
(2020) 02 BOM CK 0057
In the Bombay High Court
Case No : Writ Petition No. 799 Of 2017

Maresh

APPELLANT

Vs

Maharashtra State Road Transport Corporation

RESPONDENT

Date of Decision : 13-02-2020

Acts Referred:

Industrial Disputes Act, 1947 — Section 2A
Persons With Disabilities (Equal Opportunities, Protection Of Rights And Full Participation) Act, 1995 — Section 2, 47, 47(1), 47(2)
Constitution Of India, 1950 — Article 226

Citation : (2020) 02 BOM CK 0057

Hon'ble Judges : Ravindra V. Ghuge, J;S.M. Modak, J

Bench : Division Bench

Advocate : C.V. Jagdale, V.P. Panpaliya

Final Decision : Allowed

Judgement

Ravindra V. Ghuge, J

1] Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2] We are sad to commence the dictation of this judgment on considering the inhuman treatment meted out by the respondent M.S.R.T.C. to a hapless

litigant like the petitioner's deceased father, an employee of the M.S.R.T.C. As we unfold the facts of this case in our judgment, it would be

apparent as to why we are constrained to open this judgment with unpleasant remarks.

3] The petitioner has approached this Court in view of the demise of his father Sanjayrao Bahad, who was in the permanent employment of the

M.S.R.T.C. Earlier, he had joined on 29.11.1980 as a temporary and was dismissed from service on 05.06.2006 on account of remaining absent due to

illness. He had to approach the Labour Court by raising an Industrial Dispute under Section 2A of the Industrial Disputes Act, 1947 and Reference

(I.D.A.) No.29/2009 was allowed by the judgment and award dated 23.01.2012 delivered by the Labour Court.

The M.S.R.T.C. had approached this Court by preferring a writ petition, which was dismissed.

4] The deceased employee therefore, approached the M.S.R.T.C. for reporting for duty. On 23.01.2012, the M.S.R.T.C. referred the deceased to the

Medical Board. It is at this point in the litigation journey of the deceased employee, that the unscrupulousness of the M.S.R.T.C. would be exposed.

On 11.10.2012, after a passage of nine months, the Medical Board, as per the M.S.R.T.C., is said to have declared the deceased unfit for performing

any duty and the M.S.R.T.C., dismissed the services of the deceased on 13.12.2012. The deceased was not given the copy of the medical report. He

passed away on 01.05.2016 since he was suffering from paralysis for almost a decade during which phase of life, the M.S.R.T.C. had ill-treated him.

5] The petitioner is the son of the deceased, who is constrained to approach this Court for seeking compassionate appointment as the M.S.R.T.C.

informed the petitioner that, as his father was not in the service of the M.S.R.T.C. when he died, he cannot be said to have died in harness and

therefore, the scheme facilitating appointment of an eligible heir of the deceased, would not be applicable to the petitioner.

6] The petitioner has stated before us that he is not aware as to why his father was declared medically unfit, though he concedes that his father was

suffering from partial paralysis.

7] While considering this case, this Court had passed an order on 19.11.2019 formulating an issue as to whether the father of the petitioner could be

treated as "deemed continued in service" in the light of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and

Full Participation) Act, 1995 and whether the petitioner could be held entitled for compassionate employment. For clarity, the order passed by this

Court on 19.11.2019 is reproduced as under:-

Civil Application No.3062/2019 for amendment is allowed. Necessary amendment be carried out within a period of one week from today.

The father of the petitioner was declared as medically unfit on 11/10/2013 to

work on the post of Clerk. He was not offered posting in any other post and he expired on 1/5/2016 at the age of probably 56 years. The application for providing employment on compassionate ground was made by the petitioner and that was rejected on 30/8/2016 holding that the father of the petitioner was not in service.

We direct the respondent to consider the question as to whether the father of the petitioner could be treated as "deemed continued in service" in

terms of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and petitioner can be

held entitled to employment on compassionate ground because his father was declared as medically unfit at the age of about 56 years. This decision

be taken during the period of eight weeks from today and affidavit to that effect be filed on record.

Stand over to 28/1/2020.

8] While hearing this matter on 11.02.2020, we were intrigued by the fact that despite our repeated requests to the Advocate for the M.S.R.T.C. to

tell us as to what was the ground on which the deceased was declared unfit for any duty and therefore, the M.S.R.T.C. was constrained to terminate

him, we were not shown the report of the Medical Board. The learned Advocate told us that he was declared medically unfit and hence, he had to be

terminated and he was not fit to perform any work. We seriously felt that the M.S.R.T.C. was withholding some vital information from the Court. We

therefore, probed in the matter as to whether the medical report was placed before us and the answer was in the negative. On enquiry, the learned

Advocate for the M.S.R.T.C. conceded that the medical report was not supplied even to the deceased. We therefore, found it appropriate to give a

glance to the medical report before we could conclude that the deceased could not be continued in employment, in view of the stand taken by the

M.S.R.T.C.

9] We therefore, granted 24 hours to the M.S.R.T.C. to produce the said report. Repeated requests were made by the learned Advocate that he

should be given at least two weeks time, which we refused. Consequentially, the report was produced before us on 12.02.2020 (yesterday) and we

were shocked to realize that the Medical Board had clearly recorded that the deceased was fit for duties and he should be given a light job. This has

been a revelation for us considering the fact that this Court was consistently being informed from 2017 that the deceased was totally disabled and was not in any condition to report for duties. It is, therefore, obvious that the M.S.R.T.C. has made a well planned attempt to mislead us, as well as deprive the deceased of his daily bread by terminating him from service on the ground that he was completely unfit to perform any duty. The medical report dated 13.12.2012 is taken on record and marked as 'X' for identification.

10] We find it appropriate to record that, on the one hand, the deceased had suffered partial paralysis and on the other hand, the M.S.R.T.C. treated the deceased in the most inhuman manner by terminating his services and rendering him unemployed at such a stage in life when he desperately required an earning and especially for sustaining his medical treatment, which is quite costly. He has passed away on 01.05.2016, a dejected man.

11] Section 47 of the 1995 Act, which was applicable to the deceased as in 2012, reads as under:-

47. Non-discrimination in Government employment.â“(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.

12] We find it advantageous to rely upon the following judgments delivered by the Honâ“ble Apex Court and by this Court:-

[i] Union of India v. Om Prakash Roy, LPA No.1190/2015 in Civil Writ Jurisdiction Case No.7390/2014 decided on 27.02.2018.

[ii] Assaram Raibhah Dhage v. Executive Engineer, Sub Divisional, Mula, 1988(4) Bom. C.R.=1987(2) CLR 231.

[iii] Ramnagina Thug v. Chief Personnel MGR, Chandrapur Area,, Western Coal Fields Ltd., 2017 CLR (2) 302 = 2007 LLJ (3) 530.

[iv] Kunal Singh v. Union of India and another, (2003) 4 SCC 524.

[v] Sudarshan Rajpoot v. Uttar Pradesh State Road Transport Corporation, (2015) 2 SCC 317.

[vii] Divisional Controller MSRTC Latur v. Dhananjay Sudhakar Dixit, 2019(3) Mh.L.J. 108 (S.J. Bom)

13] It is therefore, not only a legitimate expectation of an employee, but a legal right flowing under Section 47, of being continued in employment on an

alternate job which can be termed as light work. The second proviso to Section 47(1) takes care of the helplessness of such litigants, by providing that

if it is not possible for an employer to adjust an employee against a post or allocate any alternate job to him, he should be kept on a supernumerary post

until a suitable post is available or till he attains the age of superannuation, whichever is earlier.

14] It is quite obvious that the M.S.R.T.C. has not only acted in a stone hearted manner, but has shown scant respect for life and the law applicable.

What is shocking, is that the M.S.R.T.C. kept the medical board report under wraps and has maintained utmost secrecy about the said report since the

Medical Board had recorded that the deceased should have been continued in employment on a light post. Such behaviour of the M.S.R.T.C. cannot

be countenanced, keeping in view the judgment delivered by this Court at the Aurangabad Bench (Coram: R.V. Ghuge, J.) in Divisional Controller,

Maharashtra State Road Transport Corporation, Latur v. Dhananjay Sudhakar Dixit reported in 2019(3) Mh.L.J. 108, wherein a similar act of the

M.S.R.T.C. was noted by this Court and strictures were passed against it.

15] In Sudarshan Rajpoot (supra), the Honâ??ble Apex Court has concluded in paragraph 32, 33 and 34 as under:-

32. Further, it is important for us to examine another aspect of the case on hand with respect to reinstatement, backwages and the other consequential

benefits to be awarded in favour of the appellant-workman. In the case of Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya,

2014(2) Mh.L.J. (S.C. 480 = (2013) 10 SCC 32,4 after referring to three Judge

Bench Judgments with regard to the principle to be followed by the Labour Courts/Industrial Tribunals to award backwages if order of termination/dismissal is set aside, the law has been laid down in this regard by this Court as under: (SCC p.344, para 22)

22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full backwages. If the employer wants to deny backwages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of backwages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay backwages including the emoluments.

Therefore, keeping in mind the principles laid down by this Court in the above case, we are of the opinion that the appellant workman should be paid full backwages by the respondent Corporation.

33. Since the order of termination is set aside, having regard to the finding of fact recorded by the Workmen's Compensation Commissioner while

determining the claim under the Workmen's Compensation Act, the appellant workman sustained grievous injuries to his legs which is an

employment injury suffered during the course of employment in the respondent Corporation. In the matter of the rights and protection of the appellant

workman we refer to the decision of this Court in *Bhagwan Dass v. Punjab SEB*, (2008) 1 SCC 579:

¶4. It may further be noted that the import of Section 47 of the Act was considered by this court in *Kunal Singh v. Union of India*, [2003 (4) SCC

524] and in paragraph 9 of the decision it was observed and held as follows: (SCC pp.529-30)

¶9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in

Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of

the Act has given distinct and different definitions of disability and person with disability. It is well settled that in the same enactment if two distinct

definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that a person

does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of

the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him

would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The section further provides 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; if

it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age

of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from

sub-section (2) of Section 47. Section 47 contains a clear directive that the employee shall not dispense with or reduce in rank an employee who

acquires a disability during the service. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give

them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be

preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory

obligation on the employer to protect an employee acquiring disability during service.â??

34. Therefore, the respondent Corporation is statutorily obliged under Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 to provide alternate equivalent job to the appellant-workman in place of the post of driver. Therefore, we direct accordingly.

16] It is often said that a person â??once bitten is twice shyâ??.

It appears that the M.S.R.T.C. has behaved as a law unto themselves. We are therefore, not in a position to show any mercy or sympathy to the

M.S.R.T.C despite the pleadings of Shri V.G. Wankhede, learned Advocate for the M.S.R.T.C.

17] In view of the above, while exercising our extra jurisdiction under Article 226 of the Constitution of India and keeping in view the prayers made by

the petitioner, that this petition is allowed with the following directions:-

[a] The communication dated 11.10.2013 issued by the M.S.R.T.C. is quashed and set aside.

[b] The petitioner shall be entered in the wait list of eligible candidates for appointment on compassionate grounds from the date of his application i.e.

25.07.2006.

[c] The deceased Sanjayrao Bahad shall be treated to be in employment till his death on 01.05.2016.

[d] The M.S.R.T.C. shall pay the entire back-wages to the widow of the deceased with effect from the date of his termination till his demise on

01.05.2016, within six weeks from today.

[e] In the event the widow of the deceased employee is no more, the said amount shall be paid to the petitioner, being the son of the deceased.

18] Considering our experience that payment of back-wages is delayed by certain officers of an organization and the interest is paid from the state

exchequer â?" tax payers money, we make it clear that if this amount is not paid within six weeks, it would carry interest at the rate of 6% per annum

from the date of the demise of Sanjayrao Bahad and the interest component shall be paid from the personal salary of the Divisional Controller,

M.S.R.T.C. at Yavatmal.

19] Since we are told that the Divisional Controller, who was the brain behind the above recorded episode, has retired from employment, that we are not recommending any disciplinary action against him.

20] Rule is made absolute in the above terms.