



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CONT. PETITION NO. 286 OF 2023
IN WP/14095/2019

Balu s/o Rambhau Auti,
Age: 57 years, Occ: Service,
R/o. Sutar Gali, Parner,
Tal. Parner, Dist. Ahmednagar.

...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,
Shekhar Channe.
3. The Divisional Controller,
State Transport Corporation,
Ahmednagar, Tq. & Dist. Ahmednagar,
Through its Manager
Manshia S/o Chandrakant Sapkal.

...Respondents

...

Advocate for the Petitioner : Mr. Shermale K. N.

AGP for Respondents: Mr. G.A. Kulkarni

Advocate for Respondent No.2 : Mr.M.D. Shinde

Advocate for Respondent No. 3 (e) : Mr. Bagul Dnyaneshwar
Suresh

...

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAMHE, JJ.

DATE : 02 FEBRUARY, 2024.

PER COURT :

1. The order of which the disobedience is being alleged is as under :

“1. By way of the present petition, the petitioner challenges the order dated 07.03.2018, by which the services of the petitioner have been terminated, with effect from 20.01.2018 on the ground that the petitioner has been found permanently unfit for the post of driver, in the findings recorded by the Medical Board, Pune.

2. The grievance of the petitioner is that upon being found medically unfit for the post of driver his services ought not to have been terminated but he ought to have been provided with suitable alternate job by the respondent Corporation.

*3. The issue is no more res integra and is covered by the judgment and order dated 16.07.2020 passed by this Court at **Principal Seat in Writ Petition No. 9762 of 2019 in Vikas and Anr. etc. Vs. State of Maharashtra and Ors.** The said order has been upheld by the Hon'ble Supreme Court, albeit, with certain modifications by the order dated 03.11.2020. The Hon'ble Supreme Court has directed that, the respondent Corporation would be under an obligation to consider the case of the medically unfit employees for an alternate employment. So far as, the issue of back wages is concerned, the Hon'ble Supreme Court has directed that the concerned employees must submit the relevant material along with their affidavits, as to whether the concerned employees were in employment during the relevant time or not.*

4. *In these circumstances, we find that the termination is unsustainable and the respondent Corporation is under a statutory obligation to provide alternate job to the petitioner.*

5. *We accordingly passed following order :*

ORDER

(i) The impugned order dated 07.03.2018 terminating the services of the petitioner is quashed and set aside.

(ii) The respondent Corporation is directed to consider the case of the petitioner for suitable alternate appointment, within a period of three months from today.

(iii) So far as, the intervening period from the date of termination, till the date of offering alternate appointment is concerned, the petitioner to file affidavit along with relevant material, to prove as to whether he was in gainful employment during the intervening period or not. Depending on the material so produced, the respondent Corporation to decide the issue of payment of back wages.

(iv) In the event, if it is found that the petitioner was not in gainful employment, during the intervening period, the respondent Corporation shall pass necessary order in respect of the back wages and pay the same to petitioner within 3 months of filing affidavit and material.

(v) The petition accordingly is disposed of. No costs."

2. So far as the directions in Clause (ii) in the operative part is concerned, admittedly, the petitioner has been offered and has got an alternate appointment as 'Peon'. As far as the

directions contained in Clause (iii) are concerned, apparently, an inquiry into the arrears for the intervening period was to be held and depending upon the material to be produced, a decision was to be taken regarding payment of the back wages.

3. The affidavit in reply expressly mentions about an inquiry having been undertaken and the petitioner having been found to be gainfully employed and the arrears have been refused.

4. The learned Advocate for the petitioner relies upon the order passed in the matter of **Vikas s/o Khanderao Keng Vs. State of Maharashtra and Ors in Contempt Petition No. 591 of 2019 in Writ Petition No. 9762 of 2019**, which, according to the learned Advocate, is a matter of similarly placed individual. He would submit that even in that matter, the directions were issued to deduct the amount received by the petitioners of the period they were gainfully employed as per report submitted by the Security Officer and to pay difference within eight weeks.

5. The learned Advocate, therefore, makes a request that even a similar directions may be issued in the present matter.

6. Apparently, there is no similar report in the present matter. Besides being pure question of fact for ascertaining as to during which period the petitioner was gainfully employed. We cannot undertake that scrutiny in this contempt proceeding regarding which an inquiry would be needed.

7. Once the decision has been taken, it would always be open for the petitioner to challenge it by resorting to appropriate remedy.

8. As far as the compliance of directions is concerned, the decision having been already taken in respect of the arrears of back wages/salary, nothing survives in the petition.

9. The petition is disposed of.

(SHAILESH P. BRAMHE)
JUDGE

(MANGESH S. PATIL)
JUDGE

mahajansb/