

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

LETTERS PATENT APPEAL NO. 1 OF 2014
with
CIVIL APPLICATION NO.1080/2015

Bhanudas s/o Kishanrao Giram
Age:60 Yrs. Occu. Unemployed,
R/o Giram Galli, Karanja road,
Beed.

- APPELLANT
(orig. Petitioner)

VERSUS

- 1) The Divisional Controller,
M.S.R.T. Corporation,
Beed Division, Beed.
- 2) The Presiding Officer &
Judge, Labour court,
at Aurangabad.

- RESPONDENTS

Mr.VR Mundada, Advocate for Appellant;
Mr.AB Dhongade, Advocate for Respondent No.1.

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

DATE : 24th February, 2015.

JUDGMENT (PER:-P.R.BORA, J.)

- 1) Order dated 21.8.2007 passed by learned Single Judge in Writ Petition No.3274/1990 is questioned in the present appeal.
- 2) The appellant was serving as Conductor in Respondent No.1 - Corporation. His services came to

be terminated vide order dated 20th August, 1976 passed by Divisional Controller, Maharashtra State Road Transport corporation, Beed. The aforesaid termination order reveals that the services of the appellant were terminated under Clause 61 of the Bombay State Transport Employees Service Regulations (for short, the Regulations) of the Respondent/corporation. The petitioner raised a dispute against his termination by resorting to the provisions of Industrial Disputes Act. The Dispute so made by him was referred for adjudication to the Labour court at Aurangabad.

3) The learned Judge, Labour court, Aurangabad, passed an Award on 2nd of March 1990, whereby he rejected the reference so made. The petitioner then approached this court, invoking writ jurisdiction of this court by filing Writ Petition No.3274/1990. The Writ petition came to be rejected vide order dated 21.8.2007 passed by learned Single Judge of this court. Aggrieved by that order, the appellant has filed the present appeal.

4) The record of the case shows that on 20th November, 2013 when the present appeal was taken up for hearing, time was sought by learned counsel for Respondent/corporation to argue the appeal. On that day, this court had passed an order, suggesting the appellant to place on record, his affidavit clarifying therein whether he is ready to forgo part of the backwages and has further noted that if such affidavit is filed, it would be useful at the stage

of final hearing. The record further shows that accordingly, the appellant has filed his affidavit sworn on 9th January, 2014, contending therein that he is ready to forgo the claim of back wages to the extent of 25%.

5) Learned Counsel for Respondent/corporation was asked to file response on behalf of the Respondent/corporation to the affidavit submitted by the appellant, as above. Today, when the appeal was taken up for hearing, learned Counsel for Respondent/Corporation placed on record a copy of Fax message dated 23.2.2015, received to Divisional Controller, MSRTC, Beed Division, Beed, from Deputy General Manager (Legal). The contents of the Fax message reveal that the Respondent/Corporation has shown its readiness to pay to the appellant 50% of the back wages. We find it necessary to clarify that this court has not suggested any quantum of back wages and only had asked the counsel for the respondent/corporation to respond to the affidavit filed by the appellant on 9th January, 2014.

6) Learned Counsel for appellant, on instructions, submitted that the appellant is ready to accept the offer made by the Respondent/corporation, so as to put an end to the long pending dispute. Learned Counsel submitted that, even otherwise, the appellant has attained the age of superannuation on 31st July, 2004 and is in financial crisis.

7) Learned Counsel for parties, therefore

prayed for disposing of the present appeal in the aforesaid terms.

8) We have carefully perused the Award dated 2.3.1990 passed by learned Judge, Labour court, Aurangabad and the judgment dated 21.8.2007 passed by learned Single Judge in Writ Petition No. 3274/1990. Both the above judgments are apparently unsustainable in view of law laid down by the Division bench of this court in the case of Divisional Controller, Maharashtra State Road Transport Corporation, Nagpur Vs. Shridhari s/o Padmakar Dharmadhikari, reported in II CLR H.C.BOM.73, wherein the Division Bench has declared clause 61-B of the Regulations of the Respondent/Corporation as unconstitutional. In the present case, services of the appellant have been admittedly terminated under Regulation 61(b) of the said Regulations. It is, therefore, evident that such termination order would not sustain. The record shows that the appellant since beginning has raised the aforesaid plea, but unfortunately the same was not appreciated by the Labour court and thereafter by learned Single Judge. Learned Judge of the Labour court did not consider the judgment cited by the employee for the reason that the text of the judgment was not produced before him; whereas learned Single Judge has proceeded on a wrong footing, presuming that the services of the petitioner came to be terminated after full-fledged enquiry. Learned Single Judge failed in appreciating that ultimate termination of the services of the petitioner/appellant was under clause 61 of the

Regulations of the corporation and the said order was under challenge. In view of the Judgment of the Division Bench (cited supra), since the aforesaid Regulation was declared as unconstitutional, it could not have been pressed into service to terminate the services of the appellant. Thus, the termination order was null and void. Since, both the impugned judgments have been passed, overlooking the aforesaid legal provision, they are liable to be quashed and set aside. We accordingly set aside the Award dated 2.3.1990 passed by the Labour court and the order dated 21.8.2007 passed by learned Single Judge in Writ Petition No.3274/1990. Consequently, order dated 20.8.1976 passed by Divisional Controller, MSRTC, Beed, also stands set aside.

9) As has come on record, during pendency of the writ petition, the appellant attained the age of superannuation on 31st July, 2004. Obviously relief of reinstatement therefore, can not be granted. Secondly, the appellant has not brought on record sufficient evidence so as to show that he had remained unemployed and/or without any income in the entire meanwhile period. Similarly, the Respondent/Corporation has also not brought on record any evidence to show that in the meanwhile period, the appellant was gainfully employed. In the circumstances, the offer made by the Respondent/Corporation to pay to the appellant 50% of the back wages of the entire relevant period, appears us to be reasonable. Moreover, the appellant has also fairly conceded to the offer so made by the

Respondent/Corporation. We, therefore, dispose of the present appeal with the following order, -

ORDER

- 1) The Letters Patent Appeal is allowed;
- 2) The judgment and order dated 21.08.2007 passed by learned Single Judge in Writ Petition No. 3274/1990 and Award dated 2.3.1990 passed by learned Judge of Labour court, Aurangabad, are quashed and set aside;
- 3) Termination order dated 30.08.1976 passed by Respondent/Corporation, also stands quashed;
- 4) The Respondent/Corporation is directed to pay to the appellant 50% of the back wages of the entire relevant period, i.e. from the date of his termination till date of his superannuation i.e. 31st July, 2004 within the period of three months from the date of this order;
- 5) No order as to costs;
- 6) In view of disposal of the appeal, Civil Application No. 1080/2015 does not survive and the same stands disposed of.

sd/-
(P.R.BORA)
JUDGE

sd/-
(R.M.BORDE)
JUDGE

bdv/
fldr 26.2.