

BDP-SPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9425 OF 2013**

Shri Bhaskar Gangadhar Dombé,)
Age: 59 years, residing at S.T.)
Colony, Block No.34, Opp. New)
R.T.O. Office, Vijapur Road,)
Solapur.) Petitioner.

V/s

1] The State of Maharashtra)
)
2] The Divisional Controller,)
Maharashtra State Road)
Transport Corporation (MSRTC),)
Solapur.) Respondents.

Mr. V.S. Tadake for the Petitioner.
Mr. G.S. Hegde for Respondent No. 2.
Ms. K.N. Solunke, AGP for the State.

**CORAM: B. P. DHARMADHIKARI &
NITIN W. SAMBRE, JJ.**

DATE: 25th November, 2019

ORAL JUDGMENT: (Per B.P. Dharmadhikari, J.)

1] Taken up for final hearing by consent by issuing Rule and making it returnable forthwith.

2] Petitioner, a driver, in employment of MSRTC, working since 1981, met with accident while on duty in 1992. He was indisposed and till 20/8/1997 received 50% of his salary as compensation. On that day he was terminated.

3] On 20/9/2000, Petitioner has been appointed on alternate post as peon. He worked on that post till his superannuation on 30/6/2011. After superannuation, he has been paid Provident Fund, Gratuity and other terminal benefits. A break in his service from 20/8/1997 to 20/9/2000 has been regularized as leave without wages.

4] Contentions raised by learned counsel for the Petitioner are, in view of provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [For short “1995 Act”], Petitioner could not have been denied full salary and act of paying him only compensation is unjust and illegal, break in his service and denial of salary for period from 20/8/1997 to 20/9/2000 is unsustainable. As a peon, he should have been given

salary equivalent to the post of driver and accordingly his terminal benefits should have been computed on 30/6/2011.

5] Learned Counsel appearing on behalf of Respondent No.2 – employer submits that provisions of 1995 Act came into force in 1996 and till then the field was governed by the settlement between parties and case of the Petitioner has been accordingly dealt with. As per settlement, he has been taken back on 20/9/2000 on alternate employment and as vacancy/post of peon was then available, the said work was given to him again as per settlement.

6] It is urged that several disputed questions arise and same can be looked into either by Labour Court or Industrial Court. It is submitted that Petition is filed in 2013 and it is hopelessly belated.

7] In brief reply, Counsel for Petitioner states that Petitioner has been making repeated representations and hence there is no question of any delay.

8] After hearing respective Counsel, we find that provisions of

Section 47 of 1995 Act became applicable to the case of present Petitioner after September 1996. On that day, he was very much in employment. However, he did not make any grievance and did not even challenge the termination dated 20/8/1997. The said termination was as per settlement and as per that settlement only on 20/9/2000, he has been taken back on available post. In this situation, it would not be proper to permit him to turn back and to question the termination and to claim salary for the said period.

9] According to learned Counsel for Respondent No.2, after taking the Petitioner back as peon, he has been paid wages equivalent to the post of driver only.

10] Petitioner has been superannuated on 30/6/2011.

11] There is break in the service of the Petitioner of about three years and he has been denied wages for that break. Obviously, that break has affected his further fitment in the pay-scale when he was made a peon and therefore must have affected calculations of Gratuity and Provident Fund.

12] Provisions of Section 47 of 1995 Act has been looked into by several judgments and Hon'ble Courts have found that an employee, who is disabled while in service, cannot be terminated. He needs to be retained till alternate post suitable to him becomes available for him. If such post does not become available, he needs to be retained till his superannuation.

13] These provisions made for welfare are applicable to the case of the Petitioner since September, 1996 and were applicable even on the date of his superannuation. We therefore find that a case is made out for proper fitment and for proper determination of salary since 20/9/2000 till superannuation.

14] As Petitioner was wrongly denied wages till 20/9/2000 by treating period from 20/8/1997 as leave without pay, its effect continued to affect him every year till his superannuation. He has received lesser amount as Provident Fund and Gratuity. The cause of action is therefore continuous.

15] In this situation, we direct Respondent No.2 to treat the period from 20/8/1997 till 20/9/2000 as duty period and to compute the wages of the Petitioner notionally for the said period. Thus, he will get/earn increments for the said period. These increments will result in placing him in higher pay-scale/higher stage on 20/9/2000 when he was employed as peon. His last pay drawn on 30/6/2011 accordingly will be revised upwards. However, all this exercise shall be carried out only notionally and no amount on account of this notional exercise shall be paid to him.

16] However, revived Provident Fund so calculated and Gratuity amount so calculated shall be then made over to the Petitioner after deducting the amount already paid with necessary interest in accordance with law.

17] This exercise shall be completed within six months from today.

18] With these directions, we partly allow the Writ Petition and dispose it of.

(NITIN W. SAMBRE, J.)

(B. P. DHARMADHIKARI, J.)