

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8380 OF 2014

Sudhir s/o Digambar Bhumkar,
Age-48 years, Occu-Service,
R/o At Post : Dasmegaon,
Tq.Washi, Dist.Osmanabad

PETITIONER

VERSUS

1. Divisional Controller,
Maharashtra State Road Transport
Corporation, Divisional Office,
Osmanabad Division,
Osmanabad, At Post Tq. and Dist.
Osmanabad.

2. Divisional Traffic Superintendent,
(D.T.S.Default) (Competent Authority)
Maharashtra State Road Transport Corporation,
Divisional Office, Osmanabad Division,
Osmanabad, At Post Tq. And Dist. Osmanabad.

RESPONDENTS

Mr.P.L.Shahane, Advocate for the petitioner.
Mr.D.S.Bagul, Advocate for the respondents.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 13/08/2015

ORAL JUDGMENT :

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

2. The petitioner joined the respondents as a "Bus Conductor" in 1992 and subsequently became permanent in employment. On

05/06/2003, while on duty on the Hyderabad-Kallamb route, the bus was checked by the Flying Squad at village Halgara. The petitioner was charged with having misappropriated Rs.83/- vide charge sheet dated 30/06/2003. After conducting a departmental enquiry, a second show cause notice with the Enquiry Officer's Report holding the petitioner guilty was issued on 12/12/2003.

3. Before the order of punishment could be imposed upon the petitioner, he preferred Complaint (ULP) No.255/2004 before the Labour Court under Item 1 of Schedule IV of the MRTU and PULP Act, 1971. He was granted interim relief and the respondent was prevented from issuing the final order of punishment.

4. Subsequently, the interim relief was not extended as the learned Advocate for the petitioner was on leave on a particular date and the respondent issued the order of dismissal dated 11/03/2008.

5. The petitioner, therefore, preferred Complaint (ULP) No.15/2008 before the Labour Court and the interim order protecting his service was passed on 18/11/2008. The petitioner, therefore, resumed duties and is still in employment.

6. By order dated 22/08/2013, the Labour Court delivered the Part 1 judgment concluding that the enquiry was conducted in a fair and proper manner and the findings of the Enquiry Officer are sustainable and are not perverse. However, by judgment dated 28/01/2014, the Labour Court dismissed Complaint (ULP) No.15/2008.

7. By securing protection, the petitioner preferred Revision (ULP) No.09/2014 before the Industrial Court at Latur. By judgment dated 06/09/2014, the Industrial Court dismissed the revision petition and granted 15 days protection to the petitioner.

8. The petitioner preferred WP No.8380/2014 before this Court. By order dated 22/09/2014, passed by this Court (Coram : Sunil P. Deshmukh, J.) the petitioner was protected against termination and since then, the petitioner is under protection and continues to be in employment.

9. On 05/08/2015, when this matter was heard for quite some time, the petitioner put forth a proposal which was recorded in paragraph Nos. 1 and 2 of the order of this Court, which read as under :-

“1. *Shri Shahane, learned Advocate for the petitioner submits*

on instructions that the petitioner is left with about 4-5 years of service. He desires to avoid stigmatic removal from employment and rescue his retiral benefits. He, therefore, submits on instructions, that the petitioner would apply for VRS by tendering a resignation and the petitioner be permitted to do so in the light of the order passed by this Court in a similar case in the matter of Ramlal Sadhu Gund Vs. Divisional Traffic Superintendent, MSRTC, in Writ Petition No.9992 of 2012 dated 6.7.2015.

2. Learned Advocate for respondents prays for time till 13.8.2015 to take instructions on the proposal of the petitioner.”

10. The petitioner has filed an affidavit today wherein it is submitted that he would give up / relinquish his remaining service of about 5 years by tendering a resignation in order to rescue his retiral benefits and to avoid an unceremonious removal from service.

11. The affidavit is taken on record and marked as “X” for identification and the copy of the affidavit is furnished to the learned Advocate for the respondents.

12. Mr.Bagul, learned Advocate has opposed the proposal on instructions. He submits that the respondents do not desire to accept such a proposal. He, therefore, submits that this petition could be decided on its merits.

13. I have considered the submissions of the learned Advocates. I have also considered the affidavit Exh.X filed by the petitioner. If this petition was to be admitted, it would come up for final hearing in due course. Presently, the petitions instituted in 1994 onwards till 1999 are being taken up for final hearing.

14. This Court has come across several such cases involving the respondent MSRTC, wherein similar petitions are admitted and the employee is granted protection by this Court. By the time the petitions are decided, they are rendered only of academic interest since the employee has retired several years prior to the final hearing of the petitions. Retiral benefits are already paid to the concerned employees including gratuity.

15. Considering the above situation and the fact that the petitioner desires to relinquish 5 years of his remaining employment so as to rescue his retiral benefits, I am inclined to permit the petitioner to tender a resignation, as is stated in paragraph No.2 of the affidavit Exh.X.

16. In the light of the above, affidavit Exh.X shall be complied with

by the petitioner by tendering a resignation for relinquishing his service with the respondents, on or before the 29/08/2015. The petitioner shall accept the said resignation and pass necessary orders on or before 31/10/2015. The petitioner shall be entitled to the provident fund accumulations, leave encashment as per rules, gratuity as per rules and the family Pass. In the event, he is eligible for family pension on necessary compliance of conditions required for such eligibility, he may be entitled to such family pension.

17. Till the respondents pass an order of relieving the petitioner on or before 31/10/2015, he shall be continued in employment and shall work in a disciplined manner.

18. Mr.Shahane submits that the petitioner is present in the court today and he would submit his unconditional resignation before 29/08/2015, failing which, the respondents may proceed to pass orders against the petitioner.

19. With the above directions, this petition is partly allowed and Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)