

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

**WRIT PETITION NO. 2287 OF 1999**

Maharashtra State Road Transport  
Corporation, through its  
Divisional Controller, Osmanabad **..PETITIONER**

VERSUS

Shri Shrimant Sadashiv Waikar,  
Age 44 years, occ. Nil, R/o At  
& Post Wadgaon (Kati), Taluka  
Tuljapur, District Osmanabad **..RESPONDENT**

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Advocate for the Petitioner : Shri A. B. Dhongade  
Advocate for the Respondent -sole : Shri K. V. Nikam

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**CORAM : RAVINDRA V. GHUGE, J.**

**DATED : 20<sup>th</sup> JUNE, 2019.**

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***ORAL JUDGMENT :***

1. By this petition filed on 18/12/1997, the petitioner Corporation has challenged the judgment of the Industrial Court dated 19/06/1997, by which, complaint (ULP) No. 6/1995 filed by the respondent employee was allowed. Unfair Labour Practice was declared under Item 9 of Schedule IV and the order of termination dated 27/09/1994 was held to be illegal and was quashed and set aside. The respondent was

granted an alternate employment in a suitable category with continuity and full back wages.

2. This Court admitted the petition on 18/06/2001 and interim relief was granted in terms of prayer clause D on 02/07/2001. On account of the said interim relief, the impugned judgment of the Industrial Court was stayed. The respondent was 44 years of age in 1995 and is now about 68 years of age.

3. I have considered the submissions of the learned Advocates for the respective sides.

4. There is no dispute that the respondent approached the Industrial Court by filing a complaint on 12/01/1995 which was time barred and no application for condonation of delay was filed. He had challenged his termination dated 22/09/1994 which was effected with retrospective effect vide order dated 27/09/1994.

5. It appears from the record that neither the respondent

employee noticed that the Industrial Court does not have the jurisdiction to interfere with an order of termination which is exclusively within the realm of the Labour Court in the light of Section 7 of the MRTU and PULP Act 1971, *inasmuch* as, the MSRT Corporation did not raise this objection. To make things worse, the Industrial Court also lost sight of this fact and entertained the complaint under Item 9 of Schedule IV of the MRTU and PULP Act, 1971.

6. Sections 5 and 7 of the 1971 Act read as under :-

**5. Duties of Industrial Court :-** *It shall be the duty of the Industrial Court -*

*(a) to decide an application by a union for grant of recognition to it ;*

*(b) to decide an application by a union for grant of recognition to it in place of a union which has already been recognised under this Act*

*(c) to decide an application from another union or an employer for withdrawal or cancellation of the recognition of a union ;*

*(d) to decide complaints relating to unfair labour practices except unfair labour practices falling in item 1 of Schedule IV ;*

*(e) to assign work, and to give directions, to the*

*Investigating Officers in matters of verification of membership of unions, and investigation of complaints relating to unfair labour practices ;*

*(f) to decide references made to it on any point of law either by any civil or criminal court ; and*

*(g) to decide appeals under section 42.*

**7. Duties of Labour Court :-** *it shall be the duty of the Labour Court to decide complaints relating to unfair labour practices described in item 1 of Schedule IV and to try offences punishable under this Act.*

7. Item 1 of Schedule IV and Item 9 of Schedule IV of the 1971 Act read as under :-

**Item 1 of Schedule IV :-**

**General Unfair Labour Practices on the part of employers :**

*1. To discharge or dismiss employees -*

*(a) by way of victimisation ;*

*(b) not in good faith, but in the colourable exercise of the employer's rights ;*

*(c) by falsely implicating an employee in a criminal case on false evidence or on concocted evidence ;*

*(d) for patently false reasons ;*

*(e) on untrue or trumped up allegations of absence without leave ;*

*(f) in utter disregard of the principles of natural*

*justice in the conduct of domestic enquiry or with undue haste ;*

*(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment.*

***Item 9 of Schedule IV***

***9. Failure to implement award, settlement or agreement.***

8. It is obvious that the respondent challenged his termination order dated 27/09/1994 effected with retrospective effect from 22/09/1994, after four months of such termination by approaching the Industrial Court. It was prayed in the complaint that he should be reinstated in service with continuity and full back wages and should be granted an alternate employment as he was declared unfit by the Medical Board considering that he had a damaged eye sight.

9. It is not in dispute that the respondent is out of employment from 22/09/1994 till attaining the age of superannuation in 2009. It is also admitted that he worked for

only four years and twenty days and was yet to be absorbed as a regular employee on time scale since he had not completed five years in service.

10. The learned Advocate for the respondent has strenuously contended that the fact that the Industrial Court did not have jurisdiction, was lost sight of by the learned Advocate who had preferred the complaint before the Industrial Court. He further submits that a litigant should not suffer for the mistakes committed by an Advocate. He adds that even the petitioner Corporation did not raise any objection as regards jurisdiction, *inasmuch* as, the Industrial Court also did not sight Sections 5 and 7 and failed to know that the matter would be tenable before the Labour Court under Item 1 of Schedule IV. He, therefore, prays that as he was removed from employment on account of a damaged eye sight though he was not completely blind, the MSRTC could now consider appointing the son of the respondent on compassionate basis.

11. The learned Advocate for the Corporation tenders an apology on behalf of the Corporation that neither did the

Corporation raise an objection about the tenability of the complaint before the Industrial Court, nor has the said ground being taken even in this petition in this Court. He submits that notwithstanding the lapse on the part of the Corporation, it cannot be ignored that the impugned judgment is a result of the Industrial Court having exercised the jurisdiction of the Labour Court and, therefore, the impugned judgment is non-est. It is, therefore, submitted that this Court cannot exercise its supervisory jurisdiction and grant any relief to the respondent when the impugned judgment itself is without jurisdiction.

12. I am conscious of the limitations of the supervisory jurisdiction of this Court while issuing the writ of certiorary. I am also aware of the view taken by the Honourable Apex Court in *Director, Defence Metal Research Laboratory and another Vs. G. Murali, (2003) 9 SCC 247*, wherein it has been concluded that time is the essence for granting compassionate appointments and such a compassionate appointment cannot be granted after the passage of five years or ten years or even more. I am, therefore, unable to accede to

the request of the respondent counsel that his son may be considered for compassionate appointment after a passage of 25 years.

13. The learned Advocate for the respondent, therefore, contends that this Court may consider the matter on its own merits. The learned Advocate for the Corporation submits that when the impugned judgment of the Industrial Court is delivered without jurisdiction, the only order that this Court could pass is of allowing this petition and setting aside the said judgment. He submits that the doors of the Court are not closed on the respondent as he can raise a grievance before the Labour Court.

14. I find that Section 2A of the Industrial Disputes Act deals with termination, discharge, dismissal, removal or otherwise termination from service as a deemed industrial dispute. No limitation is prescribed under the Industrial Disputes Act for referring a matter to the Labour Court or the Tribunal, though a belated demand raised by an employee cannot be entertained.

15. It is painful even for the Court to record after 25 years of litigation that the Industrial Court could not have entertained a complaint admittedly as against termination from service under Item 9 of Schedule IV. It is equally painful to record that the respondent, who now can raise an industrial dispute under Section 2A of the Industrial Disputes Act, 1947, will have to restart his litigation journey from scratch by approaching the Conciliation Officer.

16. The learned Advocate for the respondent has prayed for compensation in the peculiar facts and circumstances of the case. The learned Advocate for the petitioner Corporation submits that the respondent had approached the Court having no jurisdiction to deal with a case of the termination and having so done, he cannot claim compensation.

17. This case has indeed created a dilemma. One remedy available to the respondent today is to raise an industrial dispute under Section 2A and considering that he was in litigation from 1995 till today for a period of about 25 years, it

would not be an impediment for him to raise an industrial dispute and such an industrial dispute could be dealt with expeditiously. If referred to the Labour Court by way of a reference, the Labour Court can decide the said case within three years in view of the peculiar facts. The other option is that this Court can grant compensation by relying upon the judgments delivered by the Honourable Apex Court in the following cases :-

(a) *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal*, **[(2013) LLR 1009]**;

(b) *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh*, **[(2013) 5 SCC 136]**;

(c) *BSNL Vs. Man Singh*, **[(2012) 1 SCC 558]**; and

(d) *Jagbir Singh Vs. Haryana State Agriculture Marketing Board*, **[(2009) 15 SCC 327]**.

18. The Honourable Apex Court has held in the above referred cases that when an employee puts in a short spell in service and is out of employment for a long duration, granting of reinstatement/continuity/back wages would be impractical

and would not be a pragmatic order. Instead, compensation of about Rs. 30,000/- to Rs. 40,000/- per year of service put in, would be appropriate. This view has been taken in 2013 by the Honourable Apex Court. Passage of time would, therefore, lead to the enhancement in compensation, in my view.

19. In view of the above, this petition is partly allowed to the extent of quashing and setting aside the impugned judgment of the Industrial Court dated 19/06/1997. Complaint (ULP) No. 6/1995 stands disposed off.

20. I am passing an unprecedented order of giving an option to the respondent employee in the peculiar facts and circumstances recorded as above.

21. The respondent, therefore, will have an option of raising an industrial dispute under Section 2A of the ID Act, 1947. In the event, such a dispute is raised within a period of eight weeks from today, the Conciliation Officer shall call upon the petitioner MSRTC to resolve the dispute. If no resolution is arrived at, the Conciliation Officer would refer the dispute to

the Labour Court at Latur within three months from the date of the commencement of the Conciliation proceedings since a dispute under Section 2A is a deemed industrial dispute. The Labour Court shall then proceed to decide the reference within a period of three years from the date when reference is registered in the Labour Court and shall not seek an extension of time considering the age of the respondent and the fact that he has spent 25 years in litigation.

22. If no industrial dispute is raised by the respondent and if he conveys to the MSRTC in writing that he does not desire to raise an industrial dispute, the petitioner MSRTC would pay quantified amount towards compensation of Rs. 2,50,000/- within a period of eight weeks from the date of communication by the respondent. I am calculating this compensation at the rate of Rs. 60,000/- per year of service put in by the plaintiff which is a total period of four years in employment.

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

**(RAVINDRA V. GHUGE, J.)**

shp/-