP) No.04 of 2021 be stayed.”*

3. Having considered the strenuous submissions of the learned counsel for the respective sides and having gone through the petition paper-book, I find that the following factors need to be taken into account:-

- (a) The respondent original complainant before the Industrial Court in Complaint (ULP) No.4 of 2021, is a 100% visually impaired person.
- (b) He was transferred on 10/12/2020 to JDC Bytco Hospital, another location in Nashik itself.
- (c) Since the location, where he was transferred as a liftman, was a 100% Covid facility centre, it became extremely

difficult for the Complainant to perform his duties and, his predicament was further aggravated, he being completely visually impaired.

- (d) He preferred the ULP complaint on 18/01/2021. By the impugned interim order dated 05/03/2021, the Industrial Court allowed the application, Exh.-U-2.
- (e) It is the contention of the complainant that he was denied the right to join till 30/06/2021, because the petitioner had approached this court by filing this petition.
- (f) The complainant was allowed to join on 01/07/2021 and, he is drawing his full salary ever since.
- (g) By an order dated 09/09/2021, the complainant was transferred by the petitioner to the Multanpura Shahari Arogya Kendra (Multanpura Urban Health Centre) from the earlier place of transfer i.e. JDC Bytco Hospital, Nashik Road.
- (h) The complainant noticed that the Multanpura Urban Health Centre was not functional.
- (i) On the request of the complainant, he was again transferred to JDC Bytco Hospital.

4. Today, the learned counsel for the petitioner-Corporation has placed before the court a copy of the communication dated 27/01/2022, by which, the complainant, who was brought back to the Covid Centre, is now again transferred to the Multanpura Urban Health Centre, as it has become functional.

5. It does not call for any debate that a physically challenged person should be treated with sensitivity and with a humane touch. So also, his hardships have to be reduced rather than increasing or aggravating them. It is well settled that such a handicapped person should not be put out of the employment, in view of the provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the subsequent Right of Persons with Disabilities Act, 2016.

6. In the above backdrop, I called upon the learned advocate for the respective sides to endeavour to put an end to the litigation, primarily in the light of the fact that the complainant before the Industrial Court was a 100% visually impaired employee and who was appointed on compassionate ground. His mother was a class IV employee (sweeper) in the Corporation.

7. The learned counsel for the Corporation has used his good offices and the Corporation has agreed to place the complainant with the Multanpura Urban Health Centre, though the order dated

27/01/2022 placed before the court and which is marked as X-1 for identification, carries the word “तात्पुरत्या”. It is informed that the said word would be removed from the said order.

8. So also, Mr. Warunjikar has consulted the complainant as well as the briefing advocate, who represents him before the Industrial Court, and makes a statement that the issue of wages would be for the period 15/12/2020 till 30/06/2021. The complainant is willing to wave 25% of the wages.

9. It is obvious from the above set of facts that the litigation between the parties before the Industrial Court could be brought to an end and, both the parties before the court are agreeable for giving a quietus to the litigation.

10. Insofar as accepting the concession of the complainant of waiver of 25% of the back-wages and the fact that the Industrial Court has found that the Corporation had *prima facie* wrongly transferred the complainant, I find that this matter can be disposed off with certain directions.

11. In view of the above and the peculiar facts of this case, this petition is partly allowed with the following directions:

- (a) There shall be no interruption in the service of the complainant, meaning thereby, his transfer vide

order dated 10/12/2020 and his joining / reporting for the duties, after the interim order of the Industrial Court, would not amount to any break in his service.

- (b) The order of the Industrial Court, granting full back-wages to the complainant from the date of being relieved i.e. 15/12/2020 onwards till the date of his joining, is modified by granting such back-wages to the extent of 75% for the period 15/12/2020 till 30/06/2021.
- (c) Now that the complainant has been posted at the Multanpura Urban Health Centre, he would continue at the said place, save and except, any exigencies that may occur in future.
- (d) The petitioner-Corporation shall pay 75% of the gross wages of the complainant for the period 15/12/2020 till 30/06/2021, preferably, on or before 15/03/2022.

12. The issue of change in cadre on request, concerning the complainant, is left open.

13. In view of the above, Complaint (ULP) No.4 of 2021 stands disposed off by virtue of this order and the Industrial Court would pass a formal order of disposing off the said complaint.

[RAVINDRA V. GHUGE, J.]