

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8252 OF 2014

1. Babasaheb Vasant Salve
Age 44 years, Occ. Service,
R/o Lohgaon, Tq. Newasa,
District Ahmednagar.

2. Gitaram Laxman Dange
Age 47 years, Occ. Service
R/o Dahigaon, Tq. Rahata,
District Ahmednagar.

3. Rafik Bashir Pathan,
Age 44 years, Occ. Labour,
R/o Madhi (Bk.), Tq. Kopargaon,
District Ahmednagar.

..Petitioners

Versus

1. Maharashtra State Road
Transport Corporation,
Ahmednagar Division,
Sarjepura, Kotia, Ahmednagar
Through its Divisional Controller.

2. Managing Director,
Maharashtra State Road
Transport Corporation,
Regional office, Mumbai-8.

..Respondents

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Advocate for Petitioners : Shri Barde Parag Vijay
Advocate for Respondents 1 & 2 : Shri Deshmukh Bhausaheb S.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: August 10, 2015

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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner challenges the judgment of the Labour Court dated 26.12.2011 in Complaint (ULP) 93 of 2002 as well as the judgment of the Industrial Court dated 16.12.2013, in Revision (ULP) Nos. 9, 10 and 11 of 2012.

5. Having considered the strenuous submissions of both the learned Advocates and in the light of the order that I intend to pass, the following undisputed factors need reference:-

(a) The petitioners were selected as Drivers by the respondent - Corporation and were appointed on 15.7.1999.

(b) Within one year, petitioners 2 and 3 were terminated on 29.7.2000 and petitioner 1 was terminated on 31.12.2000.

(c) Last drawn salary was in the pay-scale of Rs.2700/- per month.

(d) All three of them, filed a common Complaint (ULP) No.93 of 2002 before the Labour Court along with Gorakhnath Dada Sonawane, who is not the petitioner before this Court.

(e) By appointment order dated 5.11.2004, these three petitioners were appointed as new appointees as Drivers and they joined duties in January 2005.

- (f) An undertaking was executed by each of them in July 2004.
- (g) The Labour Court has delivered the impugned judgment dated 26.12.2011 considering the contentions of the litigating sides as well as the contention of the respondent / Corporation that the roster reservation was not followed and hence all the Drivers were terminated.
- (h) Though the Labour Court considered the rival contentions in its judgment, the Complaint was dismissed primarily on the ground that it became infructuous due to the subsequent appointments of the petitioners.
- (i) Aspect of juniors having been retained in service as set out in Annexure "B" in the complaint was not considered by the Labour Court.
- (j) These petitioners, despite filing one complaint, preferred three Revision Petitions bearing Nos.9, 10 and 11 of 2012, which were dismissed by the Industrial Court, by its judgment dated 16.12.2013. Hence this single petition.

6. The issue for my determination is very short. Petitioner No.1 was terminated on 31.12.2000 and petitioner Nos.2 and 3 were terminated on 29.7.2000. All were reengaged as fresh appointees from January 2005. They are still in employment. The Labour Court has presumed that the fresh appointments of these petitioners from January 2005 rendered the complaint infructuous.

7. Grievance of the petitioners is that they accepted the fresh appointments to escape continuous unemployment and starvation. It was aimed at rescuing themselves and thereby feed their families. They did not give up the complaint under any undertaking. They pursued their complaint for six years after their fresh appointment and which was dismissed on 26.6.2011, practically after seven years of reappointment.

8. Shri Deshmukh has strenuously canvassed that the petitioners are approbating and reprobating. Their undertaking needs to be construed that the complaints were to be disposed off and they had given up all earlier rights. Having accepted fresh appointments renders their complaints infructuous. This tendency to accept the fresh appointments and question earlier termination needs to be deprecated

9. I am unable to accept the contention of the respondent for the reason that the respondent did not withdraw its earlier termination orders and did not reinstate the petitioners. For reasons which are not specified in the fresh appointment orders, the petitioners were issued with fresh appointments on lower scale. The complaint was prosecuted even thereafter.

10. It is not the case of the respondents that they moved an application before the Labour Court immediately after appointing the petitioners by virtue of the appointment orders of November, 2004 praying for dismissal of the complaint. The respondents also participated in the Complaint. Based

on the subsequent events of fresh appointments, the Labour Court had not framed an issue as to whether the complaint could be said to be rendered infructuous.

11. So also, the issue raised is as regards the five years of unemployment suffered by the petitioners. Had it been a case of a joint purshis being filed in the Labour Court indicating that the petitioners are giving up the earlier cause of action on account of their new appointments, could have been a different situation altogether.

12. In the light of the above, without deciding the cause of action of termination of the petitioners in the year 2000, the Labour Court has abdicated its jurisdiction by concluding that the complaint has become infructuous owing to the new appointments five years post termination.

13. The error committed by the Labour Court was lost sight of by the Industrial Court. An order passed by the learned LPA Bench of this Court in the matter of LPA No. 162 of 2002 has been relied upon by the Labour Court as well as the Industrial Court while concluding that the Complaint was infructuous. The order of the learned LPA Bench in LPA No. 162 of 2002 is dated 22.6.2007 in relation to an election matter of a cooperative society. The Labour Court has referred to an order dated 11.11.2004 delivered by the learned LPA Bench of this Court in LPA No.162 of 2002. There is no such order passed with regard to the Drivers of the MSRTC.

14. Both the learned Advocates indicate that the order dated 11.11.2004 has been passed by the learned LPA Bench in LPA No.164 and 166 of 2002.

15. In the light of the above, the judgment of the Labour Court as well as the judgment of the Industrial Court, dated 26.12.2011 and 16.12.2013 are quashed and set aside. The revision petitions do not survive. Complaint (ULP) No. 93 of 2002 to the extent of these petitioners is remitted back to the Labour Court for fresh adjudication.

16. Needless to state, the respondent Corporation, in the light of the amendment carried out by the petitioners in their complaint, is at liberty to submit an additional written statement taking up such grounds as they may deem proper. Parties are at liberty to cite the order passed by the learned LPA Bench of this Court dated 11.11.2004 in LPA Nos.164 and 166 of 2002 before the Labour Court. The grievance of the petitioners as regards their termination shall be decided by the Labour Court on its own merits.

17. Writ Petition is partly allowed. Rule is made partly absolute in the above terms. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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