

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

**LETTERS PATENT APPEAL NO. 12 OF 2010
IN
WRIT PETITION NO. 3815 OF 1996**

Maharashtra State Road Transport Corporation .. Appellant
through its Divisional Controller,
Ahmednagar.

Versus

Alfred James Gamare, .. Respondent
Age. Major, Occ. Conductor,
R/o. H.No.47-A, Tarakpur,
Ahmednagar.

Mr. B.S. Deshmukh, Advocate for appellant.
Respondent in person present.

**CORAM : SUNIL P.DESHMUKH &
S.M.GAVHANE,JJ.
DATED : 17-10-2019**

ORAL JUDGMENT : [PER : SUNIL P. DESHMUKH,J.] :-

1. In the present letters patent appeal scope of challenge to order by learned single judge is limited to payment of back-wages under order of division bench of this court while admitting the same. While aforesaid appears to be the position, it may be worthwhile to refer to the background in which the litigation has cropped up.

2. Respondent had been appointed as a conductor by appellant in 1981. In October, 1985, he had been dismissed from services for absenteeism

being a misconduct under discipline and appeal procedure of the appellant corporation. Appeal before the first appellate authority at the instance of respondent had failed, as it was considered that respondent being accused in sessions case No. 99 of 1985 and had been detained in jail from 1985 to 1989 and was convicted by the sessions court and was sentenced imprisonment for life. The first appellate authority had rejected appeal in 1989 as a time barred appeal.

3. Respondent, however, had been acquitted by high court in 1989. It is on account of his detention under said criminal prosecution, there had been absence from duty. Subsequent appellate authority, the second one, however, had modified order substituting dismissal with reappointment afresh as conductor. Respondent accordingly had been allowed to join duty as conductor with the corporation.

4. The punishment being met with to respondent being considered not proper, respondent had been under complaint (ULP) No. 53 of 1999 before labour court, pursuant to provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The labour court under its order dated 04-11-1995 allowed the complaint declaring corporation to have committed unfair labour practice under items (a) and (f) of schedule 4 to the Act, directing appellant corporation to give continuity in service and back wages from 10-07-1989 to 25-04-1991. Aggrieved corporation had been in

revision (ULP) No.15 of 1996 before industrial court. However, learned member, industrial court had dismissed revision and the writ petition No. 3815 of 1996 had been moved by appellant-corporation. Same too came to be dismissed under an elaborate judgment. Learned judge has observed under paragraphs No. 13 and 19 thus :-

“ 13. Apart from the said position, it is material to note that the very dismissal of the respondent herein was held to be by way of following unfair labour practice by the learned Labour Court as circumstances were beyond the control of the respondent since he was detained in jail in the present case and the learned Member, Industrial Court, Ahmednagar also concurred with the said view that absence of the respondent Conductor was for the reasons which were beyond his control and he cannot be punished without any fault and, therefore, he dismissed the revision filed by the petitioner herein by judgment and order dated 26-2-1996, observing that once it is held that the dismissal is illegal, the employee is entitled for continuity in service, and the Labour Court has rightly appreciated the evidence on record and facts involved in the present case. Having considered the judgment and order dated 4-11-1995, passed by the learned Labour Court, Ahmednagar and the judgment and order dated 26-2-1996, passed by learned Member, Industrial Court, Ahmednagar in revision, I do not find any fault therein to interfere under Articles 226 and 227 of the Constitution of India.”

“ 19. Having considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent and also having considered the observations made by the Hon’ble Supreme Court in the above referred cases cited by learned counsel for the petitioner and learned counsel for the respondent, admittedly there is no dispute about the rule of ‘no work no pay’, but, considering the peculiar facts and circumstances in the instant case in entirety, it is apparently clear that the respondent herein was ready and willing to work but was not allowed to do so unlawfully and, therefore, the respondent herein is entitled for the benefits of back wages from the period 10.07.1989 to 25.04.1991, “as if he has worked” during the said period, relying upon the observations made by the Hon’ble Supreme Court in paragraph No. 32 in the case reported in 2008 (1) Mh.L.J.546 (supra). ”

5. The extract from decision of supreme court in the case of J.K. Synthetics Ltd. Vs. K.P. Agrawal and Anr. 2007 (2) SCC 433, as a matter of fact

synoptically would show that action terminating services of respondent imputing absenteeism as a misconduct, while situation had been beyond control of respondent, would not be missible in the facts and law. As observed by learned single judge, reluctance to let petitioner resume duty after acquittal had not been fair as he had been purportedly appointed afresh. This has been considered as unfair labour practice and has been considered so from the court of first instance up to learned single judge of this court and that has not been subject matter in letters patent appeal. Under order dated 11-10-2010, challenge in letters patent appeal is confined to back wages.

6. It would be relevant to note that back wages do not relate to the period of detention. The appellant had been reluctant to let respondent resume duty after he had been acquitted and relieved from jail. The verdict of labour court in respect of commission of unfair labour practices by the appellant corporation is for the period 1989-1991, the period after acquittal of respondent during which petitioner had not been let to work. Findings recorded by labour court, while being upheld by the revisional court and learned single judge have remained untouched. The findings given by the two courts hitherto and learned single judge are not shown to be in any way not proper, nor were those challenged as such. No case is made out by appellant to interfere with concurrent decisions in favour of the respondent. The quoted paragraph in order dated 11-10-2012 admitting the letters parent appeal, does not appear to be of any avail to the appellant in the given facts and circumstances.

7. Letters patent appeal, thus, lacks substance and is dismissed.
8. With the dismissal of letters patent appeal, respondent would be at liberty to withdraw amount deposited in this court along with interest accrued thereon.

[S.M.GAVHANE,J.]

[SUNIL P.DESHMUKH,J.]