

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5007 OF 2001

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

..Petitioner

Versus

Liladhar Pralhad Shirsath,
resident of Anwarde Kd.
Tq. Chopda, Dist. Jalgaon.

..Respondent

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Advocate for Petitioner : Shri Goyanka M.K.
Advocate for Respondent 1 : Shri Patil Vijay Y.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 11, 2019

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ORAL JUDGMENT :-

1. On 20.6.2019, I had passed the following order:-

“1. This is yet another identical judgment of the Labour Court, Jalgaon (Coram : K. W. Thakre – J.), by which, the enquiry is sustained and the findings are held to be partly perverse. The worker has tendered a purshis waiving back wages and the learned judge has delivered the impugned order in one stroke vitiating the enquiry and granting reinstatement in service with continuity.

2. *The respondent worker at issue was involved in an accident, as a driver of the State Transport Bus, which has killed one person. The learned Advocate for the Corporation submits that after his reinstatement the same driver has committed 11 misconducts.*

3. *Since I find that the impugned judgment of the Labour Court is perverse and erroneous, the issue would be as to whether the matter should be remitted back to the Labour Court for following the due procedure laid down in law or not.*

4. *The learned Advocate for the respondent submits that he was dismissed from service on 24/03/1996, he was reinstated by virtue of the lower Court's order on 14/12/2001, he has superannuated on 30/11/2017 and has received Provident Fund Accumulations on 04/12/2017 for an amount of Rs. 6,03,000/- He seeks time to take instructions as to whether the respondent would give up the gratuity amount and pray for according a 'quietus' to this matter.*

5. *Stand over to 27/06/2019 for "passing orders."*

2. The learned Advocate for the respondent / employee has tendered a brief additional affidavit-in-reply. The employee is present in the Court.

3. The learned Advocate for the petitioner / Corporation points

out that there was no affidavit earlier filed by the employee.

4. The learned counsel for the petitioner concedes that after the respondent was dismissed on 24.3.1996, he was reinstated in service on 14.12.2001 and he superannuated on 30.11.2017. He has received his provident fund accumulations for an amount of Rs.6,03,000/-. Gratuity amount is yet to be paid.

5. The learned Advocate for the employee draws my attention to the affidavit, dated 11.7.2019, filed by the said employee to indicate that the employee would not claim any backwages for the period of his unemployment from March, 1996 to December, 2001 and he would also not claim gratuity for the said period. He relies upon an earlier order passed by this Court dated 17.12.2018 in Review Application No.186 of 2018 in the matter of Avinash Shrikrishna Joshi Vs. Divisional Controller and another, wherein, this Court had accepted the statement of the employee, who had waived backwages for his period of unemployment and had also waived payment of gratuity for the said period. He prays that an identical order may be passed in this matter, considering the affidavit filed by the employee.

6. The learned Advocate for the Corporation has expressed his reluctance to agree with the statement made by the employee.

7. It is obvious from the impugned judgment of the Labour Court that it did not follow the procedure laid down in law which has crystallized for almost 60 years. Without dealing with the legality of the enquiry and the findings of the Enquiry Officer, a single judgment is delivered vitiating the enquiry without affording an opportunity to the Corporation to conduct a *de novo* enquiry in the light of the judgment of the Honourable Apex Court (5 Judges) in the matter of Karnataka State Road Transport Corporation Vs. Laxmidevamma & another [2001 (II) CLR 640].

8. On these premises, the matter will have to be remitted to the Labour Court for framing of the two issues and considering them, in view of the crystallized law. However, the Honourable Apex Court has observed in the matter of Kumari Pushpa Ramdas Zatake Vs. The Divisional Controller - Civil Appeal No. 6171 of 2018, decided on 9.7.2018, that in such matters, a 'quietus' needs to be accorded to such proceedings.

9. In view of the above, this petition is partly allowed. The impugned judgments of the Labour Court and the Industrial Courts would stand modified in the following terms:-

(A) The statement of the respondent / employee that he waives the backwages for the period March 1996 to December 2001, is accepted.

(B) His statement that he would not claim gratuity for the period March 1996 till December 2001, is accepted.

(C) The petitioner / Corporation shall calculate his gratuity for the period of joining duties till February 1996 and from January 2002 till November 2017 and pay the said amount within a period of three months, if there is no other legal impediment.

(D) The respondent would be precluded from raising any claim against the petitioner, save and except any such claim which he is entitled to under any Statute or Law.

10. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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akl/d