

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.266 OF 2005

The Divisional Controller,
Maharashtra State Road Transport
Corporation, Parbhani Division,
Jalna

-- PETITIONER

VERSUS

Khandu Kisanrao Chidre,
Age-45 years, Occu-Service,
R/o Gandhi Chowk,
Jalna, Dist. Jalna

-- RESPONDENT

Mr.D.S.Bagul, Advocate for the petitioner.
Mr.P.L.Shahane, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)
DATE : 07/06/2018

ORAL JUDGMENT :

1. The petitioner/Corporation has challenged the judgment of the Industrial Court dated 25/08/2004 by which Complaint (ULP) No.80/2000 filed by the respondent/workman was allowed and his order of reappointment as a fresh employee on 07/08/2000 was set aside by relegating him to the Second Appellate Authority for deciding the quantum of punishment.

2. This Court has admitted the petition on 20/01/2005 and no

interim relief was granted.

3. I have considered the strenuous submissions of the learned Advocate for the Corporation and on behalf of the original complainant. Issue is as regards the Appellate Authority of the Corporation modifying a punishment of dismissal from service imposed on an employee and granting fresh appointment. The respondent was awarded the punishment of dismissal from service w.e.f. 17/04/1999. He had approached the departmental appellate authority. The Second Appellate Authority, while maintaining the punishment of dismissal from service, granted fresh appointment to the respondent / employee.

4. This issue is no longer *res-integra* in view of the judgment delivered by this Court in Anil Vaijnath Arbad Vs. The Divisional Traffic Superintendent, MSRTC and others [2016(3) BCR 861]. It is concluded that a fresh appointment is possible only if the worker is dismissed from service and without such dismissal, there cannot be issuance of a new appointment order. It is also settled, in view of the judgment of the Hon'ble Apex Court in the matter of State of Punjab Vs. Krishan Niwas [AIR 1997 SC 2349] and Subhash Vs. Divisional Controller, MSRTC [AIR 2010 SC 2484], that after accepting fresh

employment, an employee cannot challenge the said order and claim continued employment.

5. However, in this case, the respondent continued as a fresh appointee pursuant to the judgment of the Industrial Court and has attained the age of superannuation on 30/06/2013. Mr.Shahane submits that he has also been paid all retiral benefits pursuant to his retirement after his fresh appointment.

6. In view of the above, I do not find that any issue survives for the adjudication of this Court in this matter. The writ petition is, therefore, disposed of. Rule is discharged.

(Ravindra V.Ghuge, J.)