
(2015) 03 BOM CK 0301
In the Bombay High Court
Case No : Writ Petition No. 1977 of 2014

Dnyaneshwar

APPELLANT

Vs

M.S.R.T. Corporation and Others

RESPONDENT

Date of Decision : 24-03-2015

Acts Referred:

Companies Act, 1956 — Section 617
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2(i), 2(k), 2(o), 47

Citation : (2015) 03 BOM CK 0301

Hon'ble Judges : V.A. Naik, J;A.M. Badar, J

Bench : Division Bench

Advocate : D.C.R. Mishra, for the Appellant; V.H. Kedar, Advocates for the Respondent

Final Decision : Allowed

Judgement

A.M. Badar, J—Heard. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.

2. By this petition, Petitioner-Mechanic Artisen-A working with the respondent-Maharashtra State Road Transport Corporation Limited (hereinafter referred to as "Corporation" for the sake of brevity) is challenging the order dated 14th December, 2013 issued by respondent No. 2 thereby terminating his services with retrospective effect from 14th October, 2013; for the reason that the Medical Board, I.G.M.C., Nagpur, has declared him unfit for working as Mechanic Artisen-A. The petitioner is praying for reinstatement in service with all consequential benefits including release of his salary.

3. The facts in nutshell leading to the institution of present petition, which are, in fact, undisputed can be summarized thus:-

In the year 1980, the petitioner was engaged as a Helper on daily wages. Thereafter on 20th March, 1984, he was absorbed on permanent basis as a

Mechanic Artisen-A in time scale since then he was working as Mechanic Artisen-A with respondent-Corporation. According to the petitioner, on 29th April, 2011 while working at Divisional Workshop at Chandrapur, he developed high blood pressure and was admitted to the District Hospital, Chandrapur, where he suffered paralytic attack. He proceeded on leave. It was on 1st/4th August, 2011, the Divisional Controller of the respondent-Corporation referred him for medical examination in order to ascertain whether the petitioner suffered paralytic attack. After ascertaining illness of the petitioner from the Civil Surgeon, General Hospital, Chandrapur, the petitioner was granted medical leave up to 9th January, 2012. It is the case of the petitioner that on 24th June, 2013, the Medical Board examined him and declared him fit for light job. This can be seen from the communication annexed by the petitioner at Annexure-E, which is a letter addressed by the Divisional Controller to the Medical Board, Nagpur. By this communication, the Divisional Controller requested the Medical Board to ascertain and certify whether the petitioner is fit for working on his original post as there is no provision in the Rules of the Corporation to provide light job. This communication was followed by a letter dated 11th October, 2013 (Annexure-F) issued by Respondent No. 2-Divisional Controller to the Medical Board, Nagpur, with a request to ascertain the fitness of the petitioner for working as Mechanic Artisen-A. Accordingly, the petitioner appeared before the Medical Board at Nagpur on 14th October, 2013. Upon examining the petitioner, the Medical Board, vide its report dated 14th October, 2013 (Annexure-J) certified that the petitioner is unfit for the job of Mechanic Artisen-A. According to this certificate of the Medical Board, the petitioner was found to be suffering from "LIVE right hemeplegia". On receipt of this report declaring the petitioner unfit for work as Mechanic Artisen-A, respondent No. 2-Divisional Controller by the impugned order dated 14th December, 2013 terminated the services of the petitioner with retrospective effect i.e. from 14th October, 2013. The petitioner was then also examined by General Hospital, Chandrapur and panel of Doctors examining him certified on 11th December, 2013 vide certificate at Annexure-K that the petitioner is suffering from "LIVE with right hemeplegia" resulting in 55% disability. This certificate do show that the petitioner suffers from Locomotor or cerebral palsy affecting his right leg as well as right arm.

4. According to the petitioner, his termination from services because of declaration that he is rendered unfit for work by the Medical Board is totally illegal and in breach of mandatory provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as "Act of 1995"). He, therefore, prayed for quashing and setting aside the said termination order and for reinstatement with all consequential benefits.

5. The petition came to be opposed by filing an affidavit-in-reply by respondent-Corporation. According to respondent-Corporation, the matter is governed by a Circular dated 10th September, 2008 issued by respondent-Corporation whereby employees, who are declared unfit to serve and having disability of 40% or more

are entitled for priority in alternate job. According to respondents, the petitioner ought to have applied for alternate job by submitting an affidavit along with his application and then he could have been provided with alternate job upon ascertaining his fitness for the same from the Medical Board. Respondents submitted that the petitioner ought to have preferred an appeal to the Health Department of State if he was really aggrieved by the impugned action.

6. Heard the learned counsel appearing for both the parties.

7. Shri Mishra, the learned counsel appearing for the petitioner, by relying on the judgment of the Hon"ble Apex Court in the matter of Anil Kumar Mahajan Vs. Union of India (UOI) and Others, (2013) 8 AD 241 : (2014) 173 PLR 678 : (2013) 8 SCALE 366 : (2013) 7 SCC 243 : (2013) 2 SCC(L&S) 665 : (2013) 4 SCT 167 : (2013) 3 SLJ 15 submitted that Section 47 operates as injunction restraining the respondents from terminating the petitioner because of sustaining disability in the course of employment. As per his submission, the petitioner who has incurred disability while in service is entitled for the reliefs claimed.

8. As against this, Shri Kedar, the learned counsel appearing for the respondents, argued that the petitioner could have been provided alternate job if he had applied in terms of Circular dated 10th August, 2009 issued by the Corporation. As he has not applied for the same, the petition deserves dismissal.

9. Upon hearing the rival submissions, we are of the view that the impugned order terminating services of the petitioner with retrospective effect issued on 14th December, 2013 (Annexure-A) cannot be sustained. It is not in dispute that the petitioner was working as a Mechanic Artisen-A with respondent-Corporation right from his regularisation with effect from 20th March, 1984. Prior to that, he was working as helper on daily wager with the respondent-corporation from the year 1980. Respondent-Corporation has not controverted the fact that on 29th April, 2011 while working at the Divisional Workshop of the Corporation at Chandrapur, the petitioner was required to be admitted at District Hospital, Chandrapur as he had suffered paralytic attack. It is seen that the petitioner was granted medical leave right from 29th April, 2011 to 9th January, 2012 after ascertaining from the Civil Surgeon, Chandrapur the fact that he suffered paralytic attack. Annexure-C and Annexure-D are the orders issued by the respondent-Corporation granting medical leave to the petitioner up to 9th January, 2012.

10. It was on the insistence of the respondent-Corporation, the petitioner appeared before the Medical Board, Nagpur, and upon his thorough medical examination, the Medical Board came to the conclusion that the petitioner developed "LVE with right hemeplegia". Disability certificate at Annexure-K issued by Chairperson, Medical Board, Government Hospital, Chandrapur shows that the petitioner is suffering from locomotor or cerebral palsy affecting his both right limbs. Similar is the Certificate at Annexure-J issued by the Medical Board, Nagpur, which shows that the petitioner suffered "LVE Right Hememeplegia".

11. At this juncture, it would be apposite to look into the provisions of Act of 1995. This act was enacted with a laudable object spell out in Statement of Objects and Reasons, which reads thus:-

(i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;

(ii) to create barrier free environment for persons with disabilities;

(iii) to remove any discrimination against person with disabilities in the sharing of development benefits, vis-a-vis non-disabled persons;

(iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;

(v) to lay down a strategy for comprehensive development of programmers and services and equalisation of opportunities for persons with disabilities; and

(vi) to make special provision of the integration of persons with disabilities into the social mainstream."

12. A bare look to the provisions of this Act of 1995 goes to show that it is welfare legislation which has to be interpreted in favour of subjects. It would be apposite to reproduce the provisions of Section 2(i), 2(k), 2(o) of the Act of 1995 which defines disability, establishment and locomotor disability. They read thus:-

"Section 2(i) "disability" means:-

i. blindness;

ii. low vision;

iii. leprosy-cured;

iv. hearing impairment;

v. locomotor disability;

vi. mental retardation;

vii. mental illness"

"(k) "establishment" means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) and includes Departments of a Government;"

"(o) "loco motor disability" means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy;"

13. It is not in dispute that the respondent-Corporation is the Corporation owned, controlled and aided by the State Government and as such, it is an establishment as defined by Section 2(k) of the Act of 1995. Locomotor disability is one of the disabilities enumerated in inclusive definition of the term found in Section 2(i) of the said Act. Cerebral palsy and disability of muscles leading to substantial restriction of movement of the limbs is covered by the term "locomotor disability" defined by Section 2(o) of the Act of 1995. The Medical Certificates placed on record including certificate issued by Medical Board goes to show that the petitioner suffered disability as defined by Section 2(o) of the Act of 1995. This disability was caused to the petitioner due to paralytic attack suffered by him while on work at the Divisional Workshop at Chandrapur on 29th April, 2011. The fact is thus established that the petitioner incurred disability in the course of his employment and during his service with respondents. As such, the provisions of Section 47 of the Act of 1995 come into play and respondents were, in fact, injected by virtue of this provision from dispensing with the services of the petitioner, who acquired a disability during his service.

14. At this juncture, it is apposite to quote provisions of Section 47 of the Act of 1995, which reads thus:-

"47. Non-discrimination in Government Employment - (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

15. In view of this provision of welfare legislation, it was not open to the respondents to dispense with the service of the petitioner by passing impugned order of termination on 14th December, 2013. As the petitioner was declared unfit to work as Mechanic Artizan-A, he ought to have been shifted to some other post with the same pay scale and service benefits. If that was not possible, then respondents ought to have kept the petitioner on a supernumerary post till availability of suitable post or till the petitioner attains the age of superannuation, whichever contingency occurs earlier. The learned counsel for

the petitioner rightly relied on the judgment of the Hon''ble Apex Court in Anil Kumar Mahajan Vs. Union of India through Secretary, Ministry of Personnel, Public Grievance & Pensions, Department of Personnel & Training, New Delhi & Ors. (supra) wherein it is held that the prohibition imposed under Section 47 against dismissal or reduction in rank of an employee is total prohibition and services of such employees acquiring disability while in service cannot be dispensed with. The ratio of the said judgment applies with full force to the case in hand.

16. In the result, the petition is allowed. The impugned order dated 14th December, 2013 passed by the respondent No. 2-Divisional Controller is quashed and set aside. Respondents are directed to reinstate the petitioner with continuity in service and with full back wages on some other suitable posts having light work with the same pay scale and service benefits. If it is not possible to adjust the petitioner against any post, he should be kept on supernumerary post until the suitable post is available or until he attains the age of superannuation whichever earlier.

17. Rule is made absolute in the above terms with no order as to costs.