

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1332 OF 2023

Mohammed Athar Mohammed Akbar Inamdar ...Petitioner

Versus

Divisional Controller,
Maharashtra State Road Transport Corporation
S.T. Divisional Office, Parbhani. ...Respondent

ALONG WITH
WRIT PETITION NO.1287 OF 2023

Gajanan Govindrao More ...Petitioner

Versus

Divisional Controller,
Maharashtra State Road Transport Corporation
S.T. Divisional Office, Parbhani. ...Respondent

Mr. Parag Shahane, Advocate for petitioner.
Mr. A.D. Wange, Advocate for respondent.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 20th SEPTEMBER, 2023

ORDER :

1. In both these petitions, petitioners/complainants are aggrieved by the order dated 25.11.2022 passed by learned Member, Industrial Court Jalna, thereby rejecting the application filed by petitioners for referring them to Vision Next Hospital, Pune, in terms of circular dated 21.01.2020.

Bhagyawant Punde

2. Petitioners/complainants were working as drivers with respondent. On 05.01.2017 during the eye check up, the District Hospital, Parbhani has diagnosed petitioners with hypentensive retinopathy with Maculopathy and issued disability certificate. Thereafter, they were given duty as peon. Pursuant to the complaint received to the corporation as regards authenticity of the disability certificate of petitioners, petitioners/complaints were referred to Medical Board at Sir J.J. Hospital, Mumbai. Medical Board of Sir J.J. Hospital, after conducting examination of petitioners, issued certificate declaring that petitioners do not suffer from any visual impairment. Thereafter, again petitioners were subjected to third test on 05.12.2019, wherein District Hospital, Parbhani, reiterated its report of first test conduct on 05.01.2017.

3. Pursuant to the report of Sir J.J. Hospital, Mumbai, respondent issued notice to petitioners directing them to resume services as drivers, in the corporation. Said notice is challenged by the petitioners by filing Complaint (ULP) Nos. 65/2020 and 66/2020. In the complaints applications Exhibits- U-18 and U-17 are filed by petitioners for examination of petitioners by Vision Next, Hospital, Pune, which is empanelled hospital as per circular

dated 23.01.2020, issued by respondent.

4. Industrial Court has rejected the applications holding that the circular is of January, 2020 and previous medical tests were conducted prior to that, no right is accrued to petitioners to examine themselves by Vision Next Hospital, Pune.

5. This Court (Coram: Sharmila U. Deshmukh) by order dated 06.02.2023, observed thus;

"6. Considering the nature of the duties of the petitioner as a driver in the corporation, it is necessary that accurate report is submitted as regards visual impairment of the petitioner, as the duties discharged by petitioner concerns with the life and safety of the passengers traveling in the bus as well as pedestrian. Merely because circular is of January 2020, petitioner's right is not curtailed in as much what is important is definite finding as regards visual impairment. The Corporation has empanelled Vision Next Hospital, Pune on its panel for regular medical check up of its employees and as such in order to ascertain disability of the petitioner, the petitioner can be examined by the Vision Next Hospital, Pune."

6. In the light of peculiar facts of the present cases, and considering the fact that there are contradictory reports of visual impairment of petitioners and taking into consideration the circular dated 23.01.2020, wherein it is mentioned that Sir J.J.

Hospital does not have necessary equipment and therefore, Vision Next Hospital, Pune is empanelled, and above order of this Court, it is desirable to refer petitioners to Vision Next Hospital, Pune for examination.

7. Industrial Court has taken hypertechnical approach and has erroneously rejected the applications filed by petitioners. The impugned order, therefore, is unsustainable. In the result, following order:-

ORDER

- (i) Writ petitions are allowed in terms of prayer clause 'B'.
- (ii) Application Exhibit-U-17 and U-18 are allowed.
- (iii) Petitioners shall be examined by Vision Next Hospital, Pune, within four weeks from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI, J.]