

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3487 OF 2003

Umeshchandra s/o Ambadas Morkar (died),
Through LR's

1-A) Vidyabai w/o Umeshchandra Morakar,
Age-52 years, Occu-Household,

1-B) Parag s/o Umeshchandra Morakar,
Age-32 years, Occu-Nil,

1-C) Shekhar s/o Umeshchandra Morakar,
Age-30 years, Occu-Nil,

1-D) Sunil s/o Umeshchandra Morakar,
Age-28 years, Occu-Education,
All R/o 40-A, Joshi Colony,
Zilla Peth, Dist. Jalgaon

– PETITIONERS

VERSUS

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

2. Depo Manager,
Maharashtra State Road
Transport Corporation,
Bhusaval Depo, Dist.Jalgaon

– RESPONDENTS

Mr.V.Y.Patil, Advocate for the petitioner.
Mr.M.K.Goyanka, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 25/07/2019

ORAL JUDGMENT :

1. The petitioner is aggrieved by the judgment of the Labour Court dated 14/03/1997 by which, though his Complaint (ULP) No.153/1994 was disposed off and he was granted appointment as a fresh employee, reinstatement with continuity and full back wages has not been granted. The petitioner is also aggrieved by the judgment of the Industrial Court dated 23/10/2002 vide which his Revision (ULP) No.345/1999 (Old No.149/1997) has been dismissed.

2. I have considered the strenuous submissions of the learned Advocates and have gone through the petition paper book.

3. The petitioner joined the respondent MSRTC as a "Clerk" in 1980. He was dismissed from service on account of a proved misconduct on 28/11/1994. He preferred his ULP (Complaint) before the Labour Court. The enquiry and the findings of the Enquiry Officer were sustained. Since the charge of mis-appropriation stood proved against the petitioner in view of the findings being sustained, the Labour Court disposed off the complaint and refused reinstatement in service. Surprisingly, the Labour Court (Shri K.W.Thakre) directed the Corporation to appoint the petitioner as a

fresh employee and grant him continuity of service as if he was in employment from the date of termination till the complaint was decided.

4. The petitioner challenged the judgment of the Labour Court before the Industrial Court. He prayed for reinstatement with full back wages.

5. It is quite shocking that though such an unsustainable order was passed by the Labour Court, the Industrial Court which could have exercised its jurisdiction u/s 44 under the MRTU and PULP Act, which are its revisional powers, sustained the judgment of the Labour Court. The MSRTC did not challenge the Labour Court judgment and the Industrial Court therefore dismissed the revision petition filed by the petitioner/employee.

6. The learned Advocate Mr.Patil on behalf of the petitioner/workman submits that since the Management has not challenged the judgment of the Labour Court and of the Industrial Court, he cannot be deprived of the continuity granted from 11/08/1995. He, however, prays for continuity right from the date of his joining duties and convert his fresh employment into continuous

employment.

7. This Court has delivered a judgment on 21/01/2016 in the matter of Anil Vajinath Arbad Vs. The Divisional Traffic Superintendent, MSRTC, Parbhani [2016 (3) BCR 860]. It was concluded by this Court that once the Labour Court does not interfere with the order of the dismissal, notwithstanding that fresh employment is granted, the dis-continuance in employment is *fait accompli*. When the Labour Court approves the dismissal, the earlier service period of the employee stands disconnected from his fresh employment.

8. The Hon'ble Apex Court has delivered judgments in the matters of Subhash Vs. The Divisional Controller, MSRTC [AIR 2010 SC 2484] and in State of Punjab Vs. Krishan Niwas [AIR 1997 SC 2349] that once fresh employment is accepted by an employee, his earlier service period stands wiped out and he would neither be entitled to any continuity of service, nor challenge his fresh employment.

9. in view of the above, this petition is devoid of merit and therefore stands dismissed. Rule is discharged.

10. The learned Advocate for the petitioner/employee submits that he has tendered an additional affidavit today and has stated that as gratuity has not been paid, he would be entitled for such gratuity from the date of his fresh employment and the MSRTC should promptly pay him the said amount. In view of the above, it is expected that the MSRTC shall forthwith pay the gratuity amount to the petitioner within 8 (eight) weeks from today.

(Ravindra V.Ghuge, J.)