

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

WRIT PETITION NO.85 OF 2003

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

...PETITIONER

-VERSUS-

Dattu Vanji Pawar,
resident of 133, Shani Peth,
Jalgaon.
Since deceased through his Legal heir:-
Vimalbai wd/o Dattu Pawar.
(Legal heir brought on record as per
order passed today).

...RESPONDENT

...
Advocate for the Petitioner : Shri M.K.Goyanka and Shri M.D.Shinde
Advocate for the Respondent : Shri V.Y.Patil
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 13th June, 2019

Oral Judgment :

1 The learned advocate for the respondent submits that the respondent/ original complainant workman had passed away. He prays that his legal heir Smt.Vimalbai Dattu Pawar, wife of the deceased, be taken on record.

2 The learned advocate for the petitioner corporation does not oppose.

3 Therefore, on the oral request of the learned advocate for the respondent, the widow of the deceased respondent/ workman is taken on record. Addition be carried out forthwith.

4 The petitioner corporation is aggrieved by the judgment of the Labour Court dated 03.01.1996 by which, Complaint (ULP) No.273/1993 filed by the deceased respondent was partly allowed and he was granted a fresh employment in lieu of reinstatement. Revision (ULP) No.259/1999 (Old No.91/1996) filed by the petitioner corporation challenging the judgment of the Labour Court, was dismissed by the impugned judgment dated 02.08.2002 delivered by the Industrial Court.

5 I have heard the learned advocates for the respective sides and have perused the record, which reveals that the respondent was dismissed from service on account of the charge of theft having been proved against him. He was a clerk appointed by the petitioner corporation in 1982. After conducting a departmental enquiry with regard to the charge of theft, he was dismissed from service on 14.07.1988. Since the Labour Court delivered a judgment granting fresh appointment on 03.01.1996, the petitioner corporation issued the appointment order to the respondent as a fresh appointee. As such, there is no question of back wages involved in this matter.

6 The learned advocate for the petitioner corporation submits, on instructions, that the deceased respondent superannuated on 30.04.2005 and was paid his retiral benefits except the gratuity amount. Subsequently, the deceased respondent approached the Controlling Authority under the Payment of Gratuity Act, 1972 and his claim was partly allowed. The deceased respondent, therefore, entered into a compromise with the petitioner corporation agreeing to accept the quantified amount of Rs.28,136/- towards satisfaction of his unpaid gratuity amount and also gave an undertaking that in the event, he suffers an adverse verdict in this proceeding, he would return the gratuity amount.

7 I find that the order of dismissal is dated 14.07.1988, which is 31 years old. The deceased respondent accepted his fresh appointment without any protest and joined duties and retired on 30.04.2005. The gratuity was, therefore, payable for a short period of 09 years.

8 The Honourable Supreme Court has dealt with the matter in the case of *Kum.Pushpa Ramdas Zatake Vs. The Divisional Controller, Maharashtra State Road Transport Corporation, in Special Leave to Appeal No.22618/2017* decided on 09.07.2018, wherein, the Honourable Supreme Court recorded that the employee was already in employment for several years and the proceedings should, therefore, be put to an end by according a quietus.

9 In the instant case, I find similar factors as recorded above. The deceased respondent retired 14 years ago and has already passed away.

10 Considering the above, I find that this litigation can be brought to an end by according a quietus. This Writ Petition is, therefore, disposed off. Rule is discharged.

11 Notwithstanding the above, if the widow of the deceased, who is now taken on record, is of the view that all retiral benefits have not been paid, she would be at liberty to make a representation to the petitioner corporation within a period of six weeks from today. The petitioner corporation shall consider the said representation and after verifying it's record, shall decide the said representation within SIX WEEKS thereafter and communicate it's decision to the widow of the deceased respondent. Needless to state, the widow of the deceased respondent shall mention her present postal address as well as her cellular number in her representation for correspondence.