

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

WRIT PETITION NO. 1190 OF 2015

Rukmini wd/o. Digambar Kumbhar
Age 57 years, Occ. Household,
Residing at Flat No.303,
"C" Block, Sai India Park,
Santosh Nagar, Thergaon,
Dist. Pune – 411 033.

..PETITIONER.

VERSUS

1. The Managing Director,
Maharashtra State Road Transport
Corporation, Head Office at
Maharashtra Vahtuk Bhavan,
Dr.Anandrao Nair Marg,
Mumbai – 400 008.

2. The Divisional Controller,
Maharashtra State Road Transport
Corporation, Ahmednagar.

..RESPONDENTS.

...

Mr. S.T. Shelke, Advocate for Petitioner;
Mr. B.S. Deshmukh, Advocate for Respondents No. 1 & 2.

...

CORAM : S.S. Shinde and P.R. Bora, JJ.

**RESERVED ON : 29th April, 2015
PRONOUNCED ON : 30th June, 2015**

JUDGMENT: (Per : P.R. Bora, J.)

1) Heard. Rule. Rule made returnable forthwith, with
the consent of the parties.

2) Petitioner has filed the present Writ Petition seeking following relief.

(B) Issue a writ of mandamus or a writ in the nature of Mandamus or a direction in the like nature thereby directing the respondents to pay the difference amount of the period of 22.06.2006 to 31.05.2010 by treating the re-appointment of the husband of the petitioner as reinstatement, thereby protecting last drawn pay and giving the benefits of past service.

3) Husband of the Petitioner was serving as a Conductor in the Respondent No.1 Corporation and was working in the division under the control of Respondent No.2. On allegation of misappropriation, the husband of the Petitioner was dismissed from the services of the Respondent Corporation with effect from 16.06.2004. Giving benefit of the Circular / *Paripatruk* No. 31/2005 dated 03.12.2005 issued by the respondent Corporation, since the husband of the petitioner admitted his guilt and also paid the prescribed penalty and withdrew the case which he has filed before the Labour Court pertaining to his dismissal, he was reappointed by the Respondent Corporation vide order dated 14.12.2006. Subsequently, after attaining the age of superannuation, the husband of the petitioner got retired from the services of Respondent Corporation in the year 2010. On

05.08.2012 he expired.

4) Petitioner has filed the present petition alleging discrimination on the part of respondent Corporation in reappointing her husband instead of reinstating him in the services. It is the case of the Petitioner that, except the Respondent No.2 division of Respondent No.1 Corporation in other divisions, the similarly situated employees as that of the husband of the Petitioner, were given the orders of reinstatement and not the re-appointment. It is the contention of the Petitioner that, the order of re-appointment is virtually a fresh order because of which her husband was deprived of his past pay-scale and suffered huge financial loss.

5) The Petitioner has relied upon the order passed by the Division Bench of this Court in Writ Petition No.2276/2010 and on that basis has claimed that, her deceased husband should be deemed to have been reinstated with effect from 14.12.2006 and his pay should be fixed protecting his last drawn pay and has also prayed for arrears of wages accordingly.

6) Shri Shelke, learned counsel appearing for the Petitioner brought to our notice that, writ petition No.2276/2010 was filed by the Conductors who all were dismissed from services for certain acts of misconduct and who were re-employed in the

services on the basis of the circular dated 3.12.2005. In the aforesaid writ petition, it was their contention that, on the basis of same circular, in other divisions of the Respondent Corporation the similarly situated employees were reinstated by the Corporation. In the aforesaid writ petition, affidavit in reply was filed by the Vice Chairman and Managing Director of the Respondent Corporation in which he had disclosed that, he was not aware of the discrimination practiced by the various divisions of the Respondent Corporation and he became aware of the same only on filing of the aforesaid writ petition. It was further stated in the said affidavit that the Vice chairman cum Managing Director would look into the matter and issue appropriate direction to the officers concerned. In view of such affidavit of Vice Chairman and Managing Director of the Respondent Corporation, the aforesaid writ petition was disposed of by the Division Bench. Shri Shelke submitted that, the Petitioners in the aforesaid petition were subsequently reinstated by the Respondent Corporation. Shri Shelke then invited our attention to copy of the order filed on record by the Petitioner issued in favour of one of such Petitioner in Writ Petition No.2276/2010 to bring to our notice that, similarly situated Conductor was reinstated in the services of Respondent Corporation who initially was issued with the order of re-appointment. Shri Shelke submitted that, the similar relief must have been given to the

husband of the Petitioner also and by not giving such relief to the husband of the Petitioner, Respondents have practiced the discrimination. Shri Shelke submitted that, the discrimination practiced in the case of husband of the Petitioner needs to be removed and he needs to be provided with the benefits which were provided to take similarly situated employees.

7) Shri Balasaheb Dattatraya Ekshinge, the Labour Officer with Respondent No.1 Corporation in its Ahmednagar Division has filed the affidavit in reply in the present petition, denying in toto the contention raised in the petition. Respondents have contended that, while issuing order dated 14.12.2006 re-appointing the husband of the petitioner, he was given a clear understanding that, he will not get any benefit of back-wages and he will not file any proceeding in that regard in future. It is further contended by the respondents that, since husband of the Petitioner was fully aware of the undertaking given by him, he never raised any objection in his life time and as such now the present petitioner has no right to claim any relief as has been claimed by her in the present petition. The Respondents have prayed for dismissal.

8) We have carefully considered the submissions advanced on behalf of the Petitioner as well as on behalf of the Respondents. We have also perused the documents filed on

record. On perusal of the order passed in writ petition No. 2276/2010, it is revealed that, in the said petition, it was the precise case of the Petitioners therein that, the similarly situated employees in other divisions were reinstated by the Respondent Corporation, whereas they were issued with the order of re-employment. In the affidavit in reply filed in the said case, the Vice Chairman and Managing Director of the Respondent Corporation had disclosed that, he was not aware of the discrimination practiced by the Respondent Corporation in its various divisions. He has further stated in the said affidavit that, he will look into the matter and issue appropriate directions to the officers concerned. As stated earlier, the Petitioner has filed on record the copy the order issued by the Respondent Corporation in favour of one Prakash Chagan Surwase Conductor having batch No.22802. On perusal of the order issued in favour of said Surwase, it is clearly revealed that, the assurance given by the then Vice Chairman and Managing Director of the Respondent Corporation in affidavit in reply filed in Writ Petition No.2276/2010 was fulfilled by him. Initially, said Surwase was also given an order of 're-appointment' After decision of Writ Petition No.2276/2010, the said order of re-appointment was withdrawn by the Respondent Corporation and order of reinstatement was issued in favour of the said Prakash Chagan Surwase. On reinstatement, the pay scale of the said Surwase

was fixed on the basis of his last drawn pay at the time of his dismissal from the services of the Respondent Corporation.

9) We find that, the case of the deceased husband of the present Petitioner is as similar to the case of said Prakash Chagan Surwase and in the circumstances, the deceased husband of the Petitioner also needs to be given the benefit which was given to said Prakash Chagan Surwase and other similarly situated employees in the Ahmednagar Division of the Respondent No.1 Corporation. We are, therefore, inclined to allow the present Petition.

10) In the result, we direct the Respondents to consider the case of deceased Digambar Shankar Kumbhar for granting him reinstatement without back wages by withdrawing the earlier order of re-appointment dated 14th December, 2006 and to grant him all consequential benefits which may flow from the said order of reinstatement.

. Rule made absolute in the above terms.

**P.R. BORA,
JUDGE**

**S.S.SHINDE,
JUDGE**