
(2016) 06 BOM CK 0134
In the Bombay High Court
Case No : Writ Petition No. 7975 of 2015

Dilip	Vs	APPELLANT
Divisional Controller, Maharashtra		RESPONDENT

Date of Decision : 22-06-2016

Acts Referred:

Constitution of India, 1950 — Article 14
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

Citation : (2017) 2 ALLMR 102 : (2017) 1 BCR 784 : (2016) 5 MhLJ 840

Hon'ble Judges : S.S. Shinde and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Mr. Pandurang M. Gaikwad, Advocate, for the Petitioner; Smt. R.D. Reddy, Advocate, for the Respondent Nos. 1 and 2; Mr. R.O. Awasarmal, Advocate, for the Respondent No. 3

Final Decision : Allowed

Judgement

Sangitrao S. Patil, J.—Rule. Rule made returnable forthwith and with consent of the learned counsel for the parties, heard finally.

2. By this writ petition under Article 226 of the Constitution of India, the petitioner has challenged the vires of the order dated 18th/19th June, 2015, whereby respondent No. 1 ? the Divisional Controller of Maharashtra State Road Transport Corporation (for short, "M.S.R.T.C."), Divisional Office, Aurangabad has demoted the petitioner from the post of Assistant Traffic Inspector to his original post of driver.

3. The petitioner belongs to Vimukta Jati ? A (for short, "VJA") category. He joined the service with respondent No. 1 as a driver on 16th November, 1988. He rendered his services as a driver to the great satisfaction of his superiors. Respondent No. 1 issued a circular on 9th June, 2014, calling for the applications from the eligible traffic controllers/drivers for filling up five posts of Assistant Traffic Inspectors by promotion. Out of the said five posts, one post was reserved

for the employees/candidates belonging to VJA category. The petitioner applied for the said promotional post. He came to be selected and appointed on temporary basis to the said post as per the order dated 19th December, 2014. He joined the said post on 1st January, 2015. He presented an application on 24th July, 2015 before respondent No. 1 claiming for his regularisation to the post of Assistant Traffic Inspector. He did not receive any positive response on that application from respondent No.1. On the contrary, he received the impugned order whereby he was informed that he was appointed to the post of Assistant Traffic Inspector on temporary basis, that the order whereby he was promoted to that post has been cancelled and he has been demoted to his original post of driver. This order, according to the petitioner, infringes his fundamental right under Article 14 of the Constitution of India. Therefore, it is prayed that it may be set aside and the petitioner may be ordered to be continued to the post of Assistant Traffic Inspector.

4. During pendency of the petition, one Gokulsingh s/o Sandusingh Bainade came to be impleaded as party respondent No. 3, who has been posted by respondent No. 1 as the Assistant Traffic Inspector after demoting the petitioner.

5. Respondent No. 2 is the Divisional Personnel Officer of the M.S.R.T.C. Respondent Nos. 1 and 2 have filed a common reply while respondent No. 3 has filed his separate reply and opposed the petition almost on the same grounds. The sum and substance of their defence is that the petitioner was appointed to the promotional post of Assistant Traffic Inspector temporarily as a stopgap arrangement because respondent No. 3, who is much senior to the petitioner, had already been promoted to the said post as per the order dated 8th December, 2011, subject to his production of caste validity certificate. Since he did not produce the caste validity certificate within the given time, he was demoted with effect from 23rd February, 2012 as per the order dated 23rd February, 2012 with a clear understanding that on production of the caste validity certificate, he would again be appointed to the promotional post of Assistant Traffic Inspector. In the meantime, the petitioner came to be selected for the promotional post of Assistant Traffic Inspector on temporary basis vide order dated 19th December, 2014. Thereafter, respondent No. 3 produced the caste validity certificate. Consequently, he was reposted as the Assistant Traffic Inspector as per the order dated 23rd May, 2015. There were in all eighteen posts of Assistant Traffic Inspectors on the establishment of respondent No. 1. There was no post available for continuation of the petitioner to the said post. Therefore, he was ordered to be demoted vide order dated 18th-19th June, 2015. It is stated that the petitioner is not entitled to claim the post of the Assistant Traffic Inspector since he was appointed to that post purely on temporary basis as a stopgap arrangement. It is stated that the selection of respondent No. 3 to the said post was much prior to that of the petitioner and that too on regular basis. Respondent No. 3 is much senior to the petitioner. Therefore, the petitioner cannot be posted as the Assistant Traffic Inspector. With these averments, the respondents prayed for dismissal of the writ petition.

6. Respondent No. 3 additionally contended that the present writ petition is not maintainable in view of availability of efficacious remedy to redress the grievance of the petitioner vide section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, "MRTP & PULP Act").

7. The learned counsel for the petitioner points to the circular dated 1st June, 2010, issued by respondent No. 1 whereby the applications were invited from the eligible employees for filling up three unreserved promotional posts of Assistant Traffic Inspectors. He then pointed out to the appointment order dated 8th December, 2011 wherein it is specifically mentioned that respondent No. 3 and two others were appointed by promotion to three unreserved/open posts. The learned counsel for the petitioner then points out to the circular dated 9th June, 2014, issued by respondent No. 1 whereby the applications were invited from the eligible employees for filling up five posts of Assistant Traffic Inspector by promotion. Out of the said five posts, two posts were reserved for the candidates/employees belonging to scheduled castes, one post for VJA, one post for Nomadic Tribe (NT) ? C, while one post was kept unreserved. He referred to the result of the selection process (Exhibit C to the petition) wherein the petitioner (serial No. 11) alone is the employee from VJA category amongst all the successful employees. He then referred to the order dated 19th December, 2014 whereby the petitioner was appointed to the promotional post of Assistant Traffic Inspector wherein he is shown to have been selected from VJA category. He submits that respondent No. 3 did not participate in the selection process that was held pursuant to the circular dated 9th June, 2014. Therefore, there was no question of appointing respondent No. 3 to the promotional post of Assistant Traffic Inspector which was reserved for VJA category employee as per the circular dated 9th June, 2014 and held by the petitioner.

8. The learned counsel for the petitioner further submits that respondent No. 3 had applied for the promotional post of Assistant Traffic Inspector in response to the circular dated 1st June, 2010 whereby three unreserved/open posts were to be filled up. The said circular was not meant for filling up any post reserved for VJA category. Therefore, according to him, there was no question of demoting the petitioner from the promotional post of Assistant Traffic Inspector which was reserved for VJA category, on the say that respondent No. 3 was already appointed to that post and since respondent No. 3 had not produced the caste validity certificate, the petitioner was promoted to that post on temporary basis as a stopgap arrangement. He submits that the impugned order dated 18th-19th June, 2015 demoting the petitioner without due procedure of law is illegal and unconstitutional.

9. As against this, the learned counsel appearing for the respondents have tried to justify the impugned order on the say that the petitioner was appointed to the promotional post of Assistant Traffic Inspector on temporary basis until production of the caste validity certificate by respondent No. 3. They stated that

respondent No. 3 was already appointed to the promotional post of the Assistant Traffic Inspector. He being much senior to the petitioner is entitled to continue to hold that post on production of the caste validity certificate. They, therefore, prayed that the petition may be dismissed.

10. From the above referred documents, and particularly from the circular dated 1st June, 2010 it is quite clear that respondent No. 3 was selected to the promotional post of Assistant Traffic Inspector which was not reserved for any category. The circular dated 9th June, 2014 shows that the applications were invited from the eligible employees for filling up five posts of Assistant Traffic Inspectors. Out of those five posts, two posts were meant for the candidates/employees belonging to Scheduled Castes and one post each for VJA and NTC categories. The petitioner had applied for the promotional post of Assistant Traffic Inspector meant for VJA category, in response to the circular dated 9th June, 2014. It is quite clear that respondent no.3 had not applied for the promotional post of Assistant Traffic Inspector, reserved for VJA category in response to the circular dated 9th June, 2014. If that be so, there was no question of appointing respondent No. 3 to the promotional post of Assistant Traffic Inspector, reserved for the candidate/employee belonging to VJA category, for which the petitioner had applied and was selected vide order dated 19th December, 2014. Consequently, there was no question of demoting the petitioner abruptly from the promotional post of Assistant Traffic Inspector reserved for VJA category for accommodating respondent No. 3, who had applied for and got appointed through the earlier selection process to the post of Assistant Traffic Inspector, which was not reserved for any category.

11. The petitioner could not and should not have been demoted from the post of Assistant Traffic Inspector without following due procedure of law. Undisputedly, he has not been demoted from that post because the performance of the petitioner was found to be unsatisfactory. As stated above, the reason given by respondent No. 1 for demotion of the petitioner from the post of Assistant Traffic Inspector is not at all sustainable. The petitioner has been demoted from the post of Assistant Traffic Inspector without following due procedure of law, which amounts to infringement of the fundamental right of the petitioner guaranteed under Article 14 of the Constitution of India.

12. Since the petitioner has alleged and established that because of his illegal demotion, his fundamental right under Article 14 of the Constitution of India has been infringed, we are of the view that the present writ petition is maintainable. Consequently, the contention of respondent No. 3 that the present writ petition is not maintainable in view of the provisions of Section 28 of the MRTU & PULP Act, cannot be said to have any substance.

13. In view of the above facts and circumstances of the case, we are of the considered view that the impugned order dated 18th/19th June, 2015, passed by respondent No. 1 is liable to be quashed and set aside. The petitioner is entitled to continue to hold the post of Assistant Traffic Inspector, without any

interruption/break, in pursuance of the order dated 19th December, 2014. Respondent No. 1 will have to be directed to allow the petitioner to join the post of Assistant Traffic Inspector. In the result, we pass the following order :

(i) The writ petition is allowed.

(ii) The impugned order dated 18th-19th June, 2015, passed by respondent No.1, demoting the petitioner from the post of Assistant Traffic Inspector, is quashed and set aside.

(iii) Respondent No. 1 is directed to allow the petitioner to discharge his duties as the Assistant Traffic Inspector in terms of the promotional order dated 19th December, 2014, with continuity in service to the said post even after issuing the impugned order dated 18th-19th June, 2015.

(iv) The parties shall bear their own costs.

(v) The Rule is made absolute accordingly.