

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

**LETTERS PATENT APPEAL NO. 224 OF 2003
IN
WRIT PETITION NO. 2226 OF 1999**

Divisional Controller,
Maharashtra State Road
Transport Corporation,
Division Osmanabad
Dist. Osmanabad.

.. APPELLANT

VERSUS

Pandurang s/o Marotirao Salunke
(Deceased through LRs)

1A Sudhamati w/o Pandurang Salunke
 age 45 years, occ. Household

1B Santosh s/o Pandurang Salunke
 age major, occ. Student.

Both r/o c/o Bora in front of
Police Quarter, Ramnagar,
Osmanabad, Dist. Osmanabad.

.. RESPONDENTS

Mr. A.B. Dhongade, advocate holding for Mr. P.K. Joshi, advocate for
appellant.

Mr. S.R. Barlinge, advocate for respondents.

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**CORAM : R.M. BORDE &
 P. R. BORA, JJ.**

DATE : 31st JULY, 2015

ORAL JUDGMENT : (PER R. M. BORDE, J.)

1. Heard.

2. Admit. With the consent of the parties, appeal is taken up for final
disposal at admission stage.

3. Respondent – deceased employee was in employment with

Maharashtra State Road Transport Corporation, Osmanabad as bus driver. During the continuance of service, in the year 1983, he met with an accident and, as a result of said accident, some monetary loss is caused to the respondent. Charge sheet came to be issued against the deceased employee by the appellant and, departmental enquiry was initiated against him. At the conclusion of the enquiry, the order of dismissal came to be passed. Said order of dismissal issued by the employer was subject matter of challenge at the instance of the deceased employee under Item – 1 of Schedule IV of MRTU and PULP Act r/w section 26 of the said Act. The labour Court held that the findings recorded by the Enquiry Officer are perverse and are based on inadmissible evidence. Labour Court further held that the charge of mis-conduct or negligence and rashness in driving the vehicle has not been established. Labour Court as such set aside the order of dismissal and directed re-instatement of the employee with full backwages. The decision rendered by the labour Court was subject matter of challenge in writ petition presented by the appellant being Writ Petition No. 2226/1999. Writ petition presented by the appellant came to be dismissed by the learned Single Judge of this Court by order dated 09.04.2003. The learned Single Judge, while dismissing the petition, recorded that there is no justification to deny full backwages since the department has not established the charges levelled against the employee nor it has been established that the employee was gainfully employed during the intervening period. The learned Single Judge also took into consideration the fact that the deceased employee was acquitted by the criminal Court in respect of the charges levelled against him. Initially, the

appeal presented by the employee came to be dismissed which order was subjected to challenge in Special Leave Petition before the Supreme Court. Special Leave Petition presented by the employee came to be allowed and the matter has been remitted to this Court for consideration of issue as to whether the employee is entitled to claim full backwages in the light of the decision in the matter of General Manager, Haryana Roadways Vs. Rudha Singh reported in 2005(5) SCC 591.

4. Heard learned counsel for both the parties. It is not a matter of dispute that during the pendency of this appeal the employee has died on 15.11.2006. Learned counsel for appellant, placing reliance on the judgment referred above, has contended that the employee is not entitled to claim backwages, much less 100% backwages. It is contended that it has not been demonstrated by the employee that he did not have any means of livelihood. The employee was out of employment since the date of issuance of order of his dismissal until his re-instatement in the year 1998 and as such, it is not desirable that the employee shall be paid 100% backwages since the employer is not benefited by the services of the employee.

5. While directing payment of backwages, the Court has to take into consideration the facts and circumstances of each case and there is no straight jacket formula for directing payment of backwages. In the instant matter, it is observed that the employee has stated that he was not gainfully employed during the intervening period however, learned counsel for appellant states that infact the employee has stated in his deposition that

he was employed as a daily rated worker in a private hotel and was receiving Rs. 20/- per day as wages. It has to be considered that the employee needs to survive during the period while he was unemployed and the wages earned by him were even below the minimum wages. In the facts and circumstances of the case, according to us, issuance of direction to the employer to pay 50% backwages would serve the ends of justice. It is pointed out that the employer has deposited Rs. 1,50,863/- in writ petition and Rs. 75,431/- in the instant appeal. Said amount constitutes 50% of the backwages. As has been recorded above, the employee has passed away during the pendency of letters patent appeal and as such, in the peculiar facts and circumstances of the case, we are of the view that issuing directions to the employer to disburse 50% of the backwages in favour of legal heirs of deceased employee would serve the ends of justice. It is informed that the employee has been permitted to withdraw Rs.75,431/- and further sum of Rs. 80,000/-. In this view of the matter, the legal heirs of deceased employee shall be permitted to withdraw balance amount together with interest, if any. Order passed by the learned Single Judge stands modified accordingly. Appeal is thus partly allowed. In the facts and circumstances of the case, there shall be no order as to costs.

6. Pending civil application, if any, does not survive and stands disposed of.

(P. R. BORA)
JUDGE

dyb

(R. M. BORDE)
JUDGE