

INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI
BEFORE SMT. R.S.NIMBALKAR MEMBER,

COMPLAINT (ULP) NO.259 OF 2022
[CNR NO : MHICO1-0001481-2022]

Mr. Ashok Ramji Pawar

... Complainant

Versus

The BEST Undertaking
& 1 Another

... Respondents

ORDER BELOW EXH.U-7
(28.06.2024)

01. This is an application seeking to issue witness summon.

02. It is contended that the Complainant on 16/05/2016, Mr. Ashok Ramji Pawar had met with an accident, while, he was in service of the Respondents. He was under regular medical treatment as per direction of the Medical Officer of the Respondents. Since October, 2016 to March, 2020, he was treated in K.E.M. Hospital, M.C.C.M. Parel, Mumbai. Thereafter, he was retired from the service of Respondents w.e.f. 01/06/2020. The Medical Officer K.E.M. Hospital had issued him permanent unfit certificate dated 15/02/2018. The original medical certificates dated 24/04/2017, 15/05/2017, 27/06/2017, 30/11/2017, 10/02/2018 and 15/02/2018 are filed vide Exh.U-6, issued to him, by Medical Officer of K.E.M. Hospital and M.C.G.M., Parel, Mumbai.

03. It is also contended that the cross-examination on Exh.UW-1, the Respondents advocate took objection that the

Complainant is not author of said medical certificate and therefore the same could not be exhibited and proved. Hence, it is prayed for the purpose of proper adjudication of matter and in the interest of justice, it is required to call as a witness to the of Medical Officer of the K.E.M. Hospital. In order to prove the medical certificate issued by the K.E.M. Hospital, hence, prayed to issue witness summon to the Medical Office of the K.E.M. Hospital.

04. In reply objecting the application filed by the Complainant vide Exh.C-4, contending that the application filed by the Complainant is bad in Law, it is not maintainable. The complaint is filed under Item 9 of Schedule IV of the MRTU & PULP Act, 1971 for claiming wages and allowances for the period 17/11/2016 to 24/04/2017. The Complainant was outpatient department and he was fit to resume on duty on his regular work from 25/04/2017. The K.E.M. Hospital has not issued any disability certificate, the Complainant was not admitted in the hospital. There is no any disability certificate issued by K.E.M. Hospital, the evidence of Medical Officer of K.E.M. Hospital is not required for deciding the real dispute involved in the matter, hence, prayed to reject the application.

05. In the light of submission and proceeding of the respective parties. I have gone through the prayer made by the Complainant in the original complaint along with the evidence of Shri J. N. Tiwari recorded on 09/02/2024. Admittedly the complaint is filed under Item 9 Schedule IV of the MRTU & PULP Act, 1971, claiming for wages and allowances for Rs.19,10,392/-

for the period of October, 2016 to May, 2020.

06. It is the case of Complainant that, he was met with an accident on 16/05/2016. Thereafter, he was suffering from severe pain to his abdomen and headache. The Medical Officer of the Respondents No.1 referred for treatment in K.E.M. Hospital, in the said hospital. He had undergone into the medical treatment near about 22 months on 15/02/2018. The R.M.O. of K.E.M. Hospital issued to the Complainant an unfit certificate. During that period, the Complainant had approached and requested to the Respondents to allow to some other work in department instead of street light maintenance work. When the Complainant was in medical leave no wages and other benefits were given to him by the Respondents. That apart, the Respondents had not given him other alternative work. The Respondents was assured to him that the Respondents will extend him benefit of medical treatment, compensation for accidental injury and medical leave with wages as per rules of the Respondents No.1, but the said assurance was not fulfilled by the Respondents.

07. Taking into consideration the entire case of the Complainant, I find that, at this threshold of the proceeding, it would not be justifiable to prevent the Complainant for adducing his evidence, in order to prove his case. On the contrary, an opportunity to take the cross of the Medical Officer would be available, if the witness is called by the Complainant. No prejudice will be caused to the Respondents, if application of the Complainant is allowed. However, if the application is rejected great prejudice

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will be caused of the Complainant on this backdrop of the factual aspect. I am going to allow the application of the Complainant. Hence, I pass following order.

ORDER

1. The Application at Exhibit U-7 is allowed.
2. To issue the witness summon to the Medical Officer (R.M.O.) of K.E.M. Hospital, Municipal Corporation of Greater Mumbai, Parel, Mumbai-400 012.
3. It is hereby directed to Complainant to pay Bhatta Charges to the Witness as per Rule.

Date:-28.06.2024

Rahul Gejage

Sd-
(SMT. R.S. NIMBALKAR)
Member,
Industrial Court, Mumbai.