

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

WRIT PETITION NO. 1793 OF 2016

MAHARASHTRA STATE ROAD TRANSPORT CORPORATION DHULE
THROUGH THE DIVISIONAL CONTROL
VERSUS
LIMBA MANGALSINGH THAKUR

...

None for Petitioner.

Advocate for Respondent : Shri Patil Shrikant S..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th September, 2016

Per Court:

1 None for the Petitioner. I heard Shri Patil, learned Advocate for the Respondent/ Employee. His basic and strenuous contention is that the order of termination dated 04.04.2015 was never served upon him. Even till today, the said order is not served upon him. He, therefore, submits that there is a presumption that the order of termination is not served and the Respondent continues in employment.

2 There is no dispute that the Respondent/ Employee had challenged the second show cause notice dated 11.03.2015 by which the Petitioner Corporation proposed the punishment of dismissal from service for a proved misconduct of accepting illegal gratification. He received

notice on 19.03.2015 and preferred Complaint (ULP) No.8/2015. He was granted ex-parte ad-interim protection. By order dated 26.03.2015, the application for interim relief filed by the Respondent was rejected and ad-interim relief was vacated.

3 The case of the Petitioner Corporation is that they issued the order of dismissal from service on 04.04.2015. Since the Respondent was not available at the workplace, 05.04.2015 being a Sunday, it was dispatched through the post on 06.04.2015. On 06.04.2015, the Industrial Court had stayed the effect of the notice dated 11.03.2015. By the impugned judgment dated 10.08.2015, the revision was allowed and the Industrial Court has restrained the Petitioner Corporation from serving the order of dismissal dated 04.04.2015 upon the Respondent/ Employee till the disposal of the main complaint.

4 Considering the peculiar facts as above and in the light of the note of caution expressed by the Honourable Supreme Court in paragraphs 53 and 54 of it's judgment in the matter of *Hindustan Lever v/s Ashok Vishnu Kate*, 1995(6) SCC 326, I find that the Industrial Court should not have exercised it's jurisdiction in it's revisional powers under Section 44 of the MRTU & PULP Act, 1971 when the Petitioner/ Corporation had taken a stand that the Respondent/ Employee was

already dismissed from service by order dated 04.04.2015 after the Labour Court vacated the interim relief on 26.03.2015. Even otherwise, the Respondent has superannuated on 31.05.2015.

5 In the light of the above, the impugned judgment dated 10.08.2015 is rendered perverse since the Industrial Court has ventured into exercising jurisdiction under Item 1 of Schedule IV of the MRTU & PULP Act, 1971 which is not vested in it by law.

6 As such, this Writ Petition is partly allowed. The impugned judgment is, therefore, quashed and set aside.

7 Needless to state, the Respondent/ Employee has a right to amend his Complaint (ULP) No.8/2015 and by assailing the order of dismissal dated 04.04.2015 he is at liberty to challenge the fairness of the enquiry as well as the findings of the Enquiry Officer. Needless to state, this Court has, therefore, not expressed any view about the merits of the case and especially, the defence of the Respondent that he is not guilty of the misconduct alleged against him and the charges are not proved against him.

8 Since the Respondent/ Employee has superannuated on

31.05.2015, ends of justice would be met by directing the Labour Court to decide Complaint (ULP) No.8/2015 on its own merits and as expeditiously as possible and preferably within a period of one year from today.

kps

(RAVINDRA V. GHUGE, J.)