

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9839 OF 2022

Ferozkhan S/o Mustafakhan Pathan,
Age: 39 years, Occu.: Nil,
R/o. Islampura, Near Kali Mosque,
Tal. & Dist. Beed.

.... Petitioner

Versus

1. The State of Maharashtra,
Through it's the Principal Secretary
Maharashtra State Transport Department,
Mantralaya, Mumbai-32.
2. The Maharashtra State Road and Transport Corporation,
Maharashtra Wahatuk Bhavan,
Dr. Anandrao Nair Marg,
Mumbai- 44008
Through its Managing Director.
3. The Divisional Controller
State Transport Corporation,
Beed, Tq. & Dist. Beed
4. The Depot Manager,
State Transport Corporation,
Beed, Tq. & Dist. Beed

.... Respondents.

.....

Advocate for Petitioner : Mr. K. N. Shermale
AGP for Respondent No.1 : Mr. S. K. Tambe
Advocate for Respondent Nos. 2 to 4 : Mr. A. B. Dhongade

.....

**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.**

DATED : 01st MARCH, 2023

ORAL JUDGMENT (PER RAVINDRA V. GHUGE, J.) :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner has put forth prayer clauses 'B', 'C', 'D', 'E' and 'F' as under :-

"B] Rule may kindly be made absolute by allowing this Writ Petition, thereby declaration that the termination of the petitioner vide letter dated 27.08.2020 by the respondent No.3 is illegal, unconstitutional and against the section 20 of the Rights of Persons with Disabilities Act, 2016.

C] Rule may kindly be made absolute by allowing this Writ petition, thereby declaration that the clause No. 11 of circular dated 23.01.2020 issued by the respondent No.2 is ultra virus to the section 20 of the Rights of Persons with Disabilities Act, 2016.

D] Rule may kindly be made absolute by this Writ Petition, thereby directions to the respondents to provide the alternative service to the petitioner by virtue of the section 20 of the Rights of Persons with Disabilities Act, 2016.

E] Rule may kindly be made absolute by allowing this Writ Petition, thereby direction to the respondents to pay the back-wages to the petitioner as the decision taken by the respondent No.2 to 4 is illegal and contrary to the provisions of the law."

F] Pending the hearing and final disposal of the present Writ Petition the letter dated 27.08.2020 issued by the respondent No.3 to the petitioner may kindly be stayed.

3. Having considered the strenuous submissions of the learned Advocates for the respective sides and having perused the judgments delivered by this Court in similar set of circumstances regarding the conduct of the MSRTC, we find this case to be yet another example of an employee being treated by the MSRTC in a manner not befitting an employer.

4. The Petitioner has been working as a bus conductor since 30/05/2002. He had joined on compassionate basis. On 15/09/2016, the MSRTC bus, in which the Petitioner was on duty as a bus conductor, met with a serious accident. The Petitioner suffered permanent injuries which have been diagnosed as right femur fracture. There are screws/bolts which are implanted and it has resulted in his right leg being shortened on account of the severity of the injuries.

5. By communication dated 27/08/2020, the MSRTC declared the Petitioner to be incapable of performing the duties of a bus conductor and purportedly terminated his services with effect from 29/07/2020. The learned Advocate for the MSRTC submits on specific instructions that the Petitioner's name is only removed from the muster roll of bus conductors. The words

“२९/०७/२०२० पासून वाहक पदाची सेवा समाप्त करण्यात येत असुन, त्यांचे नाव दिनांक २९/०७/२०२० रोजी म.ऊ. पासून वाहक पदातून व रा. प. बीड आगाराच्या वाहक पदाच्या हजेरीपटावरून कमी करण्यात येत आहे.” mean that his name is only removed from the muster roll. If this submission is to be accepted, it would be obvious that the MSRTC indicates that the Petitioner’s service with MSRTC has not been terminated.

6. We are, however, circumspect about the statement made on instructions since the said order apparently means that the Petitioner’s name has been removed from the muster roll meant for the conductors and his service has been brought to an end. The fact remains that the Petitioner has not been paid his monthly salary from 29/07/2020 till today.

7. We have perused the disability certificate issued by the Swami Ramanand Teerth Rural Government Medical College and Hospital at Ambejogai, Dist. Beed which indicates that though the disability cannot be quantified in percentage, he has suffered injury to his right lower limb i.e. right neck femur bone and screws are implanted since his one right leg has got shortened. The Swami Ramanand Teerth Rural Government Medical College and Hospital, Ambajogai has certified vide the Medical Board Examination Certificate dated 07/11/2020 that the Petitioner is fit to perform the work of a

peon. Three senior doctors had examined the Petitioner and issued the said certificate.

8. The Petitioner had approached the Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India, seeking a disability certificate. The Medical Authority Members and the issuing Medical Authority, Beed have noted the injuries suffered by the Petitioner and have expressed that a disability certificate is not required to be issued. This is being construed by the MSRTC, today before us, that the Petitioner is fit to perform the duties of a bus conductor and the MSRTC is willing to reinstate him as a bus conductor.

9. We would not venture into delivering a verdict as to whether the Petitioner is capable of performing work as a bus conductor or not, since we do not have the expertise to make such a diagnosis. In this context, it would be appropriate that the Petitioner is once again subjected to a medical examination by the three members Medical Board of the SRTR Government Medical College and Hospital, Ambajogai, keeping in view that it is seven years from the date of the accident. His latest medical examination could reveal the extent of the restrictions on him and assist in deciding whether the Petitioner is rendered handicapped or disabled.

10. All said and done, the fact remains that the service of the Petitioner ought not to have been terminated. The MSRTC is attempting to put forth a shrewd reply. MSRTC is neither willing to make a statement that the Petitioner has been terminated, nor is it willing to make a statement that the Petitioner has not been terminated. We find this to be a strange approach of the MSRTC.

11. Nevertheless, in view of the provisions of the Rights of Persons with Disabilities Act, 2016 (for short, “the Disabilities Act, 2016”), more specifically sub-section 4 of section 20 which prohibits a Government establishment from dispensing with or reducing in rank, an employee who acquires a disability during his or her entire service, the action of the MSRTC either of terminating him or stopping his salary illegally, cannot be sustained. The two provisos below sub-section 4 clearly mandate that the employee has to be shifted to another post with the same pay scale and service benefits. If the employee cannot be adjusted against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

12. Apparently, the MSRTC has not referred to these provisions of law and has acted highhandedly. The conduct of the MSRTC is further aggravated

by the fact that it is not willing to even state before this Court as to whether the Petitioner has been terminated from service. We, therefore, take it that the Petitioner has not been terminated from service and his name is simplicitor removed from the muster roll of bus conductors, being maintained separately. This, therefore, makes the MSRTC liable to pay the entire unpaid salary to the Petitioner with interest.

13. In similar set of facts, this Court had delivered a judgment on 28/03/2022 in Writ petition No. 3227 of 2021, ***Kacharu Kakasaheb Pandit Vs. State of Maharashtra and others*** and connected matters, wherein it was noted for paragraph Nos. 4 to 8 as under :-

“4. The MSRTC approached the Honourable Supreme Court by preferring Civil Appeal Nos.3607-3620/2020. By order dated 03.11.2020, the appeals were allowed only to the limited extent of striking out the sentence from the judgment of the learned Division Bench as regards setting aside the circular. Consequentially, the circular was held to be good in law. To the extent of back wages, the Honourable Supreme Court directed that these petitioners would tender their individual affidavits declaring that they were not gainfully employed during the period of termination.

5. The learned advocate for the MSRTC submits, on instructions, that the termination orders of these petitioners would be withdrawn forthwith and within three months, the petitioners would be accommodated on alternate jobs. The wages for these three months as per the last drawn wages would be paid.

6. Though we are disposing off the writ petitions in the light of the statement made by the learned advocate for the MSRTC on instructions, we find it astonishing that the Divisional Controller, MSRTC, Beed, had terminated these petitioners after the Division Bench of this Court at the Principal Seat delivered the judgment on 16.07.2020 in Writ Petition No.9762/2016, **Vikas Khanderao Keng vs. The State of Maharashtra and others** on identical grounds. It is not possible that the Divisional Controller may not be aware of the said judgment. The MSRTC was the respondent in the said petitions and was the appellant before the Honourable Supreme Court.

7. So also, this is not the first time that this Court has delivered orders against the MSRTC in matters of disability when the MSRTC had shown it's undue eagerness in dismissing the services of the disabled employees. In a similar case, in the matter of **Arvind Shankarrao Khodke vs. The Regional Director of Municipal Administration, Nagpur Division, Nagpur**, in Writ Petition No.3496/2007 decided on 10.01.2017, the termination of this type had been set aside. In case of **Vishnu Shahurao Bangar vs. The Divisional Controller**, Writ Petition No.3772/2019, the MSRTC was saddled with costs for having terminated the services of an employee without accommodating him on a lighter job.

8. In view of the above, these Writ Petitions are allowed with the following directions :-

(a) The termination orders impugned in these petitions, stand quashed and set aside.

(b) The petitioners shall tender individual affidavits declaring that since the date of their termination till today, they have not been in gainful employment. Thereafter, the MSRTC shall initiate steps for payment of salaries to those petitioners, who have given such declarations.

(c) *The MSRTC shall initiate appropriate steps as are permissible in law and allot the work to these petitioners on any alternate job, within four months from today.*

(d) *Salaries of these petitioners from today till the decision is taken by the MSRTC within four months, shall be paid on month to month basis as per their last drawn salary.*

(e) *Since the Divisional Controller, MSRTC, Beed has highhandedly issued the termination orders in these matters despite the judgment delivered at the Principal Seat on 16.07.2020 and the judgment delivered by the Division Bench in **Vishnu Shahurao Bangar (supra)**, we find it appropriate to saddle the Divisional Controller, MSRTC, Beed, occupying the position on the date of termination of these petitioners, to pay costs of Rs.5000/- (Rupees Five Thousand) per petitioner, from his salary account, to the petitioners in two equated monthly installments beginning from April, 2022 and ending with the salary payable in May, 2022.*

14. In view of the above, this Petition is allowed. The name of the Petitioner would be continued in his capacity of being an employee of the MSRTC, without break in service from 29/07/2020. The Petitioner would be entitled for the entire unpaid salary from 29/07/2020 until today with 5% interest per annum, from the date the amount has become payable. The said amount shall be paid to the Petitioner with interest, within 60 days from today and his monthly salary being a bus conductor with the MSRTC, in the light of section 20(4) of the Rights of Persons with Disabilities Act, 2016, shall be payable forthwith on month to month basis.

15. The Petitioner would be entitled to report for duties from tomorrow and mark his presence at the same depot where he was last working when the impugned order dated 27/08/2020 was issued.

16. MSRTC is at liberty to refer the Petitioner to a further medical check to the medical board of the SRTR Government Medical College and Hospital, Ambajogai for complete physical examination to assess the extent of the deformity and the handicap suffered by him on account of the 2016 accident. Based on the medical report, the MSRTC would follow the provisions under section 20(4) read with the two provisos there below, of the Disabilities Act, 2016 and grant an appropriate posting/work to the Petitioner depending on the report of the medical college.

17. The learned Advocate for the Petitioner submits, on instructions that the Petitioner would present himself for medical examination as per the date/time/schedule as is agreed upon between MSRTC and the SRTR Government Medical College and Hospital, Ambajogai on intimation with proper notice period. The statement is recorded.

18. Since we are coming across MSRTC cases, in which section 20 of the Disabilities Act, 2016, is not even adverted to by the MSRTC, much less followed, we deem it appropriate to direct the learned Registrar (Judicial) of

this Court to place a copy of this judgment before the Principal Secretary, Maharashtra State Transport Department, Mantralaya, Mumbai for ensuring that similar cases do not occur/recur in any Government department. The concerned Secretary is expected to issue necessary directives to all authorities in order to avoid recurrence of similar incidents.

19. Rule is made absolute in the above terms.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)