

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 3348 OF 2002.

Shri Kacharu Babasaheb Shaikh,
Resident of Mangade Chawl,
Near Grossery shop,
At, Post & Tal. Barshi,
District Solapur

.. Petitioner

Vs.

1. The Maharashtra State Road
Transport Corporation,
Bombay Central, Mumbai-400 008
2. Divisional Controller,
Maharashtra State Road Transport
Corporation, Osmanabad Division,
At & P.O. Osmanabad.
3. Depot Incharge,
Maharashtra State Road Transport
Corporation, At & P.O. Bhoom,
Dist. Osmanabad.
4. Shri J.P.Muley,
Member, Industrial Court, Solapur .. Respondents
Mumbai.

Ms. Anjali Helekar, for the Petitioner.
Mr. G.S. Hegde, for Respondents.

***CORAM: N.M. Jamdar J.
Thursday 20 August, 2015***

Oral Judgment :

The Petitioner has challenged the order dated 15 April 2002 passed by the Industrial Court, Solapur partly allowing the Revision filed by the Respondent - Corporation and directing that the reinstatement of the Petitioner will be without back wages and continuity of service.

2. The petitioner joined the services of the Respondent-Corporation as a driver in the year 1981. He was confirmed in service on 27/01/1984. Due to illness the Petitioner remained absent from 1 October 1986 to 4 December 1986. An inquiry was conducted against the Petitioner and he was dismissed from services by order dated 26 May 1987.

3. The Petitioner filed a Complaint (ULP) No.128 of 1987, in the Labour Court, at Solapur. The labour Court by order dated 18 March 1998 allowed the complaint and declared that the dismissal order of the Petitioner was bad in law and Petitioner was entitled for reinstatement with effect from 26 May 1987 with full back wages and continuity of service. The Respondent Corporation therefore, filed a Revision Application (ULP) No.43 of 1998, which was partly allowed by the learned Industrial Court by the impugned order dated 15 April 2002. The Industrial Court did not interfere with the direction to reinstate the Petitioner however deprived the Petitioner for back wages and continuity of service. The grant of relief of reinstatement has not been challenged by the Respondents-

Corporation and only the Petitioner has challenged the order of the Industrial Court.

4. The Petitioner was taken back in service and has now retired on superannuation. The learned counsel for the Petitioner, has restricted the scope of the petition for claiming continuity of service challenging the only that part of the impugned order which treats the Petitioner as fresh employee which would affect his terminal benefits. She submitted that she is doing so only with a view to put an end to the litigation. In view of the stand taken by the learned counsel for the Petitioner, the learned counsel for the Respondent-Corporation has also agreed to restrict the inquiry in this petition, to put an end to the litigation.

5. I have heard both the sides. The Labour Court had come to the conclusion that the Petitioner had proved that unfair labour practice was committed by Respondent-Corporation. The Labour Court had negated the contention of the Respondent-Corporation that the Respondent was habitual defaulter and also the past conduct of the Petitioner was not good. The perusal of the impugned order passed by the Industrial Court shows that there are hardly any reasons given as to why the Petitioner was deprived of his back wages and continuity of services. The Industrial Court had based the conclusion on the ground that Petitioner had not intimated the Respondent-Corporation about his illness. However, while doing so the Industrial Court has completely missed the finding given by the Labour Court holding that the Petitioner had

intimated the Respondent-Corporation. The Labour Court found that the Petitioner had applied for leave by giving an application to the depot manager. Petitioner had produced acknowledgment marked Exhibit U-22. He had also produced copy of the medical certificate and a copy of the telegram along with acknowledgment intimating the Corporation. The conclusion of the Industrial court that the Petitioner never informed the Respondent - Corporation is contrary to the record. Since this was the basis for depriving the Petitioner of benefits of continuity of service, the same cannot be sustained. The Industrial Court in fact noted that there was no bad service record of the Petitioner. In the circumstances, the relief sought for by the Petitioner regarding continuity of service will have to be granted as he was wrongly deprived of the same by the Industrial Court. Accordingly, the Writ petition is partly allowed by directing the Respondent-Corporation to grant continuity of service to the Petitioner with effect from 26 May 1987 for the purpose of terminal benefits, and modifying the impugned order of the Industrial Court to that effect.

6. **Rule** made absolute in above terms. No order as to costs. The Respondent-Corporation will give effect to this order within period of eight weeks from today.

(N.M.Jamdar J.)