
(2000) 07 BOM CK 0065

In the Bombay High Court

Case No : Writ Petition No. 2286 of 1992

Divisional Controller, M.S.R.T. Corporation

APPELLANT

Vs

Shri Rafiuddin Sk. Habib

RESPONDENT

Date of Decision : 07-07-2000

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

Citation : (2001) 1 BomCR 77 : (2000) 87 FLR 234

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

Bench : Single Bench

Advocate : P.K. Joshi, for the Appellant; R.R. Patil, for the Respondent

Judgement

R.J. Kochar, J.—The petitioner, a statutory corporation established under the Road Transport Corporations Act, 1950, is aggrieved by an order dated 7th February, 1992 passed by the Industrial Court, Maharashtra at Nasik in Complaint (ULP) No. 218 of 1989 filed by the present respondent u/s 28 read with Items 9 and 10 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971 praying for a declaration that the present petitioner had engaged in an unfair labour practice within the meaning of the aforesaid items and further praying for employment of his son under the Corporation on compassionate grounds as provided under its circular dated 10th September, 1975 modified by the subsequent circulars dated 15th October, 1987 and 9th December, 1988 whereunder the petitioner Corporation appears to have formulated a scheme to employ the sons or daughters of such employees who were declared medically unfit to be continued in its employment.

2. The undisputed facts are that the respondent was in employment of the petitioner corporation as a driver and was terminated from employment on 23rd October, 1987 on the ground that he was medically unfit. He made an application on 29th October, 1987 to the petitioner Corporation that his son, who was eligible to be employed, should be given an employment as helper by applying

the aforesaid circulars in force. The petitioner Corporation did not send any reply to the said application and, therefore, the respondent once again applied by his letter dated 4th January, 1988 repeating his request. Almost after one year the petitioner Corporation replied the said application by its letter dated 7th January, 1989 refusing to employ his son saying that he was not eligible to be employed as a helper. The respondent, being aggrieved by the said reply, filed the aforesaid complaint of unfair labour practice on 14th February, 1989 seeking the reliefs set out hereinabove. On the basis of the rival contentions of the parties the learned member of the Industrial Court, after recording oral and documentary evidence, concluded that the complaint was not barred by limitation and that the petitioner Corporation had committed an unfair labour practice within the meaning of Item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act by not, giving employment to the son of the respondent relying on a circulars dated 15th October, 1987 issued by the Deputy General Manager to different Divisional Controllers requiring their attention to the earlier circulars on the subject of compassionate appointments for the post of Helpers under the Corporation. By the aforesaid circular, it appears that, even a candidate who had passed 7th standard examination, could be employed. It was further directed that the apprentices/trainees who were already so appointed and who possessed I.T.I. certificate should be considered on priority basis while effecting direct recruitment as Helpers. Unfortunately, the petitioner Corporation did not place on record of the Industrial Court all the relevant circulars which are produced before me, on my demand. The first such circular dated 10th September, 1975 was based on the Corporation's Resolution No. 8305 dated 19th August, 1975 which provided for employment to Driver's who were declared medically unfit by the competent medical authority and in the interest of their rehabilitation. The said resolution reads, as under :

"The Corporation considered the question of providing employment to drivers, who are declared medically unfit by the Competent Medical Authority, and, in the interests of their rehabilitation; took the following ad-hoc decisions in their respect :---

If the service record of the driver in question is free from major accidents and if he had been taken on time-scale, he may be asked to choose one of the following facilities :---

1. If he is a departmental promotee, he may be considered for absorption in the category from which he was promoted, without affecting his pay, and break in service, if any, should be condoned and the service should be treated as continuous.
2. In other cases, not covered by (1) above, he may be absorbed in any other category suitable to his qualifications, etc., without any loss of pay, and break in service, if any, be condoned as in (1) above.
3. An opportunity may be given to his son, if the latter is physically fit, to learn driving, with a view to his eventual absorption in the Corporation as a driver.

4. His son/daughter may be employed in the Corporation in any category suitable to his/her qualifications.

5. Subject to careful selection, such of the drivers who have the requisite experience may be employed as drivers to assist the Training Inspector in training in driving, at the rate of 3 drivers in each Division.

If, after following the above alternatives, any drivers still remain to be absorbed, their case should be placed before the Corporation, indicating their full details, the reasons why they could not be absorbed and their number, etc. so as to enable the Corporation to take an appropriate decision in the matter. The Corporation clarified that, while absorbing the drivers in the manner mentioned above, they should be given priority over all the other persons on the waiting lists of any type."

3. On the basis of the aforesaid resolution the different authorities have issued subsequent circulars to fill in the gaps and to better effectuate the resolution in the interest of administration. The second such circular was issued by the Divisional Controller on 9th October, 1975 following the first circular dated 10th September, 1975. It appears that the circular was issued by the Deputy General Manager on 15th October, 1987 permitting the competent authorities to consider the appointments of such candidates who had passed 7th standard examination and also directing to consider the I.T.I. trainees on priority basis. There is a third circular dated 9th December, 1988 which, in fact, is called General Standing Order. It appears that the said circular called in modification to General Standing Order No. 503 dated 19th June, 1959 which was in pursuance of the Corporation's Board Resolution dated 26th February, 1988 prescribing required qualifications for the posts of Helper-A. By the said General Standing Order for regular recruitment of Helper-A relevant qualification required is prescribed as I.T.I. I am afraid the General Standing Order circular dated 9th December, 1988 is not relevant for our purpose as it was in modification of its existing General Standing Order for regular recruitment of Helpers in the category of Helper-A. It appears that the reliance on the said circular is wholly misplaced. What we are concerned in the present matter is appointments of candidates on compassionate grounds as prescribed under the Corporation's Resolution No. 8305 dated 19th August, 1975. The whole intention and purpose of the said resolution is to rehabilitate the Corporation's employees who were declared medically unfit to continue in its employment. The other two circulars are issued by the subordinate officers to meet the administrative exigencies and they are not in modification of the Corporation's resolution obviously as these individual officers could not modify the resolutions passed by the Corporation in its Board meeting. The Corporation's resolution dated 19th August, 1975 is broadly intended to give employment to the sons or daughters of the employees who were declared medically unfit to rehabilitate their families. There is no specific qualification or eligibility criteria prescribed in the said resolution. It only says that suitable candidates, in accordance with their qualifications, may be employed. The further

details are prescribed by the concerned authorities to employ or to enforce the resolution effectively in consonance with the recruitment rules and prescribed qualifications for the concerned posts. Even on compassionate grounds the appointments cannot be made of such candidates who do not possess the required qualifications as prescribed under the recruitment rules. By the resolution it only means that the wards of the medically unfit employees would be considered on preferential or priority basis. For the post of Helper-A the recruitment rules prescribed necessary qualifications to be an I.T.I. certificate. It appears that there is another post i.e. ordinary helper for which I.T.I. certificate was not insisted as is obvious from the circular dated 15th October, 1987. It is, however, not known under what authority the Deputy General Manager had relaxed such requirements. Nonetheless, by the said circular dated 15th October, 1987 he had circulated amongst his subordinate officers that even 7th standard passed candidates could be appointed. To be precise and to translate the Marathi Version into English from the circular, the authority had pointed out that there was no objection if a candidate who has passed 7th standard examination to be appointed as a helper on compassionate ground. It appears that the circular dated 15th October, 1987 was issued after discussions with the union, to get the condition of I.T.I qualification to be relaxed for appointments as ordinary Helpers on the basis of compassionate grounds.

4. The basis question, which the Industrial Court has missed, is whether the required qualifications for the post of Helper-A can be relaxed by any subordinate authority either the Deputy General Manager or a Divisional Controller. The General Standing Order which provide for employment on compassionate ground was first passed on 19th August, 1975 and it was modified by another Resolution No. 1132 dated 9th December, 1988. The circular on which the respondent employee has relied on is dated 15th October, 1987 which appears to have followed the discussions with the union. According to me, the General Standing Orders and the Corporation's resolutions cannot be modified or relaxed by the Deputy General Manager. If the post of Helper-A, under the recruitment rules, require the necessary qualification of I.T.I. the Deputy General Manager had no authority or powers to reduce it to the 7th standard examination. Such a resolution ought to have been passed by the Corporation. The required qualification for the concerned posts cannot be relaxed by any subordinate officer, including the General Manager. It is for the Corporation and the Board of Directors alone to prescribe the general recruitment rules and the eligibility criteria. As is obvious from the modification of the General Standing Order circular dated 9th December, 1988 such modification was done by the Corporation in the meeting of the Board of Directors. The circular dated 15th October, 1987 was issued by the Deputy General Manager who had no authority and powers to relax the required qualifications for the post of Helper-A. Such relaxation ought to have been by the Board. I fail to understand under which provision the Deputy General Manager had relaxed the required qualifications for the post of Helper-A. According to me, the respondent cannot rely on the said

circular dated 15th October, 1987 as the Deputy General Manager had no powers to relax the eligibility criteria prescribed by the recruitment rules under the Board's resolution.

5. Appointment on compassionate grounds does not mean that all the recruitment rules are to be thrown off the board. Such appointments only mean that such candidates, if suitable, should be given preference as per the rules. It does not mean that the sons and daughters of the medically unfit employees should be appointed, though not suitable and not possessing the required qualifications. If such appointments are left to the subordinate officers, to say the least, it would create havoc in the field of public employment. The instant is the case of such unauthorised relaxation of required qualifications for the post of Helper-A. The Corporation is now taking shelter under the subsequent Circular dated 9th December, 1988 which is issued by the Vice-Chairman and Managing Director of the Corporation conveying the resolution modifying its earlier General Standing Order.

6. According to me, the respondent cannot be helped by relying on the circular issued by the Deputy General Manager on 15th October, 1987. It does not create any right in either the employee or the sons or daughters of such employees. It is only an enabling provision and guideline for the subordinate authorities while enforcing its resolution for compassionate employment. Such welfare provisions made by the Corporation cannot be said to create any right in rem. Neither the employee nor the son or daughter of such employee can claim, as a matter of right, the employment on the basis of compassion. The respondent employee has sought an order under the said circular dated 15th October, 1987 and has said that he had passed 7th standard examination and, therefore, he was eligible to be appointed as Helper and since he was not appointed the petitioner Corporation was accused of engaging in an unfair labour practice. As I have held that the said circular issued by the Deputy General Manager, who had no powers to issue such circulars to modify the required qualifications prescribed under the recruitment rules. I wonder under what provisions of law he could issue such circulars. If such circulars are issued by the subordinate and sundry officers it would create confusion and give risk to malpractices. Such officers would go on issuing such circulars relaxing the recruitment eligibility criteria following the rule of "show me the man and I show you the rule". By issuing such circulars the public employment would suffer. The respondent employee, therefore, cannot take help of the said circular which is issued unauthorisedly by the Deputy General Manager. According to me, the respondent has failed to show his right, even remotely, to get employment on compassionate ground. There is neither any award nor settlement or agreement which the Corporation has failed to implement, to attract the provisions of the unfair labour practice. The Industrial Court has erred in deciding the question and I cannot blame the Industrial Court as it was not properly assisted while deciding the complaint. There is no substance in the complaint. In these circumstances, the petition succeeds. Rule is made absolute in terms of prayer Clause (B). The judgment and order of the

Industrial Court dated 7th February, 1992 is quashed and set aside and the complaint is dismissed. No order as to costs.

7. The respondent, however, bona fide relied on the circular dated 15th October, 1987 issued by the Deputy General Manager to get compassionate employment as a helper, though not I.T.I. but only 7th standard pass. It would be, therefore, in the interest of justice to direct the petitioner Corporation to consider the case of the son of the respondent to employ him as a helper or to any other suitable post depending on his present qualifications by relaxing the age requirement, if possible, under the recruitment rules, sympathetically. Such decision shall be taken by the petitioner Corporation within four months from today.

Case to be considered sympathetically