



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6223 OF 2024

KALIDAS MANSARAM CHATE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS THE PRINCIPAL
SECRETARY AND OTHERS

...
Advocate for the Petitioner : Mr. K. N. Shermale
AGP for Respondent No.1 : Mr. S. S. Dande
Advocate for Respondent No.3 : Mr. D. S. Bagul
...

**CORAM : S. G. MEHARE &
SHAILESH P. BRAHME, JJ.**

DATE : 02-01-2025

PER COURT:-

1. Heard the learned counsel for the parties.
2. The petitioner has received disability during the course of his employment and he was not able to discharge the duties of his post. However, instead of considering him sympathetically, the circular dated 23.01.2020 was put into service and particularly Clause (11), which provides that;

“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.”

3. The circular dated 23.01.2020 was impugned before the Principal Seat of this Court, in Writ Petition No.9762 of 2019 (**Vikas s/o. Khanderao Keng vs. The State of Maharashtra and others**) and other connected matters.

4. The Principal Seat of this Court by order dated 16.07.2020 held that Clause (11) of the said circular is violative of Articles 14, 15 and 21 of the Constitution of India.

5. The respondent/MSRTC had impugned the said judgment before the Hon'ble Supreme Court, by way of Civil Appeal Nos. 3607-3620 of 2020 (Arising out of S.L.P. (Civil) Nos. 12795-12808 of 2020 (**The State of Maharashtra and others vs. Vikas & Anr. Etc.**)).

6. The Hon'ble Supreme Court, by order dated 03.11.2020, considered Clauses (11) and (9) of the impugned Circular and observed that "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.”

7. The Hon’ble Supreme Court finally setting aside the order of Principal Seat of this Court, struck out the sentence in the impugned order and set aside the said Circular.

8. Reading the Judgment of the Hon’ble Supreme Court, right to receive back wages has not been taken away. The steps to make an inquiry, whether the disabled employee was in alternative employment, was granted as set out in clause (9) of the said Circular. The right of the employer to make such inquiry was also protected.

9. In the present case, the petitioner was not allowed to discharge the duties, after he received the disability during the course of his employment. He has not been paid a single penny.

10. The learned counsel for the respondent No.3 has fairly conceded that the issue is no longer *res integra*. He submits that since the issue was *sub judice* before the Court, costs may not be imposed.

11. We have gone through the orders passed by this Court and the Hon’ble Supreme Court. We are of the view that the same course is to be adopted.

12. In view of the above, this writ petition is allowed with the following directions :-

- (a) The acts of respondent not allowing the petitioner to discharge the duties, are declared illegal and against the law.
- (b) The petitioner shall tender individual affidavit declaring that since the date of his not allowing to discharge duties till today, he has not been in gainful employment. Thereafter, the MSRTC shall initiate steps for payment of salary to the petitioner, who has submitted such declaration.
- (c) The MSRTC shall initiate appropriate steps as are permissible in law and allot the work to the petitioner on any alternate job, within four months from today.
- (d) Salary of the petitioner from today till the decision is taken by the MSRTC within four months, shall be paid on month to month basis as per his last drawn salary.

13. We also direct the respondent/employer to provide the petitioner with alternate post having same pay scale and service benefits as his earlier position. This exercise must be completed within a month from today.

[SHAILESH P. BRAHME]
JUDGE

[S. G. MEHARE]
JUDGE