

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

WRIT PETITION NO. 3812 OF 1995

Maharashtra State Road Transport
Corporation.
Through Divisional Controller,
Ahmednagar.

...PETITIONER

-VERSUS-

Bhimsen Deoram Kandekar,
Age Major, Occupation Nil,
R/o Hamidpur Hingangaon,
Taluka Nagar,
District Ahmednagar.

...RESPONDENT

WITH
CIVIL APPLICATION NO.8182 OF 2005
IN WP/3812/1995

M.S.R.T.C., AHMEDNAGAR.
VERSUS
BHIMSEN DEORAO KHANDEKAR.

...

Advocate for Petitioner : Shri M.K.Goyanka and Shri Manoj Shinde.
Advocate for Respondent : Shri P.S.Pawar.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 26th September, 2016

Oral Judgment :

1

The Petitioner/ MSRTC has challenged the judgment of the

Industrial Court dated 10.05.1995 by which Complaint (ULP) No.304/1990 was allowed and the Petitioner is directed to confirm the service of the Respondent as a Helper with effect from the date of the judgment.

2 This Court admitted the petition on 28.09.1995 and granted interim relief in terms of prayer clause (d) thereby, staying the execution and implementation of the impugned judgment.

3 I have heard Shri Goyanka, learned Advocate for the Petitioner/ MSRTC and Shri Pawar, learned Advocate for the Respondent/ Employee.

4 The Respondent was appointed as an Apprentice under the Apprenticeship Act on 28.08.1989. It was noticed in the light of the communication of the Industrial Training Institute, Ahmednagar dated 14.01.1990 that the Respondent was not qualified to be engaged as an Apprentice since he has not acquired the requisite qualifications and has not attended the classes in the said trade. Accordingly, he was discontinued as an Apprentice on 14.01.1990.

5 The Respondent preferred Complaint (ULP) No.34/1990

before the Industrial Court and the Industrial Court passed the order on the same day staying the termination of the Respondent and further directed the continuation of the Respondent until further order. Pursuant to such order, the Respondent was reinstated and continued in service. On 17.04.1990, the Industrial Court vacated the interim relief. The Respondent preferred Writ Petition No.3336/1991 and the learned Division Bench of this Court dismissed the petition on 07.09.1993.

6 The Respondent preferred Complaint (ULP) No.141/1990 on the same subject. Subsequently, the Respondent withdrew both the above said complaints. Thereafter, he filed a fresh Complaint (ULP) No.304/1990 which has been allowed by the impugned judgment.

7 The record reveals that some officer of the Petitioner/ MSRTC issued a quarter page order dated 09.08.1990 and similar such orders permitting the Respondent to wash and clean the buses. Based on such documents below the list Exhibit U/10, the Industrial Court came to a conclusion that because the Respondent has completed 180 days, he is required to be confirmed in service as per the agreement signed in 1985. Notwithstanding the fact that the Respondent was not in employment from 02.09.1990, the Industrial Court directed the Petitioner/ MSRTC to confirm the Respondent in service and to pay him all consequential

benefits from the date of the judgment.

8 Though Shri Pawar, learned Advocate for the Respondent, has strenuously defended the impugned judgment, I do not find that the said judgment could be sustained. The learned Division Bench while dismissing Writ Petition No.3336/1991 by order dated 07.09.1993, has termed the facts of the Respondent's case as being "curious". The Respondent has entered in the service of the Petitioner as an Apprentice on the basis of the contention that he has acquired I.T.I. Course in the Sheet Metal Work trade. It was subsequently noticed that he had passed his 09th standard and had never attended the classes with the I.T.I.. The learned Division Bench of this Court, therefore, dismissed the petition concluding that the Respondent could not be continued as an Apprentice.

9 Thereafter, the Respondent preferred Complaint (ULP) No.141/1990 and both the said complaints (34/1990 and 141/1990), which were on the subject of permanency, are said to have been withdrawn. The Respondent, therefore, appears to have given up his claim to be continued as an Apprentice. His working as an Apprentice and especially under the orders of the Industrial Court concluded on 17.04.1990.

10 Thereafter, it is stated that he worked on the work of washing and cleaning the Buses from May, 1990 till 02.09.1990. There was no regular selection process, much less a specific appointment order issued to the Respondent. It appears that the Industrial Court has added the period of apprentice working along with the period of washing and cleaning the Buses as a Helper so as to conclude that he has completed 180 days in service.

11 In the light of the above, I find the impugned judgment of the Industrial Court to be perverse and erroneous. This Writ Petition is, therefore, allowed. The impugned judgment of the Industrial Court dated 10.05.1995 is quashed and set aside and Complaint (ULP) No.304/1990 stands dismissed. Rule is made absolute.

12 The pending Civil Application does not survive and the same stands disposed of.

13 The record and proceedings in Complaint (ULP) No.304/1990 be returned to the Industrial Court, Ahmednagar forthwith.