

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

957 WRIT PETITION NO.1264 OF 2007

Divisional Controller,
MRTC, Ahmednagar Division,
Ahmednagar

...PETITIONER

VERSUS

Sanjay Dhanraj Bhandari,
Age-Major,
R/o. Ganesh Building, Kalu Bhagwan Galli,
Ahmednagar

...RESPONDENT

Mr. Mukesh K. Goyanka, Advocate for the petitioner
Mr. P. L. Shahane, Advocate for the respondent

CORAM : RAVINDRA V. GHUGE, J.

DATE : 17-03-2022

ORAL JUDGMENT:

1. I have considered the strenuous submissions of Advocate Mr. M. K. Goyanka and Advocate Mr. P. L. Shahane on behalf of the respective sides. With their assistance, I have gone through the petition paper book.

2. The petitioner M.S.R.T.C. is aggrieved by the

Judgment of the 2nd Labour Court, Ahmednagar dated 29.11.2005 vide which, complaint (ULP) No. 108 of 1996 filed by the respondent for challenging his dismissal dated 10.08.1993, was partly allowed and he was granted reinstatement in service with continuity and 50% back wages. However, even for the period of delay condoned in approaching the Labour Court by order dated 10.09.1999, he has been granted back wages. Technically, the respondent approached the Labour Court in the year 1996. The delay is from August, 1993 till August, 1996, when the complaint was filed.

3. The petitioner is also aggrieved by the Judgment of the Industrial Court dated 27-11-2006 vide which, Revision (ULP) No. 1 of 2006 filed by the employees and Revision (ULP) No. 6 of 2006 filed by the MSRTC, have been dismissed.

4. This petition was admitted on 27.06.2008. The direction to pay back wages was stayed by this Court on 01.03.2007 on the condition that the respondent would be reinstated in service.

5. The conduct of the respondents during the

pendency of this litigation cannot be ignored, which is as under :-

a] The respondent was transferred from Rural area to the Urban area on 11.08.1992. He did not join duties.

b] On 21.09.1992, he preferred a ULP complaint for challenging his transfer and status-quo order was passed. He did not join duties, though relieved.

c] On 27-04-1993, the Industrial Court vacated the ad-interim protection. He still did not join duties.

d] On 27-04-1993, MSRTC issued a charge-sheet on the ground of absenteeism. Yet, the respondent did not join duties.

e] On 10-08-1993, by way of punishment for proved misconduct of absenteeism of seven months, the respondent was dismissed from service.

f] On 01-04-2007, considering the order of this court dated 01-03-2007, the respondent was reinstated in service, and since then he has worked

till his superannuation on 31-12-2019.

g] He has been granted his entire service benefits from 01-04-2007 till 31-12-2019, including the gratuity, leave encashment, family pension, free pass and PF. His earlier service from 03-05-1988 till 31-03-2007 has been wiped out.

6. A host of factors have been canvassed by both the sides including the aspect of the Labour Court having earlier upheld the enquiry and, thereafter, having declared the finding of the enquiry officer as being perverse, in the part II judgment, on 29-11-2005, which is impermissible in law.

7. However, the fact remains that the respondent is now a senior citizen and after a litigation history between the parties from 1992 till today, a period of 30 years, I do not find that it would be appropriate to remand the matter to the Labour Court on account of the illegality of setting aside the enquiry and granting benefit of relief of reinstatement in service, by a common judgment of the Labour Court.

8. The Hon'ble Apex Court, in Pushpa Ramdas Zatake Vs The Divisional Controller, MSRTC, Civil Appeal No. 617 of 2018 has passed an order on 09-07-2018 granting a 'quietus' to the matter by concluding that the litigation between the parties be brought to an end as the appellant was already in service. In the instant case, the respondent has superannuated from service.

9. The learned Advocate for the MSRTC has strenuously canvassed that though the transfer of the respondent was not stayed and finally his ULP complaint challenging the transfer was dismissed, he did not join duties. He had decided not to join duties and therefore, the Management initiated action for his absenteeism and dismissed him from employment. He has been out of employment from 1993 till 31-03-2007 which is a period of almost 14 years.

10. It appears from the record and is equally surprising as to why the respondent did not report for duties, when he was moved only from the rural depot to the city area by way of a movement in the same depot. Even after the status-quo was vacated,

he had no option but to join. Yet, he remained absent. In these circumstances, the respondent alone can be blamed for his misfortunes and the said situation was aggravated with his dismissal from his service.

11. In the light of above and to balance the equities, I am of the view that an equitable order could be passed by depriving the respondent of the entire backwages for the period of delay caused in approaching the Labour court i.e. August, 1993 to August, 1996. From September, 1996 till 31-03-2007, he would be granted only 25% backwages. The record before the Labour Court as well as the Industrial Court does not indicate a blemished past service record of the respondent.

12. In view of the above and to render a quietus to the matter, this petition is partly allowed to the following extent:

a] Grant of backwages to the extent of 50% as per the order of the Labour Court stands modified.

b] The respondent shall be deprived of the backwages for the period of August, 1993 to August, 1996 for the delay caused in approaching the Labour Court for challenging his dismissal.

c] He would be entitled for 25% backwages from September, 1996 till March, 2007 and the said amount shall be calculated by the MSRTC and be paid to the respondent on or before 30-06-2022.

d] Since I am not interfering in the order of reinstatement of the respondent by the Labour Court and sustained by the Industrial Court, his service, for the purpose of re-calculating the gratuity and for re-calculating his pensionary benefits, would be reckoned with from 01-05-1988 till 31-12-2019.

e] The short fall in gratuity shall be paid to him on or before 30-06-2022, if any.

(8)

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f] By re-calculating pensionary benefits as the respondent is being paid temporary pension, MSRTC shall ensure that requisite papers are forwarded to the appropriate authorities for clearance of regular pension with arrears and the said exercise shall be completed in any case on or before 30-06-2022.

g] Leave encashment, if any, be paid.

13. Rule is made partly absolute in the above terms.

[RAVINDRA V. GHUGE, J.]

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