

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

LETTERS PATENT APPEAL NO. 223 OF 2010
IN
WRIT PETITION NO. 2412 OF 1997

Gulabrao S/o Rambhau Bobade,
Adult, Occupation : Retired,
R/o Plot No.292, Gandhi Nagar,
Near Mata Mandir, Nagpur.

... **APPELLANT**

V E R S U S

Maharashtra State Road Transport
Corporation Nagar, through its
Divisional Controller.

... **RESPONDENT**

Shri N. D. Khamborkar, Advocate for appellant.
Shri R. S. Charpe, Advocate for respondent-sole.

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

DATED : 29/07/2021

JUDGMENT : (PER : G. A. SANAP, J.)

1. In this Letters Patent Appeal, challenge is to the Judgment and order dated 26/11/2008 passed in Writ Petition No.2412/1997 and the order dated 06/07/2009 passed in Review Application bearing M.C.A. No.29/2009 whereby the learned Single Judge set aside the order passed by the Industrial Court, Nagpur in Complaint (ULPN) No.63/1989 dated 24/04/1997 holding that the superannuation age of the appellant would be 60 years.

The facts leading to the filing of this Letters Patent Appeal are as follows :-

2. The appellant was working as a driver with the Provincial Transport Company which had merged in MSRTC. The appellant joined as a driver with MSRTC on 01/01/1957. It is the case of the appellant that as per the settlement between the MSRTC and the Union, the employees who joined after 01/01/1957 were entitled for the retirement at the age of 58 years, while others were entitled for retirement at the age of 60 years. The appellant joined the service on 01/01/1957. According to the appellant, he was entitled for retirement at the age of 60 years. Though he was entitled for retirement at the age of 60 years, he was retired on 30/06/1984 at the age of 58 years.

3. Being aggrieved, the appellant had filed a complaint before the Industrial Court, Nagpur. The Industrial Court, Nagpur allowed the said complaint. The respondent filed writ petition against the order of Industrial Court, Nagpur. The learned Single Judge allowed the writ petition vide order dated 26/11/2008. The appellant applied for review of the said order.

The review application was also rejected. The learned Single Judge on re-appreciation of the material, came to the conclusion that in view of the settlement between the respondent and the Union, the retirement age of the appellant was 58 years and not 60 years as held by the Industrial Court, Nagpur.

4. Being aggrieved by the order passed in writ petition and the review application as mentioned above, the appellant has come before this Court in appeal. The grounds of challenge to the impugned order have been set out in the Memo of Appeal.

5. We have heard learned advocate for the appellant and the learned advocate for the respondent. Perused the record and proceedings of the appeal.

6. Learned Advocate for the appellant submitted that according to Clause (24) of the settlement agreement dated 09/03/1961, the retirement age of the appellant would be 60 years and not 58 years inasmuch as the appellant joined his service on 01/01/1957. The learned advocate submitted that the

similarly situated employees have been granted the benefit of the retirement at the age of 60 years. Learned advocate submitted that the learned Single Judge has not properly considered the evidence placed on record and on the basis of two decisions of this Court in Writ Petition Nos.2805/2006 and 569/1993 came to the wrong conclusion.

7. Learned Advocate for the respondent submitted that the learned Single Judge has followed the consistent view taken by this Court in the decisions rendered in Writ Petition Nos.2805/2006 and 569/1993. The learned advocate submitted that the decisions rendered in two writ petitions by the learned Single Judge considered the similar facts and came to the conclusion that the employee who joined the service as a driver is not entitled to get the benefit of 60 years retirement age. Learned Advocate submitted that no case has been made out to disturb the consistent view taken by this Court in the similar facts.

8. At the outset, it is necessary to mention that at the time of the merger the settlement was arrived at between the S.T. Corporation and its employees in respect of age of retirement,

particularly those employees who have joined the service on and after 01/01/1957. For the sake of convenience, it would be appropriate to reproduce the demand made by the employees and the settlement arrived at, which reads thus :-

<u>Demand</u>	<u>Settlement</u>
Existing age of retirement in the case of employees appointed on and after 1st January 1957 which is at present 55 would be raised to 60 years.	(a) The employees who have joined a services after 1.1.1957 or are hard after pro ted in the direct sector, will be governed by the Bombay State Road Transport Corporation Rules and Regulations in matter of age of retirement. These are produced below. "The retirement age would be extended to 58 years provided the workman <u>is</u> in physically and muntally fit and his work is satisfactory. No workman will be dircontinued form service in this connection. It will be the duty of the Unit Head to initiate action in this connection. b) For remaining employees the present practice regarding age of retirement will continue."

9. It is undisputed that the appellant joined the service on 01/01/1957. Perusal of the settlement would show that the demand was made by the employees for raising the retirement age from 55 years to 60 years in case of employees appointed on or after 01/01/1957. However, this demand was not accepted. The settlement was arrived at and the benefit of retirement at the age of 58 years was extended to the employees who have joined after 01/01/1957. As per this settlement, the retirement of the employees who joined after 01/01/1957 was extended up to 58 years from the retirement age of 55 years.

10. Admittedly, the appellant joined the service on 01/01/1957. As per this settlement, the benefit of the retirement at the age of 60 years was, therefore, not available to him. The minute perusal of the Judgment rendered by the learned Single Judge as well as the decisions in Writ Petition Nos.2805/2006 and 569/1993 would show that the learned Single Judge has properly considered the decisions rendered in Writ Petition Nos.2805/2006 and 569/1993, while deciding the writ petition filed by the appellant. On perusal of the decisions rendered in Writ Petition

Nos.2805/2006 and 569/1993, it is crystal clear that the controversy raised in the writ petition filed by the appellant is squarely covered in those decisions. The learned Single Judge adopted the reasonings rendered in Writ Petition Nos.2805/2006 and 569/1993. On going through the decisions rendered in Writ Petition Nos.2805/2006 and 569/1993 and the decision of the learned Single Judge impugned herein, we are of the opinion that the learned Single Judge has not committed any mistake. On re-appreciation of the entire material on record, we conclude that the view taken by the learned Single Judge is the only possible view in the facts and circumstances of this case. Accordingly, we conclude that there is no substance in the appeal. The submission advanced by the learned advocate for the appellant, therefore, cannot be accepted. The appeal, therefore, deserves to be dismissed. Hence, the following order :

ORDER

- I] The Letters Patent Appeal stands dismissed.
- II] In the peculiar facts and circumstances of the case, the parties shall bear their own costs.

(G. A. SANAP, J.)

(A.S. CHANDURKAR, J.)