

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

Writ Petition No. 121 of 2013

* Ashok Pandurang Suryawanshi,
Age 57 years,
Occupation : Service,
R/o. Sahjewan Colony,
Plot No.51, Govt. Milk Dairy,
Dhule. **.. Petitioner.**

Versus

- 1) The State of Maharashtra
Through its Principal Secretary
Department of Road Transport.
Maharashtra State, Mumbai.
- 2) Maharashtra State Road
Transport Corporation,
Through its Managing Director,
Nashik.
- 3) The Divisional Controller,
M.S.R.T.C., Dhule Division,
Dhule. **.. Respondents.**

Mrs. S.T. Kazi, Advocate, for petitioner.

Shri. P.G. Borade, Assistant Government Pleader, for
respondent No.1.

Shri. U.B. Shriram, Advocate, holding for Shri. D.S. Bagul,
Advocate, for respondent Nos.2 and 3.

**Coram: T.V. NALAWADE &
S.K. KOTWAL, JJ.**

Date: 8 January 2018

ORAL JUDGMENT : (Per T.V. Nalawade, J.):

1) Rule, rule made returnable forthwith. Heard both the sides by consent for final disposal.

2) The petition is filed to challenge the order dated 4-3-2011 issued by the respondent No.3, employer of the petitioner, of recovery of rent in respect of the residential quarter allotted to the petitioner. The period mentioned is from December 2009 to January 2011. The employer wanted to recover the rent at the rate of Rs.1730/- per month in respect of this period.

3) The submissions made and the record show that the petitioner was working as driver on the bus of the respondent. While driving the bus on 6-11-2008 he met with accident and due to that he became incapable to drive the bus. He was terminated from the post of driver but subsequently by using the provisions of scheme made in favour of such employees he was given appointment as sweeper in the year 2009 but he was given actual posting in the year 2011. He came to be transferred to different

place like Shahada in the month of February 2011. Though he was given actual posting in the year 2011 he continued to occupy that quarter. The recovery is ordered for the period from December 2009 to January 2011.

4) It can be said that the Department ought to have taken decision in respect of the entitlement of the petitioner to get other post as he was not able to work as driver due to injury sustained by him in the accident. Though he was terminated for some time, he was reinstated. It is up to the Department to take decision promptly for giving different post on which such employee can work. If the matter remained pending with the employer and the employee continues to occupy the residential quarters the rent at the aforesaid rate cannot be recovered from the employee. Further, the submission made and the record show that the period between the date of termination and the date of his appointment on the post of Sweeper was treated as the period of leave without pay and so he was in service. Due to this also this Court holds that the rent at the aforesaid rate cannot be recovered from the petitioner. This court is not touching

the remaining period and if after his transfer to Shahada he had continued to occupy the residential quarters and he had not vacated the quarters within the time fixed as per rules. The Department can take separate action for that.

5) In view of the circumstances, the petition is allowed. The order under challenge is hereby set aside. Rule is made absolute in the aforesaid terms.

Sd/-
(S.K. KOTWAL, J.)

Sd/-
(T.V. NALAWADE, J.)

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