

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.879 OF 2004

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr.S.D.Paithane for the petitioner

Mr.P.B.Kadam i/b Mr.G.S.Hegde for the respondent no.1

CORAM : K. K. TATED, J.
DATE : FEBRUARY 9, 2017

P.C.:

1 Not on board. At the request of Advocate for the petitioner, matter is taken on board for speaking to minutes of order dated 19.01.2017.

2 On page 4 paragraph 8 line 5 after the word "before", the words, "termination of tenure" be added and the words "acceptance of the resignation" be deleted.

3 Thereafter on page 4 paragraph 8 line 11 after the word "before", the words, "termination of his tenure" be added and the words "its final acceptance" be deleted.

4 Rest of the order remains as it is.

5 The original corrected order dated 19.01.2017 reads thus:

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

WRIT PETITION NO. 879 OF 2004

Shri. Maruti Narayan Satpute	... Petitioner
V/s.	
Divisional Controller, Maharashtra State Road Transport Corporation, Division Solapur	... Respondent

Mr. S.D. Paithane for the Petitioner.
Mr. G.S. Hegade for the Respondent.

**CORAM : K. K. TATED, J.
DATED : 19/01/2017**

PC.:

1. Heard learned Counsel for the parties.
2. By this Petition under Article 227 of Constitution of India, the Petitioner is challenging the Judgment dated 13.09.2000 passed by the Labour Court, Solapur in Complaint (ULP) No. 8 of 2000 dismissing the Petitioner's complaint under Section 28 Schedule IV Item No.1(a),(b),(d),(f),(g) of M.R.T.U. & P.U.L.P Act, 1971 and Judgment dated 01.07.2003 passed by the Industrial Court, Solapur confirming the order passed by the Labour Court.
3. Since, 08.05.1970, the Petitioner was serving as a Conductor with Respondent/Maharashtra State Road Transport Corporation, Solapur. The Petitioner was promoted to the post of Assistant Traffic Inspector and at the time of termination of his services, he was working as an Assistant Traffic Inspector in Karmala Depot in Solapur. During his service period, the Petitioner submitted his resignation on 30.08.1999 to the Respondent and same was

accepted by Divisional Controller as on 01.09.1999. In the meanwhile, the Petitioner issued letter dated 31.08.1999 for withdrawal of his resignation. The said withdrawal letter was issued by the Petitioner to the Depot Manager. Same was received by the Karmala, Depot Manager on 01.09.1999. The Depot Manager did not have any authority to take any action on the letter of withdrawal of resignation. The Petitioner instead of submitting his withdrawal letter to the Divisional Controller, he submitted it to the Depot Manager. As the Petitioner resignation was accepted by the Respondent before the reaching of the Petitioner's withdrawal letter, the Respondent informed the Petitioner that it is not possible for them to allow him to withdraw his resignation letter because same was accepted on 01.09.1999 and acted upon.

4. Being aggrieved by the decision communicated by the Respondent to the Petitioner, the Petitioner filed Complaint (ULP) No. 8 of 2000 in the Labour Court at Solapur under Item-1 (a),(b), (d), (f) & (g) of Schedule IV of MRTU and PULP Act, 1971. Considering the pleading on record, the Labour Court framed following issues for its determination.

“ISSUES

- (1) *Does the Complainant prove that his tendering of resignation on 30.08.1999 was the result of any pressure, coercion, inducement etc. on the part of Respondent and therefore the resignation tendered on 30.08.1999 was not voluntary resignation?*
- (2) *Does the Complainant further prove that the Respondents have committed unfair labour practice by accepting his resignation on 01.09.1999 in exercise of rights in the employer not in good faith but in colourable exercise in the rights of the employer, to*

accept the resignation before the resignation is become effective

- (3) Does he further prove that acceptance of resignation on 01.09.1999 allowing to struck off his name from muster roll w.e.f. 01.10.1999 amounts to termination by way of unfair labour practice and the complainant is therefore entitled to the declaration accordingly?*
- (4) Does the respondent prove that by accepting the resignation w.e.f. 01.09.1999 and ordering to struck off the name of the complainant w.e.f. 01.10.1999 does not amount to indulgence in an unfair labour practice and the complainant has failed to make out any case of unfair labour practice, hence the complainant does not entitled to any relief as sought for?*
- (5) Whether the complainant is entitled to the relief as prayed?*
- (6) If yes, what relief and order?"*

- 5. Considering the submissions of both the parties, the Labour Court dismissed the petitioner's Complaint.
- 6. Being aggrieved by the order passed by the Labour Court, the Petitioner preferred Revision Application (ULP) No. 148 of 2000 before the Industrial Court, Solapur. The industrial Court also held that the Petitioner failed to make out any case of unfair labour practices. The Industrial Court also held that the Petitioner submitted his application for withdrawal of his resignation after the same was accepted and acted upon by the Respondent. Being aggrieved by the said findings, the Petitioner preferred the present Writ Petition.
- 7. The learned Counsel Mr. S.D. Paithane appearing on behalf of the Petitioner submits that judgments passed by the Labour Court as

well as the Industrial Court were against the justice, equity and good conscience and are liable to be set aside. He submits that inspite of his withdrawal of resignation, the Respondent terminated Petitioner's services. He submits that both the Courts below failed to consider the fact that before the acceptance of Petitioner's resignation, Petitioner intimated to the Respondent for withdrawal of his resignation and that it was well within time. He submits that this fact was not considered by both the Courts below.

8. The learned Counsel for the Petitioner submits that the learned Judge, Labour Court, Solapur erred in holding that Petitioner withdrew his resignation after the Respondent accepted the same. He submits that both the Courts below failed to consider the fact that before termination of tenure the employee has the right to withdraw his resignation. In support of his contention, he relies on the Judgment of the Apex Court in the matter of ***Srikantha S. M. V/s. Bharath Earth Movers Ltd. reported in (2005) 8 Supreme Court Cases 314.*** He submits that Apex Court in this matter held that the resignation can be withdrawn at any point of time before termination of his tenure. He relies on paragraph 27 and 28, which reads thus.

“27. In affidavit in reply filed by the Company, it was stated that resignation of the appellant was accepted immediately and he was to be relieved on January 04, 1993. It was because of the request of the appellant that he was continued upto January 15, 1993. In the affidavit in rejoinder, the appellant had stated that he reported for duty on January 15, 1993 and also worked on that day. At about 12.00 noon, a letter was issued to him stating therein that he would be relieved at the close of the day. A cheque of Rs. 13,511/- was paid to him at 17.30 hrs. The appellant had asserted that he had not received terminal

benefits such as gratuity, provident fund, etc. It is thus proved that upto January 15, 1993, the appellant remained in service. If it is so, in our opinion, as per settled law, the appellant could have withdrawn his resignation before that date. It is an admitted fact that a letter of withdrawal of resignation was submitted by the appellant on January 08, 1993. It was, therefore, incumbent on the Company to give effect to the said letter. By not doing so, the Company has acted contrary to the law and against the decisions of this Court and hence, the action of the Company deserves to be quashed and set aside. The High Court in our opinion, was in error in not granting relief to the appellant. Accordingly, the action of the Company as upheld by the High Court is hereby set aside.

28. *The next question is, as to what benefits the appellant is entitled to. As he withdrew the resignation and yet he was not allowed to work, he is entitled to all consequential benefits. The learned Counsel for the respondent-Company no doubt contended that after January 15, 1993, the appellant had not actually worked and therefore, even if this Court holds that the action of the respondent-Company was not in consonance with law, at the most the appellant might be entitled to other benefits except the salary which should have been paid to him. According to the counsel the principle of "no work, no pay" would apply and when the appellant has admittedly not worked, he cannot claim salary for the said period."*
9. On the basis of these submissions and the law declared by the Apex Court in the matter of Srikantha S. M. (supra), the learned Counsel for the Petitioner submits that this Hon'ble Court be pleased to set aside the Judgment passed by both the Courts below i.e. Labour Court dated 13.09.2000 and the Industrial Court dated 01.07.2003 directing the Petitioner to reinstate in services with back wages. He submits that at the time of filing the petition, the Petitioner was 54 years old and at present, he may be more than 65 years old. Hence, there is no question of reinstatement. But, the Respondent may be directed to pay monetary compensation i.e. full back wages and other benefits to

the Petitioner. He submits that if the present petition is not allowed, irreparable loss and injury will be caused to the Petitioner.

10. On the other hand, the learned Counsel Mr. G.S. Hegade appearing on behalf of Respondent vehemently opposed the present Writ Petition. He submits that there is concurrent findings of facts recorded by both the Courts below. He submits that the Petitioner has not made out any case to interfere under Article 227 of the Constitution of India in respect of concurrent findings of facts recorded by the Courts below. He submits that in the present proceeding, the Petitioner on his own submitted his resignation dated 30.08.1999. He submits that the said resignation was accepted by Respondent after following due process of law on 01.09.1999. He submits that though the Petitioner's case was that he filed application for withdrawal of the said resignation on 31.08.1999, the same was not received by the concerned Officer till acceptance. He submits that on inquiry, they learnt that the Petitioner submitted his letter dated 31.08.1999 for withdrawal of his resignation to the Depot Manager. He submits that the Competent Authority to accept the resignation letter was the Divisional Controller and not the Depot Manager. He submits that before receipt of Petitioner's withdrawal letter, the Authority accepted the resignation letter and relieved him from service. Hence, there is no question of entertaining the present Writ Petition challenging the concurrent findings of facts recorded by the Courts below. He submits that in any case, the Petitioner has already crossed the superannuation age. Therefore, there is no question of

entertaining the present Writ Petition.

11. I heard both the sides at length. It is to be noted that in the present proceeding, the issue involved is that “whether the Respondent accepted the Petitioner's resignation dated 30.08.1999 before the same was withdrawn by the Petitioner”.
12. Both the courts below recorded that because of Petitioner's family problem, he tendered his resignation dated 30.08.1999. Though, the Petitioner in his complaint made allegations against the Respondent for bringing pressure for tendering the resignation, the same was not proved by the Petitioner during the course of Trial. Petitioner on his own submitted his resignation dated 30.08.1999 and same was accepted after following due process of law by the Respondent. Letter written by the Petitioner dated 31.08.1999 for withdrawal of his resignation, was addressed to the incorrect authority i.e. Depot Manager instead of Divisional Controller and same was reached after accepting the resignation.
13. Though the Petitioner raised several grounds in his complaint about the bringing pressure on him by the Respondent for resignation, he failed and neglected to bring on record cogent evidence against the Respondent Authority. Both the courts concurrently held that the Petitioner failed to satisfy by cogent evidence that the resignation was withdrawn by him before it was accepted and acted upon by the Respondent. The Authority cited by the Petitioner in the matter of Srikantha S. M. (supra) is not applicable to the facts and circumstances of the present case. In that case, the resignation was not accepted by the Authority

after following due process of law. Hence, the Supreme Court held that employee can withdraw the same. That is not case in the present case. The Petitioner on his own submitted his resignation dated 30.08.1999 and same was accepted by the Respondent after following due process of law. Hence, I do not find any substance in the present Writ Petition.

14. Hence, following order is passed:
 - a. Rule discharged.
 - b. Writ Petition stands dismissed.
 - c. No order as to costs.

(K.K.TATED, J.)