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

919 WRIT PETITION NO.754 OF 2014

**SHRI. RAMRAO GAJABAPU MUSMADE
VERSUS
DR. BABURAO BAPUJI TANPURE CO-OPERATIVE
SUGAR FACTORY LTD.**

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Mr D. R. Markad, Advocate for petitioner;
Mr Sandeep D. Munde, Advocate h/f Mr R. R. Karpe, Advocate
for respondent

CORAM : RAVINDRA V. GHUGE, J

DATE : 8th March, 2022

PER COURT:

1. This is a classic example of a litigant having lost his remedies on account of an incorrect advise.
2. The petitioner joined the respondent as a Clerk in the Accounts Department on 11/12/1969. He became permanent on 30/11/1974. He suffered a medical disability in the nature of a paralytic attack in between 04/10/2007 and 03/10/2008. The respondent referred his case to the District Civil Surgeon during his recuperation and obtained an unfit certificate on 22/09/2008. The petitioner reported for duties with a fitness certificate issued by the Medical Practitioner. However,

(2)

though he reported for duties on 05/10/2008, he was disengaged on 26/02/2009 without permitting him to report for duties.

3. He approached the Labour Court in Complaint (ULP) No.29/2009 for challenging his termination dated 26/02/2009 and for claiming back-wages for the period of oral refusal of work from 04/10/2007 till 03/10/2008.

4. During the pendency of the Complaint (ULP), the petitioner received an appointment order dated 19/07/2010 w.e.f. 06/06/2010 and to be treated as a fresh employee. He accepted the appointment order without any protest or without reserving his right to challenge the same. On 21/04/2013, he appeared before the Lok Adalat and signed on the compromise terms along with his Advocate and thereby withdrew the Complaint (ULP) from the Labour Court. He, thus, gave up the challenge to the termination order dated 26/02/2009 and the oral refusal of work for the period from 04/10/2007 till 03/10/2008.

5. The petitioner pursued Complaint (ULP) No.73/2010 filed before the Industrial Court for challenging the fresh appointment order dated 19/07/2010. By the impugned Judgment, the Industrial

(3)

Court concluded that as the complaint challenging the termination order, the oral refusal of work had been withdrawn, said issues cannot be considered and no relief can be granted.

6. Having considered the extensive submissions of the learned Advocate for the respective sides, I find that the challenge of the petitioner to the fresh appointment order is prohibited by the law laid down by the Hon'ble Apex Court in the case of *State of Punjab v/s Krishan Niwas*, **AIR 1997 SC 2349** and in the case of Subhash vs. the Divisional Controller, MSRTC, **AIR 2010 SC 2484**. This Court has also delivered judgments dated 02/07/2015 in the case of MSRTC vs. Pandurang Trimbak Dusane in Writ Petition No.2139/1997 and in the case of Anil Vaijnath Arbad Vs. Divisional Traffic Superintendent, MSRTC, **2016 (5) ALL MR 502**.

7. The law has thus crystallized that, if an employee accepts a fresh appointment order without any protest or murmur and unconditionally joins duties as a fresh employee, he is precluded from challenging the fresh appointment order after accepting the same and while being in service.

8. In view of the above, I do not find that this petition could be entertained and the same is therefore, dismissed.

(4)

(RAVINDRA V. GHUGE, J.)

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