

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

WRIT PETITION NO.4233 OF 2019

Jahaara Hamid Shaikh
and others

Petitioners

Versus

Divisional Controller,
Maharashtra State Road Transport
Corporation Division, Jalgaon,
Tq. & District Jalgaon.

Respondent

Mr.Satish S. Manale, advocate for the petitioners
Mr. M.K.Goyanka, advocate for the Respondent.

CORAM : AVINASH G. GHAROTE, J.

DATE : 12th July, 2021.

PC :

1 Heard Mr.Manale, learned Counsel for the petitioner
and Mr.Goyanka, learned Counsel for the respondent.

2 The application for restoration of Reference IDA No.64
of 2009, filed by Hamid Shaikh, which came to be dismissed on
02.02.2011, has been filed by his legal heirs. The same has been
dismissed on the sole ground that the cause of action would not
survive.

3 It is material to note that the parties are *ad idem* that deceased Hamid Shaikh was terminated from service and not suspended and, therefore, IDA No.64 of 2009, challenged the termination and not the suspension, as incorrectly mentioned in the impugned order. It is material to note, that insofar as the plea of reinstatement is concerned, on setting aside of termination, the same can not be pursued by the legal heirs. However, the benefits arising out of the setting aside of termination, can definitely be availed by them. To this limited extent, the legal heirs have a right.

4 This position is enunciated by the Hon'ble Apex Court in **Rameshwar Manjhi (deceased) through his son Lakhiram Manjhi Vs. Management of Sangramgarh Colliery**; 1994 (1) SCC 292.

5 In that view of the matter, the impugned order cannot be sustained. The same is, therefore, quashed and set aside. The parties shall appear before the learned Labour Court, Jalgaon, on 09th August, 2021, who shall, thereupon, proceed to consider the application and decide it on merits, being mindful of the judgment in **Rameshwar Manjhi** (*supra*) and Section 10 (8) of the Industrial Disputes Act. The said application shall be decided within a period

of three months from the date of parties putting their appearance,
as directed above.

6 Writ Petition is disposed of in above terms. There shall
be no order as to costs.

(AVINASH G. GHAROTE)
JUDGE

adb