

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

MISC. CIVIL APPLICATION NO.974 OF 2013

IN

WRIT PETITION NO.1779 OF 2003

(Maharashtra State Road Transport Corporation, Yavatmal ..vs.. Shri Subhash Nandlal Gargele and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.S. Mehadia, Advocate for the applicant/petitioner.

CORAM : Z.A. HAQ, J.

DATED : 10-06-2015

This application is filed by the applicant/petitioner seeking review of the judgment, dismissing the petition filed by the petitioner.

2. The respondent No.1/employee was dismissed from service on 17-11-1997. This order of dismissal was challenged by the employee under Clause 8 of the Discipline and Appeal Procedure by filing departmental appeal which was partly allowed by the order dated 11-12-1998. The competent authority while allowing the departmental appeal, had set aside the punishment of dismissal and had directed the petitioner to give fresh appointment as Conductor to the employee. Accordingly, the employee was given fresh appointment as Conductor. The employee approached the Industrial Court with the grievance that the competent authority could not have directed that the appointment of the employee should be

treated as fresh appointment and that the competent authority could have imposed one of the punishment as shown in Clause 7 of the Discipline and Appeal Procedure. The Industrial Court partly allowed the complaint filed by the employee and directed the petitioner to treat that the employee was in continuous service from the date of his initial appointment. However, the claim for back wages as made by the employee came to be rejected. The order passed by the Industrial Court was challenged in the petition. The petition is dismissed by the judgment dated 12-07-2013.

3. The petitioner is seeking review of the judgment on the ground that this Court has failed to consider that the employee having accepted fresh appointment order issued pursuant to the directions given by the competent authority while deciding the departmental appeal, it was not open for the employee to challenge the order passed by the competent authority before the Industrial Court contending that the competent authority did not have the powers to direct that the appointment of the employee should be treated as fresh appointment. In support of the submission, the learned Advocate for the applicant/petitioner has relied on the following judgments :

i) Judgment given by this Court in the case of ***Maharashtra State Road Transport Corporation,***

Bombay .vs. Prakash Tulshiram Pardeshi reported in ***2008(4) Mh.L.J. 940.***

ii) Judgment given by this Court in the case of ***Sahebrao s/o Pandu Patil .vs. The Divisional Controller, Maharashtra Road Transport Corporation, Jalgaon*** in ***Writ Petition No.210/1997 on 23-07-2009.***

4. In the case of ***Maharashtra State Road Transport Corporation, Bombay .vs. Prakash Tulshiram Pardeshi*** reported in ***2008(4) Mh.L.J. 940***, the employee was re-employed with effect from 10-12-1994 and he filed the complaint before the Labour Court in 1996. Similarly, in the case of ***Sahebrao s/o Pandu Patil .vs. The Divisional Controller, Maharashtra Road Transport Corporation, Jalgaon*** in Writ Petition No.210/1997, the employee was re-appointed and he joined the service on 12-02-1988 and he moved the Labour Officer for conciliation proceedings and the conciliation proceedings were taken up on 18-01-1990 and then the reference was made to the Labour Court. It is recorded in the judgment given in Writ Petition No.210 of 1997 that the employee had sought to amend the demand by the letter dated 18-01-1990 to make claim for continuous service and back wages. In both the above mentioned cases, the employees accepted the fresh appointments and joined the services and then after about two years made the

claim for continuity of service. In the present case, the order of re-appointment was issued pursuant to the order passed by the competent authority in departmental appeal on 11-12-1998 and the employee filed the complaint before the Industrial Court on 04-03-1999. The above facts show that the employee filed the complaint before the Industrial Court immediately. It cannot be said that the employee accepted the fresh appointment order and subsequently he made claim for continuity of service and back wages.

5. The applicant/petitioner has not been able to point out any error apparent on the face of the record which necessitates the review of the judgment. The application is dismissed. In the circumstances, there shall be no order as to costs.

JUDGE

pma