

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR.**

**LETTERS PATENT APPEAL NO. 216/2012 IN WRIT PETITION NO.1100/2003 (D)**

Panchafulla Khanduji Bhiskute,  
Aged about Major, Occu.: Service,  
R/o Gyani House, Behind Gajanan  
Maharaj Temple, Kaulkheda, Akola.

**APPELLANT**

**.....VERSUS.....**

1. Maharashtra State Road Transport Corporation,  
Akola through its Divisional Controller, Akola.

2. Member, Industrial Court, Akola.

**RESPONDENTS**

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Shri B.M. Khan and Shri R.B. Khan, counsel for the appellant.  
Shri A.R. Fule, counsel for the respondent no.1.

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**CORAM : A. S. CHANDURKAR AND G.A. SANAP, JJ.**

**DATE : 07<sup>TH</sup> OCTOBER, 2021.**

**ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)**

The challenge raised in this letters patent appeal is to the judgment of the learned Single Judge in Writ Petition No.1100 of 2003 decided on 10.01.2012. By that judgment the writ petition preferred by the respondent no.1 herein for challenging the order passed by the Industrial Court allowing the complaint preferred by the appellant has been allowed and the order passed by the Industrial Court has been set aside.

2. The facts in brief are that the husband of the appellant was in service of the Maharashtra State Road Transport Corporation. After his death, the appellant was appointed as a Peon on compassionate basis. During the course of service a charge-sheet was issued to the appellant for

committing misconduct. After holding a departmental enquiry services of the appellant were terminated. The departmental appeal filed by her challenging the order of termination was also dismissed. The appellant filed a complaint challenging the order of termination. When that complaint was pending, the appellant filed a second departmental appeal which was partly allowed on 06.08.1991. By that order the appellant was offered re-appointment in service without any benefit of past service. The appellant accepted that order and joined her duties on 19.05.1992. Subsequently on 11.11.1994 the appellant filed a fresh complaint challenging the order passed by the second Appellate Authority dated 06.08.1991. The Industrial Court by its judgment dated 08.10.2002 allowed the said complaint and after setting aside the order of re-appointment directed her reinstatement with continuity in service and full back wages. The Corporation challenged the aforesaid judgment by filing writ petition and as stated earlier that writ petition has been allowed by the learned Single Judge.

3. Shri B.M. Khan, learned counsel for the appellant submitted that in the discipline and appeal rules applicable to the Corporation there was no provision to pass an order of re-appointment without the benefit of past service. According to him, since the order dated 06.08.1991 could not have been passed there was no question of the appellant raising any

protest while joining duties again in the year 1992. Referring to paragraph 2 of the judgment of the Industrial Court wherein it was observed that the order of the second Appellate Authority had been accepted under protest, it was submitted that the learned Single Judge erred in setting aside the order passed by the Industrial Court. He therefore submitted that since the Industrial Court had considered the entire material on record and had granted relief to the appellant that order be restored.

4. Shri A.R. Fule, learned counsel for the respondent no.1 supported the order passed by the learned Single Judge. According to him, the appellant accepted the order passed by the second Appellate Authority dated 06.08.1991 and joined duties without any protest on 19.05.1992. After about four years the appellant filed a complaint seeking to challenge the order dated 06.08.1991. He submitted that the learned Single Judge rightly found that in the absence of any protest being made by the appellant before accepting the order of re-appointment, relief could not have been granted to the appellant. He referred to the decision in *Maharashtra State Road Transport Corporation, Bombay Versus Prakash Tulshiram Pardeshi* [2008(4) **Mh.L.J.** 940] and submitted that in paragraph two of the judgment the Industrial Court had merely referred to the contentions raised by the

appellant. Hence there was no case made out to interfere with the judgment of the learned Single Judge.

5. We have heard the learned counsel for the parties and we have perused the material on record. It is an undisputed fact that on 06.08.1991 the second Appellate Authority passed an order of re-appointment in favour of the appellant but without giving any benefit of past service. The appellant accepted that order and joined her duties on 19.05.1992. In November-1994, the order passed by the second Appellate Authority was sought to be challenged. In the complaint, there was no averment that the appellant accepted her re-appointment under protest. The records further indicate that the parties did not lead any evidence before the Industrial Court. Thus there is no material on record to indicate acceptance of re-appointment by the appellant under protest. This very issue has been considered by the learned Single Judge in *Prakash Tulshiram Pardeshi* (supra) and there is no reason to take any other view than the one taken in the said decision. Having accepted the order of fresh appointment by foregoing earlier service, the appellant cannot be permitted to turn around and raise the challenge subsequently. The appellant was estopped from doing so and on that premise, the learned Single Judge rightly allowed the writ petition after setting aside the order passed by the Industrial Court.

6. In view of aforesaid, we do not find any reason to interfere in appellate jurisdiction. The letters patent appeal is accordingly dismissed leaving the parties to bear their own costs.

(G.A. SANAP, J.)

(A.S. CHANDURKAR, J.)

APTE