

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

**REVIEW APPLICATION NO. 40 OF 2016
IN
WRIT PETITION NO. 9701 OF 2010**

MSRTC through its
Vice Chairman & Anr.

..... APPLICANTS

V E R S U S

Rajendra Arjun Dalvi & Ors.

..... RESPONDENTS

.....

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

Mr. P.B.Shirsath, Advocate for R - 1 to 7.

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**CORAM : SUNIL P. DESHMUKH &
RAVINDRA V.GHUGE, JJ.**

DATE : 15th FEBRUARY, 2017

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ORDER : [PER - RAVINDRA V.GHUGE, J.]

1. The petitioner - MSRTC is before this court seeking a review of the Judgment dated 08/08/2012 delivered by this court in Writ Petition No. 9701 of 2010.

2. We have heard the learned counsel for the respective sides at length on 03/02/2017 and today.

3. The grounds raised appear to be based on the apprehension of the petitioner with reference to para Nos. 9, 10 and 12 of the Judgment delivered by us on 08/08/2012. Para Nos. 9, 10 and 12 of the Judgment read as under :

" 9. The petitioners have produced a chart in paragraph 3 of the petition, which shows date of completion of 180 days. They have also disclosed the date on which permanency is conferred upon them. In view of clause 49 of 1956 settlement, petitioners are entitled to benefit of time scale after they complete 180 days of continuous service. Said benefit is, therefore, necessary and should be extended to them for the period between the two dates i.e. the date on which they completed 180 days and the date on which permanency is conferred upon them.

10. Hon. Apex Court has, in this respect, in the case of MSRTC Vs. Premlal, reported at 2007 (9) SCC 141.

(supra), made following observations :

" One of the demands was abolition of the daily-wage system. Under Clause 49 of 1956 the Corporation agreed to give to the workmen all the benefits available to a time scale worker. On the other had, under Clause 19 of 1985 Settlement, subject to a worker fulfilling the eligibility criteria, the Corporation agreed to absorb daily rated workmen who completed 180 days of service. Therefore, the High Court was right in holding that the above two Clauses operated in different fields and, therefore, there was no question of Clause 19 of 1985 Settlement superseding Clause 49 of 1956 Settlement. Under Clause 49 of 1956 Settlement, the Corporation agreed to provide benefits to employees working for 180 days continuously to be given all benefits available to time scale workers. In our view, there is a difference between the status of an employee on one hand and the benefits accruing to the workmen on the other hand.

12. In the result, petition is allowed. We direct respondents to release benefit of time scale to respective petitioners for the period between two dates, as disclosed in paragraph 3 of the petition. " "

4. Mr. Bagul submits that based on the above stated conclusions of this Court, the respondents have filed contempt proceedings alleging that the benefits for the period between the two dates have not been paid. He submits that all the benefits as per clause 49 and clause 19 have been paid.

5. After hearing both the learned counsel, it is quite evident that the Review Application is filed under an apprehension that this court expects the MSRTC to pay the amounts which are beyond Resolution No. 8856. Both the learned counsel have no dispute that clause 2 below (II-A) of Resolution No. 8856 dated 31/08/1978 is applicable to the respondents/employees who have completed 180 days in service and have been granted permanency with effect from the dates mentioned in para No. 3 of memo of the Writ Petition. Mr. Shirsath, learned counsel submits that after completion of 180 days and prior to being

granted permanency, these employees will be entitled only to the monetary benefits as shown under clause 2.

6. For the sake of clarity, clause (II-A) under Resolution No. 8856 dated 31/08/1978 is reproduced hereunder :

" (II-A) Thereafter the Corporation considered the two demands and decided as under :

(1) The present Clause No. 49 in the Settlement dated 28th May, 1956 shall stand cancelled.

(2) The persons in employment casually or on daily wages as on the date of this Resolution as also those who may thus be employed thereafter shall, if they have already completed or will complete an aggregate service of 180 days in any one financial year commencing from 1st April, 1973, be appointed temporarily in ephemeral vacancies in time scale of pay of the post in which they were appointed with effect from the date of this Resolution or from the date of their completion of 180 days aggregate service in a financial year, as the case may be, and

shall also be entitled from the relevant date to the following benefits admissible to regular employees on time scale of pay provided they satisfy all the conditions prescribed for their entitlement :

- (i) uniforms,*
- (ii) washing allowance,*
- (iii) medical facilities,*
- (iv) family free pass,*
- and (v) periodical increments.*

(3) The Corporation made it clear that the absorption of such persons who are granted the above benefits, in regular vacancies will be strictly according to their turn and will be subject to the normal rules and orders in this respect.

(The above decision being in modification of the Settlement would need the approval of Government)."

7. Considering the above, we find that our direction in para Nos. 9 and 12 is aimed at granting monetary benefits to the original petitioners not beyond what they are entitled to under the service conditions. In that view of the matter, there is no error apparent on the

face of the order.

8. Notwithstanding the fact that this Review Application is to be disposed of considering the above, we find that the following observations would assist the parties in bringing an end to this litigation :

[A] The respondents/original petitioners shall move a representation to the MSRTC within a period of four (4) weeks from today indicating any shortfall in the payment made to them after completing 180 days and prior to being granted permanency with reference to Clause 2 under (II-A) reproduced above.

[B] After receiving such representation, the MSRTC shall consider the claims and shall pass an appropriate order within six (6) weeks, indicating to the employees as to whether Clause 2 has been complied with. In the event of any shortfall, MSRTC shall make the residual payment.

[C] After the MSRTC decides the representation and communicates its decision to the employees, in the event, their grievance based on disputed questions is still

not redressed, they would be at liberty to resort to an appropriate adjudicatory remedy, as may be available in law, with regard to the disputed questions.

9. Considering the above directions, we are of the view that the disputed and contentious issues between the parties would be resolved. As such, the respective parties are at liberty to seek the disposal of the pending Contempt Petitions.

[RAVINDRA V.GHUGE]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE