

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

LETTERS PATENT APPEAL NO.343/2012 IN WRIT PETITION NO.3092/2000(D)

APPELLANT : Vinod s/o Mahadeorao Kathane,
aged about 56 years, Occupation : Service,
R/o Kishor Nagar, Amravati,
Tq. and District Amravati.

-vs-

RESPONDENTS : 1. Maharashtra State Road Transport Corporation,
Amravati, through its Divisional Controller,
Amravati.

2. Member, Industrial Court at Amravati,
District Amravati.

3. Anand s/o Baduji Dongre,
Age about 57 years, Occ. Service.
R/o. Kishor Nagar, Amravati.
Tq.and District Amravati.

.....

Shri Sanket Bhalerao, Advocate with Shri N.B.Kalawaghe, Advocate for
appellant.

None for the respondents though served.

...

CORAM : A. S. CHANDURKAR AND PUSHPA V.GANEDIWALA, JJ.

DATED : 21st September, 2021.

Judgment : (Per A.S.Chandurkar, J.)

The challenge raised in this Letters Patent Appeal is to the judgment dated 09.04.2012 in Writ Petition No.3092/2000. By the said judgment, the writ petition preferred by the respondent no.1 challenging the order passed by the Industrial Court in ULP (Complaint) No.742/1997 was allowed and the judgment of the Industrial Court dated 08.03.2000 granting relief to the appellant was set aside.

2. Brief facts relevant for adjudicating the challenge raised in the Letters Patent Appeal are that the appellant came to be appointed as 'helper' with the Maharashtra State Road Transport Corporation (for short, 'the Corporation'). Subsequently he was promoted on the post of 'Artisan C -Mechanic' by virtue of the order dated 13.10.1995. He was placed in the pay-scale of Rs.950-1445 and was posted at Divisional Workshop Amravati. The order of promotion indicated that the same was to be effective from the date of taking charge of the post and the fixation of pay on promotion was to be made after joining on the promotional post. The appellant joined his duties at the Divisional Workshop Amravati on 15.10.1995 by submitting his joining report. Thereafter on 30.10.1995 a revised order was issued by the Corporation transferring the services of the appellant from the Divisional Workshop Amravati to Warud Depot. The appellant being aggrieved by the aforesaid order of transfer filed a complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, 'the said Act'). The Industrial Court on 06.11.1995 passed an interim order and stayed the order of transfer. Thereafter on 03.02.1998 the said complaint came to be dismissed in default. Since the appellant and his co-employee were not paid salary as per the promotion order, they filed ULP (Complaint) No.742/1997 seeking application of pay scale on the promotional post. In the written statement filed by the

Corporation it was admitted that the appellant had been promoted. However since the appellant has not joined duties at the place of posting, which was amended on 30.10.1995, they were not entitled for promotional pay. The Industrial Court on consideration of the material on record, by the judgment dated 08.03.2000 allowed the complaint and directed payment of salary to the appellant as 'Artisan C-Mechanic' from the date of joining at the new posting. This judgment of the Industrial Court was challenged by the Corporation by filing Writ Petition No.3092/2000 under Articles 226 and 227 of the Constitution of India and a ground as regards non-application of mind by the Industrial Court was raised. By the impugned judgment dated 09.04.2012 the order passed by the Industrial Court has been set aside on the ground that the appellant had not joined the promotional post at Warud Depot. Hence this appeal.

3. Shri Sanket Bhalerao, learned counsel for the appellant submitted that after the order of promotion the appellant had joined his duties on 15.10.1995 thus becoming eligible for getting the relief of promotional pay. The subsequent order of transfer to Warud was stayed by the Industrial Court and the appellant continued to discharge duties at Divisional Workshop Amravati. Even after the dismissal of the complaint challenging the order of transfer, the appellant continued to work at the Divisional Workshop Amravati and hence there was no reason to deny the

appellant benefit of promotional pay. No action was taken against the appellant for not joining the duties at Warud Depot despite the fact that the complaint filed earlier had been dismissed in default. He therefore submits that the learned Single Judge erred in setting aside the order passed by the Industrial Court.

4. The respondents are duly served but there is no appearance on their behalf. With the assistance of the learned counsel for the appellant we have perused the records of the case and we have given due consideration to his submissions.

5. It is admitted position that on 13.10.1995 the appellant was promoted on the post of 'Artisan C-Mechanic'. He joined his duties on 15.10.1995. Subsequent order of transfer from Divisional Workshop Amravati to Warud Depot dated 30.10.1995 was challenged by the appellant by filing Complaint (ULP) No.986/1995. The order of transfer was stayed on 06.11.1995. The interim order operated till 03.02.1998 when the complaint was dismissed in default. From the aforesaid it is clear that despite the order of transfer dated 30.10.1995, the appellant discharged his duties at Divisional Workshop Amravati on the post of 'Artisan C-Mechanic' under the orders of the Industrial Court till 03.02.1998 when Complaint (ULP) NO.986/1995 was dismissed in default. After dismissal of the complaint in default, it was incumbent upon the appellant to have joined duties at transfer place which was

Warud. There is no material on record to indicate that after 03.02.1998 the appellant proceeded to join his duties at the transferred place.

6. From the aforesaid, it becomes clear that since the appellant joined his duties on the promotional post on 15.10.1995 and continued to discharge the same at the Divisional Workshop Amravati till 03.02.1998, he was entitled to the relief of promotional pay at least for that period. The Industrial Court however had granted relief to the appellant without specifying the period for which the appellant was entitled to the same. The learned Single Judge in the writ petition has dismissed the complaint on the premise that the appellant had not joined the promotional post at Warud. The effect of the interim order passed by the Industrial Court on 06.11.1995 till 03.02.1998 has not been considered. Though it is true that after the dismissal of the complaint on 03.02.1998 there is no evidence to show that the appellant joined duties at Warud, at the same time the services rendered by the appellant on the promotional post from 15.10.1995 to 03.02.1998 in view of the interim order passed in ULP (Complaint) No.986/1995 cannot be ignored. To that limited extent the appellant would be entitled to get the relief of being paid the promotional pay.

7. We find that the aforesaid facts are undisputed and are available on record. To that limited extent it is found that the appellant is

entitled for the relief. The learned Single Judge in the light of this admitted position was not justified in denying the relief to the appellant for the aforesaid period. Since it is found that failure to grant relief to the aforesaid extent on the basis of admitted facts results in causing manifest injustice to the appellant, a case is made out for modifying the judgment of the learned Single Judge.

8. Accordingly the following order is passed :

(i) The judgment dated 09.04.2012 in Writ Petition No.3092/2000 is partly modified. It is held that the appellant is entitled for the relief as granted by the Industrial Court in Complaint (ULP) No.742/1997 decided on 08.03.2000 from 15.10.1995 till 03.02.1998 as the appellant discharged duties on the promotional post at Divisional Workshop Amravati.

(ii) Letters Patent Appeal No.343/2012 is allowed in aforesaid terms. No orders as to costs.

JUDGE

JUDGE

Andurkar..