

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION No. 914 OF 2020.

Anil Ramrao Thete. Petitioner.

VERSUS

Vice President and Divisional Director
MSRTC and another. Respondents.

Mr. V.B. Bhise, Advocate for the Petitioner.
Mr.A.S. Mehadia, Advocate for Respondents.

**CORAM : NITIN JAMDAR AND
ANIL L. PANSARE, JJ.**

DATE : 30 MARCH 2022.

P.C.

Heard learned Counsel for the parties. Taken up for disposal.

2. The Petitioner had applied for the post of driver with Respondent – Maharashtra State Road Transport Corporation, Akola. The Petitioner was selected and was appointed as a driver (junior) by order dated 1 April 2011. The Petitioner joined the post

on 2 April 2011. He was made permanent by order dated 5 May 2012. On 30 April 2019 i.e. after six years of service, the Petitioner was referred for medical check up to Civil Surgeon, Akola. In the medical check up, it was revealed that the Petitioner had defective colour vision. Respondent No.2 Corporation referred the Petitioner for medical check up to the President, Board of Referees, Nagpur. Board of Referees by medical report dated 31 July 2019 opined that the Petitioner was unfit for service. The Respondent Corporation again referred the Petitioner to an Organization, which submitted report on 19 September 2019, that the Petitioner had 'Deutan Colour Vision defect', and was not fit to work as a driver or any field work.

2. By order dated 8 November 2019, the Petitioner was terminated from services from the post of driver. The Petitioner thereafter has filed this Writ Petition.

3. The Petitioner has relied upon Section 47 of the Persons with Disabilities (Equal Opportunities, Protection or Rights and Full Participation) Act, 1995 (now Section 20 of the 2016 Act), to contend that the Petitioner could not have been terminated, and it was the bounden duty of the Respondent Corporation as per the provisions of the 1995 Act, to grant appointment to the Petitioner to an alternate suitable post.

4. The learned Counsel for the Petitioner has relied upon a

decision of Division Bench of this Court in case of *Vikas Khanderao Keng .vrs. State of Maharashtra and others*¹ and in the case of *Deepak Mahadeorao Adchule .vrs. Vice-President and Divisional Director and another* (Writ Petition No.8422/2018, decided on 9 December 2021).

5. No reply to this petition has been filed by Respondents. It is not pointed out as to how the decisions relied by the Petitioner are not applicable to the facts of the present case.

6. In these decisions also the petitioners therein were working as drivers, who were diagnosed with visual impairment as regards colour vision and came to be terminated. They were directed to be reinstated. The order passed in the case of *Vikas Keng (supra)*, by this Court was challenged in the Supreme Court and subject to certain modifications, the order was confirmed. The Division Bench in case of *Vikas Keng (supra)*, had issued the following directions :

“20. Keeping in line the mandate of section 20 of the 2016 Act, we order and directed MSRTC to provide each one of the petitioners with alternative posts having the same pay scale and service benefits as their earlier. This exercise must be completed within a period of 4 weeks from the date of this Order.

21. As a result of the aforesaid decision, we order and direct MSRTC to pay backwages to each of the petitioners from the date that their respective

services were discontinued until the date they have been provided with an alternative position in compliance with section 20 of the 2016 Act. These wages must be credited to the petitioners' accounts within a period of 6 weeks from the date of pronouncement and uploading of this Order. However, whilst computing the amount of backwages to be paid to the petitioners, we grant liberty to MSRTC to ascertain whether or not any of the petitioners were otherwise employed during this intervening period, and if so, MSRTC would be at liberty to deduct the amount of wages that the petitioners may have earned from their alternative employment whilst paying out the backwages. In the event MSRTC wishes to undertake this exercise, such exercise should be completed within a period of 4 weeks from the date of pronouncement and uploading of this order.

22. The Writ Petitions are disposed of accordingly. We appreciate the assistance rendered by Dr. Sathe as Amicus Curiae in the matter.

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 backwages 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."*

7. These directions have been modified by the Supreme Court by order dated 3 November 2020, as follows :

" Leave granted.

Learned counsel for the respondents/caveator accepts notice.

We have heard learned counsel for parties.

We are broadly in agreement with the view taken by

the Bombay High Court in the impugned order except on two aspects which we enumerate as under:

1) The first aspect is as discussed in paragraph 21 of the impugned judgment requiring the appellants to pay the respondents the back wages within six weeks from the pronouncement and the uploading of the order. Liberty has been granted to the appellants to ascertain whether or not any of the respondents who were otherwise employed during the intervening period for that period deduction of the amount of wages was held as permissible.

It has been rightly pointed out by the learned counsel for the appellants that this burden cannot be shifted on to the appellants and the information would be within the knowledge of the respondents. Learned counsel for the respondents cannot seriously dispute the aforesaid position.

We thus, direct that the respondents will file the relevant material along with their affidavits before the appellants within two weeks from today and the appellants can verify the position within a period of six weeks thereafter. Subject to the aforesaid verification, we grant four weeks' time thereafter to credit the account of the respondents dependent on the fate of the verification and the right of the appellants to deduct the amount in case the respondents are found having alternatively employed.

2)The second aspect arises from the observations towards the end of para 19 whereby Clause (11) of the impugned circular has been struck down. The said Clause reads as under:

“11. The period which elapses after the employee's disability is advanced and he is

promoted to alternative posts should be considered as normal unpaid leaves. Also the leaves in credit to his account should be carried forwarded to his alternate position.”

Learned counsel for the appellants has also drawn our attention to Clause (9) of the same Circular which reads as follows:

“9. After obtaining the certificate of disability and completing other matters, it will be appropriate to try to resolve the issue of alternative employment within three months so that the question of payment of previous service will not arise. As per the provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, it will be necessary to comply with the previous salary protection, continuity of service & promotion.”

We are of the view that the learned counsel for the appellant is correct in contending that a conjoint reading of the two Clauses does not make it an open-ended exercise for the appellants and the issue of an alternative employment has to be resolved within a span of three months. We are thus, of the view that it would not be appropriate to quash the Clause (11) in this behalf. It appears that what weighed with the learned Judges while passing the impugned order was the fact that this Circular having come on 23rd January, 2020, it may be used to deprive the respondents of their back wages. That issue is taken care of by the order which we are passing now and upholding the back wages for the respondents as directed in the impugned order.

We thus, strike out the sentence in the impugned order setting aside the Circular which will hold good. The

import of this for the other employees will be that the alternative employment would have to be located within the period of three months as set out in Clause (9) of the Circular.

The appeals are allowed to the limited extent in the aforesaid terms, leaving the parties to bear their own costs.”

8. Since the decision in case of *Vikas Seng [supra]*, as modified, is clearly applicable to the case of the Petitioner, the Respondent Corporation will have to take necessary steps as enumerated in these decisions in respect of Petitioner as well. We note that in the decision of *Vikas Keng [supra]*, the Respondent Corporation was directed to set out a time table as enumerated above. We therefore, dispose of this Writ Petition directing the Respondent Corporation to take steps as directed in the case of *Vikas Seng [supra]*, as modified by the Supreme Court within the time limit as set out in the said decision in respect of the case of the Petitioner.

9. Writ Petition is accordingly allowed. No order as to costs.

(ANIL L. PANSARE, J) (NITIN JAMDAR, J)

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