

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9366 OF 2025

The Maharashtra State Road Transport Corporation .. Petitioner

Versus

Baburao Basanna Putge .. Respondent

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- Mr. Nitesh V. Bhutekar, Advocate for Petitioner
- Mr. Prasad B. Kulkarni i/by Mr. Suhas Inamdar, Advocates for Respondent

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CORAM : MILIND N. JADHAV, J.

DATE : JULY 22, 2025

P. C.:

1. Heard Mr. Bhutekar, learned Advocate for Petitioner and Mr. Kulkarni, learned Advocate for Respondent.

2. Present Petition impugns Judgment & Order dated 09.10.2023 passed by learned Industrial Court, Solapur in Complaint (ULP) No. 197/2018. By the said judgment & order, Complaint filed by Complainant (Respondent herein) came to be allowed.

3. Briefly stated Respondent served as a driver with Petitioner since 1999. Being a driver, he was subject to regular medical checkups and medical examination to ensure that his vision was optimum and commensurate with the job of a driver of ST bus. Sometime in 2012, after a regular medical check-up, Civil Surgeon issued medical

certificate stating that Respondent was not fit to serve as driver due to the gap in his neck and spine which affected his vision and he suffered disability. In view of that certificate, Petitioner Corporation summarily discontinued services of Respondent from 18.10.2012. This discontinuation of service was contrary to the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short "**Disabilities Act**") wherein in such a case it is mandatory for the Corporation to offer alternate employment to the medically unfit employee by protecting his pay, especially when the employee is a permanent employee.

4. It is seen that on the request made by the Respondent after his termination, Corporation once again referred the Respondent for medical examination to the Medical Board in the Civil Hospital. The Medical Board after examining the Respondent issued fresh certificate dated 02.01.2013 stating that the employee was fit to do light work. Not being satisfied and having no provision to give light work to the drivers of the Corporation, Respondent once again referred him to the Medical Board who after due examination issued a further certificate dated 31.03.2015 opining that Respondent was fit to work as Peon or was to be employed on some other post. Respondent was thereafter appointed on the post of Peon from 07.05.2015 by the Corporation

however without protecting his pay and giving him any benefit for the above intervening period.

5. Grievance of Respondent was that he was not given salary from 18.10.2012 (date of termination) to 06.05.2015 despite repeated requests made by him neither was the provisions of Section 47 of the Disabilities Act applied to the Respondent's case. It was however applied only after 07.05.2015. Being aggrieved, Complaint (ULP) No. 197/2018 was filed by Respondent seeking direction to Corporation to pay him arrears of salary for the period from 18.10.2012 to 06.05.2015 along with interest at the rate of 12% per annum with continuity of service for all purposes, his annual increments for years 2012 to 2015 and other benefits as applicable.

6. Complaint filed by Respondent was resisted by Corporation by filing written statement below Exh. C-5 before the Industrial Court. Apart from mere denial by Corporation, it was the case of Corporation that Respondent was unfit to work as driver due to which it was incumbent upon the Corporation to terminate his services from 18.10.2012 and it is only after the opinion received from the Civil Surgeon on 31.03.2015 that he was given an alternate job of Peon.

7. Mr. Bhutekar, learned Advocate for Petitioner Corporation would persuade me to consider the impugned judgment and order appended

at page Nos. 28-42, Exh. "F" of Petition and would submit that admittedly the claim of Petitioner for the intervening period during which he did not serve the Corporation cannot be countenanced and computed for the purpose of payment of any dues to him since he had apparently not worked in view of the disability suffered by him. He would submit that the concept of "No work no pay" would be applicable to the case of Respondent since admittedly in view of the certificate given by Respondent to the Corporation, he could not be given work of a driver which resultantly led to his termination in October 2012. He would submit that only after following the due process of law and after receiving the certificate from the Civil Surgeon, Respondent was reemployed as a Peon but it was only after a lapse of 2 & 1/2 years and hence for the intervening period Respondent cannot claim any entitlement.

8. Mr. Kulkarni, learned Advocate for Respondent would persuade the Court to consider the reasoned judgment & order passed by the Industrial Court whereby the Industrial Court has held non-compliance and applicability of the provisions of Section 47 of the Disabilities Act to Respondent's case and has also commented upon the discriminatory attitude of the Corporation whereby similar relief was extended by the Corporation to other similarly placed employees whose names and

details were given who had suffered similar disability during their employment.

9. I have considered the submissions and arguments made across the bar by both learned Advocates appearing for the parties and with their able assistance perused the record of the case.

10. It is *prima facie* seen that similar benefits were advanced and extended to similarly placed employees of the Corporation in view of the orders passed by the Court in similar circumstances. There is no dispute about the same. That apart Mr. Bhutekar would submit that Respondent's case should not be considered for entitlement because the job of the driver being of a hard nature it was commonly seen that drivers would submit false medical certificates in order to take advantage of Section 47 of the Disabilities Act for seeking employment in light jobs and continuity in pay. In the present case, the statement made by Mr. Bhutekar cannot be countenanced because it is seen that admittedly Respondent was working with the Petitioner Corporation since 1999 and with his advanced age until in 2012 when he was 53 years old he encountered disability in vision due to the serious medical condition of cervical spondylitis and gap between his neck and spinal cord. The job of the ST driver is a highly responsible job and cannot be equated with any ordinary office job. The vision of the ST driver has to be at the optimum level to enable and ensure that safety and

security of the passengers travelling in the ST as also all other vehicles on the road is fully secured. In that view of the matter, in the facts of the present case, it is seen that it is only in 2012 that Respondent submitted the certificate from the Civil Surgeon with respect to the disability suffered by him in his vision. That certificate was not only merely accepted by the Corporation but Respondent was thereafter subjected to two further medical examinations thereafter in the year 2013. In both the medical examinations, Civil Surgeons once again after examining the Respondent opined that he was fit to do light duty and he should be employed as a Peon in view of the fact that there was a serious medical condition with respect to the gap existing between his neck and spine. In that view of the matter, there can be no fault found with all 3 medical certificates issued by the Civil Surgeons which are placed on record before the Industrial Court. Neither the Industrial Court has found anything false about the same. On the medical certificates having been accepted applicability of Section 47 of the Disabilities Act would come into play for extending the benefit to Respondent employee. In that view of the matter, the findings returned by the learned Industrial Court in paragraph Nos. 9 onwards of the impugned judgment while determining the issues are cogent and reasoned findings. No fault whatsoever is found in the reasonings arrived at by the Court.

11. Mr. Bhutekar has referred to and relied upon the decision of this Court in the case of *Namdev Pundlik Chaudhari v. Divisional Controller, Maharashtra State Road Transport Corporation, Thane & Anr.*¹ to argue that in paragraph No. 23 of the said decision in similar circumstances, this Court has come to the conclusion that ends of justice would meet if the employee therein was awarded 50% of the backwages for the intervening period during which he was on termination and did not work.

11.1. I have perused the said decision and find that the facts in that case are completely different than the facts in the present case. In that case, it was seen that Petitioner therein had joined services merely two years prior to the medical condition suffered by him whereas in the present case it is seen that Respondent has given his life and blood for serving the Petitioner Corporation from 1999 onwards and he suffered the medical condition only on account of his advanced age with respect to his vision which was duly certified by 3 Civil Surgeons and therefore the findings and conclusion arrived at by the learned Industrial Court cannot be faulted with. In that view of the matter, I am not inclined to accept the submissions made by Mr. Bhutekar and interfere with the impugned judgment & order.

1 Judgment & Order dated 16.04.2024 in Civil WP 6535/23 (Coram : Sandeep V. Marne, J.)

12. In view of the observations and findings, Petition fails. The judgment & order dated 09.10.2023 passed by the Industrial Court, Solapur is confirmed and upheld.

13. I am informed that during pendency of the present Petition, Respondent has retired from service in the month of May 2025. Mr. Kulkarni would submit that despite the Respondent having retired, his gratuity has still not been paid due to pendency of the present Petition. In view thereof, Petitioner is directed by this Court to ensure that all computations and calculations by giving all benefits to the Respondent including continuity of pay and increments be computed and calculated within a period of two weeks from today and the same shall be deposited in the bank account of Respondent within a period of two weeks thereafter without fail. The gratuity amount shall be calculated on the basis of the last drawn salary of Respondent after giving him all due benefits of continuity and annual increments for the intervening period when Respondent stood terminated and which has been set aside by the learned Industrial Court. The aforesaid exercise shall be carried out as expeditiously as possible as directed above in the interest of justice and complied with. All retirement dues of Respondent are directed to be released within four weeks from today as directed hereinabove.

14. Writ Petition is dismissed with the above directions.

Amberkar

[MILIND N. JADHAV, J.]

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