
(2002) 03 BOM CK 0083

In the Bombay High Court

Case No : Writ Petition No. 3368 of 1995

Divisional Controller, Maharashtra State Road Transport Corporation

APPELLANT

Vs

Pralhad Ramchandra Kamble

RESPONDENT

Date of Decision : 28-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(1), 12

Citation : (2002) 5 BomCR 786 : (2002) 94 FLR 376

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : G.S. Hegde, for the Appellant; S.R. Nargolkar, for the Respondent

Final Decision : Dismissed

Judgement

R.J. Kochar, J.—The Divisional Controller of the Maharashtra State Road Transport Corporation, Pune is aggrieved by the Award dated 8-11-1994 passed by the Presiding Officer, IInd Labour Court, Pune directing him to reinstate the respondent-workman with full backwages and continuity of service. The learned Labour Court also gave liberty to the petitioner to reinstate the respondent-workman preferably in his original post of "driver" and alternatively to provide alternate job.

2. The petitioner himself is the employee of the Maharashtra State Road Transport Corporation, which is established under the State Road Transport Corporation Act, 1950 and it is carrying on the industrial activities of transport of passengers and goods within and without the State of Maharashtra. The respondent-employee was in permanent employment of the Corporation as a driver from 1964. He had 22 years of service to his credit under the Corporation. It appears that from 23-8-1986 to 6-9-1986 the respondent workman was on sanctioned leave. No sooner he resumed his duty on 7-9-1986 his services came to be terminated by a letter issued by the Dy. Manager and he was relieved from

service w.e.f. 7-9-1986 on the ground that he was medically unfit on the basis of the report of the Joint Chief Medical Officer of the Corporation.

3. The respondent workman had thereafter raised an industrial dispute u/s 10(1) (c) read with section 12 of the Industrial Disputes Act, 1947 challenging the propriety and legality of the order of termination passed by the petitioner. The respondent-workman filed his statement of claim set out the aforesaid facts and challenged the order of his termination being illegal and improper and also in violation of the principles of natural justice as he was not heard by the Competent Authority and he prayed for a relief of reinstatement with full backwages and continuity of service. According to the respondent-workman he was not given a copy of the report or findings of the Joint Chief Medical Officer who had earlier examined him and certified him to be medically unfit. In the absence of such a report or certificate of the Joint Chief Medical Officer he could not file an internal appeal as provided under the Rules. According to him, he was not given an alternative job though he was entitled to get such an alternative job under the Corporation in accordance with the Rules. The petitioner filed the written statement to contest the reference and claim of the respondent-workman. According to the petitioner, the respondent workman was legally terminated from employment as he was declared permanently medically unfit by the Joint Chief Medical Officer. It was also contended that the respondent workman did not file an internal departmental appeal against the said order. It was also contended by the petitioner that the respondent-workman was not entitled to get an alternative job for himself or for any adult member of his family as he did not fulfill the conditions prescribed under the rules. The petitioner also contended that the respondent-workman was not eligible for such alternative job either for himself or for his family member as his service record was not free from major accident. According to the petitioner, the respondent-workman was given his legal dues and that the order of termination was passed by the Competent Authority in accordance with law, and therefore, the petitioner prayed for rejection of the reference.

4. The respondent-workman examined himself before the Labour Court. The petitioner Corporation examined the Joint Chief Medical Officer and two other employees in support of its case. On the basis of the pleadings and the oral evidence the learned Labour Court came to the conclusion that the termination of the workman was not legal, and therefore, he was entitled to get the relief of reinstatement with full backwages and continuity of service. The learned Judge has recorded reasons for his findings.

5. I have carefully gone through the oral evidence on record and also the Award given by the learned Labour Court. It appears from the record that the respondent-workman was medically examined by the Joint Chief Medical Officer and found the respondent workman medically unfit on the ground of defective vision in the right eye of the workman without glasses as there was a cataract in the right eye. According to him, the workman was permanently unfit for the work

of a driver and that he did not have normal vision as required for the drivers. Further, according to the expert medical witness a driver in the public utility service is required to see in normal course even without glasses. He had issued a certificate certifying the vision of the workman on right eye as 6.24 and left eye 6/9. He has also categorically stated on oath that he had sent his certificate to the Divisional Office. In cross-examination the witness had categorically admitted that after operation of cataract the vision could be normal. He has also admitted that he did not advise operation of the right eye to remove the cataract. He further admitted that the left vision of the workman was normal. It is significant to note that the said witness has admitted that he was advised to give opinion in respect of the fitness of the workman whether the unfitness was permanent or temporary. He however, denied the suggestion that on the basis of cataract the workman could not be held unfit. The second witness examined on behalf of the Corporation was the Establishment Supervisor. He deposed from the record available in the office as he had no personal knowledge of the case and the workman as at that time he was not in the department. He admitted that the respondent workman was not provided with alternative job as there were two accidents reported against him and that he was held responsible for the same. According to the said witness, under the Rules, such a driver-workman did not become eligible for alternative job. The said witness further admitted that he was not aware whether there was any police case against the workman for accident or whether there was any departmental enquiry held against him and whether he was punished for such an act of misconduct. He expressed his inability to say for which accident the respondent-workman was held responsible. He further admitted that from the service book it could not be said whether the respondent workman was held responsible for accident or not. He denied all other suggestions put to him.

6. The Labour Court has considered, appreciated and assessed the entire oral and documentary evidence before him. The Labour Court has noted in particular the medically unfitness opined by the Chief Joint Medical Officer on the ground of low vision in the right eye of the workman due to cataract. He has also noted the admission of the said Doctor that cataract can be removed and the vision can become normal. He has also noted the fact that the workman was not provided with medical report or the medical certificate or the findings of the said Chief Joint Medical Officer. In the aforesaid circumstances I also agree with the findings of the Labour Court that in the absence of such medical report the respondent-workman was not able to file an appeal before the Director of Health Services under the Rules. It is however the fact that the respondent having come to know that he was held medically unfit he had applied for an alternative job for himself or for any eligible member of his family. At this stage I may mention that the Chief Joint Medical Officer who examined the respondent workman ought to have given him a copy of his report to apprise him the basis or the ground for which he was held to be medically unfit. I fail to understand why it is provided under the rules of the Corporation by way of small note that "In no circumstances shall

a candidate be entitled to a copy of the report or detailed findings of a Medical Officer". Such a note or even the rule is per se bad in law as the workman who is held medically unfit has every right to know on what basis he was held medically unfit and what he was suffering from and what he was required do to correct himself physically and medically. He also must get such a copy to enable him to file an appeal under the Rules before the higher authority. It is high time that the Corporation deletes the said note from the relevant Rule 8 which appears on the page 39 of the paper book. It is also legally mandatory for the Corporation and for every employer to furnish all such material which he has used against the employee on the basis of which he loses his valuable employment. It is surprising how the Corporation as well as the Unions functioning in the Corporation have allowed such a note to be continued. I further fail to understand why the report or detailed findings of a Medical Officer cannot be given to the concerned workman particularly when a delinquent workman is as a matter of law entitled to get a copy of complete proceedings of the enquiry and the report of the Enquiry Officer in the cases of disciplinary proceedings. By not furnishing the copy of the report or detailed findings of the Medical Officer the petitioner Corporation has violated the principles of natural justice. In the absence of such a valuable document he could not avail of the remedy of appeal before the Director of Health Services. It is possible that the aforesaid higher authority would have appreciated a very salient fact in the case that the development of a cataract in the human eyes can be cured by surgery and by removal of the cataract the vision in his right can become normal. The higher authority perhaps would have also realised that the cataract in the eyes was not a permanent disability but was a temporary phase of unfitness. The said higher authority perhaps would also have advised the said workman to undergo the surgery and removed the contract. It was the bounden duty of the Chief Joint Medical Officer to have advised the respondent-workman that he could undergo an operation of the right eye and get the cataract remove and thereafter he would become medically fit as far as that ground was concerned. I do not know why the said Medical Officer did not disclose to him the reason for his becoming medically unfit and why he certified that the workman was permanently medically unfit merely because there was a cataract in his right eye. It is the bounden duty of every Medical Physician not merely to diagnose the malady or detect the ailment but also has to prescribe medicines for cure and give appropriate advice to his patient. The duty of the Medical Officer does not come to an end by merely certifying that the patient was suffering from a particular disease, was medically unfit. He must disclose the grounds, reasons and also remedy if available to cure such malady. In the present case the said Officer had clearly admitted that the cataract can be cured after surgery. He ought to have told the said workman at that time itself. He ought to have advised the Corporation that the eye sight of the respondent-workman was defective for the reason of development of cataract in the right eye of the workman and that it was not a permanent unfitness but was temporary phase of unfitness. The format of the certificate clearly warrants the Medical Officer to say whether the workman examined was temporarily or

permanently unfit for employment. In the absence of the certificate it is not possible to say what was the advice given by the said witness. But it is possible to conclude that he must have certified that the workman was permanently unfit which resulted in his termination from employment. If the Medical Officer had certified him to be temporarily unfit in that case the order of termination could certainly be termed as mala fide and colourable exercise of powers of the employer. It is further clear from the subsequent events that the workman had undergone an eye surgery and got removed the cataract from his right eye in November, 1988. It is however a fact that this fact was not brought on record by the concerned workman during the trial. Shri Hegde has made a grievance that there is no such evidence on record and in my opinion he is right. Shri Nargolkar the learned Advocate for the respondent, however has disclosed this fact on the basis of a Medical Certificate issued by the Doctor who had operated the said workman on the right eye to remove the cataract. In any case a judicial notice can be taken of the fact that cataract in the human eyes can be removed and they eye sight can normally or ordinarily be cured. I therefore, do not find any fault with the findings and conclusions recorded by the Labour Court on the basis of the material on record.

7. Even on the issue of alternate job the learned Judge is right in his conclusion. The learned Judge has perused the service record before him and has found that there was no record of major acts of misconducts such as major accidents against the respondent-workman to deny him alternative job. He has also found from the service record that the respondent-workman was declared permanently medical unfit by the Joint Chief Medical Officer. In the aforesaid circumstances discussed by me it is not possible to hold that the respondent workman was permanently medically unfit. The learned Judge has rightly come to the said conclusion and that I do not find any illegality and infirmity in his findings. According to the learned Judge in the circumstances even assuming that the respondent-workman was permanently medically unfit he was eligible to get alternative job for himself or for his eligible family member under the rules as from the service record no major accident was reflected. It was therefore a clear case of eligibility for the respondent workman for an alternative job for him for any of his eligible adult family member. The petitioner Corporation failed on both the counts. The respondent workman had put in 22 years of service and there was no major act or major accident in his service record. There was no charge-sheet or police case against him for any alleged act of major accident. It is natural human tendency to develop defect in the eyes which can always be cured. The defect of the nature of cataract is curable and is not of a permanent nature in the ordinary circumstances. The first thing the Medical Officer ought to have advised the respondent workman to undergo an eye surgery to remove the cataract and ought to have opined that it was only a temporary phase of unfitness and that it could always be cured if timely steps were taken. It was the bounden duty of the Medical Officer to have properly and correctly advised the respondent workman as well as the Corporation that the cataract was curable

and that he was temporarily unfit till he got his right eye cataract removed. I do not agree with Shri Hegde when he submitted that the Corporation could not sit in appeal over the Medical Advice given by the Chief Joint Medical Officer. On reading the medical papers even a layman with 10 mlg of common sense would understand that cataract in the eyes is a temporary phase and could not be a permanent medical unfitness. If in doubt the Competent Authority ought to have enquired from the Medical Officer and got satisfied that the respondent was suffering from such a defect in the eyes which was of a permanent nature and which was not curable at all. There is no such material on record that the Competent Authority made such efforts. The Competent Authority has mechanically without applying its mind passed an order of termination. It was the bounden duty of the Competent Authority to have enquired from the respondent and to have advised him to undergo an operation for removal of cataract and ought to have further warned him if he was not to do so he would be removed from employment. If the petitioner had done this in that case only the bona fides of the Competent Authority of the Corporation would be clear. The Competent Authority has blindly and mechanically accepted the certificate given by the Chief Joint Medical Officer who in his oral evidence admitted that the defect of cataract is curable and that the left vision of the workman was clear. The Competent Authority has to apply its mind to the material before it before passing any order. It cannot take shelter under the plea that it could not sit in appeal over the decision of the Medical Officer. Even a layman always makes certain enquiries from the Doctors. In the present case the Competent Authority before passing the extreme order of termination ought to have verified from the Medical Officer whether the defect in the right eye of the respondent workman was not curable at all and whether his eye sight would be corrected if he was to undergo an operation to remove the cataract. The Competent Authority has failed in its primary duty in this regard before taking the extreme decision of removal of the workman.

8. In the aforesaid circumstances I do not find any illegality, impropriety and infirmity in the Award of the learned Labour Judge. He has rightly set aside the order of termination and has rightly awarded reinstatement of the workman with full backwages and continuity of service. However, it appears that meanwhile the workman has reached the age of superannuation in the year 1997. Now, therefore, there is no question of his reinstatement in employment. He is however entitled to get the benefit of full backwages on the basis of continuity of service as he was never terminated from employment. He will have to be restored in every respect of all the benefits till the date of his superannuation. The petitioner would compute his legal dues on the basis that the respondent was continued in employment till the date of his superannuation and pay him all such legal dues including pension within four weeks from today.

9. The writ petition is dismissed. Rule is discharged. I was inclined to Award cost to the respondent workman in the peculiar facts and circumstances of the case. However, I am not doing so as the petitioner is a public Corporation.

10. All concerned to act on an ordinary copy of this order duly authenticated by the associate of this Court.

Certified copy is expedited.