

(1)

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

906 WRIT PETITION NO.9557 OF 2013

THE DIVISIONAL CONTROLLER, MAHARASHTRA STATE
ROAD TRANSPORT CORPORATION, JALGAON DIVISION
VERSUS

HIRAMAN MUKUNDA PATIL, Died, thr. L.RS. KAMALBAI
HIRAMAN PATIL AND OTHERS

...

Mr M. K. Goyanka, Advocate for petitioner

CORAM : RAVINDRA V. GHUGE, J

DATE : 8th March, 2022

PER COURT:

1. Notice was issued to the respondents on 20/12/2013. Once again, the notice was issued on 28/02/2014. On both occasions, the respondents were served and yet no appearance was entered either in person or through an Advocate. Even after a passage of almost 8 years of the pendency of this petition, no appearance is entered.

2. The petitioner has raised an issue in this petition which is no longer *res integra* in the light of the Judgment delivered by this Court, dated 02/07/2015 in **Writ Petition No.2139/1997**, filed by **MSRTC, Jalgaon vs. Pandurang Trimbak Dusane** and in the

(2)

case of **Anil Vaijnath Arbad Vs. Divisional Traffic Superintendent, MSRTC, 2016 (5) ALL MR 502**. So also, the Hon'ble Apex Court has delivered Judgments on this count in the case of **State of Punjab v/s Krishan Niwas reported in AIR 1997 SC 2349** and in the case of **Subhash vs. the Divisional Controller, MSRTC, AIR 2010 SC 2484**.

3. The deceased respondent was charge-sheeted for a misconduct vide charge-sheet dated 01/01/2002. After conducting a full-fledged enquiry, he was dismissed from service on 18/02/2002. He preferred a first departmental appeal which was dismissed. He preferred a second departmental appeal and the second appellate authority set aside the order of dismissal and by way of a punishment, granted a fresh appointment. His past service tenure was wiped out. He accepted the appointment order without any protest and murmur and joined the employment in 2003.

4. In 2008, the respondent preferred Complaint (ULP) No.13/2008 before the Labour Court, Jalgaon. By Judgment dated 30/08/2012, the Labour Court partly allowed the Complaint, declaring that the petitioner MSRTC has indulged in unfair labour

(3)

practices by illegally dismissing the complainant from service and granted monetary benefits of 50% back-wages to the legal heirs of the complainant since he had passed away during the pendency of the Complaint. The revision petition preferred by the petitioner bearing Revision (ULP) No.6/2013 was dismissed by the Industrial Court vide Judgment dated 16/08/2013.

5. It is apparent that the MSRTC did not cite the Judgment delivered by the Hon'ble Apex Court in **State of Punjab v/s Krishan Niwas** (supra) as well as in **Subhash vs. the Divisional Controller, MSRTC** (supra). Had these two judgments been cited, the Labour Court could have realized that, it could not have allowed the complaint as a challenge to a fresh appointment after accepting the appointment order, joining duties and after putting in some period of service, renders the complaint untenable.

6. Considering the law laid down by the Hon'ble Apex Court and the view taken by this Court in the light of the pronouncements in *State of Punjab v/s Krishan Niwas* (supra), *Subhash vs. the Divisional Controller* (supra), in *MSRTC vs. Pandurang Dusane* (supra) and in *Anil Vaijnath Arbad* (supra), both the impugned orders are unsustainable.

7. Consequentially, this petition is allowed.

The impugned Judgment of the Industrial Court, dated 16/08/2013, is quashed and set aside and Revision (ULP) No.6/2013 stands allowed. Consequentially, the Judgment of the Labour Court, dated 30/08/2012, stands quashed and set aside and Complaint (ULP) No.13/2008 stands dismissed.

(RAVINDRA V. GHUGE, J.)

sjk