

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8302 OF 2006

Vijay Dattatraya Bahadurge
age: 55 years, occu: Service
R/o Lane No.5, Dhule
Tq. Dist. Dhule

Petitioner

Versus

Divisional Controller,
Maharashtra State Road Transport Corporation,
Divisional Office, Dhule

Respondents

Mr. P.S.Paranjape advocate for the petitioner
Mr. R.N. Jain h/f Mr.D.S. Bagul advocate for Respondent

CORAM : **RAVINDRA V. GHUGE, J**

Date : 15th OCTOBER, 2015.

ORAL JUDGMENT

1 This petition was admitted on 18.10.2007.

2 The petitioner is aggrieved by the order of dismissal from service dated 27.4.2001 and confirmation of the dismissal by the First Appellate Authority on 10.9.2001. The petitioner is also aggrieved by order dated 13.6.2002 passed by the Second Appellate Authority, by which dismissal was upheld and petitioner was given a fresh appointment as a driver. The review petition dated 13.6.2002 preferred by the petitioner has led to no result.

3 The petitioner filed Complaint ULP. No.145/2004 (Old ULP.No. 88/2003) before the Industrial Court at Dhule. By the impugned Judgment dated 23.3.2006, the complaint came to be dismissed.

4 Learned Advocate for the respondent Corporation Shri Bagul submits that, in fact, the said complaint could not have been filed before the Industrial Court for two reasons. Firstly, that, the petitioner had accepted the fresh appointment, as has been granted by respondent Corporation and he joined service, continued in employment and has superannuated in 2009. In the light of the Judgment delivered by the Apex Court in case of **State of Punjab V/s Krishan Niwas** (AIR 1997 SC 2349) and by Division Bench of Gujrat High Court in case of **Union of India V/s N.M. Dhobi** (GLR 2006 (I) 82)once an employee accepts a fresh appointment, subsequently, he cannot challenge the same on any count.

5 Mr. Bagul submits that secondly, the Industrial Court should not have gone into proportionality/validity of the order of dismissal, by which the petitioner was dismissed from service by way of punishment. Such jurisdiction lies with the Labour Court. He further submits that, on both these grounds, this petition deserves to be dismissed.

6 Mr. Paranjape, learned Advocate for the petitioner submits that, the petitioner would prefer to canvass his case before the appropriate forum, on the issue as to whether the petitioner can question his fresh appointment, after accepting the same. However, for the said reason, the petitioner will have to first assail his order of dismissal dated 27.4.2001. He therefore, submits that despite the petitioner, having attained the age of superannuation and retired from service, he is desirous of seeking redressal of his grievances as his past long service has been wiped-out on account of the fresh appointment.

7 I have considered the submissions of the learned Advocates, as have been recorded above.

8 It is apparent that the petitioner has, under a wrong advise, approached the Industrial Court for challenging his order of dismissal and questioning his fresh appointment under items 5, 9 and 10 of Sch.IV of the MRTU & PULP Act, 1971. In effect the challenge to his order of dismissal by a competent Court still survives.

9 In the light of above, this petition is partly allowed only to the extent of observing that, in the event, the petitioner prefers a complaint under item 1 of Sch.IV before the Labour Court or raises

an industrial dispute under section 2-A of the Industrial Disputes Act, 1947 before the appropriate Government, the impugned order of the Industrial Court shall not be an impediment. If appropriate proceedings are instituted within a period of one month from today, the time spent by the petitioner, before the Industrial Court and in this Court, shall be a ground for condonation of delay.

10 However, it is made clear that, the liberty granted to the petitioner shall not mean that, this Court has decided any of the contentions of the rival sides, on their merits. For the sake of clarity, all the contentions of the litigating sides are kept open, including the contention of the respondent that, the petitioner cannot challenge his dismissal and fresh appointment, once he has accepted a fresh appointment, continued in service as a watchman after taking all the benefits and has retired.

11 Rule is made partly absolute in above terms.

(RAVINDRA V. GHUGE, J.)