

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

WRIT PETITION NO. 2049 OF 1997

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

...PETITIONER

-VERSUS-

Ajinath Babulal Kaikadi,
Age : Major, Occupation : Conductor,
R/o Mahi Jalgaon, Post : Pategaon,
Taluka Karjat, District Ahmednagar.

...RESPONDENT

...
None for Petitioner.
Advocate for Respondent : Shri V.S.Bedre.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 25th November, 2016

Oral Judgment :

1 None appeared for the Petitioner/ MSRTC on 24.11.2016.
None appears even today.

2 Since this petition is pending final adjudication and is
practically 20 years old, I decided to deal with this petition on it's merits.
Shri Bedre, learned Advocate for the Respondent/ Employee, has rendered

his assistance.

3 The Petitioner is aggrieved by the judgment and order dated 20.09.1996 passed by the Industrial Court, Ahmednagar by which Complaint (ULP) No.140/1990 filed by the Respondent has been allowed.

4 I do not find any dispute with regard to the following factors:-

- (a) The Respondent joined as a Bus Conductor with the Petitioner/ MSRTC on 01.08.1970.
- (b) On 03.03.1987, when the Bus was halted at Pune, it was found that the Respondent consumed liquor and was under the influence of liquor.
- (c) He misbehaved with the passengers and abused them at Shivajinagar Bus Stand, Pune.
- (d) On 27.04.1988, the Respondent was dismissed from service after conducting the disciplinary enquiry under the Discipline and Appeal procedure of the Petitioner/ MSRTC.
- (e) On 18.08.1988, the appeal filed by the Respondent was dismissed by the First Appellate Authority of the Petitioner.
- (f) The Respondent was acquitted by the Criminal Court on 05.11.1988.
- (g) The Second Appellate Authority has allowed the appeal by

sustaining the punishment of dismissal and granting fresh appointment.

- (h) On 14.03.1989, the Petitioner issued a fresh appointment order to the Respondent, which he had accepted and joined service.
- (i) On 29.05.1990, the Respondent challenged the order of dismissal as well as the fresh appointment and prayed for continuity of service and full back wages, vide Complaint (ULP) No.140/1990.
- (j) The said complaint was filed under Item 9 of Schedule IV of the MRTU & PULP Act, 1971.
- (k) The Respondent has retired on 30.04.1997 after attaining the age of superannuation.
- (l) This Writ Petition was filed before his retirement on 03.02.1997 for challenging the judgment of the Industrial Court dated 20.09.1996 by which the Respondent was granted full back wages and continuity of service.
- (m) By order dated 01.07.1998, this Court directed the Petitioner to implement the order of the Industrial Court in all respects and thereafter, the criminal complaint filed by the Respondent before the Labour Court under Section 48(1) of the MRTU & PULP Act, 1971 would be withdrawn.

5 Shri Bedre submits that though he is not in touch with the Respondent, the fact remains that this Court had refused interim relief to the Petitioner/ MSRTC and had directed the Petitioner to implement the order of the Industrial Court. Having peacefully retired from service, this petition has become infructuous.

6 It is thus, apparent in this case that the Respondent had challenged his dismissal and his fresh appointment dated 14.03.1989 before the Industrial Court on 29.05.1990. It is thus, the case of accepting a fresh appointment post dismissal and after working on the said post for about 14 months, the complaint has been filed challenging the dismissal and seeking continuity in service and full back wages, that too before the Industrial Court which cannot deal with a challenge to the dismissal order.

7 This issue is no longer res-integra in the light of the judgment of this Court in the matter of *Anil Vaijnath Arbad v/s Divisional Traffic Controller, MSRTC*, **2016(3) Bombay C.R. 860**. It has been observed by this Court in paragraphs 18, 19, 20, 21 and 22 of the said judgment as under:-

"18. *The Apex Court in the case of State of Punjab (supra) has concluded in paragraphs 2 to 5 as under:-*

"2. This appeal, by special leave, arises from the

judgment of the Punjab & Haryana High Court made on March 7, 1996 in Second Appeal No.2662/95.

3. The admitted facts are that the respondent was charged for an offence under Section 302 I.P.C. He was convicted and sentenced to undergo imprisonment for life. Thereafter, proceedings were initiated against him under Article 311(2) of the Constitution and he was removed from service. Appeal against his conviction under Section 302 I.P.C. was allowed by the High Court. Punishment of conviction under Section 302 IPC was modified to one under Section 325 IPC and he was directed to undergo rigorous imprisonment for 1-1/2 years. After undergoing the imprisonment, the respondent filed an appeal before the appellate authority. The appellate authority by order dated March 1, 1989 reduced the punishment of removal from service to lower scale of pay drawn by him and directed that he was not entitled to back-wages. The respondent accepted it and joined duty on June 5, 1989. Subsequently, he filed a civil suit for declaration that his dismissal from the service and reduction of rank and also the direction that he is not entitled to pay the arrears of wages, were illegal. The Trial Court dismissed the suit. On appeal; the Addl. District Judge reversed the judgment of the trial Court and decreed the suit. In the second appeal, the High Court has confirmed the same. Thus this appeal, by special leave.

4. Learned counsel for the respondent contends that the offence with which he was sentenced under Section 325 IPC does not involve his moral turpitude and, therefore, the imposition of punishment of reduction of his scale of pay and also denial of back wages, is clearly illegal and that the appellants are not entitled to challenge the order. We find no force in the contention. The respondent having accepted the order of the appellate authority and joined the post on June 5, 1989, it was not open to him to challenge the order subsequently. By his conduct he has accepted the correctness of the order and then acted upon it. Under these circumstances, the civil Court

would not have gone into the merits and decided the matter against the appellants.

5. Accordingly, the appeal is allowed. The orders of the High Court and the appellate Court stand set aside and that of the trial Court stands confirmed. No costs.”

(Emphasis is supplied).

19. In the light of the ratio laid down by the Apex Court in the case of the State of Punjab (supra), the Petitioner would, therefore, be precluded from questioning the fairness of his fresh appointment once he has accepted it without any protest or murmur and has joined duties. If he was aggrieved with the order of fresh appointment and imposition of punishment of dismissal from service, he could have questioned his order of dismissal before the Labour Court. The Industrial Court did not have jurisdiction to deal with the order of dismissal in the light of the powers vested in it.
20. The powers of the Labour Court and the Industrial Court are defined in Sections 4, 5, 6 and 7 of the MRTU & PULP Act, 1971, which read as under:-
 - “4. Industrial Court
 - (1) The State Government shall by notification in the Official Gazette, constitute an Industrial Court.
 - (2) The Industrial Court shall consist of not less than three members, one of whom shall be the President.
 - (3) Every member of the Industrial Court shall be a person who is not connected with the complaint referred to that Court, or with any industry directly affected by such complaint:

Provided that, every member shall be deemed to be connected with a complaint or with an industry by reason of his having shares in a company which is connected with, or likely to be affected by, such complaint, unless he discloses to the State Government the nature and extent of the shares held by him in such company and in the opinion of the State Government recorded in writing, such member

is not connected with the complaint, or the industry.

(4) Every member of the Industrial Court shall be a person who is or has been a Judge or a High Court or is eligible for being appointed a Judge of such Court :

Provided that, one member may be a person who is not so eligible, if he possesses in the opinion of the State Government expert knowledge of labour or industrial matters.

5. Duties of Industrial Court.

It shall be the duty of the Industrial Court:-

(a) to decide an application by a union for grant of recognition to it;

(b) to decide an application by a union for grant of recognition to it in place of a union which has already been recognised under this Act;

(c) to decide an application from another union or an employer for withdrawal or cancellation of the recognition of a union;

(d) to decide complaints relating to unfair labour practices except unfair labour practices falling in Item 1 of Schedule IV;

(e) to assign work, and to give directions, to the Investigating Officers in matters of verification of membership of unions, and investigation of complaints relating to unfair labour practices;

(f) to decide references made to it on any point of law either by any civil or criminal court and

(g) to decide appeals under Section 42.

6 Labour Court

The State Government shall, by notification in the Official Gazette, constitute one or more Labour Courts, having jurisdiction in such local areas, as may be specified in such notification, and shall appoint persons having the prescribed qualifications to preside over such Courts;

Provided that, no person shall be so appointed, unless he possesses qualifications (other than the qualification of age), prescribed under Article 234 of

the Constitution for being eligible to enter the judicial service of the State of Maharashtra; and is not more than sixty years of age.

7 Duties of Labour Court

It shall be the duty of the Laour Court to decide complaints relating to unfair labour practices described in Item I of Schedule IV and to try offences punishable under this Act."

21. *As such, even if it is presumed that the order of the Appellate Authority granting re-appointment/ fresh appointment is to be set aside, the Petitioner would be relegated back to the earlier order which is an order of dismissal. At best, the Industrial Court, if were to allow the complaint, could have set aside the order of the Appellate Authority thereby, relegating the Petitioner to the order passed by the first Appellate Authority confirming the order of dismissal. In any case, if the order of fresh appointment is to be set aside, the Petitioner will have no option, but to challenge the order of dismissal which is a stage prior to the passing of the order by the second Appellate Authority.*
22. *In the light of the above and the law laid down by the Apex Court in the case of State of Punjab (supra), the Petitioner could not have questioned his fresh appointment after having accepted it and joined duties without any protest and without reserving a right to challenge the orders of the second Appellate Authority, the first Appellate Authority and the order of dismissal passed by the competent disciplinary authority and that too before the Industrial Court."*

8 It is thus, settled that once the first appellate authority or the second appellate authority shows leniency and grants a fresh appointment to an employee as like the Respondent herein, it presupposes that the

dismissal is sustained and by way of sympathy, a fresh appointment order is issued. There can be no debate that unless the dismissal order is sustained, there cannot be a fresh appointment since the fresh appointment order can be issued only after the earlier employment is brought to an end.

9 It is also settled that after accepting the fresh appointment and joining duties without reserving the right to challenge the order or without expressing any protest, an employee cannot be permitted to challenge such an order after having accepted it and joined duties, in the light of the judgment of the Honourable Supreme Court in the matter of *State of Punjab vs. Krishan Niwas*, **AIR 1997 SC 2349**.

10 In the light of the above, the impugned judgment of the Industrial Court dated 20.09.1996 is unsustainable and deserves to be set aside. This Writ Petition is partly allowed. The impugned judgment of the Industrial Court is quashed and set aside and Complaint (ULP) No.140/1990 stands dismissed.

11 However, considering the interim orders passed by this Court on 17.07.1997 and 01.07.1998 in Civil Application Nos.4511/1997, in the event the directions of this Court and the Industrial Court have already

been complied with in all respects including by payment of gratuity and retiral benefits, the judgment of this Court thereby, setting aside the judgment of the Industrial Court shall not grant any liberty to the Petitioner/ MSRTC to reopen the said issue and seek recovery of the benefits already paid to the Respondent.

12 However, in the event, all retiral benefits have not been extended, if gratuity has also not been paid and if the directions of the Industrial Court granting full back wages have also not been implemented, the Respondent would not be entitled for the same in the light of this judgment.

13 Rule is made partly absolute in the above terms.