

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

WRIT PETITION NO. 668 OF 2009

Babasaheb Ghanshyam Ingole

Age: 44 years, Occ. Nil,

R/o Manjarsumba,

Tq. & Dist. Beed.

..PETITIONER

VERSUS

1. The Divisional Controller,
Maharashtra State Road Transport
Corporation Ltd., Beed Depot

2. The Traffic Controller,
Maharashtra State Road Transport
Corporation Ltd., Manjarsumba Bus Stand,
Tq. & Dist. Beed.

..RESPONDENTS

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Mr. A.A. More, Advocate for petitioner.

Mr. D.S. Bagul, Advocate for Respondents.

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 28th JANUARY, 2016

ORAL JUDGMENT :

1. This petition was admitted by order dated 28.07.2009.

2. The petitioner is aggrieved by the judgment and order dated 15.10.2007 delivered by the Labour Court, by which

Complaint (ULP) No. 159/2003 filed by the petitioner has been dismissed. The petitioner is also aggrieved by the judgment and order dated 01.08.2008 delivered by the Industrial Court, by which Revision (ULP) No. 55/2007 has been dismissed.

3. The grievance of the petitioner is that he had been working from 01.07.1999 till 05.10.2003 as a sweeper with respondent-MSRTC. He was working continuously and uninterruptedly. By an oral instruction dated 05.10.2003, he has been terminated from service without compliance of Section 25-F of Industrial Disputes Act, 1947.

4. He further submits that several receipts of weekly payments made by the respondent were produced before the Labour Court. The said payment receipts would indicate that the petitioner was working continuously. He examined himself by filing an affidavit and has proved his case.

5. He submits that Labour Court has itself recorded the finding about the continuous work performed by the petitioner,

however has erroneously concluded that some of the receipts were in the name of his father, sister and wife, and hence he has not completed 240 days continuous service. He, therefore, prays that this petition be allowed and the impugned judgments of the Labour Court and Industrial Court be quashed and set aside and the petitioner be reinsisted in service with continuity and full back wages. He also relies upon judgment of the Apex Court in the case of *MSRTC Vs. Premlal* reported in *2007 All SCR 1065*.

6. Mr. Bagul, the learned Counsel appearing on behalf of MSRTC submits that the petitioner was neither appointed nor he was engaged as per procedure on any vacant post of Safai Kamgar. He was given some work, as and when it was available, which is being termed as Safai Kamgar. He was neither selected nor was he an employee of the MSRTC. There was no employer and employee relationship between these two.

7. At the Manjarsumba Depot, sometimes the petitioner and sometimes his wife/sister/mother/father used to come for about 1

to 2 hours and used to do the work of sweeping. They were paid amounts of Rs.25/- for having performed such work, which was neither done regularly nor was available on day to day basis. The petitioner's case would amount to a back door entry claiming to have been orally appointed and working regularly. He therefore prays that this petition be dismissed.

8. I have considered the submissions of the learned Counsel as have been recorded hereinabove, and have gone through the impugned judgments.

9. The whole issue is whether the petitioner was appointed on a permanent vacant post and as to whether he has established continuous and uninterrupted working with the respondent-Corporation. Besides the weekly payment receipts produced on record, the petitioner has no other evidence to indicate continuous service.

10. Receipts, that were placed on record, have been considered by the Labour Court. It is concluded that some of the

receipts are in the name of his father - Ghanshyam Ingole, wife - Meera and sister - Sangita and mother - Gangabai. Considering the same, the Labour Court concluded that neither was the petitioner appointed on a regular basis nor was he working regularly. It appears to be an activity of cleaning the depot intermittently. Sometimes, the petitioner used to clean the premises and sometimes his wife/sister/mother/father.

11. If the claim of the petitioner is to be entertained, the Labour Court was then required to consider the work performed by his wife/sister/mother/father. As such, the Labour Court was not convinced that the petitioner was working continuously.

12. The MSRTC being a limb of the Government, cannot regularise the services of such occasional sweepers, who may have worked intermittently. Finding of facts by the Labour Court have not been disturbed by the Industrial Court, while delivering the impugned judgment.

13. I did not find that the impugned judgments could be termed as perverse or erroneous. This petition is devoid of merits and is therefore dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)