

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

WRIT PETITION NO.95/2020

Maharashtra State Road Transport Corporation, Nagpur
..V/s..
Vijay Haribhau Navghare and another

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

Court's or Judge's orders

Shri Ashish Fule, Advocate for the petitioner.

CORAM : RAVINDRA V. GHUGE, J.
DATED : 14.1.2020.

1] The petitioner - Maharashtra State Road Transport Corporation is aggrieved by the Judgment and Order dated 18th April, 2019 delivered by the Industrial Court, Nagpur by which, Complaint (ULP) No.208/2016 filed by the respondent No.1 has been allowed and he is placed higher in the seniority list as compared to respondent No.2.

2] The learned advocate for the petitioner Corporation has strenuously criticized the impugned judgment. He pointed out the several grounds formulated in the memo of petition and contended that the impugned judgment is perverse, erroneous and unsustainable. With his assistance, I have gone through the petition paper book.

3] The petitioner contends that the seniority list dated 10th October, 2013 was not challenged when the complainant was placed at Serial No.66 as compared to respondent No.2. The second seniority list was published on 29th December, 2014 when the complainant was placed at serial number 25 and the respondent No.2 was placed at serial number 6. The complaint was barred by the law of limitation.

4] He further submits that the complainant joined employment on 21st February, 2008 as an Assistant. Respondent No.2 also joined at Kolhapur as an Assistant in 2004. In September 2008, respondent No.2 voluntarily sought a transfer to Nagpur after the complainant was appointed on 21st February, 2008. The complainant was absorbed as a permanent employee on 1st April, 2012. He, therefore, submits that the impugned order of the Industrial Court is bad in law.

5] The record reveals that MSRTC has evolved a policy which is described as GSO No.503. The seniority list is to be maintained as per GSO 503. It is an admitted position that the Union representing the workers prevailed upon the MSRTC to consider the case of respondent No.2 and raise him in the seniority list.

6] GSO No.503 was at Exh.C-II before the Industrial Court. Clause 86 of GSO No.503 mandates that a person who seeks a transfer on personal

convenience and as per his choice of place, would agree to waive his entire seniority and he would be considered in the seniority list at the bottom from the date of his request transfer.

7] The complainant was appointed on 21st February, 2008 and his regularization on 1st April, 2012 would relate back to the date of joining and the period from 21st February, 2008 till 1st April, 2012 shall be reckoned as his service with the Corporation. Admittedly, respondent No.2 was transferred to Nagpur on request in September, 2008 and he had therefore waived his earlier seniority and he is at the bottom of the seniority list for the Nagpur Division.

8] Despite service of Court notice by the Industrial Court, respondent No.2 did not choose to contest the complaint and did not participate in the adjudication of the said complaint.

9] Considering the above, it is obvious that the Corporation violated its GSO 503 - Clause 86 under the pressure of the Union which has resulted in favouring the second respondent. It was on account of this act of nepotism that the original complainant was pushed down in the seniority list. His challenge to the second seniority list dated 29th December, 2014 by preferring a ULP complaint on 7.4.2016 does not indicate inordinate or deliberate delay. Such act of injustice of disturbing the seniority list under pressure from a union and in

violation of its rules, is a recurring cause of action and therefore, the complaint was maintainable.

10] In view of the above, this petition being devoid of merits, is **dismissed**. No costs.

(RAVINDRA V. GHUGE, J.)

Tambaskar.