

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

WRIT PETITION NO. 3663 OF 1999

Divisional Controller
Maharashtra State Road
Transport Corporation Ltd.
Jalgaon Division
Jalgaon

.. Petitioner
(Org. respondent)

VERSUS

Sayyad Rafique
Sayyad Rashid
R/o Dhar, Tq. Amalner
Dist. Jalgaon.

.. Respondent
(Org. complainant)

WITH

**CIVIL APPLICATION NO. 1747 OF 2004 IN
WRIT PETITION NO. 3663 OF 1999**

...

Sayyad Rafique Sayyad Rashid,
Age – Major, Occup. Nil,
R/o Dhar, Tq. Amalner
Dist. Jalgaon.

.. Applicant
(Org. Respondent in WP)

VERSUS

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

..Respondent
(Org. Petitioner in WP)

...

Advocate for the Petitioner : Shri M. K. Goyanka with
Shri Manoj D. Shinde

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 20th JUNE, 2019.

...

PER COURT :

1. None had appeared on 26/04/2017 and 05/06/2017.

On 06/05/2019, I had passed the following order :-

"1. *None present for both the parties.*

2. *Though these matters are listed in the special final hearing of old matters in vacation, none appears for the petitioner and respondent.*

3. *Stand over to 20/06/2019 for "passing orders" on dismissal.*

4. *C.A. No. 8908/2004, filed for final hearing, does not survive and stands disposed off."*

2. None appears for the respondent today. I have therefore, heard the learned Advocate for the petitioner Corporation and have considered the record available.

3. The learned Advocate submits that in identical set of facts, the Labour Court had delivered a common judgment on 03/10/1998 in complaint ULP Nos. 48/1995, 49/1995 and 84/1995. The respondent herein Sayyad Rafik Sayyad Rashid was the complainant in 84/1995. The petitioner Corporation had preferred Revision ULP Nos. 40, 41 and 42 of 1999 challenging the reliefs granted by the Labour Court to the original complainants. The respondent herein was party to Revision ULP No. 42/1999. All these revisions were dismissed by the common impugned judgment dated 12/04/1999.

4. The learned Advocate points out that this Court dealt with Writ Petition Nos. 3677/1999 and 3807/1999 filed by the Corporation against Daulat Ramchandra and Ramesh Giridhar. Since none appeared for the respondent in the present petition, this was kept aside and the remaining two identical petitions were decided by this Court by judgment dated 23/07/2015.

5. I had recorded in the judgment dated 23/07/2015 with regard to the other two Writ Petitions, as under :

"1 These two petitions were admitted by this Court by the orders dated 17.08.1999 and 21.12.1999 respectively and interim reliefs were granted to the Petitioner/MSRTC in terms of prayer clause (E) by which Criminal Complaint Nos.3/1999 and 1/1999 instituted by the Respondents, respectively under Section 48 of the MRTU & PULP Act, 1971 were stayed.

2 The Petitioner is aggrieved by the common judgment and order dated 03.10.1998 delivered by the Labour Court in Complaint (ULP) Nos.49/1995 and 48/1995. Similarly, the Petitioner has challenged the common judgment of the Industrial Court dated 12.04.1999, thereby, dismissing Revision (ULP) Nos.41/1999 and 40/1999 filed by the Petitioner/MSRTC.

3 It is brought to my notice that pursuant to the interim orders of this Court, the Respondent (Daulat Jagtap) in the first petition i.e. Writ Petition No.3677/1999 was reinstated in service on 24.09.1999 whereas the Respondent (Ramesh Sonawane) in the second Petition i.e. Writ Petition No.3807/1999 was reinstated in service on 10.03.2000. Since then they have been performing duties as employees of the Petitioner/MSRTC till their superannuation on reaching the age of retirement on 31.03.2015 and 31.05.2011, respectively. The provident fund accumulation for

amounts of Rs.2,49,066/- and Rs.1,33,000/- have been paid to the Respondents on 21.04.2015 and 31.05.2011, respectively. The gratuity amount is outstanding.

4 The Petitioner submits that the Respondents were given the licences on 04.11.1988 to perform the business of porters. They were permitted to enter the premises of the Bus-Stand and do the work of loading and unloading of the luggage of the passengers and charge the passengers separately. Similarly, they were paid Rs.90.33 per month for loading and unloading the goods of the Petitioner/MSRTC.

5 The Respondents alleged oral termination on 29.03.1995 and preferred Complaint (ULP) Nos.49/1995 and 48/1995, respectively before the Labour Court, Jalgaon seeking reinstatement with continuity and full back-wages. The Labour Court allowed the complaints by its judgment and order dated 03.10.1998 and directed the Petitioner/ MSRTC to reinstate the Respondents in employment with continuity in service. The back-wages were denied.

6 The Petitioner/ MSRTC preferred Revision (ULP) Nos.41/1999 and 40/1999 before the Industrial Court at Nashik. By the judgment and order dated 12.04.1999, the revision petitions were dismissed.

7 *It is stated that a licenced porter could not have become an employee of the Petitioner/ MSRTC. There is no such post created, much less any vacant post of the porter. If it is presumed that the Respondents were employees of the Petitioner, they could not have indulged into the business of loading and unloading the luggage of the passengers and could not have charged each passenger separately. It is an admitted position that the Respondents used to take money from each passenger for loading and unloading their luggage which itself disproves the factum of employment with the Petitioner/MSRTC.*

8 *Shri Goyanka, learned Advocate appearing for the Petitioner/ MSRTC, strenuously submits that the impugned judgments of the Labour Court as well as the Industrial Court are perverse and unsustainable warranting interference by this Court in it's jurisdiction under Article 227 of the Constitution of India. He further prays that this Court should exercise it's jurisdiction under Article 226 and take cognizance of the fact that the Respondents were operating independent business of loading and unloading and earning money from the passengers.*

9 *Shri Patil, learned Advocate appearing for the Respondents/ Employees, has strenuously supported*

the impugned judgments. He points out from Exhibits U/14 to U/22 from the record and proceedings of the Labour Court that these were the documents pertaining to the provident fund slips, appointment order, office order, monthly salary being paid and the termination order. These are the documents which have been proved before the Labour Court. Uniforms were supplied to them. A three members Committee selected the Respondents and similarly situated one more porter, namely, Mr.Sayyad Rafiq Sayyad Rashid. Similar other porters, namely, S.B.Shirke, Shivaji Sandu Patil, Kailas S. Patil, Pralhad R. Bagul, Vasant R. Bagul and Rajendra S. Bagul were also working as porters.

10 *Shri Patil points out from the oral evidence recorded before the Labour Court to indicate that the factum of employment was established. He, however, is at discomfort in responding to the contention of Shri Goyanka that the Respondents had admitted before the Labour Court that they were taking money from the passengers for loading and unloading their luggage.*

11 *It is visible from the oral and documentary evidence recorded before the Labour Court that the factum of employment was proved. The service book was also prepared in 1988 by which the Petitioner/ MSRTC entered the name of the Respondents as well as one Sayyad Rafiq Sayyad Rashid. The service book,*

therefore, indicates that the Respondents were treated as being employees of the Petitioner/ MSRTC. The General Provident Fund slips were also produced before the Labour Court.

12 *I find that the above findings on facts have rightly not been interfered with by the Industrial Court in its revisional jurisdiction under Section 44 of the MRTU & PULP Act, 1971. Considering the same, I am not convinced that the Labour Court and the Industrial Court have arrived at any such conclusions which could be termed as perverse or erroneous or causing grave injustice to the Petitioner/MSRTC. The provident fund has also been paid to the Respondents.*

13 *The Petitioner contends that the Respondents be deprived of the gratuity in the light of the fact that the Respondents used to collect money from the passengers for loading and unloading their luggage and at the same time, used to draw wages from the Petitioner/ MSRTC especially after their reinstatement on 24.09.1999 and 10.03.2000, pursuant to the orders of this Court.*

14 *Shri Patil submits that the gratuity flows from the Payment of Gratuity Act, 1972 and the Respondents cannot be deprived of the amount of gratuity which belongs to them.*

15 The Respondents have been out of employment from 29.03.1995 till 23.09.1999 and 09.03.2000, respectively. They have been reinstated on 24.09.1999 and 10.03.2000 respectively. The back-wages have been denied to them for the said period. The fact that they used to collect money from the passengers is also not disputed.

16 As such, in order to balance the equities I deem it proper to direct the Petitioner/ MSRTC to pay the gratuity to the Respondents/ Employees for the period from the date of engagement till termination dated 29.03.1995 and from the date of reinstatement 24.09.1999 and 10.03.2000 till their superannuation on 31.03.2015 and 31.05.2011, respectively. The portion of gratuity till the date of termination shall be calculated on the basis of the last drawn monthly wages of March, 1995 and for the subsequent portion, the gratuity shall be computed in accordance with law on the basis of their last drawn wages for March, 2015 and for May, 2011, respectively. Interest on gratuity @ 3% per annum will be payable only to Ramesh Girdhar Sonawane as he was entitled to gratuity in July, 2011."

6. In view of the above, the learned Advocate for the

Corporation has narrated the dates and events as under :-

(a) The respondent and the other persons identically placed were given the licenses as porters on 04/11/2018.

(b) The respondent herein Sayyad Rafique was terminated on 28/03/1995.

(c) After the Labour Court and the Industrial Court delivered their common judgments as are recorded above, he was reinstated on 25/05/1999.

(d) He retired from service on attaining the age of superannuation on 31/01/2008.

7. Considering the above, I am issuing the same directions as have been issued in my judgment dated 23/07/2015, as under :-

The petitioner MSRTC shall pay gratuity to the respondent for the period of engagement till his termination on 28/03/1995 and from the date of the reinstatement 25/05/1999 till 31/01/2008 when he retired. The portion of gratuity till the date of termination shall be calculated on the basis of the last drawn monthly wages of March 1995 and for the subsequent portion, the gratuity shall be computed in

accordance with law on the basis of his last drawn wages for January 2008 for the period from 30/05/1999 till 31/01/2008. Interest on gratuity @ 3 % per annum will be payable by the Corporation to the respondent Sayyad Rafique considering his entitlement to gratuity till January 2008.

8. This petition is, therefore, allowed only to the extent of the payment of gratuity. Rule is made partly absolute accordingly.

9. Pending Civil Application does not survive and stands disposed off.

(RAVINDRA V. GHUGE, J.)

shp/-