

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 8316 OF 2015

Subhash Dagdu Kamble

.. Petitioner

Vs.

Maharashtra State Road Transport
Corporation.

.. Respondent

Mr.A.S.Rao, for the Petitioner.
None for the Respondent.

***CORAM: N.M. JAMDAR, J.
Monday, 25 January 2016.***

PC. :

The Petitioner challenges the order passed by the Industrial Court, Satara dated 27 February 2013, dismissing the Complaint ULP No.14 of 2008 filed by the Petitioner.

2. The Petitioner was charge-sheeted for misconduct for being habitually absent. An inquiry was instituted. Pursuant to the inquiry he was dismissed from services on 28 February 2004. The Petitioner filed Departmental Appeal, which was partly allowed. The order of dismissal from services was set aside and the Respondent was directed to give fresh appointment to the Petitioner. The Petitioner accordingly joined the services of the Respondent and filed a second departmental appeal which was rejected. Thereafter the Petitioner filed the present Complaint

which was dismissed by the impugned order. The Industrial Court held that having accepted the decision of the appellate authority, the Petitioner was precluded from raising a challenge to the same.

3. The learned counsel for the Petitioner submitted that the approach of the Industrial Court is not correct. He submitted that it is open for the Petitioner to challenge the order and the fact that the Petitioner has joined the services will not take away his rights.

4. The Industrial Court has relied upon decision of the learned Single Judge in the case of **M.S.R.T. Corporation, Bombay V/s Prakash Tulshiram Pardeshi** – 2008 II CLR 452, wherein this Court has taken a view, in identical facts and circumstances, that having taken benefit of the order, the employee therein was estopped from challenging the order by which he was given a fresh appointment. The observations of the learned Single Judge are as below -

“However, it was the Respondent who had stated that he would not commit such a mistake in the future and it was on his request that the Appellate Authority eventually decided to make a fresh offer of appointment so as to enable the Respondent to have some opportunity to improve upon himself. The Respondent accepted the order of the Appellate Authority and joined service with effect from 10th December 1994. Once that was done and having taken the benefit of the order, it was clearly not open to the Respondent to turn back and complain of an unfair labour practice. The Respondent is clearly estopped from doing so. The principle of estoppel must apply in such a case and the Labour Court ought to have rejected the complaint on this ground alone. Counsel appearing on behalf of the Petitioner urged that the

powers of the Appellate Authority are wide enough to include an offer of the fresh appointment to the workman. For the purpose of these proceedings, it is not necessary for this Court to enter any final judgment on whether the Appellate Authority in the course of modifying the order of dismissal can pass an order of fresh appointment. But in the facts of the present case, it needs emphasis that the order of the Appellate Authority properly construed, was an offer for a fresh appointment which was duly accepted by the Respondent. If the Respondent believed that the Appellate Authority had no authority to impose such a direction upon him, he could have challenged the order in its entirety. Having taken the benefit of the order, the Respondent was estopped from challenging the order by which he was given fresh appointment. The Appellate Authority while justifying its own finding, confirmed the order of dismissal. The Respondent was, however, offered re-employment on humanitarian grounds”.

5. Even assuming it is open for the Petitioner to challenge the order of the appellate authority not granting him reinstatement with full back wages on merits, the Petitioner has no case. The Petitioner did not apply for leave nor he informed the superiors. The Petitioner was once warned and his one increment was stopped for misconduct of similar nature. In spite of this position the first appellate authority has been indulgent with the Petitioner. Therefore, apart from accepting the order and working with the Respondent-Corporation before challenging the same, even on merits the Petitioner's challenge cannot be sustained. The Writ petition is accordingly **rejected**. No order as to costs.

(N.M.Jamdar, J.)