IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2140 OF 2014

1. The Divisional Controller,
Maharashtra State Road Transport
Corporation,
Latur Division, Latur,

2. The Vice Chairman and Managing Director,
Maharashtra State Road Transport
Corporation,
Vahatuk Bhavan, Mumbai -- PETITIONERS

VERSUS

Shivaji Babarao Garad,
Age-44 years, Occu-Nil,
R/o Sindalwadi, Tq.Ausa,
District : Latur -- RESPONDENT

Mr.Rakesh Jain h/f Mr.D.S.Bagul, Advocate for the petitioners.
Mr.L.S.Mahajan, Advocate for respondent No.1.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 06/02/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. This petition brings up unusual and peculiar factors and circumstances

3. The respondent herein was appointed in 1989 as a 'Conductor'. One Mr.Murali Jadhav has lodged a complaint against the respondent contending that the respondent had prepared false and bogus documents and had acquired employment with the petitioners. Pursuant to the said complaint, the petitioners began investigation through its Security Department. On 30/05/2009, the respondent submitted a resignation letter and prayed that it should be accepted forthwith w.e.f. 01/06/2009. There is no dispute that the petitioners accepted the resignation w.e.f. 18/06/2009 and thereafter the name of the respondent was removed from its muster rolls.

4. After the petitioners realized that the respondent had resigned only to extricate himself out of the investigation that had commenced, it passed an order on 08/01/2010 staying its decision dated 18/06/2009 of acceptance of resignation. The respondent was, however, not reinstated in service. He was asked to work as a "Pravasi Mitra" which is not a substantive post with the Corporation. A "Pravasi Mitra" is a free lancer who is given a booth in a particular bus stand and he is supposed to assist the passengers in their travel and encourage them to board the MSRTC buses. Neither is it a Post nor is any pay scale prescribed. The respondent began assisting the Corporation as a "Pravasi Mitra".

5. On 09/02/2010, the respondent was suspended pending disciplinary proceedings. On 31/01/2011, a charge sheet-cum-show cause notice was issued which prompted the respondent to approach the Industrial Court on 06/04/2011 by filing Complaint (ULP) No.64/2011. By the impugned judgment dated 09/04/2012, the Industrial Court allowed the complaint and directed the MSRTC to pay the retiral benefits of the respondent with 6% interest w.e.f. 06/04/2011.

6. Despite the strenuous submissions of Mr.Bagul, learned Advocate for the petitioners, considering the sequence of events, I am not inclined to accept his submissions.

7. It could be possible that the respondent has resigned in order to save himself from an unceremonious removal from service. After the passage of about 18 days, his resignation was accepted by the Corporation and he was relieved from service. 6 months down the line, the decision of acceptance of resignation was stayed which cannot be said to be permissible in law. On 09/02/2010, the respondent was suspended pending disciplinary proceedings when he was neither reinstated in service nor he was drawing wages. On

31/01/2011, a charge sheet-cum-show cause notice is issued, when there was no employer-employee relationship between the petitioners and the respondent after 18/06/2009. Considering this position, I find that the petitioners, without restoring employer-employee relationship, could not have initiated the disciplinary proceedings against the respondent.

8. In the light of the above, this petition stands dismissed. Rule is discharged.

9. It is clarified that since the respondent has withdrawn the amount of Rs.50,000/- deposited in this Court by the petitioners alongwith interest, the petitioners would be at liberty to adjust the said amount with the amount to be paid to the respondent towards retiral benefits as directed by the Industrial Court. All such amounts, which are not retiral benefits and have been paid to the respondent after 18/06/2009 as like the amount withdrawn by him, shall be adjusted against his retiral dues.

(RAVINDRA V. GHUGE, J.)