

BEFORE THE MEMBER INDUSTRIAL COURT, MAH., AT SANGLI**Complaint (ULP) No.20 Of 2019**

(CNR No.MHIC10-000038-2019)

Shri Aabasaheb Pandurang Aiwale ..Complainant
V/s
1) MSRTC, Sangli
Divisional Controller & Anr. ..Respondents

Common Order on Ex.U-2 and Ex.U-12(Date : 1st February 2021)

These two applications for interim relief are filed to challenge the action of respondents based upon their Circular dt.29/07/2016. The order of respondent Corporation dt.29/08/2016 is giving rise to the complainant for filing application Ex.U-2. Similarly order dt.8/08/2020 is giving rise for filing Ex.U-12 application. By both these orders respondent Corporation asked the complainant to undergo the medical check up of colour blindness through anamoloscope machine. These directions of medical check up are based upon a Circular dt.29/07/2016. The complainant has challenged these orders of respondents dt.29/08/2016 and 8/08/2020.

2. It is case of complainant that initially he was serving as driver with respondent Corporation but subsequently due to defective eye sight he was found unfit to discharge his duties as driver, therefore in December 2013 he was appointed as security guard and his service as well as pay was protected. This action of respondent Corporation is

based upon their circular dt.21/07/2012. It is his further case that vide said circular the respondent Corporation decided to absorb and accommodate the drivers who are found suffering from disease of colour blindness and whose eye sights are found defective on the post of security guard by protecting their pay. Accordingly he was appointed as security guard in December 2013 and Since then he is discharging his duties properly. It is further contended that despite of this the respondents with view to terminate his services again asked him to go to Medical Board of Sir J. J. Hospital, Mumbai and get examine his eyes through anamoloscope machine. It is further contended that there upon he approached to the learned Labour Court under apprehension of termination of his services based upon medical report of Sir J.J. Hospital. Accordingly he filed Comp.(ULP) No.13/2017 and sought interim protection to his service status. It is further contended that despite of this the respondents again by issuing orders dt.29/08/2016 and 8/08/2020 asked him to get examine his eyes through anamoloscope machine as they intends to alter his service status from security guard to either sweeper or cleaner etc. as per their circular dt.29/07/2016. It is further contended that said action on the part of respondent Corporation prima facie amounts to an unfair labour practices to breach the service conditions. Therefore, he filed those applications for the relief of staying execution operation of both the orders till final disposal of

complaint.

3. Both respondents appeared in the matter and have filed their joint and separate say to both interim relief applications. Say of Ex.U-2 is of Ex.C-4 and that of Ex.U-12 is at Ex.C-8. The contentions raised in the both say are by and large identical and similar. Therefore, I propose to consider the same commonly. The respondent Corporation mainly contends that the circular is received from head office for all employees of State Corporation. Therefore, it is to be implemented by each division and independent employee cannot challenge the same before this court. It is further contended that vide previous circular the respondent Corporation has decided to protect the services of all drivers who were found either suffering from disease of colour blindness or found having defective eye sight by appointing them on the post of security guard. However, subsequently it was found that there is rise in cases of colour blindness of drivers and therefore they could not accommodate all of them on the post of security guard and have decided to accommodate them on the post of sweeper, cleaner etc. Therefore, they have issued subsequent circular dt.29/07/2016. They also decided to reverify the correctness of disease of colour blindness and defective eye sight of the drivers by examining their eyes on anamoloscope machine from ophthalmologist. By said circular the respondent Corporation further decided either to reappoint the

drivers who were found fit to discharge their duties as drivers or to initiate appropriate departmental enquiry proceeding against them for committing fraud upon respondent Corporation. They further contend that the circular was issued inconsonance with provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. They have got every right to issue such circulars to find out suitability of their employee to discharge particular duty. Therefore, their action does not amount to an unfair labour practices. They further contend that vide interim order of learned Labour Court the service status of complainant is protected. Therefore, if he is asked to go for medical check up then no irreparable injury will be caused to him. Accordingly they prayed for rejection of both applications.

4. In view of above facts following points arise for my determination and I have recorded my findings against each of them for the reasons stated there below -

<u>Points</u>	<u>Findings</u>
(1) Whether complainant proves prima facie case ?	In the negative
(2) In whose favour balance of convenience lies ?	In favour of respondents
(3) To whom irreparable loss / injury will be caused if interim relief is granted ?	Respondents
(4) What Order ?	As per final order

Reasons

5. I have heard advocates of parties at length. Beside this

advocate Shri S.S. Mutalik and advocate Shri D.S. Yadav have placed on record synopsis of written argument in Comp.(ULP) No.18/2019 and orally requested for reading the same in other related complaints including present one. I have gone through the synopsis of written argument. It is nothing but repetition of oral submissions.

6. It is useful to describe few material undisputed facts to decide these both interim relief applications.

Prima facie it is not in dispute that initially complainant was appointed as driver and subsequently since December 2013 reappointed as security guard due to colour blindness / defective eye sight. Prima facie it is also not in dispute that this reappointment on the post of security guard was made on the basis of circular of respondent dt.21/07/2012. Prima facie it is also not in dispute that the respondent Corporation by issuing circular dt.29/07/2016 previous circular dt.21/07/2012 was set aside and cancelled. Similarly other two circulars dt.24/08/2012 and 18/04/2015 based upon circular dt.21/07/2012 were also came to be set aside and cancelled vide circular dt.29/07/2016. Prima facie it is also not in dispute that on the basis of this subsequent circular of 29/07/2016, complainant was asked to go for medical check up of eyes through anamoloscope machine. Prima facie it is also not in dispute that under apprehension of oral termination of services complainant approached to the learned Labour Court by filing complaint of unfair labour practice and

has sought interim protection to his service status. Prima facie it is also not in dispute that vide order dt.29/08/2016 and 8/08/2020 which were subject matters of Ex.U-2 and Ex.U-12 respectively the respondent Corporation again asked complainant to go for medical check up for his eye sight. This action of respondent Corporation is challenged contending that the subsequent circular of 29/07/2016 cannot be applied retrospectively to the case of complainant as his status as security guard is found protected by earlier circular of 21/07/2012. On the other hand, the respondent Corporation contends that their action is within their jurisdiction and complainant independently cannot challenge the same before this court.

7. In view of above referred facts of case now it become necessary to ascertain from material on record whether respondents have prima facie indulged into an unfair labour practices by issuing orders dt.29/08/2016 and 8/08/2020 respectively. So far as contention of respondent Corporation about right of complainant to challenge the subsequent circular dt.29/07/2016 and jurisdiction of court decide the legality of the same is concerned at this stage court is not going to consider the legality of the circular but simply prima facie assessing the merit of the case in the context of above referred circular by invoking three cardinal principles of grant of interim relief viz. prima facie case, balance of convenience and irreparable injury. In other words, the objection raised by respondent Corporation in this

regard needs no consideration at this stage and therefore same needs consideration during course of trial.

8. Now coming to other aspects of the matter. In both applications complainant has seriously assailed the action of issuing orders of eye check up on the part of respondent Corporation based upon subsequent circular. According to his contention, the circular is not applicable to him as his status as security guard is found protected by previous circular dt.21/07/2012 and same cannot be disturbed by subsequent circular dt.29/07/2016. In substance he tried to contend that by way of subsequent circular dt.29/07/2016 his previous service status as security guard cannot be affected retrospectively. Therefore, the crux of the matter is proper interpretation of the subsequent circular dt.29/07/2016. So it is useful to reproduce the vernacular version of the said circular for understanding the controversy as well as for deciding the interim relief applications.

महाराष्ट्र राज्य मार्ग परिवहन महामंडळ
मध्यवर्ती कार्यालय, महाराष्ट्र वाहतूक भवन
डॉ. आनंदराव नायर मार्ग,
मुंबई ४००००८.
दिनांक २९/०७/२०१६

विषय- रा.प. सेवेमध्ये असताना चालकास रंग आंधळेपणा (color Blind) या कारणास्तव वैद्यकीयदृष्ट्या अपात्र केल्यास अशा प्रकरणी करावयाच्या कार्यवाहीबाबत...

- संदर्भ-१) राप/कर्मवर्ग/आस्था/४८६-ई/३३४६ दि.२१/०७/२०१२
 २) राप/कर्मवर्ग/आस्था/४८६-ई/३८७८ दि.२४/०८/२०१२
 ३) राप/आस्था/युआर/४८६-ई/२०७५ दि.१८/०४/२०१५

रा.प. सेवेत असताना चालकास रंग आंधळेपणा (color Blind) या कारणास्तव वैद्यकीयदृष्ट्या अपात्र केल्यास करावयाच्या कार्यवाहीबाबत संदर्भित परिपत्रकानुसार सुचना देण्यात आल्या होत्या. अशा प्रकरणासंदर्भात महामंडळामध्ये उदभवलेल्या परिस्थितीच्या अनुषंगाने दि.१/०४/२०१६ रोजी झालेल्या महामंडळाच्या सभेमध्ये विचार करण्यात आला. महामंडळ ठराव क्र.२०१२:०६:१८ दि.२०/०६/२०१२ नुसार वरील विषयाबाबत जो ठराव करण्यात आला होता. त्या ठरावाच्या अनुषंगाने येणा-या अडचणीचाही वरील सभेमध्ये विचार करण्यात आला. सर्व बाजूंचा सांगोपांग विचार करून संचालक मंडळाने महामंडळ ठराव क्र. २०१६:०४:१६ दि.१/०४/२०१६ पारीत केला आहे. त्यानुसार करावयाच्या कार्यवाहीबाबत खालीलप्रमाणे सुचना देण्यात येत आहेत.

१) उपरोक्त महामंडळ ठराव क्र. २०१६:०४:१६ दि.०१/०४/२०१६ नुसार यापुर्वी केलेला महामंडळ ठराव क्र. २०१२:०६:१८ दि.२०/०६/२०१२ रद्द करण्यात येत आहे. त्यानुसार प्रसारित केलेली संदर्भित परिपत्रक क्र.१ व २ ही सुध्दा रद्द करण्यात येत आहेत. त्यामुळे यापुढे जे चालक दृष्टी तीक्ष्णता चाचणीमध्ये रंग आंधळेपणा (color Blind) या कारणास्तव वैद्यकीयदृष्ट्या अपात्र ठरल्यास अशा चालकांना पर्यायी नोकरी देण्यात येऊ नये.

२) संदर्भित परिपत्रक क्र.१ नुसार दि.१८/०४/२०१५ पर्यंतच्या कालावधीपर्यंत ज्या चालकांना रंग आंधळेपणा (color Blind) या कारणास्तव वैद्यकीयदृष्ट्या अपात्र ठरविल्यानंतर सुरक्षा रक्षकपदी पर्यायी नोकरी दिली आहे किंवा पर्यायी नेमणूकीची प्रकरणे प्रलंबित आहेत, अशा कर्मचा-यास खालील दोष असतील तर रंग आंधळेपणा उदभवू शकतो. ही वस्तुस्थिती विचारात घेऊन या कर्मचा-यांबाबतीत खालील तपासणी अनाॅमोलोस्कोप मशीनद्वारे, जिल्हा शल्य चिकित्सक, स्थानिक वैद्यकीय मंडळ यांच्याकडे उपलब्ध नसल्यास सर जे.जी. समुह रुग्णालय, मुंबई यांचेकडून करून घेण्यात यावी.

- अ) अपघात होऊन मेंदूचा आक्शीपीटल्स लोब निकामी झाल्यास,
 ब) अल्ट्राव्हायलेट किरणांनी डोळ्याचा रेटिना खराब झाल्यास,
 क) वयोमानाप्रमाणे होणारा रेटिनाचा 'मॅक्यूलर डिजनरेशन' हा आजार
 ड) मधुमेहामध्ये रेटिनावरील मॅक्यूलर भागात येणारे कायम स्वरूपी सुज वरील वैद्यकीय तपासणीअंती ज्या कर्मचा-यांना रंग आंधळेपणा नसल्याचे आढळून

आल्यास व सदर कर्मचारी चालकपदी काम करण्यास पात्र ठरल्यास अशा कर्मचा-यांची उचित वैद्यकीय तपासणी करून त्यांना चालक पदाचे उचित प्रशिक्षण देऊन चालक पदी नियमाधीन पूर्ववत नियुक्ती द्यावयाची आहे. वैद्यकीय तपासणीमध्ये पात्र ठरलेल्या चालकांना चालक पदी नोकरी दिल्यानंतर सदर चालकांविरुद्ध महामंडळाची फसवणूक केल्याप्रकरणी उचित प्रमादीय कार्यवाही करण्यात यावी व रंग आंधळेपणा (color Blind) आढळून आलेल्या चालकांना 'स्वच्छक' पदावर पर्यायी नोकरी देण्यात यावी.

३) वर अनुक्रमांक २ येथे नमुद केलेल्या कार्यपध्दतीनुसार सदरचे परिपत्रक प्रसारित झालेल्या तारखेपर्यंतच्या प्रलंबित प्रकरणी रंग आंधळेपणा या कारणास्तव वैद्यकीयदृष्ट्या अपात्र ठरलेल्या परंतु त्यांना पर्यायी नोकरी न दिलेल्या अशा चालकांची वैद्यकीय तपासणी करून वर अनुक्रमांक २ मध्ये ठरल्याप्रमाणे कार्यवाही करण्यात यावी.

४) यापुढे रंग आंधळेपणा (color Blind) या कारणास्तव वैद्यकीयदृष्ट्या अपात्र ठरलेल्या कर्मचा-यांना पर्यायी नोकरी देण्यात येऊ नये. त्यांची सेवा वैद्यकीयदृष्ट्या अपात्रतेच्या कारणास्तव समाप्त करण्यात यावी'.

9. Advocate Shri S.S. Mutalik heavily relied upon clause-3 of the circular which says that the cases of employees who are found suffering from disease of colour blindness or defective eye sight and to whom alternative employment is not allotted are only governed by the said circular and therefore those employees only required to get their eyes tested on anamoloscope machine through ophthalmologist. However, in my view, the circular cannot be interpreted in such manner by reading only one clause. It requires to be read in entirety and inference about applicability of same is requires to be drawn. So on careful reading of clause -1 prima facie it appears that the respondent Corporation has set aside their earlier circular dt.21/07/2012 of providing job of security guard to the drivers who are found suffering from disease of colour blindness. The

said clause further says that henceforth alternative employment shall not be provided to such drivers who are found suffering from colour blindness. Clause-2 says that the drivers who were found suffering from disease of colour blindness and were given appointment on the post of security guard till the circular dt.18/04/2015 or the drivers whose claim for alternate employment are pending require to go for medical check up of their eye sight on anamoloscope machine either at Civil Hospital or Medical Board or Sir J.J. Hospital, Mumbai. It further says that on examination of eye sight by ophthalmologist through anamoloscope machine if the driver does not found suffering from disease of colour blindness then he should be reappointed on the post of driver after medical check up and imparting training of said post. The respondent Corporation may initiate appropriate departmental enquiry proceeding against drivers for committing fraud upon respondent Corporation. It further says that during said check up if the drivers / employees are found suffering from disease of colour blindness then they be given alternate appointment on the post of sweeper. So prima facie this clause- 2 of circular covers all cases of drivers who are found suffering from the disease of colour blindness to whom alternate appointments on the post of security guard are given. Therefore, in my view, the respondent Corporation by issuing orders dt.29/08/2016 and 08/08/2020 based upon subsequent circular dt.29/07/2016 have prima facie not indulged into

unfair labour practices. As stated above the service status of complainant is already protected by interim order of learned Labour Court. Therefore, if he is asked to go for medical check up of his eye sight through anamoloscope machine no irreparable loss / injury would be caused to him. On the other hand, if such medical check up is not done then the respondent Corporation will be burdened either to accommodate all drivers suffering from disease of colour blindness on the post of security guard or will be prevented from taking appropriate action against those drivers who committed fraud upon respondent Corporation while securing alternative employment of security guard. Therefore, it cannot be said that balance of convenience lies in favour of complainant. In the light of the above facts it cannot be said that complainant has succeeded in proving prima facie case.

10. In view of above discussion, I come to the conclusion that complainant failed to prove prima facie case, balance of convenience does not lie in his favour. If interim relief of staying execution operation of orders dt.29/08/2016 and 08/08/2020 is granted then irreparable loss will be caused to the respondent Corporation. Accordingly I answer the points and proceed to pass the following order.

Contd...

Order

- (i) Both applications of Ex.U-2 and Ex.U-12 are rejected.
- (ii) Interim stay granted vide order of Ex.C-6 is called back and set aside.
- (iii) No order as to costs.
- (iv) Dictated and pronounced in Open Court.

Date : 1st February 2021.

Place : Sangli.



(N.S.Kole)
Member
Industrial Court Sangli