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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3537 OF 1994

- 1 Maharashtra State Road Transport Corporation.
Through it's Divisional Controller,
MSRTC, Aurangabad Division,
Aurangabad.
- 2 The Vice Chairman & Managing Director,
MSRTC, Vahatuk Bhavan,
Dr.Anand Nair Road,
Bombay-1.

...PETITIONERS

-VERSUS-

Maharashtra State Road Transport
Kamgar Sanghatana, Aurangabad.
Through it's Divisional Secretary,
Shri P.A.Chavan,
Age : Major, Occ : Service,
R/o Aurangabad.

...RESPONDENT

...
Advocate for Petitioners : Shri D.S. Bagul.
Advocate for Respondent : Shri Pradeep Shahane.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 10th September, 2015

Oral Judgment:

- 1 This petition was admitted on 30.11.1994. No interim relief was granted to the Petitioner/ MSRTC.

2 The Petitioner is aggrieved by the impugned judgment and order dated 15.03.1994 delivered by the Industrial Court in Complaint (ULP) No.197/1988.

3 I have heard Shri Bagul, learned Advocate for the Petitioner/ MSRTC, who has strenuously criticized the impugned judgment and Shri Shahane, learned Advocate appearing on behalf of the Respondent/ Union which represents 204 beneficiary employees.

4 The whole issue revolves around the following aspects:-

- (a) Clause 49 of the 1956 settlement.
- (b) Clause 19 of the 1985 settlement.
- (c) The judgment of the Apex Court in the case of *MSRTC v/s Premlal*, **2007 (113) FLR 451**.

5 Having considered the submissions of the learned Advocates for the respective sides, I find that both of them are united in their stand though they appear to canvass their views differently.

6 Both the learned Advocates agree that clause 49 of the 1956 settlement will apply to all such employees who have been working on

daily-wages and have completed 180 days in service prior to the passing of Resolution No.8856 dated 31.08.1978, notwithstanding breaks in service.

7 Both the learned Advocates are united in submitting that those employees who have completed 180 days after the passing of Resolution No.8856, would be covered by clause 19 of the 1985 settlement by virtue of which clause 49 of the 1956 settlement has been set aside as well as the terms and conditions of Resolution No.8856 have also been set aside. All 204 workmen concerned have retired from service on their attaining the age of superannuation.

8 For clarity, it would be apposite to reproduce the above referred clause 49 of the 1956 settlement, resolution No.8856 of the Petitioner/ MSRTC dated 31.08.1978 and clause 19 of the 1985 settlement so as to resolve the controversy in between the litigating sides.

9 Clause 49 of the 1956 settlement reads as under:-

“49. All employees working for 180 days including weekly off and other holidays continuously will be brought on the time scale of pay and will get all the benefits available to time scale workers. Any absence on account of authorized leave will not be treated as break for the above purpose and will not also count for service.”

10 Resolution No.8856 dated 31.08.1978 reads as under:-

“Item No.17:

Absorption on time scale of employees working on daily-wages from 1st April 1973 onwards.

Item No.18:

Working hours and wage structure of daily rated employees.

(Items 17 and 18 were considered together).

Resolution 8856:

I. *Item 17 (regarding absorption on time scale of employees working on daily-wages from 1st April 1973 onwards) and item 18 (regarding giving retrospective effect from 1st January 1977 to the decision of the Joint committee regarding the revision of the daily rate of wages taken at its meeting held on 5th August 1978) being disagreed items of the Joint Committee, the Corporation gave a personal hearing to Sarvashri Bhau Phatak, Bhingardev and Choube, General Secretaries the Maharashtra S.T. Kamgar Sanghatana, Maharashtra S.T. Workers' Federation and Maharashtra Motor Kamgar Federation, respectively, in these matters. They explained in regard to item No.17 that the persons working on daily-wages are denied certain essential and reasonable facilities provided to the employees on time scale and it was necessary to do justice to them.*

II-A. *Thereafter the Corporation considered the two demands and decided as under:-*

- (1) The present Clause No.49 in the Settlement dated 28th May 1956 shall stand cancelled.*
- (2) The persons in employment casually or on daily-wages as on the date of this Resolution as also those who may this be employed thereafter shall, if they have already completed or will complete an aggregate*

service of 180 days in any one financial year commencing from 1st April 1973, be appointed temporarily in ephemeral vacancies in time scale of pay of the post in which they were appointed with effect from the date of this Resolution or from the date of their completion of 180 days aggregate service in a financial year as the case may be, and shall also be entitled from the relevant date to the following benefits admissible to regular employees on time scale of pay provided they satisfy all the conditions prescribed for their entitlement:-

- (i) uniforms,*
- (ii) washing allowances,*
- (iii) medical facilities,*
- (iv) family free pass, and*
- (v) periodical increments.*

- (3) The Corporation made it clear that the absorption of such persons who are granted the above benefits, in regular vacancies will be strictly according to their turn and will be subject to the normal rules and orders in this respect.*

(The above decision being in modification of the settlement would need the approval of Government).

- II.B. The Corporation directed that the pros and cons of the question of paying the persons engaged on work-charged establishment/nominal muster roll according to the time scale rate of pay and extending the other benefits (as mentioned in II.A(2)) to them should be examined with reference to the working conditions, existing rate of payment, etc. and a detailed note in the matter should be submitted to the Corporation, preferably at its next meeting.*

- III. The revised rate of daily-wages as worked out on the basis of 24 working days should be given effect to from 1st January 1977 i.e. the date from while the Second and the Fourth Saturdays in a month were observed as non-working days for the employees in the Central Office and the Regional Offices.”*

11 Clause 19 of the 1985 settlement reads as under:-

- “19. Absorption of day-rated working after completed service of 180 days -*
- (i) The absorption of such workmen be made as at present, i.e., subject their selection at least once by competent selection committee and availability of clear vacancies;*
 - (ii) As far as possible no appointment except in the category of driver will be made in future without selection of a workmen by the Committee.*
 - (iii) All past cases of daily wagers who are eligible for absorption will be reviewed on the merits of each individual case and as per the laws on the subject.*
 - (iv) As regards surplus staff viz., Watchmen, the information will be called for from the divisions and the cases after examination will be put up to the Corporation Board for its directives.”*

12 The observations of the Apex Court in the case of MSRTC v/s Premlal (supra) from paragraphs 7 to 10 read as under:-

- “7. According to the impugned judgment Clause 49 of 1956 Settlement and Clause 19 of 1985 Settlement operated in different fields and consequently Clause 19 of 1985 Settlement did not supersede Clause 49 of 1956 Settlement. Broadly, we agree with the decision of the High Court. In our view, there is a difference between the status of an employee on one hand and the benefits accruing to the workmen on the other hand. As stated above, in 1956 the Union presented to the Corporation various demands. One of the demands was abolition of the daily-wage system. Under Clause 49 of 1956 the Corporation agreed to give to the workmen all the benefits available to a time scale worker. On the other hand, under Clause*

19 of 1985 Settlement, subject to a worker fulfilling the eligibility criteria, the Corporation agreed to absorb daily rated workmen who completed 180 days of service. Therefore, the High Court was right in holding that the above two Clauses operated in different fields and, therefore, there was no question of Clause 19 of 1985 Settlement superseding Clause 49 of 1956 Settlement. Under Clause 49 of 1956 Settlement, the Corporation agreed to provide benefits to employees working for 180 days continuously to be given all benefits available to time scale workers.

8. *The grievance of the workmen in the present case is that till today the Corporation has not given to them the benefits available to time scale workers. In the present case, they are not seeking absorption. In the present case, they are seeking wages payable to time scale workers. The topic of absorption is covered by Clause 19 of 1985 Settlement. It states that in all past cases all daily wagers who are eligible for absorption will be given absorption subject to their selection by the competent Select Committee and subject to existence of clear vacancies. This aspect was not there in Clause 49 of 1956 Settlement. Therefore, the High Court was right in holding that the two clauses operated in different fields. We agree with this conclusion of the High Court in the impugned judgment. In the circumstances, in the present case we are not required to examine the authority of the Joint Committee to cancel Clause 49 of 1956 Settlement. In the circumstances, in the present case we are not required to examine the question as to whether the workmen herein are entitled to be absorbed under Clause 19 of 1985 Settlement. These two aspects shall be a matter of separate adjudication. We do not wish to go into these aspects. Suffice it to state that Clause 19 of 1985 Settlement and Clause 49 of 1956 Settlement operate in different fields and, therefore, there is no question of Clause 19 of 1985 superseding Clause 49 of 1956 Settlement.*
9. *However, as stated above, we are required also to*

consider the effect of Resolution no.8856 dated 31.8.1978 passed by the Corporation under which Clause 49 of 1956 Settlement stood cancelled. It is true that the Union had agreed to the cancellation of Clause 49. However, the Union had also placed their demand for substitution of Clause 49 and the Corporation agreed to that substitution vide Resolution No.8856 passed by the Corporation under which persons in employment casually or on daily-wages as on the date of the Resolution as also those who were to be employed thereafter, were entitled to be appointed temporarily in ephemeral vacancies in the time scale of pay on completion of 180 days aggregate service in a financial year. Under the said Resolution they were entitled to the benefits admissible to regular employees on time scale of pay subject to their satisfying the conditions prescribed for the entitlement. As stated above, in the present case the workmen are not seeking absorption. They are seeking benefits admissible to regular employees on time scale of pay. In the present case, the workmen seek benefits admissible to those employees on time scale of pay. In the present case, the respondent-workmen are in service after 31.8.1978. In the circumstances, notwithstanding cancellation of Clause 49 of 1956 Settlement the workmen herein would be entitled to all benefits admissible to regular employees working in the Corporation on time scale of pay provided they satisfy the eligibility criteria of having worked for aggregate service of 180 days and subject to their satisfying all the conditions prescribed for their entitlement in terms of the above Resolution No.8856 read with Clause 19 of 1985 Settlement.

10. *In the present case, as stated above, the workmen are not seeking absorption. The workmen have reserved their rights to seek adjudication in that regard in a separate forum. Similarly, in the present case, we are not required to go into the question of validity of Resolution No.8856 dated 31.8.1978 since in our view Clause 49 of 1956 Settlement and Clause 19 of 1985 operated in two different fields. The question of*

validity of Resolution No.8856 is a matter of separate challenge before a different forum. We express no opinion in that regard. In the present case, we are also not required to quantify the liability of the Corporation. We are deciding this matter only on interpretation of above two Clauses.”

13 This Court, in the matter of *MSRTC, Amravati v/s Dwarkadas Nathmal Bharuka*, **2007(4) ALL MR 692**, relying upon the view of the Apex Court in the case of *MSRTC v/s Premlal* (supra), has concluded in paragraphs 6 and 7 as under:-

- “6. *In view of the pronouncement of law by the full bench of this Court as well as the Hon'ble Apex Court as quoted herein before, it will have to be held that Clause No.49 of 1956 Settlement was not superseded by Clause 19 of 1985 Settlement and that both these clauses operated in different fields. Clause 49 of 1956 Settlement is related to monetary demands i.e. grant of time scale of pay and all the benefits available to the time scale workers. While Clause No.19 of 1985 Settlement is related to issue of absorption of daily wages workmen on completion of 180 days of continuous service.*
7. *In this view of the matter, the Maharashtra State Road Transport Corporation is directed to provide all the benefits admissible to regular employees working in the Corporation on time scale of pay provided they satisfy the eligibility criterion of having worked for aggregate service of 180 days and subject to their satisfying all the conditions prescribed for their entitlement in terms of resolution No.8856 read with Clause 19 of 1985 Settlement.”*

14 Shri Bagul has placed on record a ready reference statistical data of few employees to indicate that the dates, on which they completed

180 days, were revised strictly as per the records available and all benefits have been given to all 204 employees involved in this petition.

15 The said chart (10 pages) is taken on record and marked as “Exhibit X Collectively” for identification.

16 If the contentions of both the learned Advocates are taken into account in the light of the ratio laid down by the Apex Court in the case of MSRTC v/s Premlal (supra) and by this Court in the case of MSRTC, Amravati v/s Dwarkadas (supra), I do not find that the impugned judgment of the Industrial Court deserves to be interfered with. The Industrial Court has, by allowing the complaint, issued the following direction to the Petitioner:-

“The respondents are directed to give timescale to those 204 workmen shown in annexure under clause 49 of the settlement dated 25.04.1956, from the date of completing 180 days by them from their initial joining and to give all benefits available to those on timescale.

Annexure-A to form part of this order.”

17 Shri Bagul submits that if all these 204 workmen shown in Annexure-A to the complaint are out of the coverage of Resolution No.8856 dated 31.08.1978 owing to their appointments being prior thereto, there is no dispute that each of these employees would be entitled

to the benefits of Clause 49 of the 1956 settlement from the date after they have completed 180 days i.e. from the 181st day.

18 Shri Shahane is in agreement with this submission. I do not find that any different or contradictory direction has been issued by the Industrial Court as is reproduced herein above.

19 As such, no interference is called for. This Writ Petition is disposed of with the above observations. Rule is discharged.

(RAVINDRA V. GHUGE, J.)