

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

WRIT PETITION (WP) NO.2122 of 2018

1. Maharashtra State Road Transport Corporation by its Divisional Controller, Buldhana Division Buldhana, Tq. And Dist. Buldhana.

.... Petitioner(s)

// VERSUS //

1. Mohamad Hajbi Abdul Gani
Aged : 65 yrs. Occu. Retired
R/o Lukhanwada Tah. Khamgaon,
Distt. Buldhana.
2. Shekh Mohmad Shoeb Mohd. Hajbi,
Aged : 29 yrs. Occu. Nil R/o
Lukhanwada Tah. Khamgaon Distt.
Buldhana.

... Respondent(s)

Shri V.H. Kedar, Advocate for the Petitioner/s
Shri B.M. Khan, Adv. for the Respondent Nos.1 and 2

CORAM : ANIL S. KILOR, J.
DATED : 20th March 2023

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally by consent by the parties.

3. The judgment and order dated 08.03.2016 passed by the Industrial Court, Akola in Compliant (ULP) No.55 of 2008 partly allowing the complaint and thereby directing the petitioner-corporation to consider the claim of the complainant No.2 for grant of employment on a compassionate ground in terms of policy decision, if the respondent No.2 is found eligible for grant of such employment, to provide him such employment in accordance with law.

4. In this case, the respondent No.1 was working as 'Driver' with the petitioner corporation and on declaring him medically unfit to perform the duties of the Driver, he was removed from services on 22.08.2000. Whereupon, after five years, the respondent No.2 being son of the respondent No.1 applied for appointment on the compassionate ground.

5. Thereupon, the petitioner corporation called upon the respondent No.2 to submit original documents to consider his claim.

6. Thereafter, on 22.03.2007, the respondents were informed that as per the prevailing rules, the respondent No.2 is not entitled for any appointment on compassionate ground. Accordingly, a complaint was filed before the learned Industrial Court, making following prayers, which read thus:

- “a) To direct the respondent to desist and cases from the unfair labour practice complained of,*
- b) To direct the respondent to pay the complainant No.1 monetary benefits like salary, and allowances of the post of driver, from 3-5-2000 onwards till the date of his retirement.*
- c) To direct the respondent to treat the complainant no.2 as having being appointed in the post of Traffic Controller, or in any other post in the same category in the Corporation as per the qualification possessed by the complainant No.2 with consequential benefits like pay and allowances applicable to the said post.*
- d) Grant any other relief including the costs of proceeding amounting to Rs.5000/- in favour of the complaints as the complainants were compelled to file this complaint by the respondent.”*

7. The said complaint came to be partly allowed, directing the petitioner to consider the claim of the respondent No.2 to appoint him on compassionate ground.

8. The learned counsel for the petitioner submits that as per the circular of 1997, unless an employee is found fully incapacitated or irrevocable to conduct his duties, an appointment on compassionate ground to his dependent cannot be granted.

9. It is submitted that the findings recorded by the learned Industrial Court while partly allowing the complaint, are perverse and without evidence.

10. It is submitted that the learned Industrial Court has shifted the burden on the petitioner corporation, to prove that the respondent No.2 is not entitled for employment on the compassionate ground. He accordingly, submits that the impugned order needs to be quashed and set aside.

11. The learned counsel for the respondents submits that there is a settlement between the union and the petitioner corporation and in light of that settlement, the respondent No.2, being son of the respondent No.1 and as the respondent No.1 was declared medically unfit by the Medical Board to be continued as Driver, is entitled for appointment on the compassionate ground.

12. It is submitted that as the petitioner corporation has not seriously disputed the settlement or the policy of the corporation to grant appointment on compassionate ground to the dependent of the employee medically declared unfit, no legal infirmity has been committed by the industrial Court in granting relief in favour of the respondents. For this purpose he has placed reliance upon the judgment of the Co-ordinate Bench of this Court in the case of *Nusrat Kamal Ansari Vs. Divisional Controller, M.S.R.T.C.*¹.

13. In the light of the rival contentions of the parties, I have perused the record and the impugned judgment and order.

14. In this case, admittedly, the respondent No.1 was declared medically unfit to be continued on the post of Driver and it is held that he is fit for clerical job. However, without assigning him any clerical job, he was removed from his services by the petitioner corporation on 22.08.2000. The respondent No.1 did not challenge the order of removal.

1 [2009 (1) Bom. LC 398 (Bom)]

15. On the other hand, after five years of termination, the respondent No.2, the son respondent No.1, applied for appointment on a compassionate ground which was denied by the petitioner corporation on the ground that under the prevailing rules, unless an employee is found fully incapacitated or irrevocable to perform his duties, a request for appointment on the compassionate ground by his dependent, cannot be considered.

16. Thereupon, a complaint was filed by the respondents making two fold prayer; firstly, to grant monetary benefits, including salary, allowances etc. of the post of Driver from 03.05.2000 onwards to the complainant No.1, till the date of his retirement; and secondly, as regards the appointment of the respondent No.2 on the compassionate ground.

17. In the complaint, an employment on the compassionate ground was claimed on the basis of settlement, however, it is evident from the record that no details about such settlement namely the date of settlement, purpose and the wordings of such

settlement as regards providing appointment on the compassionate ground, are pleaded in the complaint.

18. A mere statement that there was a settlement between the union and the corporation to provide an appointment to the dependent of the employee who is medically declared unfit, is not sufficient.

19. Whereas, if it is the case of the respondents that there is such settlement, it should have been brought on record by filing a copy of it, particularly, it is warranted when the communication of the corporation issued prior to filing of the complaint, it refers to prevailing rules which dis-entitled the respondent No.2 to claim employment on the compassionate ground.

20. Moreover, when a specific question as regards settlement, was put to the respondent No.1 in his cross examination, he in clear terms says that, he does not have any information about the settlement with the union.

21. The learned counsel for the respondents tried to justify it by saying that because there was settlement between the union and the

petitioner corporation, the respondent No.1 in that sense says that he does not have any information about such settlement.

22. However, facts reveal that without filing the copy of the such settlement or even without disclosing the wordings of such settlement, an appointment on the compassionate ground was claimed.

23. In the circumstances, an admission of the respondent No.1 in cross examination that he does not have any information about the settlement shows that without knowing the settlement, its contents and the purpose, the complaint came to be filed.

24. It is surprising that the learned Industrial Court without seeking such details of the settlement and without going through the wording of such settlement, allowed the complaint partly, on the ground that the petitioner corporation has not raised any serious dispute in the settlement.

25. In paragraph 13 of the impugned order, the learned Industrial Court has observed that the respondent No.1 has failed to produce the circular dated 26/1997 as referred in the written statement.

However, the learned Industrial Court has failed to appreciate that though the whole case of the complainant is based on some settlement, no such settlement was brought on record by the complainants and therefore, shifting of burden upon the petitioner corporation to prove that the respondent No.2 is not entitled for appointment on compassionate ground, is illegal and not sustainable in the eye of law.

26. Moreover, the observations made by the learned Industrial Court that the petitioner corporation has not raised serious dispute to the settlement, are perverse as it is clear from cross examination of the respondent No.1 and also written statement that a serious dispute was raised to the settlement by the petitioner corporation.

27. Moreover, the letter dated 22.03.2007 issued by the petitioner corporation denying appointment to the respondent No.2 on the compassionate ground, categorically states that as per the prevailing rules, the appointment cannot be granted to the respondent No.2. Thus, it sufficiently shows that since beginning, it is the case of the petitioner that the respondent No.2 is not entitled for appointment on the compassionate ground.

28. Hence, I am of the opinion that, the impugned judgment and order needs to be quashed and set aside, as it suffers from perversity and non-application of mind. Accordingly, I pass the following order:

- (i) The writ petition is **allowed**.
- (ii) The judgment and order dated 08.03.2016 passed by Industrial Court, Akola Compliant (ULP) No.55 of 2008, is hereby quashed and set aside.

Rule accordingly. No costs.

[ANIL S. KILOR, J.]