



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 4562 OF 2022

Kalimulla Khan Aman Ullakhan,
Aged about 59 years, Occupation :
Nil, R/o. Plot No.78, Sangam Nagar,
Behind Rathod Lawns, Goewada,
Nagpur.

.... **PETITIONER.**

// VERSUS //

Maharashtra State Road Transport
Corporation, Amravati, through its
Divisional Controller, M.S.R.T.C.,
Ganeshpeth, Nagpur.

.... **RESPONDENT.**

Shri C.V.Jagdale, Advocate for Petitioner.

Shri Y.R.Chougule, Adv. h/f. Shri R.Chhabra, Adv. for Respondent

CORAM : ANIL S. KILOR, J.

DATED : SEPTEMBER 07, 2023.

ORAL JUDGMENT :

1. Heard.

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

3. The petitioner was serving in the Respondent-Corporation as a Driver and as he suffered from partial paralysis he was referred to District Civil Surgeon, General Hospital, Nagpur. Thereupon, the Civil Surgeon has declared him unfit for the job of driver.

4. Thereafter, on failure of the Corporation to discharge its obligation under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as “the Disabilities Act, 1995”) and on termination of the services of the petitioner on 18/09/2015, he approached the Industrial Court by filing Complaint (ULP) No. 165 of 2019 under the provisions of Section 28 read with Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter

referred to as “MRTU & PULP Act”), for providing alternate employment.

5. The said complaint came to be partly allowed by the impugned judgment and order dated 30/06/2022 and thereby the claim of the petitioner to grant him monetary benefit of wages as per the last pay scale came to be refused and the respondent-Corporation was directed to pay compensation of Rs.50,000/- to the complainant within two months from the date of the order. Hence, this petition.

6. The learned Industrial Court while denying the monetary benefits of wages as per the last pay scale has observed thus:

“21] At the same time, the complainant cannot be allowed to take advantage of his own delay and laches. After accepting the order of discharge and collecting all the retiral dues/ benefits, certainly it would not be open to the complainant to approach the court in normal course after about 4 years and then claim the entire wages and other monetary service benefits from the date of discharge from service till superannuation. Therefore certainly, this

court is not inclined to grant monetary relief as claimed by the complainant in entirety.”

7. The said findings are contrary to the provisions of Section 47 of the Disabilities Act, 1995, which reads thus:

“47.Non-discrimination in Government employment. - (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee 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.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

8. There is no provision which stipulates that the employee shall apply for alternate employment on declaring him unfit. On the contrary, it is the obligation of the employer under

Section 47 of the Disabilities Act, 1995 to provide alternate employment.

9. The facts on the record show that the respondent-employer has not only deprived petitioner from his legitimate claim but the respondent-employer has no regards to the mandate of the provisions of Section 47(1) of the Disabilities Act, 1995 and the law laid down by the Hon'ble Supreme Court of India and this Court. The respondent-employer is a body corporate and is State within the meaning of Article 12 of the Constitution of India and, therefore, it has to act as a Model Employer. The conduct of the respondent-employer is highly deprecable and, therefore, in my view the exemplary costs of Rupees Twenty Thousand have to be imposed on the respondent-employer so that similar persons with physical disabilities are not deprived of their legitimate claim and the rights conferred by the provisions of the Disabilities Act, 1995, in future.

10. In that view of the matter, I am of the opinion that the petitioner is not entitled for the compensation but he is entitled for

the back wages from the date of termination till the date of his superannuation i.e. 07/03/2021.

11. Accordingly, I pass the following order:

- i) The Writ Petition is allowed with exemplary costs.
- ii) The impugned judgment and order dated 30/06/2022, passed by Industrial Court, Nagpur in Complaint (ULP) No. 165 of 2019 is hereby quashed and set aside and thereby it is directed that the respondent shall pay back wages to the petitioner w.e.f. 18/09/2015 (date of termination) till 07/03/2021 (date of superannuation), within three months from today.
- iii) The respondent shall pay costs of Rupees Twenty Thousand to the petitioner, within one month from today.

Rule is made absolute in the above terms.

(ANIL S. KILOR, J)