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

WRIT PETITION NO.6816 OF 2004

Divisional Controller,
Maharashtra State Road Transport
Corporation, Division Dhule,
District Dhule.

...PETITIONER

-VERSUS-

Suklal Magan Choudhari,
Age 42 years,
R/o Near Government Rest House,
Dondaicha,
District Dhule.

...RESPONDENT

WITH
CIVIL APPLICATION NO. 9107 OF 2015
IN WP/6816/2004

SUKLAL MAGAN CHOUDHARI
VERSUS
DIVISIONAL CONBTROLLER,MSRTC

...
Advocate for Petitioner : Shri D.S.Bagul and Shri R.N.Jain.
Advocate for Respondent/ Applicant : Smt.M.S.Jagtap.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 10th September, 2015

Oral Judgment:

1 This Writ Petition was admitted by the order dated
04.11.2004. No interim relief was granted to the Petitioner/ MSRTC.

2 The Petitioner is aggrieved by the judgment and order dated 30.06.2000 delivered by the Labour Court in Complaint (ULP) No.31/1997 and the judgment dated 18.06.2004 delivered by the Industrial Court in Revision (ULP) No.38/2004 (old No.128/2002).

3 It is strenuously submitted by the Petitioner/ MSRTC that the Respondent/ Employee was a paid porter. He was working with the Petitioner as and when work was available. The Petitioner had filed it's Written Statement at Exhibit C/6 before the Labour Court denying all the allegations and contentions of the Respondent. It was denied that the Respondent was an employee of the Petitioner. It was further stated that Section 25F of the Industrial Disputes Act, 1947 would not be applicable since the Respondent has not completed 240 days in a continuous service.

4 The Petitioner further submits that the impugned judgment of the Labour Court is perverse. No relief could have been granted to the Respondent when the Petitioner had taken a specific stand that the Respondent was working casually and was not working continuously.

5 The Petitioner further submits that the Industrial Court failed to notice the error committed by the Labour Court and the perversity in

the judgment of the Labour Court. The Industrial Court has mechanically dismissed the revision petition without considering the grounds raised therein. If the Industrial Court could see the perversity, it could have set aside the judgment of the Labour Court. On account of non application of mind, the revision petition has been dismissed.

6 Smt.Jagtap, learned Advocate for the Respondent, has supported the impugned judgments. She submits that the Respondent was appointed by the Petitioner on 19.01.1977 as a Porter by virtue of an appointment order which was produced before the Labour Court and proved. It was exhibited as U/10. He was allotted the work of loading and unloading the luggage. The monthly salary of the Respondent at the relevant time was at the rate of Rs.500/- with allowances. The Respondent established that he was working continuously with the Petitioner. The order of termination dated 24.04.1996 w.e.f. 27.04.1996 was also placed on record, proved and exhibited as U/11. The relieving report was also proved and exhibited as U/14.

7 She further submits that the termination order issued by the Petitioner is self explanatory. The termination was unjustified. Section 25F of the Industrial Disputes Act, 1947 was mandatorily required to be complied with in the light of the fact that the Respondent had put in

continuous service as is defined under Section 25B of the Industrial Disputes Act, 1947.

8 She further submits that the Labour Court has rightly allowed the complaint considering non compliance of the mandatory provisions under the Industrial Disputes Act, 1947. The Industrial Court also scrutinized the entire record and proceedings and after considering the same, it was convinced that there was no perversity in the findings of the Labour Court. She, therefore, prays that this petition be dismissed.

9 I have considered the submissions of the learned Advocates as have been recorded herein above. The Respondent had established continuous service with the Petitioner. The Petitioner could not prove that Section 25F of the Industrial Disputes Act, 1947 was complied with. The factum of termination is undisputed and so is the non-compliance of Section 25F.

10 The Apex Court, in the case of *Mackinnon Mackenzie and Company Limited v/s Mackinnon Employees Union*, **(2015) 4 SCC 544** and *Ajaypal Singh v/s Haryana Warehousing Corporation*, **2015(6) SCC 321**, has concluded that non compliance of Section 25F of the Industrial Disputes Act, 1947 necessarily leads to a conclusion that the termination

amounts to an unlawful retrenchment. The Apex Court, therefore, concluded that in such situation, the relief of reinstatement with continuity is necessarily to be granted.

11 This Court in the matter of *Agricultural Produce Market Committee v/s Ashok Danaji Hatzode*, 2015(4) Mh.L.J. 79, has concluded that if no perversity is found in the judgment of the Labour Court, the Industrial Court cannot interfere with the conclusions arrived at since they amount to a finding on facts. Merely because a second view is possible, the judgment of the Labour Court or as the case may be the Industrial Court, cannot be interfered with.

12 In the light of the above, despite the strenuous submissions of Shri Bagul, I am unable to conclude that the impugned judgments of the Labour Court and the Industrial Court could be termed as being perverse.

13 This Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.

14 The pending Civil Application does not survive and stands disposed of.

(RAVINDRA V. GHUGE, J.)