

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

WRIT PETITION NO. 1629 OF 2004

Maharashtra State Road Transport
Corporation, Ahmednagar.
Through its Divisional Controller,
Ahmednagar Division, Ahmednagar,
Kothla Road, Sarjepura, Ahmednagar.

...PETITIONER

-VERSUS-

Laxman Rambhau Lagad,
Age : Major, Occupation : Service,
R/o Ghogargaon, Post.Mandavgan,
Taluka Shrigonda, District Ahmednagar.

...RESPONDENT

**WITH
WRIT PETITION NO.5824 OF 2004**

Laxman Rambhau Lagad,
Age : 50 years, Occupation : Service,
R/o Ghogargaon, Post.Mandavgan,
Taluka Shrigonda, District Ahmednagar.

...PETITIONER

-VERSUS-

Maharashtra State Road Transport
Corporation, Ahmednagar.
Through its Divisional Controller,
Ahmednagar Division, Ahmednagar,
Kothla Road, Sarjepura, Ahmednagar.

...RESPONDENT

...

Advocate for the MSRTC : Shri S.T. Shelke.
Advocate for the Workman/ Employee : Shri V.S.Bedre.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd March, 2018

Oral Judgment :

1 In both these petitions, the Maharashtra State Road Transport Corporation (MSRTC) and the Workman (Laxman Rambhau Lagad) are the litigating parties.

2 The MSRTC is aggrieved by the judgment of the Labour Court dated 16.02.2002 delivered in Complaint (ULP) No.29/1997 and the judgment dated 06.01.2003 delivered by the Industrial Court in Revision (ULP) No.32/2002. The MSRTC is aggrieved because the Workman has been granted reinstatement with continuity from 17.08.1981 and the back wages are granted from 03.03.1997 till the reinstatement dated 09.03.1999.

3 Subsequently, the Workman was terminated from service on 05.10.2004. It is stated that he was again dismissed from service on 26.04.2007. It is, however, informed that the Workman has been granted his retiral benefits inclusive of Rs.43,630/- towards gratuity and Rs.80,263/- towards provident fund accumulations.

4 The Workman has preferred Writ Petition No.5824/2004 for claiming full back wages from the date of his termination till his reinstatement.

5 Insofar as the claim of the Workman for back wages from 18.08.1981 till 02.03.1997 is concerned, it cannot be ignored that the Workman was arrested in a case of committing murder and was subjected to trial in Criminal Case No.13/1980. He was convicted and sentenced to life imprisonment. He was in jail from the date of his arrest. His conviction was set aside by this Court in appeal on 28.09.1995 and obviously, he was out of employment on account of his own conduct. No back wages can be granted for the said period as he was arrested and was in jail.

6 In these circumstances, Writ Petition No.5824/2004 filed by the Workman stands dismissed and Rule is discharged.

7 Considering the fact situation as above, the issue that remains is whether, the Workman would be entitled for any back wages as have been granted by the Industrial Court for the period 03.03.1997 till his reinstatement on 09.03.1999, which is a period of about two years.

8 It is well settled in the case of *J.K. Synthetics Limited vs. K.P.Agrawal*, **2007(2) SCC 433**, that the least that is expected of the workman praying for back wages is that he should step into the witness box and he should aver that he was not in employment after his termination, had attempted to acquire an alternate employment and despite his efforts, he was not successful in getting any employment. Thus, an employee is required to prove that he has made every attempt to secure an alternate employment post termination. It is equally settled that the

Management has to prove that the terminated employee is in gainful employment after he discharges the initial burden cast on him.

9 In the instant case, the Industrial Court has granted full back wages for the period 03.03.1997 till 09.03.1999. From the judgment of the Labour Court, it does not appear that the workman has led any evidence to state that he attempted to obtain an alternate employment and despite his best efforts, he has failed to secure such an employment. At the same time, it also cannot be ignored that the workman was entitled to reinstatement after his acquittal by the Court on 28.09.1995. In my view, to balance the equities, it would be proper to grant 50% back wages to the workman for the period 03.03.1997 till his actual reinstatement on 09.03.1999.

10 As such, Writ Petition No.1629/2004 is, therefore, partly allowed. Clause (3) of the operative part of the impugned judgment of the Industrial Court is modified and along with continuity of service from 17.08.1981, the workman would be entitled to 50% back wages for the period 03.03.1997 till 09.03.1999 with simple interest at the rate of 8% per annum. Rule is, therefore, made partly absolute in this petition.