



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

915 WRIT PETITION NO.234 OF 2024

Vilas Ramchandra Deshmukh

VERSUS

The State Of Maharashtra Through It's Secretary And Another

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Advocate for the Petitioner : Mr. M.D. Narwadkar

AGP for Respondent no.1 : Mr. S.K.Tambe

Advocate for Respondent 2 : Mr. S.R. Shirsath

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CORAM : RAVINDRA V. GHUGE &
S. G. CHAPALGAONKAR, JJ.

Dated : 14th February, 2024

PER COURT :-

1. The learned advocate Shri Suryawanshi submits that his appearance on behalf of Respondent no.2-Zilla Parishad, Beed be discharged in view of the fact that learned advocate Shri Shirsath has been entrusted with the matter. As such, the appearance of Shri Suryawanshi is discharged.

2. The Petitioner has put forth prayer clause 'B' as under :-

“B. By issuing writ of certiorari or any other writ in the like nature, the order dated 20.4.2023 passed by the respondent no.2 may please be quashed and set aside the respondent no.2 may please be directed to give the retiral monetary benefits to petitioner considering pay scale of driver in the interest of justice.”

3. We have heard the learned advocates for the respective sides.

4. The learned advocate for the Respondent Zilla Parishad is under instructions to oppose this Petition. However, it is undisputed that the Petitioner is 100% (hundred percent) blind and has retired in October, 2021.

5. There can be no debate as regards the rights of the Petitioner in the light of the provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 as well as the provisions of the Rights of Persons with Disabilities Act, 2016.

6. In view of the settled position of law, more-so taking into account the judicial pronouncements delivered in cases of **Laxmikant Jalindar Mule Vs. State of Maharashtra and others reported in 2017 DGLS (Bom) 1471**, **Shaligram Dhansing Patil Vs. The Divisional Controller, MSRTC and others in Writ Petition No.13375 of 107 dated 23.2.2017**, and **Mahesh Sanjayrao Bahad Vs. Maharashtra State Road Transport Corporation, Yavatmal reported in 2020 (6) AIR Bom 609 (Nagpur Bench)**, the Petitioner has to be accommodated on such a post, that his physical disability or challenges would not be an impediment to his functioning. The Petitioner being 100 percent blind and was appointed as a driver was, therefore, posted on the post of a Peon. Law does not permit an employer to reduce the salary in such circumstances.

7. In view of the above, **this Petition is allowed.** The order dated 20.4.2023 stands quashed and set aside. The last drawn salary of the Petitioner, drawn on an average of the last three months as a driver, would be the salary that would be payable to him until his retirement.

8. The Gratuity amount will also be re-calculated on such salary in accordance with the provisions of The Payment of Gratuity Act, 1972. Since gratuity is also withheld, the same shall carry interest at the statutory rate prescribed. Needless to state that this direction would not be applicable if the gratuity is already paid. The difference in the gratuity amount shall be paid to the petitioner within 60 (sixty) days from today. So also, pension, if not released or if released as per the reduced pay scale, shall be re-calculated and the difference in the pensionary benefits shall be paid to the petitioner within 90 (Ninety) days from today. Recalculated pension shall be made applicable within the same period.

(S. G. CHAPALGAONKAR, J.)

(RAVINDRA V. GHUGE, J.)

Aaa/- f

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