

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION (CIVIL) NO.24 OF 2019
IN WP/5348/2015

DEVIDAS DUDHA JADHAV
VERSUS
THE DIVISIONAL CONTROLLER MSRTC, JALGAON

WITH

REVIEW APPLICATION (CIVIL) NO.25 OF 2019
IN WP/11863/2014

ASHOK PANDITRAO MAHAJAN
VERSUS
THE DIVISIONAL CONTROLLER MSRTC, JALGAON

WITH

REVIEW APPLICATION (CIVIL) NO.26 OF 2019
IN WP/3230/2015

VASUDEO VITTHAL MAHAJAN
VERSUS
THE DIVISIONAL CONTROLLER JALGAON AND ANOTHER

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Advocate for Applicant : Shri Patil Vijay Y.
Advocate for Respondents : Shri Goyanka M.K.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 20, 2019

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PER COURT :-

1. On 4.2.2019, I had passed the following order, recording the statement of the applicants:-

"1 *The learned Advocate for the Review Applicants submits, on instructions, that though the Labour Court has commenced the hearing in the ULP complaints in the light of the law laid down by the Honourable Supreme Court and in view of the judgment of this Court, these Applicants are making a statement that they would not claim back wages for the period of their dismissal till their reinstatement and would also not claim gratuity for that period. They are willing to accept the punishment awarded by the first Appellate Authority of the MSRTC.*

2 *The learned Advocate for the Respondent/ MSRTC submits that he has no instructions and will have to consult the MSRTC in the light of the statement made by the Applicants.*

3 *Stand over to 20.02.2019 for "passing orders". "*

2. Considering the above, I have heard the learned Advocates on the point of delay. Since the same is not inordinate, the applications praying for condonation of delay are allowed. As Devidas and Vasudeo have retired from service in June 2015 and February 2014, they shall deposit costs of Rs.2,000/- each and by the consent of the respondent, the said amount shall be donated for the treatment of poor patients. Since Ashok is in employment, he would deposit an amount of Rs.4,000/-.

3. All these three persons shall deposit the said amounts with the

Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand Draft be drawn in the name of **“Dean, Government Medical College and Hospital Dengi Samiti, Aurangabad”**), on/or before 8.3.2019, failing which, this order shall stand recalled.

4. The review applications are registered and taken up for hearing, by the consent of the parties.

5. I have heard the learned Advocates for the respective sides on the review applications.

6. In these three review petitions, each of them was initially awarded the punishment of dismissal from service on account of the proved misconduct of misappropriation. Their first appeals were considered by the first appellate authority of the MSRTC / respondent, which passed an order on 8.6.2009, granting reinstatement in service by setting aside the order of dismissal and substituting the said punishment with the punishment of stoppage of three increments permanently. Within one year of the said order, the reviewing authority exercised its power to review and after issuing a show cause notice on 27.11.2009, it proposed the punishment of

dismissal from service.

7. All these petitioners promptly approached this Court in filing Writ Petition. They were protected by an order of this Court and permitted to approach the Labour Court. Equipped with the protection, they approached the Labour Court and preferred three ULP Complaints and the protection was continued. Subsequently, their complaints were allowed and the ULP Revision petitions filed by the respondent / MSRTC were dismissed by the Industrial Court.

8. The MSRTC approached this Court by preferring three writ petitions. By judgment dated 19.6.2018, this Court concluded that the reviewing authority of the MSRTC had the power and the jurisdiction to review the punishment awarded by the first appellate authority, by relying upon the judgment of this Court in MSRTC Vs. Laxman Kacharu Vairal [2016 (3) Mah.L.J. 222].

9. Since the Labour Court had completely given a go-bye to the procedure that was mandatorily required to be complied with while dealing with the cases of disciplinary enquiry and punishment, this Court allowed the writ petitions and by framing the two decisive issues, remitted the matters to the Labour Court. During this journey of litigation, Devidas retired on 30.6.2015 and Vasudeo retired on

28.2.2014. Ashok would be retiring on 31.7.2023.

10. In similar circumstances, the Honourable Apex Court dealt with Civil Appeal No.6171 of 2018 - Kumari Pusha Ramdas Zatake Vs. Divisional Controller, MSRTC. By an order dated 9.7.2018, the Honourable Apex Court set aside a similar judgment of this Court and observed in the order as under:-

" *Leave granted.*

Having heard learned counsel for the parties and having perused the record of the case, we are inclined to set aside that part of the order which gives direction to the labour court to decide the matter afresh on merits.

In our opinion, such direction to remand the case to the labour court in the facts of this case was not called for.

It is not in dispute that the appellant was reinstated in service pursuant to the original order of the labour court and she has been working on the post since last eighteen years.

In the light of these admitted factual scenario appearing in the case, we consider it just and proper to give quietus to the case.

In these circumstances, we direct that the appellant would not be entitled to claim any backwages from the respondents and

nor the respondents would be entitled to pass any adverse order against the petitioner insofar as the charge in question is concerned.

With this modification in the impugned order, this appeal stands disposed of."

11. The above stated order of the Honourable Apex Court was passed after this Court, delivered the judgment on 19.6.2018, in the cases of Ashok, Vasudeo and Devidas who are the review petitioners.

12. This Court, therefore, applied the law laid down by the Honourable Apex Court in the matter of Kum. Pushpa (supra) and reviewed its judgment 16.2.2017 by allowing Review Application No.186 of 2018 - Avinash Shrikrishna Joshi Vs. Divisional Controller and another by order dated 17.10.2018. The statement of Avinash was recorded and his matter was given a quietus. Similar orders were passed on 29.11.2018 in Writ Petition No.5349 of 2001 with Writ Petition No.1777 of 2002 in the matter of Divisional Controller, MSRTC Vs. Maharu Onkar Naik.

13. In these three review applications, as Ashok is the only person in employment, like Kumari Pushpa (supra) and Avinash and since Devidas and Vasudeo have retired as like Maharu, I find that this review application could be allowed.

14. In view of the above, these review applications are allowed. My judgment dated 19.6.2018 stands reviewed and I am issuing the following directions, as were issued in the matter of Avinash and Maharu:-

(A) The statement of these three review applicants giving up their backwages for the period from their date of dismissal till their reinstatement as well as gratuity for the said period, is accepted.

(B) They shall, therefore, be deprived of such backwages and gratuity for the said period.

(C) Complaint (ULP) Nos.22, 24 and 25 of 2011 stand disposed off.

(D) All these three persons shall suffer the punishment of the stoppage of three increments permanently.

(E) Any misconduct, if proved against Ashok in future, shall be dealt with severely by the MSRTC.

(RAVINDRA V. GHUGE, J.)

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