

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5446 OF 1995

Shaikh Bismillah Gulab
Died through Legal Heirs :-

1. Shaikh Rahim Mulla,
Age 32 years, Occ. Labour,
R/o Wadala Mah Darwaja,
Surat (Gujrat).
2. Najama bee Shaikh Yunus,
Age 30 years, Occ. Household,
r/o Harehwar, Pachora,
Tq. Pachora, Dist. Jalgaon.
3. Hamida bee Shaikh Bismillah,
Age 28 years, Occ. Household,
R/o Islampura, Tq. Jamner,
District Jalgaon.
4. Shaikh Amin Shaikh Bismillah,
Age 25 years, Occ. Labour,
R/o Islampura, Tq. Jamner,
District Jalgaon.
5. Shaikh Salim Shaikh Bismillah,
Age 20 years, Occ. Business,
R/o Islampura, Tq. Jamner,
District Jalgaon.
6. Jaitumbi Shaikh Bismilla
Age 60 years, Occ. Household
R/o Islampura, Tq. Jamner,
District Jalgaon.

..Petitioners

Versus

The Divisional Controller,
Maharashtra State Road Transport
corporation, Jalgaon Division,
Jalgaon.

..Respondent

...
Advocate for Petitioner : Shri V.Y.Patil.
Advocate for Respondent : Shri M.K.Goyanka
...

CORAM : RAVINDRA V. GHUGE, J.

Dated: July 16, 2015

...

ORAL JUDGMENT :-

1. This petition was admitted by order dated 27.9.1996 and Rule was expedited.

2. During the pendency of this petition, the petitioner passed away and by order dated 19.4.2002, his legal heirs have been brought on record.

3. I have heard learned Advocates for the respective parties, at length.

4. The relevant prayer clauses set out in the petition read as under:-

“(B) Issue a writ of Certiorari or any other appropriate writ or like nature that, the order dt. 24.7.1995 passed by Learned Labour Court, Jalgaon in Ref. IDA No. 25/1988 may kindly be quashed and set aside.

(C) Issue appropriate writ or direction to the respondent, petitioner's services may be counted as continuity of service and backwages i.e. from 18.12.1982 to 13.11.1983 may be paid immediately to the petitioner.”

5. The petitioner has been dismissed from service by way of punishment for proved misconducts on 16.12.1982. The charge proved against the

petitioner, who was a Driver with MSRTC, is of molesting the wife of a passenger. The Second Appeal committee reduced the quantum of punishment from dismissal from service to removal from service and re-appointment as a fresh Driver without continuity. The petitioner accepted the fresh appointment, joined duties on 14.11.1983 and then raised an industrial dispute in 1988, which was referred to the Labour Court and registered as Reference (IDA) No.25 of 1988.

6. Shri Patil submits that by Part I award, dated 13.7.1993, the enquiry conducted by the respondent was held to be unfair and the findings of the enquiry officer were branded as perverse. The enquiry was thus set aside.

7. Shri Patil further submits that the respondent conducted a *de novo* enquiry before the Labour Court. By the impugned judgment and order dated 24.7.1995, the Labour Court concluded that the charges are proved and the punishment of dismissal was commensurate with the charges. The reference was, therefore, rejected.

8. Shri Patil has strenuously contended that all the allegations / charges levelled upon him are false. The petitioner has never molested the wife of the passenger. His career record is sought to be tarnished by the respondent / Corporation. He, therefore, submits that the conclusions drawn by the Labour Court are unsustainable.

9. Shri Goyanka has opposed this petition and prays for dismissing it with costs. At the outset he submits that once the punishment of dismissal from service was scaled down and the petitioner was given a fresh appointment, he could not have raised an industrial dispute after accepting the fresh appointment, joining duties on 14.11.1983 and then raising an industrial dispute in 1988.

10. He further submits that the modesty of a wife of the passenger was outraged by the petitioner. She became furious and she slapped him in the bus and also abused him in anger. After the bus halted at the Jamner depot, a complaint was lodged with the Depot Manager. The concerned lady was examined before the Court. She maintained her complaint and reiterated the act of the petitioner.

11. Shri Goyanka, therefore, submits that the charges were proved before the Labour Court and this fact is evident from the analysis of the evidence made by the Labour Court, in the impugned judgment and award.

12. I have considered the submissions of the learned Advocates and have gone through the petition paper book.

13. It needs to be mentioned that the Part I award, dated 13.7.1993, has not been called in question since the respondent has conducted a *de novo* enquiry before the Labour Court and the charges have been proved.

14. I have considered a similar situation of acceptance of fresh appointment after the punishment of dismissal was scaled down and the said employee having filed proceedings for challenging his removal from service. In my judgment dated 2.7.2015 delivered in the case of Maharashtra State Road Transport Corporation Vs. Pandurang Trimbak Dusane - Writ Petition No.2139 of 1997, it is held that once an employee accepts the order of removal from service and accepts fresh appointment and joins duties, he shall be precluded from challenging his removal. The observations in the said judgment are as follows:-

“2 Considering the extensive arguments of the learned Advocates appearing for the Petitioner and the Respondent, I am not required to advert to all of their submissions in the light of the subsequent events and in the light of the judgment of the Honourable Supreme Court in the case of State of Punjab v/s Krishan Niwas reported in AIR 1997 SC 2349.

9 It is noteworthy that the Respondent, pursuant to accepting the fresh appointment, has worked as an Assistant Artisan-A till his superannuation on 30.04.2001. He has been paid the provident fund accumulation. The gratuity is not yet paid.

10 The Apex Court in the case of State of Punjab (supra) has held in paragraphs 2 to 5 of the said judgment as under:-

“2. This appeal, by special leave, arises from the judgment of the Punjab & Haryana High Court made on March 7, 1996 in Second Appeal No.2662/95.

3. *The admitted facts are that the respondent was charged for an offence under Section 302 I.P.C. He was convicted and sentenced to undergo imprisonment for life. Thereafter, proceedings were initiated against him under Article 311(2) of the Constitution and he was removed from service. Appeal against his conviction under Section 302 I.P.C. was allowed by the High Court. Punishment of conviction under Section 302 IPC was modified to one under Section 325 IPC and he was directed to undergo rigorous imprisonment for 1-1/2 years. After undergoing the imprisonment, the respondent filed an appeal before the appellate authority. The appellate authority by order dated March 1, 1989 reduced the punishment of removal from service to lower scale of pay drawn by him and directed that he was not entitled to back-wages. The respondent accepted it and joined duty on June 5, 1989. Subsequently, he filed a civil suit for declaration that his dismissal from the service and reduction of rank and also the direction that he is not entitled to pay the arrears of wages, were illegal. The Trial Court dismissed the suit. On appeal; the Addl. District Judge reversed the judgment of the trial Court and decreed the suit. In the second appeal, the High Court has confirmed the same. Thus this appeal, by special leave.*

4. *Learned counsel for the respondent contends that the offence with which he was sentenced under Section 325 IPC does not involve his moral turpitude and, therefore, the imposition of punishment of reduction of his scale of pay and also denial of back wages, is clearly illegal and that the appellants are not entitled to challenge the order. We find no force in the contention. The respondent having accepted the order of the appellate authority and joined the post on June 5, 1989, it was not open to him to challenge the order subsequently. By his conduct he has accepted the correctness of the order and then acted upon it. Under these circumstances, the civil Court would not have gone into the merits and decided the matter against the appellants.*
5. *Accordingly, the appeal is allowed. The orders of the High Court and the appellate Court stand set aside and that of the trial Court stands confirmed. No costs."*

11 *It is apparent that the Apex Court has concluded that once the employee has accepted the order of the Appellate Authority and joined the duties pursuant to such an order, it was not open to him to challenge the order subsequently. By conduct, he has accepted the order of the Appellate Authority and having enjoyed all the benefits on account of his employment, he is precluded from challenging the order by which he was reappointed.*

12 *This Court, placing reliance upon the judgment of the Apex*

Court in State of Punjab (supra), has delivered the judgment dated 22.04.2008 in the case of MSRTC, Mumbai v/s Prakash Tulshiram Pardeshi in Writ Petition No.1858/2003 dated 22.04.2008. This Court has concluded as under:-

“ Counsel appearing on behalf of the Petitioner submitted that under clause 14 of the Discipline and Appeal Procedure the authority to which an appeal lies, is empowered to pass such order as it thinks fit. Hence, it was submitted that the Appellate Authority was justified in directing that an order of fresh appointment can be offered to the Respondent. Moreover, it was urged that in fact the Respondent was estopped from filing a complaint of unfair labour practices.

The charges against the Respondent were of a serious nature and character. A disciplinary enquiry was convened to enquire into the allegation that the Respondent while discharging his duties as conductor had collected the fare from two passengers on the bus, but to whom tickets had not been issued. The money bag of the Respondent also showed an excess fare collection. The charge against the Respondent was, therefore, that he had misappropriated the funds of the Corporation and had been guilty of a dereliction of duties by not issuing tickets to passengers for the journey. Such an act of misconduct having been found to be duly established, had to be taken seriously both by the disciplinary authority and by the Labour Court. Upon holding the charge to be established, the Respondent was dismissed from service. The first

Appellate Authority, as a matter of fact, came to the conclusion that the charge was established, that it was of a serious nature and that the service record of the Respondent was not satisfactory and he was penalised in the past under the service rules. The final order of the Appellate Authority clearly suggests that the Appellate Authority was inclined to dismiss the appellant from service. However, it was the Respondent who had stated that he would not commit such a mistake in the future and it was on his request that the Appellate Authority eventually decided to make a fresh offer of appointment so as to enable the Respondent to have some opportunity to improve upon himself. The Respondent accepted the order of the Appellate Authority and joined service with effect from 10th December 1994. Once that was done and having taken the benefit of the order, it was clearly not open to the Respondent to turn back and complain of an unfair labour practice. The Respondent is clearly estopped from doing so. The principle of estoppel must apply in such a case and the Labour Court ought to have rejected the complaint on this ground alone. Counsel appearing on behalf of the Petitioner urged that the powers of the Appellate Authority are wide enough to include an offer of the fresh appointment to the workman. For the purposes of these proceedings, it is not necessary for this Court to enter any final judgment on whether the Appellate Authority in the course of modifying the order of dismissal can pass an order of fresh appointment. But in the facts of the present case, it needs emphasis that the order of

the Appellate Authority properly construed, wasnd an offer for a fresh appointment which was duly accepted by the Respondent. If the Respondent believed that the Appellate Authority had no authority to impose such a direction upon him, he cpi;d jave challenged the order in its entirety. Having taken the benefit of the order, the Respondent was estopped from challenging the order by which he was given fresh appointment. The Appellate Authority while justifying its own finding, confirmed the order of dismissal. The Respondent was, however, offered re-employment on humanitarian grounds, particularly in the light of the fact that he accepted his mistake and stated that he would not commit such a mistake in future. The interference of the Labour Court in the proceedings, was therefore, clearly not warranted. The principle that estoppel must apply in a situation such as this is consistent with the judgment of the Supreme Court in the State of Punjab vs. Krishan Niwas, 1997 1 CLR 855. The same view has taken by the Division Bench of the Gujarat High court in Union of India vs. N. M. Dhobi, 2006 I CLR 587.

In these circumstances the petition will have to be allowed and is accordingly allowed. Rule is made absolute in terms of prayer clause (a) and the impugned judgment and order of the Industrial Court dated 7th March 2002 shall stand quashed and set aside. Complaint (ULP) 438 of 1996 shall in the circumstances stand dismissed. In the circumstances, there shall be no order as to costs."

13 *It is thus, evident that this Court has concluded that once the decision of the Appellate Authority directing a fresh appointment to the employee is accepted and acted upon, the principle of estoppel must apply in such situation since it is consistent with the view taken by the Apex Court in the case of State of Punjab (supra). The same view has also been taken by the Division Bench of the Gujarat High Court in Union of India v/s N.M.Dhobi reported in 2006(1) CLR 587.*

14 *In the light of the law as is laid down, Complaint (ULP) No.97/1991 preferred by the Respondent herein was liable to be dismissed as it was untenable. It is altogether different that an employee declines to accept a fresh appointment order issued by the first or second appellate authority and questions his dismissal. In the instant case, the Respondent accepted the decision of the second Appellate Authority, accepted the order of fresh appointment and joined the duties pursuant to which the complaint is filed. Thus, on the one hand, he continued to enjoy the benefits of the order of the second Appellate Authority and on the other hand, questioned the propriety and validity of the same order.”*

15. In the light of the above, therefore, the reference proceedings would be rendered untenable. Nevertheless, I have gone through the impugned award and the evidence analysed by the Labour Court. The victim herself has deposed before the Court. So also, the respondent / officer has also been examined. A witness was also examined. The Labour Court has, therefore, arrived at a finding on facts. It would be apposite to reproduce paragraph No.9 (*in verbatim*) of the impugned judgment herein below:-

“9. It appears from the statements and materials on record, when the IInd party workman has committed the misconducts as alleged in the charge-sheet by keeping his hand (hand) on the breast of that lady, because there was no reason for that lady to lodge false complaint against the driver. The circumstantial evidence also support the case of that lady. It appears from the record that the concerned lady passenger had lodged her complaint on the second day of the incident. Lady passenger herself deposed that to resist the action of the IInd party workman, she has slapped him and abused him in filthy language, that clearly to show that the incident took place and therefore, the workman himself has admitted that she has abused him in filthy language but he avoided to narrate the earlier incident i.e. to keep his hand on the breast of that lady passenger Evidence of that lady passenger appears to be true than the evidence of the workman recorded before the Court and the enquiry officer. Hence, I am of the confirmed opinion, that the alleged incident took place, and the driver i.e. IInd party workman has committed the misconduct of i.e. by putting his hand on the breast of that lady passenger by outraging her modesty. No doubt, the offence is involved moral turpitude of the employee which cannot be expected from the employees working with he M.S.R.T. Corporation if such type of misconducts are condoned, then it will be very difficult to maintain discipline and industrial peace to the Ist party employer. Because, today due to the faith in the M.S.R.T. Corporation commuters in general including lady passengers used to travel by the buses of the Corporation by day or night journey. If such type of misconduct is allowed, then naturally it will be affected the reputation of the M.S.R.T. Corporation hence, I am satisfied that the Ist party employer has proved the guilt / of misconduct of the IInd party workman in the Court. Heard both the learned counsel Shri R.R.Patil for the IInd party workman and the learned law officer for the Ist party employer. Therefore, the relief sought for to be granted in such type of misconducts or cases will

amounts to a mockery of justice. The learned law officer for the 1st party employer drew my attention to the fact that the past services record of the present 2nd party workman is not clean and good and therefore, he is not entitled to any relief. However, the learned counsel Shri R.R.Patil for the workman has drawn the attention of this Court thereby saying that the 2nd party workman, by virtue of order passed in 1st appeal, was already reinstated in service as a fresh employee w.e.f. 14.11.83 on the less salary than the salary to which he is entitled and that too with continuity of service; hence he prayed that continuity of service may be given to him and to pay his salary from 18.12.82 to 13.11.1983. In the instant case, the workman has already reinstated in service. The 1st party employer has sufficiently proved the misconducts levelled against the 2nd party workman before the Court and therefore, I am not disturbing the punishment already given to him and relief granted to him by way of order of 1st appeal thereby appointing him as a fresh employee w.e.f. 14.11.83. In the light of above discussion, I am of the considered opinion that the workman is not entitled for continuity of service and back wages and the order passed by the 1st party employer by reinstating him as a fresh employee w.e.f. 14.11.83 is appropriate order, hence I am not inclined to disturb the order passed by the 1st appellate authority of the Corporation. In the result, the reference is deserved to be answered in the negative and accordingly, I am proceed to pass the following order.....”

16. In the light of the above, this petition is devoid of merits and is, therefore, dismissed. Rule is discharged. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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akl/d