

(2010) 04 BOM CK 0022
In the Bombay High Court
Case No : Writ Petition No. 86 of 2003

Manoj Thakur

APPELLANT

Vs

Maharashtra State Road Transport Corporation

RESPONDENT

Date of Decision : 12-04-2010

Acts Referred:

Citation : (2010) 3 BomCR 529

Hon'ble Judges : R.C. Chavan, J

Bench : Single Bench

Advocate : C.V. Jagdale, for the Appellant; R.S. Charpe, for the Respondent

Judgement

R.C. Chavan, J.—This petition is directed against the judgment of the learned Member, Industrial Court, Nagpur, rejecting the petitioner's complaint of unfair labour practice as defined in Item 9 of Schedule IV to the Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act.

2. Facts, which are not in dispute and which are relevant for decision of the petition, are as under:

The petitioner's father was in the employment of the respondent-Corporation and was declared unfit by order dated 23-12-1994 after rendering 22 years of service. His services were, therefore, terminated. Subsequently, he expired on 28-8-1998. The petitioner applied for employment on compassionate ground. By his application dated 8-1-1999, he prayed for appointment to the post of Conductor. His application was rejected on 23-2-1999, holding that the petitioner's height was 179 cms., i.e. 1 cm. more than the maximum height prescribed for the post of Conductor, which was 178 cms. The respondent-Corporation had offered him the post of Cleaner. The petitioner approached the Industrial Court complaining that the respondent had authority to relax the requirement of maximum height and also pointed out that several other Conductors with height of more than 179 cms. were still in the employment of the respondent-Corporation. Therefore, according to him, the action of the

respondent-Corporation was violative of Item 9 of Schedule 4 to the MRTU and PULP Act. The respondent-Corporation denied that there were any other conductors with height of more than 178 cms. and also stated that the petitioner could be accommodated as Cleaner and there was no right in the petitioner to insist on the appointment as Conductor.

3. After considering the rival contentions, the learned Member, Industrial Court, held against the petitioner and dismissed the complaint. Aggrieved thereby, the petitioner approached this Court.

4. While admitting the petition on 15-7-2003, this Court observed that since the matter pertained to the appointment on compassionate ground, the respondent-Corporation should appoint the petitioner temporarily as Conductor till the decision of the petition. Accordingly, the petitioner seems to have been appointed as Conductor in terms of the interim order.

5. I have heard both the learned Counsel for the petitioner, and the learned Counsel for the respondent-Corporation.

6. The learned Counsel for the petitioner did not dispute that the height prescribed for appointment to the post of Conductor was maximum 178 cms. The learned Counsel for the respondent has also made available for my perusal the amendments to the relevant rules, since initially specific reference to maximum height of 178 cms. was not to be found in the rules. These revised physical standards came into force from 1-1-1990. There is no dispute that the respondent-Corporation has power to condone the physical standards under Clause 23 of the General Standing Order (GSO) No. 503. However, according to the respondent-Corporation, the appointing authority itself did not have any such power. The learned Counsel for the petitioner submitted that since there is no hurdle in discharge of duties and since the petitioner is discharging the duties as Conductor since 2006, the respondent-Corporation should be ordered to continue the petitioner as Conductor.

7. The learned Counsel for the respondent-Corporation submitted that since the maximum height is prescribed as 178 cms., it would not be open for the Court to condone the requirement. He submitted that since the petitioner is seeking appointment on compassionate ground, the claimant could not claim any right to a particular post. For this purpose, he placed reliance on the judgment of the Supreme Court in State of Madhya Pradesh and others Vs. Ramesh Kumar Sharma, . He further submitted that since the petitioner was claiming appointment on compassionate ground, he was liable to be accommodated on such post as may be available and at the relevant time, the post of Cleaner was offered to the petitioner - taking into consideration his eligibility. He submitted that this Court could not order creation of any post of Conductor, if that was not available at the relevant time, and for this purpose relied on a judgment of the Supreme Court in Himachal Road Transport Corporation Vs. Dinesh Kumar, . Further, according to the learned Counsel for the respondent, the question of

appointment on compassionate ground is a policy decision and if there is nothing wrong in the policy, the High Court could not dilute the criteria and for this purpose relied on a judgment of the Supreme Court in *State Bank of India and Anr. v. Somvir Singh* reported at 2007(3) SLR 497.

8. I have carefully considered the rival contentions. The contention of the learned Counsel for the petitioner that the petitioner's height is just 1 cm. in excess of the prescribed limit for appointment to the post of Conductor and that it does not cause any hurdle in discharge of duties, cannot be taken into consideration, because in that case, the prescription of maximum height in the relevant rules would be rendered meaningless with the Courts relaxing this requirement according to their own notions. Somebody else with height of 180 cms. may approach the Court and say that if height of 179 cms. was proper, why not 180 cms. and so on. The question is whether the petitioner fitted in the prescribed eligibility criteria for the post which he sought. Had the petitioner's height been 178 cms. and then he was denied the post of Conductor though it was available, he could have had some grievance. Such is not the present case.

9. The learned Counsel for the respondent is right in submitting that a person seeking appointment on compassionate ground cannot insist on any relaxation or creation of supernumerary post to accommodate him. As far as relaxation of the condition is concerned, the learned Counsel for the respondent rightly pointed out that the power to relax did not vest in the appointing authority and, therefore, the appointing authority could have done nothing in the matter. He submitted that the petitioner had not approached the higher-ups for condoning the requirement of height restriction.

10. In view of this, it cannot be said that the learned Member, Industrial Court, erred in holding that the petitioner had failed to prove that there was any unfair labour practice on the part of the respondent- Corporation and the petition would have to be dismissed. However, considering the fact that the petitioner has been working as Conductor for the last seven years in terms of the interim order of this Court, it would be open to the petitioner to approach the competent authority for condoning requirement of height restriction and should such authority condone the said restriction, it would be open for the respondent- Corporation to accommodate the petitioner on the post of Conductor.

11. In the result, the petition is dismissed.