

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1431/2019

MSRTC

..VS..

Sayyad Quazi Azim Raheman

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.S. Charpe, Advocate for the petitioner
Shri C.V. Jagdale, Advocate for the respondent

CORAM : Z.A.HAQ, J.
DATED : 22/02/2019

Heard.

The respondent – employee had filed Complaint ULP No. 211/2008 before the Industrial Court under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act. This complaint was allowed by the order dated 16/09/2009. The Industrial Court had held that the present petitioner (employer) indulged in unfair labour practice and deprived the employee of his legitimate claim. The Industrial Court directed that the employer should fix the pay of the employee in the time scale from the date on which the employee completed continuous service of 180 days. The Industrial Court further directed the employer to make available to the employee the other benefits also. Accordingly, the employer issued an order dated 21/09/2010 fixing the pay of the respondent – employee in regular time scale. The respondent – employee was paid all the emoluments as per the order passed by the Industrial

Court on 16/09/2009. Subsequently, the employer issued an order dated 31/07/2013 and cancelled the earlier order dated 21/09/2010. By the order dated 31/07/2013, the employer reduced the basic pay of the respondent – employee from Rs. 10,709/- to Rs. 9473/-. This compelled the respondent – employee to approach the Industrial Court again vide Complaint ULP No. 149/2013. This complaint is decided by the impugned order.

After examining the evidence on record, the Industrial Court has summed up its conclusions in para no. 8 of the impugned order as follows:-

“On going through the entire evidence, documents placed on the record the order passed by the Industrial Court dated 16.09.2009 in Comp. (ULP) No. 211/2008 which is filed with list Exh. U/4. It is seen that the respondent though directed by the Industrial Court to comply the order within two months and the respondent complied it on 21.08.2010 and thereafter 3 years period later the official of the MSRTC interpreted the order of the Industrial Court that the word 'except increment' in the reasoning express that the complainant is not entitled for yearly increment in his salary which has been granted to him and this mistake came to know to the respondent after some period and therefore, they have passed the order to rectify the said mistake vide DEO No. 1327/2013 dated 31.07.2013. It should be seen in this case that, if there is any ambiguity in the order of the Industrial Court then MSRTC should have challenge the said order by filing writ petition before the Hon'ble High Court but the respondent MSRTC without challenging the said order on its own view interpreted it that the court allowed the

complaint and the complainant is entitled to receive benefits without increment. It is also required to see that, the order passed by the Industrial Court dated 16.09.2009 fully complied by the respondent and after lapsed of long period i.e. 3 years period later the respondent had passed one another order vide DEO No. 1327/2013 and cancelled the DEO No. 1647/2010 and decided to reduce the basic pay of the complainant from Rs. 10,709/- to Rs. 9473/-. It should also be seen here that, such cancellation of earlier order is not permissible because earlier order was passed in compliance of order of the Industrial Court dated 16.09.2009 and contrary to the order passed by the Industrial Court if any order is passed by the respondent then it is needless to state here that is it totally illegal order and therefore, the objection raised by the complainant as regards the act of the respondent is found proper and bona fide. Moreover, in this case it is to be noted that, a single word mentioned in the judgment by the concern learned Judge while giving finding cannot be a ground of consideration to reject the benefits which is already granted to the complainant. Really, if the respondent should have any objection then the respondent should have to approach before the higher court for rectifying the order passed by the Industrial Court but no legal steps have been taken by the respondent at the relevant time. Now, the respondent cannot review the order passed by the earlier officer.”

After going through the order passed by the Industrial Court on 26/02/2018, I find that the stand taken by the petitioner – employer is unacceptable and is based on merits of the matter of the order passed by the Industrial Court on 16/09/2009. While deciding the Complaint ULP No. 149/2013, the Industrial Court has rightly held that the

order issued by the employer on 31/07/2013 is unsustainable in law and it has rightly quashed it.

I find that the conclusions of the Industrial Court are based on proper appreciation of the material placed on record.

I see no reason to interfere with the impugned order.

The writ petition is **dismissed**. No costs.

JUDGE

Ansari