

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4081 OF 2005
WITH
CIVIL APPLICATION NO.7801 OF 2008

Dattatraya Radhakrishna Rakshasbhavankar,
Age-45 years, Occu-Conductor,
R/o Dhondipura, Tq. and Dist.Beed

PETITIONER

VERSUS

1. Divisional Controller,
MSRTC, Beed,

2. Depot Manager,
MSRTC, Dharur,
Tq.Dharur, Dist.Beed

RESPONDENTS

Mr.B.R.Warma, Advocate for the petitioner.
Mr.A.B.Dhongade, Advocate for the respondents.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 05/05/2016

ORAL JUDGMENT :

1. This petition was Admitted on 14/12/2005. Interim relief was not granted.

2. The petitioner is aggrieved by the judgment and order delivered by the Industrial Court dated 18/10/2004 by which Complaint (ULP) No.113/2000 filed by the petitioner/employee has been dismissed.

3. The petitioner was awarded the punishment of dismissal from service for proved mis-conduct. His intra department appeal was accepted only to the extent of giving him a fresh appointment. The petitioner accepted the fresh appointment and joined duties. There was no protest lodged by the petitioner, nor did he join duties as a fresh employee by reserving his right to challenge the decision of the respondent/Corporation.

4. Learned Advocate for the Corporation has defended the impugned judgment.

5. I have considered the submissions of the learned Advocates.

6. The dismissal of the petitioner is dated 11/02/1997. He was given fresh appointment by order dated 15/05/1997. He has worked with the Corporation after accepting fresh appointment and has superannuated on reaching the age of retirement in December 2015.

7. This Court has dealt with an identical case in the matter of MSRTC, Jalgaon Vs. Pandurang Trimbak Dusane, 2016(2) Mh.L.J. 228. It has been concluded by placing reliance upon the reported judgment of the Hon'ble Supreme Court that once an employee

accepts fresh appointment, he cannot thereafter challenge the said appointment and pray for reinstatement with continuity of service and full back wages. It was also concluded that the order of fresh appointment presupposes that the order of dismissal is not interfered with, is maintained and the employee is discontinued following which a fresh appointment is given.

8. In the light of the above, this petition is devoid of merit and is, therefore, dismissed. Rule is discharged.

9. Notwithstanding the dismissal of this petition, considering that the petitioner has superannuated, I find it appropriate to observe that the respondents would release his retiral benefits including gratuity, if not already paid, within a period of 8 (eight) weeks from today, in the event, there is no other legal impediment.

10. Pending civil application, does not survive and hence is disposed of.

(RAVINDRA V. GHUGE, J.)