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

WRIT PETITION NO. 2139 OF 1997

Maharashtra State Road Transport
Corporation.
Through it's Divisional Controller, Jalgaon.

...PETITIONER

-VERSUS-

Pandurang Trimbak Dusane,
Age : Major, Occ : Asstt.Artisan "A",
R/o Old Malegaon Road,
Near School No.2, Chalisgaon,
District Jalgaon.

...RESPONDENT

.....

Mr.M.K.Goyanka, Advocate for the Petitioner.
Mr.Vijay Y. Patil, Advocate for the Respondent.

.....

WITH
CIVIL APPLICATION NO.5347 OF 2001
IN
WRIT PETITION NO.2139/1997
Pandurang S/o Trimbak Dusane v/s MSRTC.

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 02nd July, 2015

Oral Judgment :

1 This petition has been admitted by the order dated
11.09.1997. Interim relief was granted to the Petitioner and the

Respondent was permitted to work as an Assistant Artisan (Mechanical). It is informed that the Respondent has already superannuated on 30.04.2001.

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**.

3 For clarity, the Respondent joined the duties with the Petitioner on 04.10.1977 as an Artisan-A. An accident occurred at the hands of the Respondent while on duty, causing extensive damage to the vehicle. The damage was assessed at Rs.25,000/- in 1988. The charge sheet was issued, inquiry was conducted and the Respondent was dismissed from service by way of punishment dated 30.06.1989.

4 The Respondent preferred an appeal before the first Appellate Authority. The said appeal was rejected by the order dated 18.10.1989. The Respondent preferred the Second Appeal which was partly allowed by the order dated 21.08.1990 and the Respondent was granted a fresh appointment without continuity. In short, his earlier service was watered

down and he was issued a fresh appointment order.

5 The Respondent accepted the said order dated 21.08.1990 and reported for duties on the same day. He continued in employment and later on filed Complaint (ULP) No.97/1991 challenging his dismissal and praying for reinstatement with continuity and full back-wages.

6 The Petitioner opposed the complaint on the ground that having accepted the order of the second Appellate Authority and having joined the duties as a fresh appointee pursuant to accepting the order of appointment, the Respondent was precluded from questioning his fresh appointment.

7 By the order dated 15.05.1993, the enquiry was set aside on the ground that the findings of the Enquiry Officer are not based on the evidence recorded in the enquiry and were branded as perverse. By the final judgment dated 15.06.1995 the complaint was allowed and the Respondent was granted reinstatement with continuity of service on the post of Artisan-A with full back-wages except for the period 30.06.1989 to 11.04.1991.

8 Revision (ULP) No.230/1995 filed by the Petitioner was

dismissed by the judgment and order dated 10.10.1996.

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 have 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 Needless to state, this amounts to approbating and reprobating at the same time. The Apex Court has, therefore, ruled that such complaints ought not to be entertained.

16 Had the Respondent, without accepting the order of the second Appellate Authority challenged it, the competent authority would have been in a position to consider the legality and validity of the order of the second Appellate Authority directing fresh appointment, on the ground that such punishment of imposing the dismissal, causing break in service and then appointing as a fresh candidate, was not permitted by the Discipline and Appeal Rules of the Petitioner.

17 As such, I am not required to consider this controversy as to

whether, the order of the second Appellate Authority was permissible in law since the Respondent has not challenged it. In the facts and circumstances of this case, the ratio laid down by the Apex Court in the State of Punjab (supra) and this Court in the MSRTC, Mumbai (supra) is squarely applicable. The complaint, in these facts and circumstances of the case was, therefore, not required to be entertained.

18 Be that as it may, the fact remains that the Respondent has superannuated on 30.04.2001 after putting in service of about 10 years as an Assistant Artisan-A. In this backdrop, I am not inclined to consider the issue as to whether, the punishment awarded was proper or not. Similarly, the salary earned by the Respondent and the benefits of the employment made available to him ought not to be recovered in this factual matrix. However, sustaining the order of the Labour Court would amount to granting a premium to the Respondent of enjoying re-employment pursuant to the order of the second Appellate Authority and then questioning the order of dismissal.

19 Hence, the judgment of the Labour Court dated 15.06.1995 in Complaint (ULP) No.97/1991 is quashed and set aside. Consequentially the judgment of the Industrial Court dated 10.10.1996 delivered in Revision (ULP) No.230/1995 is set aside.

20 Needless to state, the Respondent shall be entitled to such service benefits as may be available to him having worked as an Assistant Artisan-A. He has put in about 10 years and is entitled for gratuity which is stated to be unpaid. As such, the Respondent shall be entitled to the gratuity w.e.f. June, 2001 with interest at the rate of 6% per annum till it's actual payment. The Petitioner shall pay the said amount within TWELVE WEEKS from today.

21 The Writ Petition is, therefore, partly allowed. Rule is, accordingly, made partly absolute in the above terms.

22 In view of disposal of the Writ Petition, the pending Civil Application does not survive and it is also disposed of.

(RAVINDRA V. GHUGE, J.)