

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1610 OF 2014

Maharashtra State Road Transport Corporation,
Divisional Office, Sarjepura, Kothala Ground,
Ahmednagar Division, Tq. and District :
Ahmednagar,
Through its Divisional Controller.

PETITIONER

VERSUS

1. Vilas S/o Bhimraj Tathe,
Age-48 years, Occu-Service,
R/o Kanade Mala, Behind Market Yard,
Ahmednagar, Dist.Ahmednagar,

2. Murtuza Hussain Shaikh,
Age-48 years, Occu-Service,
R/o House No.293, Sadar Bazar,
Camp Bhingar, Ahmednagar.

RESPONDENTS

Mr.D.S.Bagul, Advocate for the petitioner.
Mr.V.N.Upadhye, Advocate for the respondents.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 22/07/2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2. The petitioner/Corporation is aggrieved by the judgment and order dated 29/07/2013 delivered by the Industrial Court in Complaint (ULP) No.6/2012.

3. Mr.Bagul, learned Advocate for the petitioners has narrated the brief facts of the case as follows :-

- a. The respondents herein are workmen.
- b. Respondent No.1 joined the petitioner on 01/08/1983.
- c. Respondent No.2 joined the petitioner in August 1986.
- d. Both were working as unskilled daily wagers.
- e. Work was allotted to them as and when it became available.
- f. Both were posted in the Divisional Workshop.
- g. Both of them were terminated on 24/12/1994.
- h. Both raised an industrial dispute u/s 2-A of the I.D.Act, 1947 and their dispute was referred to the Labour Court and registered as Ref. (IDA) Nos.73/1995 and 74/1995.
- i. By judgment and award dated 14/06/2007, the Labour Court allowed the reference and directed the petitioner to reinstate the respondents in employment on the same post, on which they were working, with seniority.
- j. Their prayer for continuity in service and back wages was rejected.
- k. Both the respondents preferred Complaint (ULP) Nos. 33/2008 and 34/2008 before the Industrial Court seeking directions to the petitioner to implement the judgment and award of the Labour Court dated 14/06/2007.
- l. By judgment and order dated 08/04/2010, the Industrial Court allowed both the complaints and directed the petitioner to implement the award of the Labour Court.
- m. In Clause 3 of the operative part of the judgment dated 08/04/2010, the Industrial Court granted continuity of service

to the respondents.

- n. Writ Petition No.288/2011, preferred by the petitioner, was dismissed by the order of this Court dated 19/01/2011.
- o. The respondents preferred Complaint (ULP) No.6/2012 before the Industrial Court claiming permanency and all benefits incidental and consequential thereto by invoking Items 6 and 9 of Schedule IV of the MRTU and PULP Act, 1971.
- p. By judgment and order dated 29/07/2013, the complaint was allowed, petitioner was held guilty of ULP and permanency with consequential benefits were granted w.e.f.01/01/2012.

4. Mr.Bagul has strenuously contended that the respondents' induction in employment tantamounts to a back door entry. Regular prescribed procedure for recruiting such employees was not followed. No right is created in the respondents to seek permanency. The circular dated 03/12/2007, issued by the petitioner, by which permanency and service benefits are made available to the employees, who have completed 180 days in continuous service, is not applicable to the respondents.

5. The respondents have been retained in employment because of the award delivered by the Labour Court. If the said award was not delivered, the respondents would have been removed from employment since they have not been appointed by following the

prescribed procedure. The impugned judgment deserves to be quashed and set aside and Complaint (ULP) No.6/2012 deserves to be dismissed.

6. Mr.Upadhye, learned Advocate on behalf of both the respondents has supported the impugned judgment. He submits that the respondents have been harassed by the petitioner as can be seen from the various rounds of litigation. The judgment of the Industrial Court dated 08/04/2010 delivered in Complaint (ULP) No.33/2008 and 34/2008 was challenged before this Court in WP No.288/2011, which has been dismissed on 19/01/2011.

7. The respondents have been in continuous service from 1983 and 1986 respectively. Both are in their 50's. Security of employment and retiral benefits are still kept at a distance by the conduct of the petitioner. This petition amounts to persecution of the respondents and therefore deserves to be dismissed by imposing heavy costs.

8. I have considered the above submissions of the learned Advocates. It is apparent that the respondents are legally held to be in continuous employment from 01/08/1983 and August 1986

respectively in the light of the award of the Labour Court dated 14/06/2007 and the judgment of the Industrial Court dated 08/04/2010. Despite having put in more than 30 years in employment, the petitioner strangely insists that the respondents do not have a right to seek regularization and benefits incidental thereto.

9. The petitioner has taken a stand that the respondents' entry in employment is a back door entry and the complaint for permanency is allowed by the Industrial Court on the mis-conception that they are entitled for the benefits flowing through the circular dated 03/12/2007. I find that besides a mere averment of a back door entry, nothing is placed before the Industrial Court to establish the procedure to be followed while causing recruitment. Non-applicability of the circular dated 03/12/2007 is not proved. The petitioner has not placed such material before the Industrial Court, which could have supported the contentions of the petitioner.

10. A mere averment that proper procedure was not followed while recruiting the respondents is not enough. In order to substantiate this contention, the petitioner should have produced such documentary and oral evidence which could have established that all

its employees similar to the respondents have been appointed by following a specific procedure under specific guidelines. Neither the set of rules constituting the procedure was brought before the Industrial Court nor did the petitioner identify all such employees, who were selected by following the due procedure.

11. From the facts of the case, it is immaterial whether the circular dated 03/12/2007 covers the respondents or not. They have been working with the respondent for almost 3 decades or more. It would be a miscarriage of justice to keep the respondents as “temporaries” when they are at the threshold of their retirement.

12. In the light of the above, this petition is devoid of merit. The impugned judgment does not amount to causing grave injustice to the petitioner. The same cannot be termed as being perverse or erroneous.

13. The petition is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)