

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

LETTERS PATENT APPEAL NO. 149 OF 2011
IN
WRIT PETITION NO. 1169 OF 1993
WITH
CIVIL APPLICATION NO. 16588 OF 2010

Mr. Shaikh Mohammad Abbas,
aged about 56 years, occ. Nil,
House No. 1559, Nagar Manmad Road,
Near Petrol Pump, Tq. Shevgaon
Dist. Ahmednagar ..Appellant

VERSUS

Divisional Controller,
Maharashtra State Road
Transport Corporation, Ahmednagar ..Respondent

...

Shri V.N.Upadhye, advocate for Appellant
Shri Manoj Shinde h/f Shri M.K.Goyanka, Advocate
for Respondent

...

CORAM : T.V.NALAWADE
AND
SUNIL K.KOTWAL, JJ.

DATED : JANUARY 14, 2019

ORAL JUDGMENT (Per Sunil K.Kotwal, J.)

This Letters Patent Appeal is directed by
original employee of respondent-Maharashtra State
Road Transport Corporation, Ahmednagar, against the
judgment and order, passed by the learned Single

Judge of this Court, in Writ Petition No. 1169 of 1993, whereby the order rendered by the Presiding Officer of 2nd Labour Court, Ahmednagar, in Reference (I.D.A.) No. 24 of 1985 was set aside, regarding reinstatement of petitioner on the establishment of the respondent, with effect from 26.4.1984, with continuity of service and full back wages.

2. Respondent Corporation is original employer.

3. The case of employee in the Labour Court was that he was initially employed by the Maharashtra State Road Transport Corporation at Shevgaon Depot as daily wager about in the year 1976. The employee was subsequently transferred to Pathardi Depot as security guard. He had served up till 25.4.1984. However, the Depot Manager of Pathardi Depot orally terminated the services of employee on 26.4.1984 without any tangible reason. Before the Labour Court, the employee contended that his retrenchment was bad under Section 25F of

the Industrial Disputes Act, 1947, on account of non-payment of compensation in lieu of notice period of one month.

4. On the other hand, the employer Corporation contended that the employee was employed only temporarily as off-reliever to the watchman and he was not at all a selected candidate for the post of security guard after following due procedure. The employee was required to work only on locum tenens basis. It was specifically denied that the employee had rendered continuous service of 240 days and was illegally retrenched without compliance of Section 25F of the Industrial Disputes Act.

5. The learned Presiding Officer of the Labour Court, Ahmednagar allowed Reference No. 24 of 1985 and directed to reinstate the employee with effect from 26.4.1984 with continuity of service and full back wages. The said order was challenged by the employer in Writ Petition No. 1169 of 1993. The same was allowed and the judgment and order, passed

by the Labour Court was set aside. Being aggrieved thereby, this Letters Patent Appeal is filed.

6. Heard Shri V.N.Upadhye, learned counsel for the appellant-employee and Shri Manoj Shinde holding for Shri M.K.Goyanka, learned counsel for the respondent employer.

7. Learned counsel for the appellant submits that the appellant was in continuous service of the respondent-Corporation for more than 240 days in a calendar year, and therefore, his services cannot be terminated without compliance of Section 25F of the Industrial Disputes Act. He submits that undisputedly neither one month's notice in writing indicating the reasons for retrenchment of the employee, nor in lieu of such notice wages for the period of notice, had been paid to the employee by the respondent-Corporation. Therefore, the retrenchment of the appellant-employee is bad in law and the learned Single Judge of this Court should not have set aside the factual finding of the Labour Court. He placed reliance on "**Ramesh**

Kumar vs State of Haryana" [AIR 2010 SC 683].

8. Learned counsel for the respondent-Corporation supported the judgment passed by the learned Single Judge of this Court, on the ground that the appellant was not legally appointed after following due procedure by the Corporation i.e. after publication of advertisement in the news paper. He submits that even the appellant was not appointed on sanctioned post and his appointment was de hors the recruitment rules. He has pointed out that the attendance cards (Exhs. U-6 and U-18) were not duly signed by any responsible officer of the Corporation and those attendance cards were not corroborated by any official record of the Corporation. It was also pointed out that the pay slips (Exhs. U-19 to U-33) relied by the appellant did not bear signature of Depot Manager of Pathardi Depot and seal of that Depot and therefore, those documents cannot be accepted as authentic and genuine pay slips. His contention is that the appellant being appointed only as reliever to watchman, his employment cannot be treated as

regular worker. He has placed reliance on **"Secretary, State of Karnataka and others vs Umadevi and others" [(2006) 4 SCC 1]** and **"Satya Prakash and others vs State of Bihar and others" [(2010) AIR SCW 2112]**.

9. After going through the judgment, passed by the learned Single Judge and the record and proceeding, it emerges that no appointment letter issued by the respondent-Corporation was filed by the appellant before the Labour Court to show that his appointment was regular appointment on sanctioned post of the watchman. Even the pay slips (Exhs. U-19 to U-33) relied by the appellant are not authentic and genuine documents, as those documents did not bear the signature of Depot Manager of Pathardi Depot and seal of that Depot. So also, the attendance cards (Exhs. U-6 and U-18), which are not corroborated by any official record and which are not signed by any responsible officer of the Corporation, cannot be considered as reliable documentary evidence to hold that the

appellant was in continuous employment of the respondent-Corporation for more than 240 days in a year.

10. The learned Single Judge has considered this all unreliable documentary evidence and rightly held that the appellant cannot prove that he was in continuous employment of the respondent-Corporation for more than 240 days in a year. So also, no documentary evidence has been placed on record by the appellant to show that he was appointed by the respondent/Corporation after following due procedure in accordance with the rules of the Corporation. Thus, considering the evidence of two witnesses examined by the employee and the documentary evidence placed on record by the employee, the learned Single Judge of this Court rightly held that the appointment of the appellant was only as reliever to the watchman, when no other employee was available to work as night watchman in State Transport Depot, Pathardi. The employment of the appellant cannot be treated as regular worker. Thus, the appellant, who is

appointed de hors the rules, cannot claim any right of appointment to the post.

11. In **Secretary, State of Karnataka and others vs Umadevi and others** (supra) and **Satya Prakash and others vs State of Bihar and others** (supra), the Apex Court has held that such temporary employee cannot claim right of appointment on the post. Therefore, only because one month prior notice to the appellant, who is temporary employee, was not served or in lieu of such notice one month's wages were not paid to the appellant, it cannot be said that his retrenchment was in contravention of the provisions of Section 25F of the Industrial Disputes Act.

12. The case of **Ramesh Kumar vs State of Haryana** (supra) relied on by the appellant is distinguishable on facts. In that case the employee had worked for three years and there was no break in his service tenure. Even in that case, the employee had placed on record relevant material to

show that the persons similarly situated were already reinstated and their services were regularized. Thus, considering these distinguishing facts, the ratio of **Ramesh Kumar vs State of Haryana** (supra) is not applicable in the case at hand.

13. Accordingly, our conclusion is that the judgment and order, passed by the learned Single Judge in Writ Petition No. 1169 of 1993, setting aside the order passed by the Labour Court is correct and proper and cannot be treated as perverse, which calls for interference in this Letters Patent Appeal.

14. In the result, Letters Patent Appeal No. 149 of 2011 is dismissed. Civil Application is disposed of. Parties to bear their respective costs of the Letters Patent Appeal.

[**SUNIL K.KOTWAL, J.**]

[**T.V.NALAWADE, J.**]