

**BEFORE SHRI S.B. PARATE, MEMBER,
INDUSTRIAL COURT, MUMBAI**

**COMPLAINT (ULP)No.70 of 2022.
(CNR No. MH1C01-000266-2022)**

Shri Sukhkdeo Eknath Yadav,
Shashiraj Niwas,R.No.5,
Near Kundlik Chawl, Vijay Nagar,
Gawli Nagar,Tisgaon,
Kalyan(E)-421 306. ...Complainant.

Versus

1. The BEST Undertaking,
Through the General Manager,
BEST Bhavan,BEST Marg,
Mumbai-400 001.
2. Dr. Anilkumar Singhal,
Chief Medical Officer,
BEST Undertaking,
BEST Bhavan, BEST Marg,
Mumbai-400 001. ... Respondents.

Coram:- Shri S.B. Parate, Member.

Appearances:- Shri S.S. Nalawade,Ld. Representative
for the Complainant.
Shri Suresh Babu, Ld. Advocate
for the Respondents.

ORDER (Below Exhibit U-2)
(13.10.2022)

01. This is an Application for grant of interim relief under section 30(2) of the MRTU & PULP Act, 1971 (hereinafter, referred to as the "***said Act***") in the Complaint filed under section 28 of the said Act.

02. The Complainant's case, in short, is as under:-

That the Complainant was working as a "Bus Driver" with the Respondent Undertaking since 28.04.2008 on daily wages. He was confirmed on 16.03.2011. During his service with the Undertaking, he was disabled. On 21.10.2016, he was sent to J.J. Hospital for medical examination and thereafter on 20.01.2017, he was sent for medical examination to Nair Hospital. On 25.02.2017, Nair Hospital issued certificate stating that the Complainant was suffering from 50% temporary disability. On 04.07.2017 and 06.07.2017, the permanent disability certificate was issued to the Complainant by the Nair Hospital. By Orders dated 01.11.2018 and 03.12.2018, the Complainant was discontinued from his service by the Respondent Undertaking. The Respondent Undertaking has violated the provisions of The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; and The Rights of Persons with Disabilities Act, 2016 (hereinafter, referred to as "***the Disabilities Act***" collectively) and the office-orders and circulars issued under these Acts by the Undertaking. Since 2005, about 584 workmen were employed on alternate posts. The

Complainant made correspondence with the Undertaking, but the Undertaking paid no heed to the grievance of the Complainant. Hence, the Complainant was constrained to file the Complaint under section 28 read with items 5,9 and 10 of Sch.IV of the said Act and in this Complaint, the Complainant has filed this Application at Exhibit U-2, praying that the Complainant be considered for alternate post or he be paid compensation alongwith other dues and backwages. He has also prayed that his wife be considered for appointment if he cannot be considered for the service in the Undertaking.

03. The Respondent Undertaking filed Reply to the Application and denied the contentions of the Complainant. It is contended by the Respondents that the Application is misconceived, without substance and devoid of merits. No case is made out under items 5, 9 and 10 of Sch.IV of the said act. It is contended that there is a gross misuse of the Disabilities Act. The Respondent Undertaking has been giving alternate employment or light duty to the employees in genuine cases. The Complainant was under treatment for Blackouts in K/C/o. Hypertension, c/o. LBA & Cervical Pain. The Respondent Undertaking has given the example of an employee viz. Mr. Lagas, who was dismissed from the services

of the Undertaking for abusing the provisions of the Disabilities Act. There is delay in coming before the Court. Hence, the Complaint is time-barred. The Complainant has not submitted the computerized disability certificate and thus not followed the Administrative Order No. 317 and 206 and the departmental circular dated 17.02.2014 issued by the Undertaking. The Respondent Undertaking prayed for rejection of the Application of the Complainant.

04. Both the parties have filed documents on record.

The Complainant has relied on the following documents:-

- (i) Documents issued by the Respondent Undertaking from 21.10.2016 to 10.07.2017 about the treatment of the Complainant.
- (ii) Notings of Mumbai Municipal Corporation for the period from February 2017 to July 2017.
- (iii) Disability certificate issued by the Nair Hospital dated 04.07.2017.
- (iv) Correspondence made by the Undertaking to the Hospital dated 30.10.2017.
- (v) Dismissal Order issued to the Complainant by the Undertaking dated 01.12.2018 and 03.12.2018.
- (vi) Administrative Order No. 317 dated 02.02.2005.

05. The Respondent Undertaking has also relied on the following documents:-

- (i) Government Resolution issued by the State of Maharashtra dated 06.10.2012.
- (ii) Newspaper cutting showing misuse of the Disabilities Act by the employees of the Undertaking.

06. Heard Ld. Representative for the Complainant and Ld. Advocate for the Respondents.

07. The Ld. Representative for the Complainant submitted that there is a violation of the provisions of the Disabilities Act by the Undertaking. The Complainant acquired the disability after his appointment with the Undertaking. Hence, it was the duty of the Undertaking to follow the procedure laid down in the Disabilities Act and the office-orders issued under the Disabilities Act. Complainant has made out a strong prima face. Balance of convenience lies with him and he would suffer irreparable loss if he is not given alternate job.

08. On the other hand, Ld. Advocate for the Respondents submitted that the Complainant did not submit the computerized disability certificate required under the office-order issued by the Undertaking. The Complaint is

time-barred. Hence, the Application deserves to be rejected.

09. Ld. Advocate for the Complainant relied on the following case-laws:-

(1) B.E.S.T Undertaking, Bombay & anr v/s. B.E.S.T. Kamgar Sena & others-1986(52) FLR page 39-Bom.H.C.

(2) Municipal Corporation of Gr. Mumbai through General Manager, BEST Undertaking v/s. BEST Workers Union & ors-Writ Petition(L) No. 3051 of 2019, dated 25.10.2019-Bom.H.C.

(3) Municipal Corporation of Gr. Mumbai v/s. Shrirang Anandrao Jadhav-2010 II CLR 601-Bom.H.C.

(4) Anil Kumar Mahajan v/s. Union of India through Secretary, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, New Delhi & ors.-2013 III CLR 5- S.C.

(5) State of U.P. & ors. V/s. Ravindra Kumar Sharma & ors.-2016 II CLR 180-S.C.

(6) Dharmendra Ravipratap Singh v/s. Municipal Corporation for Gr. Mumbai & ors.-2021 III CLR 766-Bom.H.C.

(7) Punamchand Vishram Solanki v/s. O.P. Gupta, G.M., BEST & anr-Writ Petition No. 2357 of 2016, dated 03.07.2017.

10. Ld. Advocate for the Respondents relied on the following case-laws on the point that interim reliefs cannot

be granted which are in the nature of final reliefs-

- (1) State of U.P. v/s. Ram Sukhi Devi-2005 I LLN 37-S.C.
- (2) Ichalkaranji Municipal Council v/s. Raju B. Taral-1999 I CLR 1257-Bom.H.C.
- (3) Anthea Aromatics Pvt. Ltd. V/s. Association of Chemical Workers-2005 II CLR 173-Bom.H.C.

11. In view of the rival pleadings and submissions, following points arise for my determination. My findings on them along with reasons are as under:-

POINTS	FINDINGS
1) Whether the Complainant has made out a strong <i>prima facie</i> case in his favour?	Partly in affirmative.
2) Whether balance of convenience is in favour of the Complainant?	Partly in affirmative.
3) Whether the Complainant would suffer irreparable loss if interim relief is not granted?	Partly in affirmative.
4) What Order?	Application is partly allowed.

REASONS

As to Point Nos.1 to 3.

12. As all the three points are inter-connected, I am deciding all the points together.

13. For deciding this Application, the relevant provisions of both the Disabilities Act have to be looked into. Section 47 of The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 reads as follows:-

"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, he 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.”

The same obligations have been cast upon the Government under section 20 of The Rights of Persons with Disabilities Act, 2016.

14. According to the Disabilities Act, 1995, Administrative Order No. 317 dated 02.02.2005 was issued by the BEST Undertaking. Para 2(ii) provides that-

“2. The procedure to be followed for implementing the above provisions of the Act is as under:-

(I)

(ii) If the member of staff produces such a Disability Certificate of having a disability of 40% or more, he will not be invalidated but he will be provided with alternate employment with continuity of service and same pay-scale and service benefits. The suitability of such members of staff of the Undertaking for alternative job will be decided by the Medical Department of the Undertaking in consultation with the respective Heads of Branches/ Departments. However, if the member of staff fails to produce a Disability Certificate of 40% or more, he will be invalidated from the services of the undertaking as per the provisions of Standing

Orders or Service Regulations, as the case may be.”

15. A Circular was issued on 17.02.2014 by the BEST Undertaking and the procedure for implementing the Order No.317 was mentioned in that Circular. By that Circular, the BEST Disability Committee has been constituted and the said Committee would refer the disabled employee to Government approved Disability Board and Standing Medical Board (J.J. Hospital, All India Institute of Physical Medicines and Rehabilitation, Haji Ali, Thane Civil Hospital, etc.) and after issuance of disability certificate by the concerned Hospital above-mentioned, the proposal would be sent to the General Manager for approval.

16. In the present case, it is undisputed that the Complainant was working as a Bus Driver with the Undertaking and he was discontinued from the service by the Undertaking. The point for consideration is whether there is a violation of the provisions of the Disabilities Act and the Order issued under these Acts by the Undertaking so that the liability can be fixed.

17. From the perusal of the judgments cited by both the parties, the judgments relevant for deciding the

controversy in the present case are ***Municipal Corporation of Gr. Mumbai v/s. Shrirang Anandrao Jadhav (supra)*** and ***Punamchand Vishram Solanki v/s. O.P. Gupta, G.M., BEST & anr (supra)***. In the case of ***Shrirang Anandrao Jadhav (supra)***, the Respondent driver was discontinued from service on account of disability incurred in service. His ULP Complaint was allowed by the Labour Court. The Hon'ble Bombay High Court upheld the Order of the Labour Court and held that the act of the Management in discontinuing the Respondent driver from service was in gross violation of the mandate of Section 47 of the Disabilities Act.

18. In ***Punamchand Vishram Solanki's*** case (*supra*), the Hon'ble Bombay High Court, in its Interim Order, held that the Tribunal was prima facie not justified in dismissing the Complaint as the Complainant was suffering from Cervical Spondylosis.

19. Now I come to the facts of the present case. By the documents filed on record, it is evident that during service, the Complainant was sent for medical examination by the Undertaking. The documents dated 21.10.2016, 21.01.2017, 30.01.2017, 02.01.2017 clearly buttress that fact. The Disability Evaluation Report and Certificate dated

24.02.2017 states that the Complainant was suffering from 50% temporary disability. The certificates issued by the Nair Hospital on 04.07.2017 and 06.07.2017 clearly shows that the patient was shown as permanently unfit to drive the BEST bus. It is also stated in the certificates that the Complainant was suffering from Blackouts. By the correspondence dated 03.10.2017, the BEST Undertaking had asked the Civil Surgeon, Central Hospital, Ulhasnagar, Thane for giving the computerized disability certificate of the Complainant, but in the Orders dated 01.11.2018 and 03.12.2018, there is no mention of the computerized disability certificate. As per the provisions under both the Disabilities Act, the duty is cast upon the Government instrumentality to strictly follow the provisions of law and the orders issued under the Act. From the above-mentioned material on record, it is evident that there is a violation of the provisions of the Disabilities Act and the orders and circulars issued under these Acts. Hence, the Complainant has made out a strong prima facie case that the Respondents have prima facie engaged in unfair labour practice under items 5 and 9 of Sch.IV of the said Act. The Complainant was working as a Bus Driver since 2008. Hence, balance of convenience also lies in his favour. It is also evident

that as he was employed , he would suffer irreparable loss if he is discontinued from service.

20. As far as the other prayers in the Application are concerned, the ratio of the judgments cited by the Ld. Advocate of the Respondents, would be applicable. Granting of the said reliefs would be in the nature of final reliefs at the interim stage. Hence, I answer Point Nos.1 to 3 in **partly affirmative** and I pass the following Order:-

ORDER

- i) The Application at Exhibit U-2 is partly allowed.*
- ii) The Respondent No.1 Undertaking is directed to consider the case of the Complainant for alternate post as per the provisions of The Rights of Persons with Disabilities Act, 2016 and the Office Order and Circular issued under it.*
- lii) The prayer for grant of other reliefs is hereby rejected.*

Date:-13.10.2022.

(S.B. PARATE)
Member,
Industrial Court, Mumbai

Skn/-