

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

C.A.O. NO. 2015/2019 IN MCA ST. NO.17399/2019 IN W.P. NO. 901/2019 (D)

(MUKESH BANDU TITIRMARE **VERSUS** M.S.R.T.C., BHANDARA)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri S.A. Nerkar, counsel for the applicant.

Shri V.H. Kedar with Ms Bhagyashree Reddy, counsel for the non-applicant.

CORAM : A. S. CHANDURKAR AND SMT. M.S. JAWALKAR, JJ.

DATE : MARCH 29, 2022.

Though the prayer made in the civil application is opposed by the learned counsel for the non-applicant, considering the reasons mentioned the application for condonation of delay is allowed. The delay in filing the review application stands condoned. The civil application is disposed of.

M.C.A. ST. NO.17399/2019.

The applicant was serving as Conductor with the non-applicant/ Corporation. Since he suffered an accident, he proceeded on medical leave. After he reported for duty, he was medically examined by the Medical Board which issued a certificate dated 22.08.2016 declaring him permanently unfit. On that basis, the services of the applicant came to be terminated. This action was the subject matter of challenge in Writ Petition No.901 of 2019. On 04.02.2019 the writ petition was dismissed on the ground that there was an alternate remedy of approaching the labour Court. The learned counsel for the applicant by relying upon the decision in *Shivaji Vishwanath Dongre Versus State of Maharashtra & Others* [2006(1) Mh.L.J. 417] submits that since the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, 'the said Act') have been violated, the writ petition could be entertained instead of relegating the applicant to the Labour Court. The termination of the applicant's services was only on the ground that he was found medically unfit. There being no disputed questions and considering the state of the applicant, the writ petition be entertained.

The learned counsel for the non-applicant opposes the aforesaid aspect and submits that the Labour Court could consider the entitlement of the applicant in accordance with law.

We find that the only reason for terminating the applicant's services is on the ground that he was found to be medically unfit. The Division Bench of this Court in *Shivaji Vishwanath Dongre* (supra) has considered the aforesaid aspect and has noted that there being failure to comply with the mandatory requirements of Section 47 of the said Act, the writ petition was liable to be entertained. We find that since the applicant alleges breach of provisions of Section 47 of the said Act, the writ petition is liable to be entertained on merits.

Hence for aforesaid reasons, the order dated 04.02.2019 is recalled. The review application is allowed. The writ petition is accordingly restored for fresh adjudication.

WRIT PETITION NO.901/2019.

Issue notice to the respondent on the writ petition returnable in three weeks.

Learned counsel Shri V.H. Kedar waives notice for the respondent.

(SMT. M.S. JAWALKAR, J.)

(A. S. CHANDURKAR, J.)

APTE