

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

WRIT PETITION NO. 3815 OF 2015

Afzalmiya S/o Achutmiya Khatib,
Age : 63 Years, Occu. : Pensioner,
R/o Babujipura, Yaval, Tal. Yaval,
District Jalgaon.

.. Petitioner

Versus

1. Maharashtra State Road Transport
Corporation, through its
Managing Director,
Central Office, Vahatuk Bhavan,
Dr. Anand Nair Marg,
Central Mumbai.

2. Maharashtra State Road Transport
Corporation, Jalgaon,
Through its Divisional Controller,
MSRTC, Jalgaon Division,
Jalgaon.

.. Respondents

Shri Mahesh S. Taur, Advocate for the Petitioner.

Shri M. K. Goyanka, Advocate for Respondent Nos. 1 and 2.

**CORAM : S. V. GANGAPURWALA AND
N. W. SAMBRE, JJ.**

DATE : 16TH SEPTEMBER, 2016.

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

02. The learned counsel for the petitioner submits that, in the year 2006 the petitioner was declared as unfit, however, the petitioner was not terminated. The petitioner continued in service and on attaining age of superannuation stood retired in the year 2010. The learned counsel submits that, since the petitioner was declared medically unfit till the date of superannuation, the petitioner was not paid any salary. Even retiral benefits are not paid to the petitioner considering his service till the year 2010. According to the learned counsel the respondents are duty bound to pay the salary and give all the retiral benefits considering his service upto the date of superannuation. The learned counsel submits that, even otherwise the petitioner is declared medically unfit, in that case the son of the petitioner is required to be appointed on compassionate ground. The learned counsel submits that, the respondents have committed grave illegality. The learned counsel for the petitioner relies on the letter issued by the Divisional Controller dated 22.03.2010.

03. The learned counsel for respondents submits that, the petitioner was declared medically unfit initially in June 2006. The petitioner has been paid all retiral benefits. The same has been accepted without any demur. According to the learned counsel, the petitioner was terminated from service. Though the Labour Court allowed the complaint filed by the present

petitioner, the respondents had filed writ petition before this Court and when the writ petition came up for hearing the petitioner stood superannuated. According to the learned counsel, as the petitioner was not terminated the prayer for compassionate appointment also cannot be considered.

04. We have considered the submissions canvassed by learned counsel for respective parties. There is no order of termination issued as against the petitioner. In view of that, the prayer of the petitioner to grant compassionate appointment to his son in the place of the petitioner does not arise.

05. No order of termination has been issued against the petitioner on the ground that he is medically unfit. The letter dated 22.03.2010 (page 52) clarifies the said position. The said letter states that, the name of the petitioner continued in the muster role as having attended the office till the date he attained the age of superannuation on 31.05.2010. Naturally, the petitioner would be deemed to be continued in service during that period. The petitioner has not made grievance about non payment of salary during the period from 22.06.2006 to 31.05.2010, nor during the pendency of said writ petition which was pending against the order of the Labour Court.

06. The petitioner has made a prayer to grant him pensionary

benefits considering his service upto the year 2010 i. e. 31.05.2010. We are inclined to consider the said prayer as the order of termination was never issued to the petitioner. Considering the above, rule is made absolute in terms of prayer clause "C" No costs.

07. In case the petitioner files an application for grant of salary from 22.06.2006 i. e. the date he was declared medically unfit till the date of retirement, the respondents may take decision on the said application on its own merits.

Sd/-

[N. W. SAMBRE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]