

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9301 OF 2017

Vishram S. Yadav & Anr.

...Petitioners

Vs.

The Hindustan Aeronautic Ltd. & Anr.

...Respondents

Ms.Rukmini Khairnar i/b. Mr.Pramod N. Joshi, for the Petitioners.

Ms.Shristi Shetty with Mr.Bhavesb Wadhwani i/b. M.V.Kini & Co., for the Respondents.

CORAM : G.S. KULKARNI, J.

DATE : JANUARY 31, 2023

P.C.:

1. The petitioner no.1 since the year 2004 was in the employment of respondent no.1-Hindustan Aeronautic Ltd. and was working on the post of 'Fitter'. He was made permanent in the year 2006. It is his case that he was suffering from Diabetes Mellitus type 2 as also hypertension and chronic kidney failure, he was also undergoing dialysis twice a week since the year 2013. Considering his medical condition, he applied to respondent No.1 to provide him an alternate convenient posting as he was not in a position to perform duties of fitter. The petitioner was examined by the medical board under a Scheme dated 5 August 1985 titled as "Scheme for Additional Compensation/Ex-gratia payment to employees who are medically unfit and are terminated from service". He was examined by the medical board of the HAL Aircraft Division, Medical Department, Nashik, and a Certificate of the Chief Medical Officer dated 3 December 2016 was issued to the effect that the

petitioner was suffering from a chronic kidney disease stage-5 with Type-2 diabetes mellitus and hypertension. The certificate recorded that the petitioner no.1 was on maintenance haemodialysis twice weekly and needs lifelong follow-up and treatment and maintenance haemodialysis. His case was also reviewed by consultant Nephrologists. A certificate of Nephrologist dated 25 November 2016 is also placed on record. However, the certificate of Nephrologist recorded that the petitioner was advised light duty.

2. The case of the petitioner is that even considering the certificate of Nephrologist, the respondent No.1 ought to have offered light duty to petitioner No.1, however, the petitioner instead of being offered light duty was discharged from the services by an order dated 30 March 2017 which recorded that the petitioner was discharged from the services of the respondent on medical grounds due to his continued ill health in terms of the Scheme dated 5 August 1985 which, according to the petitioner no.1, itself was not applicable in such situation. In these circumstances, the petitioner has filed the present petition praying for the following reliefs:-

- “(a) Issue an appropriate Writ/Order for quashing and setting aside, the order dt. 30.03.2017, passed by Respondent No.1.
- (b) Issue an appropriate Writ/order directing the Respondent No.2, Union of India to take appropriate, steps or the Representation dt.20/7/2017 for redressal of grievance.
- (c) Pending the hearing and final disposal of the present Writ Petition, the impugned order/letter dated may kindly be stayed.
- (d) Pending hearing and final disposal of this Writ Petition, the Petitioner No.1, be permitted to work on any light duty as recommended by (d) the hospital.
- (e) Ad-interim relief in terms of prayer clause (c) above may kindly be granted.
- (f) Any other further prayer that may be deem fit and proper be granted.”

3. I have heard learned Counsel for the parties for some time. Admittedly, the petitioner was in the employment of respondent No.1 as a fitter. He is certainly a workman within the meaning of the term as defined under Section 2(s) of the Industrial Disputes Act, 1947. Thus, the appropriate remedy for the petitioner is to invoke the provisions of the Industrial Disputes Act so that the case of the petitioner can be referred for adjudication to an appropriate forum as per the procedure provided thereunder. The prayers of the above nature would not be directly maintainable before this Court. Thus, keeping open all the contentions of the petitioner no.1, the petition is disposed of permitting petitioner No.1 to avail of the alternate remedy as available in law. All contentions of the parties in that regard are expressly kept open.

4. As the petitioner was bonafide pursuing this petition since 2017, if any proceedings are filed by the petitioner no.1 within four weeks from today, let the proceedings be considered on its own merits and without an objection as to limitation.

5. The petition is disposed of in the above terms. No costs.

[G.S. KULKARNI, J.]