

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Civil Application [CAW] No. 3810 of 2014
IN
Writ Petition No. 1946 of 2003 [decided]
[Maharashtra State Road Transport Corporation Vs. Ashok Bapurao Wadhai & another]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. Mehadia, Adv., for the petitioner.
Mr. N.R. Saboo, Adv., for respondent no.1.

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CORAM : A.B. CHAUDHARI, J.

DATE : 25th February, 2016

This application is in the nature of review of the Judgment and Order dated 24th September, 2013 passed by this Court in Writ Petition No. 1946 of 2003.

Maharashtra State Road Transport Corporation [MSRTC] had filed that Writ Petition in the year 2003 against the Judgment and Order of Industrial Court awarding reinstatement as well as payment of hundred per cent back wages. The learned counsel for the

petitioner, MSRTC, states that now it has come to the notice that after the first litigation, the respondent, driver, Ashok Bapurao Wadhai, was dismissed from service with effect from 8th June, 2007 by holding a Departmental Enquiry, i.e., during the pendency of the petition and, perhaps, that order was not challenged by him. He, therefore, submits that the operative order of that judgment made by this Court on 24th September, 2013 needs a modification, because upon dismissal of respondent no.1 from service, the employee is not entitled to terminal benefits, and not only that the amount deposited in this Court will have to be refunded to MSRTC.

It is not in dispute that during pendency of the Writ Petition and even before the Judgment, second dismissal took place on 8th June, 2007 and it was, therefore, the bounden duty of the MSRTC to point out the said fact before this Court at the time of hearing of the Writ Petition. The counsel for the respondent, driver, however, informed that the driver had attained the age of superannuation. This Court, however, found that the award of hundred per cent back wages made by the Industrial Court was contrary to law laid down by the Apex Court in the case of **J.K. Synthetics Ltd. Vs. K.P. Agrawal & another** [2007 (2) SCC 433] and, therefore, removed the order of payment of back wages in entirety. However, in so far as the finding of fact regarding the order of reinstatement is concerned, this Court did not interfere with it, since that was not found and shown to

be a perverse fact and as such the said order was maintained.

The contention now raised that respondent no.1 would not be entitled to terminal benefits as stated in operative part no.3 of the Order and the MSRTC would be entitled to take back the amount deposited in this Court cannot be accepted. It was the duty of the MSRTC to point out about the subsequent event and at any rate, the lis that arose in Writ Petition No. 1946 of 2003 did not have any connection, whatsoever, with the second dismissal dated 8th June, 2007. This Court, therefore, is not in a position to clarify anything as sought, nor would like to review, since the petition was decided on the facts available on the date of judgment as stated by counsel for both the parties. If the officials of MSRTC did not inform the counsel for the MSRTC after the said subsequent event, namely dismissal by order dated 8th June, 2007, then MSRTC should thank itself.

In any case, it is not possible to pass any order for speaking to minutes or review. Hence Civil Application [CAW] No. 3810 of 2014 is dismissed.

Judge