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

WRIT PETITION NO. 10036 OF 2012

- 1 THE DIVISIONAL CONTROLLER,
Maharashtra State Road Transport Corporation,
Latur Division, Latur,
Tq. & Dist.Latur.
- 2 The General Manager,
Maharashtra State Road Transport Corporation,
Maharashtra Vahatuk Bhavan,
Central Office, Mumbai.

...PETITIONERS

-VERSUS-

Shri Dnyanoba Nagnathrao Chate,
Age : 57 years, Occ : Nil,
R/o Renukanagar,
Behind Cockcit College,
Ambajogai Road, Latur,
Tq. & Dist.Latur.

...RESPONDENT

...

Advocate for Petitioners : Mr.Bagul D.S. and Mr.R.N.Jain.
Advocate for Respondent : Mr.R.G.Shirsath.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 25th August, 2015

Oral Judgment:

- 1 Rule. Rule made returnable forthwith and heard finally by the

consent of the parties.

2 The Petitioner/ MSRTC is aggrieved by the judgment and order dated 23.04.2012 delivered by the Industrial Court in Complaint (ULP) No.111/2011 by which the Respondent was granted time scale for the post of Clerk w.e.f. 06.11.1978.

3 The Petitioner submits that the Respondent had relied upon three circulars dated 24.12.1980, 18.02.1984 and 25.07.1986. It is submitted that no such circular exists.

4 The Petitioner submits that though the Respondent was initially appointed as a Clerk, over the years he has been promoted to the post of Accountant which is supervisory in nature. He started working regularly on 18.06.1980 and was granted time scale on 01.12.1980. It is further stated that the Respondent draws salary of Rs.20,000/- per month. He is not a workman under Section 2(s) of the Industrial Disputes Act, 1947 and Section 3(5) of the MRTU & PULP Act, 1971.

5 The Petitioner further makes a grievance about the fact that the Respondent had preferred the complaint on 16.07.2011 before the Industrial Court at Latur and had put forth the prayers for seeking reliefs

against the Petitioner/ MSRTC on the basis of the said three circulars and w.e.f. 06.11.1978. The complaint was, therefore, barred by limitation and should have been dismissed.

6 Shri Shirsath, learned Advocate appearing for the Respondent, submits that the above stated three circulars are in existence. The first circular dated 24.12.1980 was placed on record at Exhibit U/7. The second circular dated 18.02.1984 was placed on record at Exhibit U/8. The Respondent brought on record voluminous documents below Exhibits U/7 upto U/26.

7 He further submits that though the Petitioner contends before this Court that no such circulars exist, there was no objection before the Industrial Court and no dispute was raised about the existence of the circulars.

8 He further submits that the Respondent has brought before the Court the fact of appointment of two persons, namely, Shri Londhe and Shri Shaikh, who are similarly situated and were given time scale as per the said circulars. It is, therefore, stated that the Respondent could not have been deprived of the said benefits.

9 He further submits that the Respondent was unaware about the fact of the said circulars. The moment he gathered the information, he preferred the complaint and as such, set out a recurring cause of action. He, therefore, prays that the petition be dismissed.

10 I have considered the submissions of the learned Advocates. I have also considered the record available with their assistance.

11 The communication dated 25.07.1986 placed on record and which refers to the circular dated 18.02.1984 indicates that the daily-wagers are to be taken on regular time scale. The competent authority, which issued the said circular, has made it clear that the daily-wagers should be taken on time scale on regular basis in each month so as to ensure that they are brought on time scale without delay. This aspect was considered by the Industrial Court while deciding the complaint.

12 However, I find that the Respondent was regularly working w.e.f. 01.11.1979. Prior thereto, he was engaged intermittently for the periods of about three months with breaks in service. He was regularly working in an uninterrupted employment from 01.11.1979, even if it is presumed that there were artificial breaks from 1978.

13 Considering the above facts, it appears that the Industrial Court has lost sight of this aspect and presumed that the Respondent was working on the post of Clerk from 06.11.1978. In this situation, the Respondent could have been granted the time scale not from 06.11.1978 but, from 01.11.1979.

14 So far as the status of the Respondent is concerned, neither the salary structuring nor the designation, would decide whether the Respondent is a workman or not. It has come in evidence that he was working as an Accountant. He did not have the authority to initiate action against any employee, initiate the disciplinary proceedings, recommend the appointments or issue orders of appointment or take policy decisions on behalf of the Petitioner/ MSRTC.

15 In the light of this fact and since the Petitioner did not bring on record the evidence to indicate that the Respondent is a Manager and not a workman, the Industrial Court, in my view, has rightly arrived at a conclusion that the Respondent is not a workman.

16 Considering the above, this Writ Petition is partly allowed only to the extent of modifying the direction issued by the Industrial Court in Clause (3) of granting time scale w.e.f. 06.11.1978. The said direction

shall stand modified so as to grant the time scale to the Respondent for the post of Clerk w.e.f. 01.11.1979 with incidental and consequential benefits.

17 Rule is, therefore, made partly absolute in the aforesaid terms.

(RAVINDRA V. GHUGE, J.)