

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

**WRIT PETITION NO. 5349 OF 2001
WITH
WRIT PETITION NO.1777 OF 2002**

The Divisional Controller,
Maharashtra State Road Transport
Corporation, Jalgaon Division,
Jalgaon.

..PETITIONER
(Orig. Respondent)

VERSUS

Maharu Onkar Naik,
resident of Talegaon, Post Shegaon,
Taluka Jamner, District Jalgaon.

..RESPONDENT
(Orig. Complainant)

...

Advocate for the Petitioner : Shri M. K. Goyanka
Advocate for the Respondent : Shri V. Y. Patil

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 29th NOVEMBER, 2018.

...

PER COURT :

1. These matters were heard on 03/11/2018 and the following order was passed :-

"1 The respondent / Bus Conductor is before this Court in these two matters. Learned counsel for the MSRTC / petitioner in both these petitions submits that this respondent has faced

several departmental enquiries with regard to allegations of misconduct. His past service record is highly blemished with 22 punishments. Due to the orders of the Court, the respondent was reinstated and he continued in employment by virtue of the Court's intervention. He has now superannuated on 31.5.2018. All retiral benefits, except gratuity have been paid to him. Gratuity has been withheld owing to the proved mis conducts and the punishment of dismissal for misappropriation.

2 It is further submitted that if the respondent waives the gratuity amount, the MSRTC may consider giving a quietus to this matter. Learned counsel for the petitioner prays for time to take instructions so as to be able to make a statement.

3 In view of the above, at the request of learned counsel for the respondent, S.O. to 29.11.2018 for passing orders".

2. Today, during the course of the hearing in this matter, the learned Advocate for the MSRTC produced a default card/summary of the defaults committed by the respondent during his service tenure in between 1991 to 2008. The same

is taken on record and marked as 'X' for identification. It is further pointed out that the majority of the punishments awarded to the respondent are with reference to the acts of misappropriation, wherein it was noticed that he had allowed passengers to travel ticketless or had sold used tickets or received the ticket fare and did not issue tickets etc.

3. The learned Advocate for the respondent submits that the respondent desires to submit his written request to this Court. He has prepared the same in his mother tongue. Copies of the few awards and felicitation letters (Gauravpatra) are also placed on record .

4. The said compilation (seven pages) is taken on record and is marked as 'Y' for identification.

5. I find that in similar circumstances as like those appearing in these two matters in hand, the Honourable Apex Court has delivered orders in the matter of ***Jorsingh Govind Vanjari Vs. Divisional Controller, Maharashtra State Road Transport Corporation, 2017 (3) Mh.L.J. 497*** and in the

matter of *Ku. Pushpa Ramdas Zatake Vs. The Divisional Controller, Maharashtra State Road Transport Corporation, decided on 09/07/2018 in Petition (s) for Special Leave to Appeal © No (s). 22618/2017.*

6. In the *Jorsingh* case (supra), issue was of depriving the appellant of the gratuity amount. The Honourable Apex Court concluded that unless the charge is proved and the offence amounts to moral turpitude, gratuity cannot be forfeited. In *Ku. Pushpa* (supra), this Court had remanded the matter to the Labour Court keeping in view that the charges levelled upon *Ku. Pushpa* were grave and serious, the Labour Court had failed to follow the procedure in conducting the trial in ULP complaint and she had been reinstated in service under interlocutory orders. The Honourable Apex Court had concluded that since she has been working under orders of the Court for eighteen years, it would be appropriate, just and proper to give a "*quietus*" to the case. I had kept these views of the Honourable Court in focus while passing the order on 03/11/2018.

7. Considering the representation of the respondent at Exhibit 'Y' , it appears to be a fact and the MSRTC does not controvert that the respondent was reinstated in employment due to interlocutory orders of the Courts below. He had continued in employment under the interim orders of this Court. He was allowed to appear for departmental examination as a consequence thereof. He passed those departmental examinations and was initially promoted as a Traffic Controller and then as a Assistant Traffic Inspector. He retired from service while being in service on 31/05/2018. He was presented with few awards and appreciation Certificate (Gauravpatra) during the pendency of this petitions. He was also given a Gauravpatra for his 30 years of association with regard to the divisional workers welfare committee.

8. In this backdrop, he has made a request which is in the form of statement 'Y'. Since he was reinstated by the orders and judgments of the Courts below, he continued in employment and was granted service benefits under the orders of this Court. Now he is willing to give up the gratuity amount for the period during which he was dismissed from service. He

also makes a statement that he had given up the back wages for the period of his dismissal. He, therefore, prays that both these petitions may be disposed off by considering the statement made by him in the document 'Y'.

9. The learned Advocates for the MSRTC have strongly resisted the request/undertaking submitted by the respondent on the ground that as corruption is proved, this Court has to take a tough stand. If the lower court had failed in following the due procedure laid down by law while conducting the trial of the cases against the said respondent, this Court will have to set aside the said impugned judgment and unless appropriate procedure is followed, this Court would not be in a position to conclude that the enquiry is vitiated or that the charges are not proved against the Respondent. It is, therefore, prayed that notwithstanding the factors set out by the respondent in his request letter 'Y' , this is a fit case for setting aside the impugned judgment and for remanding the matter for afresh trial to the Labour Court.

10. The learned Advocate for the respondent workmen

submits that similar arguments were canvassed by the MSRTC in the matter of the *Divisional Controller, MSRTC Vs. Ku. Pushpa Ramdas Zatake* decided on 06/07/2017 by this Court in WP No. 2129/2010. By order dated 09/07/2018 the Honourable Apex Court had concluded that as *Ku. Pushpa*, is in employment, a *quietus* needs to be granted to the case. He, therefore, submits that though this Court had accepted the submissions of MSRTC in *Ku. Pushpa (supra)*, the Honourable Apex Court has taken a contrary view.

11. In view of the above, I find it appropriate to accept the request/undertaking dated 03/11/2018 filed by the respondent which is marked as Exhibit 'Y'. The respondent is personally present in the Court. He himself has handed over his request letter and the documents at Exhibit 'Y' and he prays that the gratuity amount for the period of dismissal be forfeited.

12. In view of the above, these two petitions are disposed off with the intention of giving a *quietus* to the case. The MSRTC would be at liberty to deprive the respondent, in view of his

undertaking, the gratuity amount for the period of his dismissal and to calculate his gratuity for the rest of the period of service. Needless to state, the said gratuity amount can be paid by the MSRTC within 3 months from today.

(RAVINDRA V. GHUGE, J.)

shp/-