

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2141 OF 1997

MAHARASHTRA STATE ROAD TRANSPORT
CORPORATION, THROUGH ITS
DIVISIONAL CONTROLLER, JALGAON

PETITIONER

VERSUS

LILADHAR RATAN TAYDE,
AGE-MAJOR, OCCUPATION – EX-DRIVER,
R/O FAIZPUR, TALUKA YAWAL,
DIST. JALGAON

RESPONDENT

Mr.M.K.Goyanka, Advocate for the petitioner.
Mr.V.Y.Patil, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 09/07/2015

ORAL JUDGMENT :

1. This petition was admitted by this Court on 26/06/1997 and the payment of back wages as granted by the Industrial Court by judgment dated 16/08/1996 in Revision (ULP) No.499/1992 filed by the respondent / employee, was stayed.

2. Having heard the learned Advocates for quite some time, a short point is raised for the consideration of this Court. It is noteworthy that the respondent/employee has been reinstated in service, has retired from service after attaining the age of

superannuation and has been paid all the retiral benefits inclusive of provident fund, gratuity etc.

3. The respondent had questioned his dismissal from service dated 20/09/1984 on account of proved mis-conduct. His first appeal and second appeal were rejected. During the pendency of the Complaint (ULP) No.27/1987, the respondent / original complainant filed a purshis containing a condition that if he is reinstated in employment with continuity of service, he was ready to give up all back wages. Vide the judgment of the Labour Court dated 07/04/1992, the purshis was accepted and the complaint was allowed by directing the respondent to reinstate the complainant within 1 (one) month from the date of the order with continuity of service, but without back wages.

4. The petitioner preferred Revision (ULP) No.214/1992 against the employee. The respondent employee as well preferred Revision (ULP) No.499/1992. The Industrial Court, by its judgment dated 16/08/1996, allowed the revision petition filed by the employee and set aside the judgment of the Labour Court refusing back wages. The Industrial Court granted full back wages from the date of the judgment and 40% back wages for the intervening period from the

date of his dismissal. For similar reasons, the revision preferred by the petitioner was rejected by order dated 11/07/1996 on the ground that the workman was reinstated without any reservation and hence the revision has become infructuous. Mr.Patil, therefore, submits that this petition deserves to be dismissed.

5. I have considered the submissions of the learned Advocates and the judgments impugned in this petition. Both, the Labour Court as well as the Industrial Court appear to have adopted an unusual stand and procedure, unforeseen in Law. Firstly, decision in the complaint is based on a bargaining condition imposed by him. The purshis filed by the workman dictating a condition to the Court that if he is reinstated in service with continuity, he would give up the back wages. The judgment of the Labour Court dated 07/04/1992 does not indicate whether the learned Advocate for the respondent was even heard.

6, The impugned judgment dated 07/04/1992 delivered by the Labour Court, in a few lines, is reproduced as below :-

“In fact the respondent has to prove misconducts which were levelled against the complainant as by order dt.12.08.1991 on the preliminary issues I have held that the findings of the

enquiry officer are perverse. However the complainant has filed purshis and mentioned therein that if the respondent would be reinstated him with continuity of service he is ready to forgo backwages. I have gone through the purshis and find that it is fair and proper. If the prayer of the complainant is granted no prejudice or monetary losses would be caused to the respondent. Further it is to be noted that the application of the respondent Exh.39 was rejected. Considering all these aspects, I pass the following order:-

ORDER

- i) The respondent is hereby directed to reinstate the complainant within one month from the date of this order with continuity of service but without back wages.*
- ii) No order as to costs."*

7. The respondent/employee's dismissal was on account of a departmental enquiry and charges proved against him. The manner of conducting the proceedings especially in a complaint under the M.R.T.U. and P.U.L.P. Act is well settled. Unless the enquiry was set aside, either due to non observance of principles of natural justice or due to perversity in the findings of the Enquiry Officer, the Labour Court could not have travelled there beyond. The judgment reproduced above is a matter of astonishment, which does not deserve to be sustained even for a minute.

8. The petitioner rightly preferred a Revision (ULP) No.214/1992 before the Industrial Court. Even the Industrial Court has arrived at a surprising conclusion, by which the revision petition was dismissed.

9. An employer, who may choose to implement the directions of the Labour Court in order to avoid a criminal complaint u/s 48(1) r/w Section 39 and 55 of the M.R.T.U. and P.U.L.P. Act 1947, cannot be presumed to have given up the revision petition. Merely because the petitioner herein implemented the directions of the Labour Court pending the revision petition, would not lead to a conclusion in any manner whatsoever that the revision petition is rendered infructuous. This was possible only if the revision petitioner itself had declared that the revision petition be disposed of, as infructuous. The Industrial Court on its own could not have arrived at such a conclusion.

10. A further element of surprise is seen from the judgment of the Industrial Court dated 16/08/1996 in the revision preferred by the respondent wherein the Industrial Court considered the grievance of the respondent and granted full back wages from the date of the judgment of the Labour Court and 40% back wages from

the date of dismissal till the said judgment. This is done purportedly on the belief that full back wages should have been granted to the respondent / employee.

11. To say the least, this is a classic case of non-application of mind and casual attitude. There was no adjudication by the Labour Court on the complaint filed by the respondent. Same was partly allowed on his purshis. I am constrained to observe that the Labour Court as well as the Industrial Court have totally lost sight of service jurisprudence.

12. Consequentially, the judgment of the Industrial Court dated 16/08/1996 in Revision (ULP) No.499/1992, judgment of the Industrial Court dated 11/07/1996 in Revision (ULP) No.214/1992 and the judgment of the Labour Court dated 07/04/1992 delivered in Complaint (ULP) No.27/1987 stand quashed and set aside.

13. This is a fit case for remanding the complaint to the Labour Court for framing of proper issues and for deciding the complaint in accordance with the procedure laid down in law. The petitioner makes a statement that the respondent was reinstated in employment, has retired on attaining the age of superannuation and

has been paid provident fund accumulations as well as entire gratuity amount. It is also stated that the respondent is about 72 years old today who retired on 28/02/2001 on attaining 58 years of age. Mr.Patil, learned Advocate for the respondent submits that the complainant may think of prosecuting the complaint, if he so desires, and the said decision be left to him in the peculiar facts of this case.

14. In the light of the above, Complaint (ULP) No.27/1987 stands remitted to the Labour Court for framing of proper issues and deciding the complaint afresh in the light of the ratio laid down by the Apex Court in the case of KSRTC Vs. Laxmidevamma and another, 2001(2) CLR 640 and the judgment delivered by this Court in the matter of Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd., and another Vs. Vasant Ambadas Deshpande, 2014(1) CLR 878, and the judgment in the case of Maharashtra State Road Transport Corporation, Beed and another Vs. Syed Saheblal Syed Nijam, 2014(4) Mh.L.J. 687.

15. Both the revision petition Nos.214/1992 and 499/1992 do not survive.

16. In the event, the respondent does not desire to prosecute his complaint in the light of having acquired all retiral benefits and having retired 14 years ago, he may accordingly intimate the Labour Court, which may then dispose of the complaint.

17. This petition is, therefore, partly allowed in the above terms and Rule is made partly absolute.

(RAVINDRA V. GHUGE, J.)