

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9328 OF 2024

Divisional Controller,
MSRTC Palghar Division, Palghar & Anr.

.. Petitioners

Versus

Clement Elis D'Silva

.. Respondent

.....

- Mr. Yashodeep Deshmukh, Advocate for Petitioner
- Mr. Vaibhav Jagdale, Advocate for Respondent

.....

CORAM : MILIND N. JADHAV, J.

DATE : JUNE 26, 2025

P. C.:

1. Heard Mr. Deshmukh, learned Advocate for Petitioners (through VC) and Mr. Jagdale, learned Advocate for Respondent.
2. On 20.09.2024 after hearing learned Advocate for Petitioners; following order was passed:-

"1. Heard Mr. Deshmukh, the learned counsel appearing for Petitioner. As per the circular dated 4/8 March 2010 it appears that the special cancer leave cannot exceed period of one year and could be granted only after the employee exhausts all other kinds of admissible leaves. Prima facie, it appears the leave in the respect of the period from 19 April 2018 to 13 April 2019 was in excess of permissible period of one year. This appears to be the reason why special cancer leave for the said period of 360 days is withdrawn by the Divisional Controller. Perusal of the written statement filed by the Petitioner before Industrial Court shows detailed explanation why the special cancer leave sanctioned in favour of Respondent has been cancelled. Instead of determining correctness of the reasons cited in the written statement, the learned Member of the Industrial Court has prima facie erred in allowing the complaint only on the ground that reasons were not indicated in the order dated 6 November 2020 by which special cancer leave has been withdrawn. Prima facie, therefore, the order passed by the Industrial Court appears to erroneous.

2. *Issue notice to Respondent, returnable on 12 November 2024. Till the next date of hearing, the Judgment and Order dated 4 October 2023 passed by Industrial Court shall remain stayed."*

3. With the able assistance of both the learned Advocates before me, I have perused the judgment & order dated 04.10.2023 passed by the Industrial Court, Maharashtra at Thane. The bone of contention happens to be interpretation of Circular issued by MSRTC dated 4/8 March 2010 appended at page Nos. 5153, Exh. "D" of Petition, *inter alia*, pertaining to special leave to be granted to the employees for paralysis and cancer diseases. Perusal of the said Circular as argued by learned Advocate for Petitioners is on the basis of staggered leave to be granted to the employee subject to fulfillment of certain conditions in the interim as stated therein to the extent and maximum period of three years.

4. There is no doubt about the fact that Respondent before me has unfortunately suffered a terminal illness and is fully covered by the said Circular. However application of the said Circular has to be on the basis of fulfillment of certain criteria as stated therein. The learned Industrial Court would therefore have to consider the case of Respondent employee on the basis of the Application made by him before the employer for seeking benefit of the applicability of the said Circular to the Respondent's case and return appropriate reasoned findings. That is not been done and no imprimatur is given thereon

as observed by this Court in the aforesaid order. Hence, I am inclined to quash and set aside the impugned judgment & order dated 04.10.2023 passed by learned Industrial Court in Complaint (ULP) No. 6/2022 and remand the matter back to the Industrial Court for fresh consideration strictly in accordance with law and for considering the applicability of the Circular dated 4/8 March 2010 to the case of Respondent namely the Application made by Respondent seeking leave for his illness and passing appropriate order in accordance with law by giving reasons.

5. Needless to state that all contentions of Respondent are expressly kept open. Learned Industrial Court shall consider the same strictly in accordance with law. Order dated 04.10.2023 is set aside and Complaint (ULP) No.6 of 2022 is directed to be decided afresh.

6. Considering the request made across the bar jointly by both the learned Advocates and in view of the illness suffered by Respondent, it is directed that Complaint (ULP) No. 6/2022 shall be determined by the Industrial Court as expeditiously as possible and in any event within period of three months from today positively.

7. With the above direction, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

Amberkar

RAVINDRA
MOHAN
AMBERKAR
Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2023.06.26
15:37:11 +0530