

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6535 OF 2023

Namdev Pundlik Chaudhari
age 57 years, R/at Room No.7,
1st Floor, Nadanvan Apartment,
Nayakwadi, Kongaon,
Taluka Bhiwandi, District Thane.

....Petitioner

V/S

1. Divisional Controller,
Maharashtra State Road Transport
Corporation, Thane

2. Depot Manager,
M.S.R.T.C., Kalyan Depot,
Kalyan (W), District Thane.

....Respondents

Mr. Krishna Kumar Mishra *for the Petitioner.*

Mr. Nitesh Bhutekar with Mr. Aniket Nangare *for Respondents.*

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 12 APRIL 2024.
PRONOUNCED ON: 16 APRIL 2024.

JUDGMENT:

1 **Rule.** Rule is made returnable forthwith. By consent of the learned counsel appearing for the parties, Petition is taken up for final hearing and disposal.

2 Petitioner has filed this Petition challenging the Award dated 17 October 2022 passed by the Presiding Officer, Third Labour Court, Thane in Reference (IDA) No.274 of 2018. The Labour Court has answered Reference relating reinstatement of Petitioner in service in the negative.

3 Facts of the case, in brief are that - Petitioner was employed with Respondent-Maharashtra State Road Transport Corporation (**MSRTC**) on the post of Driver since 28 September 1999. It appears that Petitioner made an application dated 9 June 2014 to the Depot Manager, Kalyan Depot, complaining that he was unable to see clearly and therefore incapable of discharging duties of Driver. He produced certificate of private doctor dated 2 June 2014 certifying that he was suffering from colour blindness. The Depot Manager therefore requested Medical Officer, MSRTC, Kalyan to examine Petitioner and certify whether he was fit to work as Driver. It appears that the Medical Officer endorsed a remark on letter dated 10 June 2014 of Depot Manager for reference of Petitioner to District Civil Hospital, Thane or J.J. Group of Hospitals for ophthalmic checkup. Accordingly, the Traffic Inspector, MSRTC, Thane requested Civil Surgeon, Thane to examine Petitioner for certification whether Petitioner was fit to work as Driver by letter dated 13 August 2014. After examining Petitioner, the Medical Board comprising of Medical Officer, Additional Civil Surgeon (Clinical) and Civil Surgeon of Civil Hospital, Thane issued certificate dated 10 November 2014 opining that Petitioner was unfit for Driver's job and fit for any other job. Petitioner accordingly applied for alternate job vide application dated 8 December 2014. However, Petitioner contends that he was dismissed from

service on 2 September 2014. The termination order is not placed on record by either of the parties.

4. MSRTC issued letter to Medical Board of Government Hospital, Thane on 7 January 2015 for certification of percentage of disability suffered by Petitioner. This was done possibly to consider his case for grant of alternate employment. He was also referred to Medical Board of J.J. Group of Hospitals, Mumbai by letter dated 10 March 2015. The Medical Board was requested to certify the percentage of disability of Petitioner. After examining the Petitioner, the Medical Board of J.J. Group of Hospitals submitted report dated 13 October 2015 stating that the Board could not discover any disease, constitutional weakness or bodily infirmity in respect of the Petitioner. MSRTC sought clarification in respect of the report and the Medical Board issued certificate dated 21 January 2016, certifying that Petitioner was fit to resume his duties. After receiving certificate of fitness dated 21 January 2016, Respondent-Corporation directed Petitioner to undergo training on account of gap after his termination. Accordingly, he presented himself for training on 4 February 2016 and completed the same by 23 February 2016. A certificate to that effect was issued by Divisional Traffic Officer addressed to Personnel Officer, Thane vide letter dated 24 February 2016. It is the case of Respondent-Corporation that Petitioner failed to join duties after 24 February 2016 and stated by his letter dated 2 March 2016, expressing inability to resume service on the post of Driver.

5 It appears that by letter dated 4 March 2016, the Divisional Controller, Thane, requested Superintendent of Ophthalmology of J.J. Group of Hospitals to verify whether Ophthalmic Surgeon had examined Petitioner as signature of Ophthalmic Surgeon was not reflected in the certificate. The Head of Department of Ophthalmology of Grant Government Medical College wrote to the Divisional Controller that Petitioner is eligible to work on the post of Peon or any other post, except Driver. Thereafter, Divisional Controller wrote to the Chairman of the Medical Board to certify the exact disability possessed by the Petitioner within the meaning of section 2(i) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (**the Disabilities Act**). The Head of the Department, Ophthalmology wrote back to the Divisional Controller once again reiterating that Petitioner is eligible to work as Peon or on any other post, except Driver. It was also certified that Petitioner does not suffer from any disability. As Petitioner was not taken back in service, he raised a demand and Deputy Commissioner of Labour, Thane made a Reference to Third Labour Court, Thane for adjudication of his demand for reinstatement in service with full back wages and continuity with effect from 2 September 2014.

6 The Reference was registered as Reference (IDA) No.274 of 2018. Before the Labour Court, Petitioner led his evidence. Divisional Personnel Officer of Respondent-Corporation was examined as a witness. After considering the pleadings, documents and evidence on record, the Labour Court answered the Reference in the negative by Award dated 17 October 2022, which is subject matter of challenge in the present Petition.

7 Mr. Mishra, the learned counsel appearing for Petitioner would submit that the action of Respondents in terminating services of Petitioner after acquisition of disability of color blindness by him is totally arbitrary, unjust and liable to be set aside. That Petitioner was entitled to be granted alternate employment under the Disabilities Act. That despite clear opinion of Medical Board of Government Hospital, Thane for grant of alternate employment, the Respondent Corporation illegally terminated his services and thereafter went on making baseless correspondence with J.J. Hospital rather than granting alternate appointment to him. That Respondents attempted re-employ Petitioner as a Driver by ignoring the certificate of Medical Board. That despite Medical Board of J.J. Hospital as well as Head of Department, Ophthalmology certifying that Petitioner is entitled to be granted alternate appointment on post other than Driver, Respondent-Corporation failed and neglected to grant such alternate appointment to the Petitioner.

8 Mr. Mishra would rely upon common order passed by this Court in **Malhari Jibhau Tambde vs. State of Maharashtra & Ors.** in Writ Petition No.7488 of 2023 and **Parmeshwar Govind Survase vs. The State of Maharashtra & Ors.** in Writ Petition No.7489 decided on 1 April 2024, submitting that the present case is identical and that therefore Petitioner is entitled to be granted alternate appointment alongwith full back-wages. He would also place reliance on order of this court in **Vilas Shreedhar Balapure vs. Maharashtra State Road Transport Corporation** in Writ Petition No.2279 of 2022 decided on 7 January 2023.

9 *Per contra*, Mr. Bhutekar the learned counsel appearing for Respondent-MSRTC, would oppose the Petition submitting that Petitioner is responsible not joining services despite the post of Driver being offered to him after declaration of his fitness by the Medical Board of JJ Hospitals. That on account of gap in his service, training was required to be given to him, which Petitioner underwent without any demur. Having received training up to 23 February 2016, it was incumbent for Petitioner to resume services on the post of Driver. That however, he refused to do work as Driver by submitting letter dated 2 March 2016. That Respondents made all efforts for grant of alternate employment to Petitioner. He would place reliance on circular dated 10 September 2008, which was in vogue at the relevant time and according to which, it was necessary to certify percentage of disability for the purpose of grant of alternate employment. That Petitioner does not suffer from any disability and that therefore there was no question of grant of any alternate employment to him. In any case, Respondent-Corporation was willing to reinstate Petitioner on the post of Driver, but he flatly refused to resume duties on the post of Driver. That the Labour Court has rightly appreciated Petitioner's refusal to resume duties and that therefore no interference is warranted in the well reasoned Award of the Labour Court. Mr. Bhutekar would pray for dismissal of the Petition.

10 Rival contentions of the parties now fall for my consideration.

11 In the present case, Petitioner relied upon certificate issued by private doctor on 2 June 2014 certifying that he was suffering from color blindness.

After receipt of the certificate, it appears that the Depot Manager, Kalyan referred Petitioner to Medical Officer of MSRTC for examination, who in turn recommended Petitioner's examination by Civil Hospital, Thane or J.J. Group of Hospitals for ophthalmic checkup. Accordingly, by letter dated 13 August 2014, Divisional Controller, Thane requested Civil Surgeon, Thane to examine Petitioner and submit report. Medical Board was constituted by District Civil Hospital, Thane comprising of Medical Officer, Additional Civil Surgeon (Clinical) and Civil Surgeon who unanimously recommended that Petitioner was examined by Ophthalmic Surgeon and that in his opinion he was unfit for Driver job and fit for any other job. The Medical Board agreed with the opinion of Ophthalmic Surgeon.

12 Petitioner contends that his services were terminated on 2 September 2014. However, none of the parties have placed on record any order terminating Petitioner's services. As a matter of fact, Petitioner attended Civil Hospital, Thane on 2 September 2014 for medical examination in pursuance of Divisional Controller's letter dated 13 August 2014. If this is the case, why and how his services could be terminated on 2 September 2014 is difficult to comprehend. Though reply filed by the Respondents is silent on Petitioner's termination, letter dated 10 March 2015 of Divisional Controller, Thane clearly states that '*hence his services as Driver have been terminated*'. In my view, the action of the Respondents in terminating the services of Petitioner while his case was pending consideration before the Medical Board is totally arbitrary and unlawful.

13 Petitioner was found unfit to work as Driver, but was found fit to perform other job as per the opinion of the Medical Board of District Civil Hospital, Thane. Instead of offering alternate job to him, as per the opinion of the Medical Board, Respondent desired indication of percentage of disability suffered by Petitioner and wrote back to Civil Hospital, Thane on 7 January 2015 stating that the certificate was silent about the exact reason why he was declared unfit to work as Driver. Similarly, the Divisional Controller stated in letter dated 7 January 2015 that as per the prevailing Rules, it is necessary to submit certificate with percentage of disability for the purpose of offering alternate employment. Petitioner was therefore once again referred for full medical examination to Civil Hospital, Thane. It is not known as to whether Petitioner's reexamination was conducted by Medical Board of District Civil Hospital, Thane or not? However, it appears that similar letter, with identical contents, was written by Divisional Controller, Thane, the Dean, Medical Board, J.J. Group of Hospitals, two months later, on 10 March 2015. It appears that Petitioner was examined by Medical Board of J.J. Hospitals and a vague and inconclusive certificate dated 13 October 2015 was issued stating that the Medical Board was unable to discover any disease, constitutional weakness or bodily infirmity. It appears that another certificate was issued by Medical Board of J.J. Group of Hospitals on 21 January 2016 certifying that Petitioner was fit to resume duties. MSRTC construed the report dated 21 January 2016 to mean as if Petitioner was fit to resume duty as Driver though the report did not specify so.

14. Accordingly, MSRTC imparted training to Petitioner during the period from 4 February 2016 to 23 February 2016. Though MSRTC accuses Petitioner of not joining duties as Driver after 24 February 2016, it did not take too long for Respondents to realize that case of the Petitioner was required to be considered for alternate employment. The said process resumed on 4 March 2016, this time stating that the report did not reflect signature of Ophthalmic Surgeon and stating that the report did not indicate whether Petitioner was examined in connection of his eyesight problem or not. The HOD, Ophthalmology of Grant Government Medical College informed MSRTC its presumption that Petitioner can be absorbed on other post through disability quota was itself erroneous. It was further stated that irrespective of degree of disability or absence thereof, if Petitioner was ineligible to work as Driver, he can be absorbed through open quota on post of Peon or any other post, except Driver. MSRTC however insisted that the exact disability relating eyesight must be reflected and made a query in that regard on 20 December 2016. The Head of Department, Ophthalmology once again reiterated her opinion on 28 April 2017 stating that while Petitioner did not suffer any disability, he is eligible to absorbed as Peon or any other post, except Driver. It appears that after 28 April 2017 Respondent-Corporation has not taken any steps for grant of alternate employment to the Petitioner.

15 Perusal of the impugned Award of the Labour Court would indicate that the Labour Court has completely misdirected itself while considering Petitioner's case. Firstly, it has not properly appreciated whether services of the Petitioner could have been terminated merely on account of acquisition of

disability. It has recorded a finding that Petitioner has not been terminated without any ground. The Labour Court has thereafter led stress on certificate of Medical Board dated 21 January 2016 and training imparted to the Petitioner during 4 February 2016 to 23 February 2016. The Labour Court has held Petitioner responsible for not joining on the post of Driver and has recorded a totally unsustainable finding that Petitioner abandoned the work on his own choice. In my view, there was no question of Petitioner joining the post of Driver in the light of certificate of Medical Board dated 21 January 2016. The said certificate was vague and it did not take too long for MSRTC to realize its mistake in imparting training to Petitioner on the post of Driver in the light of such vague certificate. It therefore raised a query with Superintendent of Ophthalmology of J.J. Group of Hospitals on 4 March 2016 seeking a clarification as to whether Petitioner was examined with reference to his eyesight or not. Therefore, imparting of training to Petitioner on the post of Driver is clearly meaningless. Failure to join duty as Driver after imparting of training cannot constitute as abandonment of service by Petitioner. The Labour Court has thus completely misdirected itself in considering Petitioner's grievance.

16 When Petitioner urged before the Labour Court that he deserved to be granted alternate employment, the Labour Court has turned doors on him holding that the issue of grant of alternate employment fell outside the scope of reference made to it. I find this observation of the Labour Court to be preposterous to say the least. Petitioner has been illegally terminated in the present case. There was no question of his reinstatement on the post of

Driver in the light of his medical unfitness to work on that post. Therefore, his demand for reinstatement was required to be considered on alternate post. The Labour Court therefore could not have held the demand for alternate job fell outside the scope of reference. In any case, the Labour Court has been clothed with necessary jurisdiction to grant appropriate relief under Section 11A of the Industrial Disputes Act, 1947. Section 11A reads thus:

11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.—

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter

I therefore find that the Labour Court has committed manifest error in recording perverse findings while answering the reference in the negative.

17 The issue of grant of alternate employment to Drivers of Respondent-Corporation is no more *res integra* and is fully covered by Division Bench judgment of this Court in *Vikas Khanderao Keng vs. The State of Maharashtra & Ors*, Writ Petition No.9762 of 2019 decided on 16 July 2020. This Court held in paragraphs 14 to 24 as under:

“14. After having considered the provisions of the 1995 Act and the 2016 Act in detail, we are of the considered view that the language of Section 20 is plain and certain, and casts statutory obligations on the employer to protect an employee acquiring disability during service.

15. Keeping in line with this construction of a beneficial legislation and also keeping in mind the unequivocal and express provisions of Section 20 of the 2016 Act, we deem it only legal, humane and just that the Petitioners be granted alternate jobs as also back wages from the date their services were discontinued.

16. In so far as Clause 11 of the Impugned Circular is concerned, as stated hereinabove, Clause 11 provides that after an employee is diagnosed with a disability, the matter would be examined and until such examination is complete and a decision is taken about the fitness of the employee or his alternate employment, the period would be treated as leave without pay and the earned leave on the earlier job would be carried forward to the new job. We find that this imposition is unjust and violates the Petitioners' fundamental rights on various levels. Firstly, it is clearly arbitrary and violative of Article 14 of the Constitution, in as much as the Act mandates the State establishments to shift the employee acquiring the disability during service to another suitable post, if he cannot be continued in the post originally held by him; the Act does not envisage any time lag for shifting him to such other post ; and in any event, if the employer establishment takes time to decide on such alternative employment, the employee cannot be made to suffer. Clause 11 of the Impugned Circular leaves it to the employer establishment i.e. MSRTC to decide on the alternative employment at its own sweet will and at its own leisure, leaving the employee to suffer deprivation of wages for no fault of his.

17. Further, this arbitrary imposition under Clause 11 is in the teeth of the provisos to Sub Section (4) of Section 20 of the 2016 Act which read as under :

“Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall 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.”

18. The above provisos mandate that the Petitioners ought to be shifted to an alternative post with MSRTC with the same pay scale and service benefits and if it is not possible for MSRTC to adjust the Petitioners against any post immediately, they have to be kept on supernumerary posts until suitable posts are available or

they attain the age of superannuation, whichever is earlier. This is a mandate under the 2016 Act and a statutory right granted to the Petitioners. This right cannot be violated by Clause 11 of the Impugned Circular. MSRTC has no right and is in fact prohibited from treating the intervening period between the medical examination and a decision thereon as leave without pay. The very idea of restoring an employee to a position with the same pay scale and service benefits which he or she held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the action of termination taken by the employer.

19. The financial, emotional and mental injuries suffered by the bus drivers before us today cannot simply be measured in terms of money. As a result of the discontinuance of their services by MSRTC, the Petitioners' lost their source of income with immediate effect. As a result, not only have the Petitioners suffered economically but so have their respective families, who have been deprived of their source of sustenance. This would include deprivation of nutritious food, education as also general advancement in life. These sufferings will continue till the date MSRTC provides the Petitioners with alternative positions. In our opinion, the Petitioners' reinstatement by MSRTC entitles the Petitioners to claim back wages in their entirety. The denial of back wages to the Petitioners who have suffered due to their disability would amount to indirectly punishing the Petitioners concerned and rewarding MSRTC by relieving them of their obligation to pay back wages. This would be wholly inequitable and unjust. This would be in contravention of the 2016 Act, as also in contravention of the Constitution of India. As a result, we are of the considered opinion that Clause 11 of the Impugned Circular is ultra vires the 2016 Act, as also violative of Article 14 of the Constitution of India. Therefore, we hereby quash and set-aside Clause 11 of the Impugned Circular.

20. Keeping in line with the mandate of Section 20 of the 2016 Act, we order and direct MSRTC to provide each one of the Petitioners with alternative posts having the same pay scale and service benefits as their earlier position. This exercise must be completed within a period of 4 weeks from the date of this Order.

21. As a result of the aforesaid decision, we order and direct MSRTC to pay back wages to each of the Petitioners from the date that their respective services were discontinued until the date that they have been provided with an alternative position in compliance with Section 20 of the 2016 Act. These wages must be credited to the Petitioners' accounts within a period of 6 weeks from the date of pronouncement and uploading of this Order. However, whilst computing the amount of back wages to be paid to the Petitioners, we grant liberty to MSRTC to ascertain whether or not any of the Petitioners were otherwise employed during this intervening period and if so, MSRTC would be at liberty to deduct the amount of wages that the Petitioners may have earned from their alternative employment whilst paying out the back wages. In the event MSRTC wishes to undertake this

exercise, such exercise should be completed within a period of 4 weeks from the date of pronouncement and uploading of this order.

22. The Writ Petitions are disposed of accordingly. We appreciate the assistance rendered by Dr. Sathe as Amicus Curiae in the matter.

23. Whilst parting, we anticipate that the Impugned Circular *albeit* in the absence of Clause 11 which we have struck down hereinabove, may still give rise to grievances suffered by various other persons employed by MSRTC who may be diagnosed with disabilities in the future. In order to prevent their suffering, we propose the following measures which could be taken into consideration when MSRTC implements the Impugned Circular:

i. Upon an employee acquiring a disability, the medical examination and disability certification ought to be completed within a period of 4 weeks of such disability coming to the notice of MSRTC;

ii. Within 4 weeks from the aforesaid medical examination and disability certification, the employee shall be provided with an alternative position with MSRTC in accordance with Section 20 of the 2016 Act;

iii. The time elapsed in conducting the medical examination, certifying the disability and providing an alternative position shall be treated as part of the persons' employment and the employee shall be paid back wages for this entire period expeditiously;

iv. MSRTC will be at liberty to test the veracity or otherwise of disability certificates that may be furnished. However, this exercise of ascertaining the truthfulness of these disability certificates must in any event be completed within a period of 2 weeks from the date of submission of such disability certificates. In the event that MSRTC fails to find any fault with the said disability certificates, the principles enumerated hereinabove ought to apply.

24. MSRTC will have to implement these guidelines in their entirety, keeping in mind the intent, objective and spirit of the 2016 Act."

18 The judgment in *Vikas Khanderao Keng* (supra) was challenged by MSRTC before the Apex Court. By order dated 3 November 2020, the Apex Court directed only two modifications in the operative directions issued by this Court in *Vikas Khanderao Keng* by shifting the burden of proving lack of

gainful employment on concerned employees and by holding that this Court erred in setting aside Clause-11 of the impugned Circular. The Apex Court has directed that alternate employment will have to be located within a period of three months as set out in Clause-9 of the Circular. The order passed by the Apex Court on 3 November 2020 reads thus:

“Leave granted.

Learned counsel for the respondents/caveator accepts notice.

We have heard learned counsel for parties.

We are broadly in agreement with the view taken by the Bombay High Court in the impugned order except on two aspects which we enumerate as under:

1) The first aspect is as discussed in paragraph 21 of the impugned judgment requiring the appellants to pay the respondents the back wages within six weeks from the pronouncement and the uploading of the order. Liberty has been granted to the appellants to ascertain whether or not any of the respondents who were otherwise employed during the intervening period for that period deduction of the amount of wages was held as permissible.

It has been rightly pointed out by the learned counsel for the appellants that this burden cannot be shifted on to the appellants and the information would be within the knowledge of the respondents. Learned counsel for the respondents cannot seriously dispute the aforesaid position.

We thus, direct that the respondents will file the relevant material along with their affidavits before the appellants within two weeks from today and the appellants can verify the position within a period of six weeks thereafter. Subject to the aforesaid verification, we grant four weeks' time thereafter to credit the account of the respondents dependent on the fate of the verification and the right of the appellants to deduct the amount in case the respondents are found having alternatively employed.

2) The second aspect arises from the observations towards the end of para 19 whereby Clause (11) of the impugned circular has been struck down. The said Clause reads as under:

“11. The period which elapses after the employee's disability is advanced and he is promoted to alternative posts should be considered as normal unpaid leaves. Also the leaves in credit to his account should be carried forwarded to his alternate position.”

Learned counsel for the appellants has also drawn our attention to Clause (9) of the same Circular which reads as follows:

“9. After obtaining the certificate of disability and completing other matters, it will be appropriate to try to resolve the issue of alternative employment within three months so that the question of payment of previous service will not arise. As per the provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, it will be necessary to comply with the previous salary protection, continuity of service & promotion.”

We are of the view that the learned counsel for the appellant is correct in contending that a conjoint reading of the two Clauses does not make it an open-ended exercise for the appellants and the issue of an alternative employment has to be resolved within a span of three months. We are thus, of the view that it would not be appropriate to quash the Clause (11) in this behalf. It appears that what weighed with the learned Judges while passing the impugned order was the fact that this Circular having come on 23rd January, 2020, it may be used to deprive the respondents of their back wages. That issue is taken care of by the order which we are passing now and upholding the back wages for the respondents as directed in the impugned order.

We thus, strike out the sentence in the impugned order setting aside the Circular which will hold good. The import of this for the other employees will be that the alternative employment would have to be located within the period of three months as set out in Clause (9) of the Circular.

The appeals are allowed to the limited extent in the aforesaid terms, leaving the parties to bear their own costs.”

19 Following the judgment of Division Bench in *Vikas Khanderao Keng* (supra), this Court has allowed Writ Petition No.7488 of 2023 of *Malhari Jibhau Tamade* (supra). This Court held in paragraphs 7 and 8 of the order as under:

“7) Having have held that the termination of services of the Petitioners is unlawful, the next issue is about the nature of relief that can be granted to them. Under the Scheme of the Act of 2016, the Respondent is under legal obligation to provide alternate employment to Petitioners. Mr. Bhutekar, the learned counsel appearing for the Respondents, would fairly submit that the Respondent-Corporation shall make necessary efforts for locating alternate employments for the Petitioners within 8 weeks.

8) The next issue to be decided is about payment of backwages during the intervening period. This Court in **Vikas Khanderrao Keng** directed payment of full backwages during the intervening period. Payment of backwages was however subject to the condition of the individual employee proving before the employer that he was not gainfully employed during the intervening period. In the present case, the intervening period is little long. Payment of full backwages would put huge financial burden on Respondent-Corporation. Petitioners were terminated w.e.f. 19 October 2016 and by now period of about 8 long years has elapsed. In my view, considering the peculiar facts and circumstances of the present case, 50% backwages can be directed to be paid to the Petitioners during the intervening period from 19 October 2016 till the date of their actual reinstatement.”

20 In *Vilas Shreedhar Balapure* (supra) this Court has dealt with similar case of Driver. Relying on judgment of Division Bench in *Vikas Khanderao Keng*, the Division Bench in *Vilas Shreedhar Balapure* directed payment of wages to the concerned employee.

21 Considering the overall conspectus of the case, I am of the view that the impugned Award passed by the Labour Court is unsustainable and is liable to be set aside. Respondent-Corporation was under obligation to provide alternate employment to Petitioner after his medical unfitness to work as Driver. Petitioner has been illegally kept away from his duties. Respondents must therefore offer alternative employment to him on a suitable post. Though the medical examination conducted by the Medical Board of J.J.

Group of Hospitals is inconclusive, the Medical Board of District Civil Hospital, Thane has, in unequivocal terms, certified that Petitioner is unfit to work as Driver and fit to work on other post.

22. Considering long passage of time as well as series of correspondence that has taken place between MSRTC and J.J. Group of Hospitals, I do not think it appropriate to subject Petitioner to any further medical examination. Petitioner is attaining the age of superannuation on 31 May 2024 and very few days of his service are left. In that view of the matter, it is appropriate that Petitioner is reinstated in service forthwith on a suitable post, other than Driver.

23 The next issue is about payment of wages during the intervening period from 2 September 2014 till Petitioner's reinstatement. Respondents are fully responsible for illegal termination of Petitioner and failure to offer him alternate job. Mr. Bhutekar is at pains to point out that there is growing tendency of Drivers of MSRTC to claim defect in vision with a view avoid arduous duties of driving buses. He has submitted that directing payment of full back-wages to Drivers, who feign defective vision, would put unnecessary financial burden on MSRTC, who otherwise does not have very healthy financial position. While it is difficult to hold in the present case that Petitioner has deliberately feigned defective vision in the light of specific certificate issued by the Medical Board of Government Civil Hospital, Thane, at the same time, directing payment of full back-wages to him would place heavy financial burden on MSRTC. Petitioner did not approach Labour Court

immediately after termination and especially after he was directed to work as Driver by imparting training during 4 February 2016 to 23 February 2016. A Reference order was made two years later in 2018. In such circumstances, ends of justice would meet if Petitioner is awarded 50% back-wages from the date of termination of his services till his reinstatement on alternate post. However, the intervening period is required to be treated as duty for the purpose of payment of retirement benefits such as gratuity, leave encashment, etc.

24 Writ Petition accordingly succeeds, and I proceed to pass the following order:

- i) Award dated 17 October 2022 passed by the Presiding Officer, Third Labour Court, Thane in Reference (IDA) No.274 of 2018 is set aside.
- ii) Respondents are directed to reinstate Petitioner in service on alternate post, other than Driver.
- iii) Respondents shall pay to Petitioner 50% backwages during the period from termination of service till the date of reinstatement.
- iv) The intervening period between termination and reinstatement shall be computed as duty for the purpose of grant of retirement benefits.

25 With the above directions, the Writ Petition is allowed. Rule is made absolute. There shall be no orders as to costs.

(SANDEEP V. MARNE, J.)

Digitally
signed by
SUDARSHAN
RAJALINGAM
KATKAM
Date:
2024.04.16
14:08:06
+0530