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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 145 OF 2023

Mr. Luis Fernandes, Age 52 years,
Indian National, resident of Agalli,
Fatorda, Margao, Goa. ... PETITIONER

Versus

1. Goa State Schedule Castes
and Other Backward Classes
Finance and Development
Corporation Limited, Through
its Managing Director, Having
office at 4th Floor, Patto Centre
Building, Near KTC Bus Stand,
Panaji-Goa.
2. State of Goa, Through its
Chief Secretary, Secretariat,
Porvorim, Goa. ... RESPONDENTS

Mr Parikshit Sawant, Advocate for the Petitioner.

Mr Prashil Arolkar, Additional Government Advocate for
Respondent No. 1.

Ms Sapna Mordekar, Additional Government Advocate
holding for Mr Manish Salkar, Government Advocate for
Respondent No. 2.

CORAM: **M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

RESERVED ON: **6th SEPTEMBER 2023**

PRONOUNCED ON: **8th SEPTEMBER 2023**

JUDGMENT: (per Bharat P. Deshpande, J.)

1. Rule. Rule is made returnable forthwith. This matter is taken up for final disposal at the stage of admission itself with consent of the parties.

2. The Petitioner preferred the present Petition for substantive reliefs as prayed in prayer clause (A), which reads thus:

“A. This Hon’ble Court may be pleased to issue writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order of direction, thereby quashing and setting aside impugned order dated 09.01.2023, Annexure-I, No. GSCBCFDC/ESTT/117/22-23/Vol.III/1812 and thereafter direct the Respondent No. 1 to join back the Petitioner in his services with the Respondent No. 1.”

3. The Petitioner was appointed as a Driver on 16.10.2000 with Respondent No. 1-Corporation. His services were confirmed on 03.08.2005. Unfortunately, on 31.12.2020, the Petitioner suffered a paralytic stroke, and accordingly, he was advised to rest for two and a half months. On 01.03.2021, the Petitioner resumed duties and vide his letter dated 15.03.2021, a request was made to Respondent No. 1 to exempt him from long-distance driving due to his physical condition. On 21.06.2021, Respondent No. 1 referred the Petitioner to the Medical Board for examination. On 23.08.2021, the Medical Board, vide its certificate, observed that the Petitioner is not fit to work as a

Driver and suggested that he may be allocated some other less skilful job like a clerical job. The Petitioner received a show cause notice dated 12.12.2022 asking him to show cause as to why he should not be made to retire on medical grounds. On 09.01.2023, the Petitioner filed his reply by giving specific reasons and also informing that he has fully recovered and, therefore, the show cause notice needs to be withdrawn. However, vide order dated 09.01.2023, the Managing Director of Respondent No. 1 ordered that the Petitioner be relieved w.e.f. 11.01.2023, claiming therein that the Petitioner stood retired or prematurely retired on medical grounds.

4. The Petitioner filed his representation dated 20.01.2023 requesting the Managing Director of Respondent No. 1 to reconsider the order dated 09.01.2023 and allow him to continue his services as Driver. Since there was no response, this Petition is filed.

5. Mr Sawant, appearing for the Petitioner, would submit that first of all, the Petitioner is fully fit to work as a Driver, and he even wrote a letter dated 10.11.2022 disclosing that he is fully fit and is willing to perform his duties as a Driver. He would submit that Respondent No. 1 failed to respond to such a letter. Respondent No. 1 also failed to refer the Petitioner for examination before the Medical Board in order to consider his fitness. Thus, the impugned order suffers from arbitrariness.

6. Mr Sawant would then submit that in the resolution dated 29.06.2022 and more specifically as mentioned in item no. 4, the Managing Committee of Respondent No. 1 decided that the Petitioner should be provided with some other work as a Multi Task Staff instead of the post of Driver. He then submitted that such resolution no. 03/22 was given a complete go-by without setting it aside or even modifying it in the next board meeting held on 06.10.2022. Even otherwise, Mr Sawant would submit that the meeting dated 06.10.2022 nowhere shows that any specific decision was taken. It is submitted that the Rules were not disclosed under which the Board has decided that the Petitioner be granted voluntary retirement on medical grounds. Apart from this, Mr Sawant would submit that the question of granting voluntary retirement would arise only when the Petitioner applies for it. The Board/Respondent No. 1 cannot suo motu consider the aspect of voluntary retirement of the Petitioner on medical grounds. In other words, the action taken by the Board/Respondent No. 1 in its resolution dated 06.10.2022 is totally illegal as the Petitioner filed no such Application for voluntary retirement on medical grounds. In fact, the Petitioner informed that he is fit to work as a Driver.

7. Mr Sawant would then submit that while passing the impugned order dated 12.12.2022, no opportunity was given to the Petitioner to be heard. Mr Sawant would then submit that the provisions of Section 20 of the Rights of Persons with Disabilities

Act, 2016 would be attracted wherein no Government Establishment shall discriminate against any person with a disability in the matter regarding employment.

8. He then placed reliance on the following decisions:

- (i) **Anand Bihari & Others Vs. Rajasthan State Road Transport Corporation**, (1991) 1 SCC 731 and
- (ii) **Kunal Singh Vs. Union of India & Another**, (2003) 4 SCC 524.

9. The learned Additional Government Advocate, Mr Arolkar, appearing for Respondent No. 1, would submit that there is no post wherein the Petitioner could have been accommodated as a Multi Task Staff. He submits that the Board/Respondent No. 1 has limited staff, and there are only two posts of Driver. If the Petitioner is accommodated in any other post, then there would be a shortage of Drivers. He then would submit that the Board passed the resolution in its meeting dated 06.10.2022 wherein the medical certificate issued by the Medical Board was duly considered, and even reasons were disclosed as to why the Petitioner could not be accommodated in any other post. Accordingly, he submits that the decision taken by the Board cannot be faulted.

10. The rival contentions fall for determination.

11. First of all, it is clear that the Petitioner was appointed as a Driver initially on a temporary basis and thereafter confirmed vide order dated 03.08.2005. Thus, the Petitioner is a permanent employee of Respondent No. 1.

12. It is unfortunate that somewhere in the year 2020, the Petitioner suffered a paralytic stroke, and accordingly, he was advised bed rest. After his recovery, when he joined the duty, he addressed a letter to Respondent No. 1 dated 15.03.2021 stating that he was declared fit by the Doctor, however, he was feeling weakness in the right side of the body, and accordingly, he is not in a position to drive for longer distances as reflexes of his right leg became slow which might lead to a mishap while driving. He, therefore, only requested Respondent No. 1 to spare him from driving the vehicle for longer distances.

13. Respondent No. 1, vide their letter dated 21.06.2021, i.e. after three months from the date the Petitioner joined his duties after the said ailment, requested the Dean of GMC to constitute a Medical Board and to examine the Petitioner and submit the report.

14. The Medical Board from GMC accordingly examined the Petitioner and issued a certificate dated 23.08.2021. The Medical Board found that the Petitioner's is a case of "Diabetes Mellitus with Hypertension with right-sided Hemiparesis". The Board opined that in view of his hemiparesis, he has difficulty

performing his daily activities like walking. Finally, the Board opined that the Petitioner is not fit to work as a Driver and may be allotted some other less skilful job like a clerical job.

15. It is a matter of record that Respondent No. 1-Board, in its 158th meeting held on 29.06.2022 and more specifically, item no. 4, discussed the change of designation of Driver Shri Luis Fernandes as Multi Tasking Staff as per the report of the Medical Board. Item No. 4, along with the resolution no. 03/22 reads thus:

“ITEM NO. 4

CHANGE OF DESIGNATION OF DRIVER SHRI LUIS FERNANDES AS MULTI TASKING STAFF AS PER THE REPORT OF THE MEDICAL BOARD:

4.0 The Chairman informed the meeting about the health condition of Shri Luis Fernandes, employed as Driver of the Corporation. He further informed that the said Shri Fernandes suffered paralytic attack and the Medical Board, Goa Medical College, Bambolim has issued letter stating said Shri Fernandes cannot driving the vehicle.

4.1 The Chairman further informed that it was proposed to employ him as Multi Task Staff at Corporation's Margao Office instead of as driver which will not effect Corporation financially.

(Emphasis supplied)

4.2 The Managing Director informed that it was necessary to redesignate Shri Fernandes as Multi Task Staff else, his services cannot be availed as Driver. Alternatively, Corporation will have to retire him.

4.3 The Board deliberated on the matter at length. Shri Fernandes was called and he was explained about the options available with the Corporation in detail including the terms and Conditions. Shri Fernandes agreed to work as Multi Task Staff.

4.4 The Board approved the Proposal by passing the following resolution unanimously:

RESOLUTION NO. 03/22

“RESOLVED THAT the designation of Shri Luis Fernandes, employee of the Corporation be and is hereby changed from Driver to Multi Task Staff in view of the Certificate dated 23/08/2021 issued by Medical Board, Goa Medical College, Bambolim and that Shri Prasad Volvoikar, Managing Director of the Corporation be and is hereby authorized to take such steps as may be required on behalf of the Corporation to give effect to this resolution.”

16. The resolution quoted above shows that the Petitioner was called and explained about the option available to Respondent No. 1 including the terms and conditions. The Petitioner agreed to work as Multi Tasking Staff. Accordingly, the Board approved the proposal by passing a resolution that the Petitioner's designation be hereby changed from Driver to Multi Tasking Staff and the Managing Director is authorised to take such steps as may be required on behalf of the Corporation to give effect to the resolution.

17. Admittedly, there are no Recruitment Rules which Respondent No. 1 referred to. However, it is claimed that Respondent No. 1 being a Government undertaking, all

Recruitment Rules applicable to the Government staff are available/applicable.

18. In the 159th meeting of the Board held on 06.10.2022 and while confirming the minutes of the 158th meeting dated 29.06.2022 in paragraphs 1.5 to 1.7, the discussion with regard to the earlier resolution of change of designation from Driver to Multi Tasking Staff was again discussed. However, we found that such a discussion is not complete. The resolution no. 13/22 reads thus:

“Resolved that Shri Fernandes, Driver be granted voluntary retirement on medical grounds”.

19. It is surprising that the earlier resolution no. 03/22, recorded in the 158th meeting dated 29.06.2022, was not overruled, but it was resolved that the Petitioner be granted voluntary retirement on medical grounds. Such a resolution clearly goes to show that Respondent No. 1/Board observed/resolved that the Petitioner be granted voluntary retirement on medical grounds. Even if such a resolution is accepted, it clearly goes to show that in case the Petitioner apply for voluntary retirement on medical grounds, he could be considered as retired voluntarily as unfit to work as a Driver. The condition must be implied in it that such voluntary retirement could be granted only on an Application filed by the Petitioner. A “voluntary” retirement cannot be forced upon the Petitioner. Else, it ceases to be “voluntary”. Even a compulsory retirement

must abide by the Rules and be informed with fairness and sensitivity, particularly in a fact situation like the present one.

20. By order dated 12.12.2022, thereby informed the Petitioner that the Board has decided to retire him on medical grounds. By this order dated 12.12.2022, the Petitioner was given a notice of 30 days with regard to his premature retirement on medical grounds. Vide order dated 09.01.2023, the Petitioner was relieved from duties w.e.f. 11.01.2023.

21. The learned Additional Government Advocate appearing for the Corporation claimed that though the Corporation is not having its own Rules, the Government Rules with regard to the employment and service conditions apply. However, he failed to produce any documents or resolution from the Corporation stating that the Government Rules regarding service conditions have been adopted. He also failed to justify the termination by reference to any such Rules or Regulations. The absence of Rules cannot be used as a charter for arbitrary action.

22. Admittedly, Respondent No. 1 is a Corporation, and though it is a Government of Goa undertaking, it cannot be considered a Government Department. However, Respondent No. 1 is definitely a “State” under Article 12 of the Constitution. There was no dispute raised about the Respondent’s status as a “State” under Article 12 of the Constitution. Only there was no clarity about the status of the Rules and Regulations applicable.

Assuming or even accepting that the Government Rules have been adopted, not even an attempt was made to show how the insensitive termination of the Petitioner's services was consistent with any Government Rules or procedures.

23. In the case of **Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress & Others**, 1991 Supp (1) SCC 600, the Constitutional Bench, while dealing with service law and termination, observed fairness and fair treatment by affording the principles of natural justice are an integral part of Article-14, which included the right to fair treatment. The court held that the services of a permanent employee cannot be terminated arbitrarily or unfairly. The compliance with the principles of natural justice is a facet of the fairness and non-arbitrariness that Article 14 of the Constitution guarantees. Here, even the issue of the protection guaranteed by Article 21 is involved.

24. The Petitioner has rendered 22 years of meritorious service. He was afflicted with a paralytic stroke. He frankly expressed difficulties about long-distance driving more out of consideration for the safety of the commuters. He requested for some reasonable accommodation. This was initially agreed upon after consultation with the Petitioner in the 158th Board meeting dated 29.06.2022. In the following Board meeting, only for the confirmation of the minutes of the previous minutes, it was decided to force the Petitioner to retire. There was no consultation with the Petitioner as in the case of the previous meeting. There was no compliance

with the principles of natural justice or even fair play. No rules are shown in support of this insensitive action. Even the discussion in this Board meeting does not align with the ultimate decision taken. Simply, a permanent employee who had put in service for 22 years was eased out because he expressed difficulties with long-distance driving due to the paralytic stroke suffered by him from which he recovered, but not full enough to undertake long-distance driving. Such a termination infringes the guarantees in Articles 14 and 21 of the Constitution.

25. In the case of **Anand Bihari** (supra), the question of termination of services of Drivers of the State Road Transport Corporation came up wherein the Supreme Court observed that the Drivers were serving the Corporation for years together and due to weakness of their eyesight, they could not have been terminated from the services as it would be unjust, inequitable and discriminatory.

26. In the case of **Kunal Singh** (supra), the Apex Court, while dealing with persons with disabilities and, more particularly, Section 47 of the Act of 1995, observed that when an employee acquires a disability during service needs to be protected under Section 47 of the said Act. If such protection is not given, he would not only suffer himself, but possibly, all those who depend on him would also suffer.

27. The matter in hand clearly goes to show that first of all, the resolution dated 29.06.2022 was to consider the employment of the Petitioner as a Multi Tasking Staff, thereby accommodating him for other works due to his physical condition. This resolution was not set aside or rejected in the meeting held on 06.10.2022, and in fact, no specific decision was taken except that the Petitioner be voluntarily retired on medical grounds. As already observed, such resolution depends only on the Application filed by the Petitioner for voluntary retirement and would not permit the Corporation to consider and pass an order to retire the Petitioner on medical grounds and that too without giving any opportunity to the Petitioner. Resolution no. 13/22 dated 06.10.2022 is contrary to the orders passed whereby the Petitioner was compulsorily retired from service and that too by giving one month's notice.

28. We consider that the action taken by Respondent No. 1/Board was insensitive, high handed and without application of the mind. Such an action cannot be sustained, *inter alia*, for the simple reason that no Application was filed by the Petitioner for voluntary retirement. That the earlier resolution dated 29.06.2022 was to accommodate the Petitioner as Multi Tasking Staff by giving him other work. The contention raised by Respondent No. 1 that there is no post available, has no substance at all. Thus, the action of Respondent No. 1 vide the impugned

order dated 12.12.2022 and the order dated 09.01.2023 are wholly illegal and need to be quashed and set aside.

29. Hence, we dispose of this Petition by making the following order:

ORDER

- (a) The Petition stands allowed in terms of prayer clause (A).
- (b) The impugned orders dated 12.12.2022 and 09.01.2023 are hereby quashed and set aside.
- (c) The Petitioner is reinstated in service with Respondent No. 1 with full back-wages within two weeks from today. The arrears of backwages must be paid within a maximum of four weeks without fail.
- (d) Rule is made absolute in the above terms.

30. The Writ Petition stands disposed of. All concerned must act on an authenticated copy of this order.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

VAIGANKAR
ESHA SAINATH

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