

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 318 OF 2020**

Divisional Traffic Superintendent
M.S.R.T.C. Solapur and ors .. Petitioners
Versus
Shri Jargis Gaffur Mulla .. Respondent

WITH

WRIT PETITION NO. 13013 OF 2019

Jargis Gaffur Mulla .. Petitioners
Versus
Divisional Traffic Superintendent
M.S.R.T.C. Solapur and ors .. Respondents

...

Mr. Amit A. Gharte for the petitioner in WP 318/20 and for respondent in WP 13013/2019.
Mr. Prabhu Badadare i/b Ganesh K. Gole for the petitioner in WP No. 13013/19 and for respondent in WP 318/2020.

**CORAM: RAVINDRA V. GHUGE, J.
DATED : 6th JANUARY, 2022**

P.C:-

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

Tilak

2 Both the parties in these two petitions are the employer MSRTC and the employee Jargis Gaffur Mulla. In the first petition filed by the employee, prayer clause (b) has been put forth as under :-

“(b) This Hon’ble Court may be pleased to quash and set aside Judgment and Order dated 19.07.2019 passed by Ld. Industrial Court in Revision (ULP) No.94 of 2015 to the extent of not granting back wages and continuity in service and further be pleased to grant full back wages and continuity in service”.

3 In the other petition filed by the MSRTC, prayer clause (a) reads thus :-

“(a) that this Hon’ble Court be pleased to quash and set aside the Impugned Judgment dated 19th July 2019 passed by the Ld. Industrial Court at Solapur in Revision (ULP) No.94 of 2015.”

4 The employee has been dismissed from service on 26/3/2010 by way of punishment after conducting a full fledged domestic enquiry. The employee was issued with a charge-sheet on 11/6/2009 by invoking clauses 10, 12b, 22, 26, 29A, 35, 36 and 38 of Index-A under Rule 3(2) of the Discipline and Appeal Rules. Pursuant to the dismissal, the

employee approached the Labour Court by preferring Complaint (ULP) No. 15 of 2010 under Item 1 of Schedule IV of the MRTU and PULP Act, 1971 (in short '1971 Act'). By the Part-1 order dated 9/11/2011, pertaining to the issues of fairness of the enquiry and the findings of the Enquiry Officer, the Labour Court concluded that the enquiry was conducted in a fair manner by adhering to the principles of natural justice. However, the findings of the Enquiry officer holding the employee guilty for misconducts falling under clauses 12b, 29A and 38, were held to be partly perverse. The findings were partly approved with regard to acts falling under clause 10, 22, 35 and 36.

5 For ready reference, the entire clauses invoked against the employee are reproduced hereunder :-

१०) गैरशिस्तपणा

१२ब) महामंडळाच्या कासकाबाच्या किंवा मालमत्तेच्या संबंधात लबाडी, बेईमानी किंवा अफरातफर.

२२) कोणत्याही प्रशासकीय आदेशांचा भंग करणे.

२९अ) कर्मचार्याने स्वतः किंवा त्याच्या माहितीतील अन्य व्यक्तीने केलेल्या कोणत्याच अपराधासंबंधी किंवा महामंडळाशी संबंधित कोणत्याही बाबीसंबंधी किंवा पूर्वासंहार किंवा अभिलेख रेकॉर्ड) बाबतची पूर्वी व यथार्थ माहिती देण्यास कसूर करणे.

३५) अनियमित उपस्थिती, रजेशिवाय आणि कारणाशिवाय गैरहजर राहणे आणि पूर्व परवानगी शिवाय गैरहजर राहणे.

३६) राज्य परिषद कर्मचाऱ्यांच्या सेवेसंबंधी विनियमापैकी विनियम ४३-ब अन्वये करण्यास आल्याप्रमाणे महामंडळाची अगोदर परवानगी घेतल्याशिवाय मुख्य कर्मचाऱ्याने प्रथम पत्नी हयात असताना किंवा स्त्री कर्मचाऱ्याने पती हयात असता दुसरा विवाह संबंध करणे.

३८) महामंडळाच्या कर्मचाऱ्यांना दिलेली कोणतीही सवलत किंवा सुविधा यांचा गैरवापर करणे व किंवा कोणत्याही सक्तीचा किंवा सुविधांचा असा गैरवापर होणे मुभा देणे किंवा त्याकडे करणे

6 Pursuant to the above part I order, the employer MSRTC led evidence as noted by the Labour Court in paragraph no.35 of the final judgment dated 11/9/2015. The offence of the employee, having tendered a false medical bill was proved before the Labour Court. Similarly, the employee was held guilty of having procured two free passes in the name of his first wife in the year 2009 and then, for the second wife, after he performed a second marriage without intimation to the MSRTC. The charge of cheating the Corporation was established and the Labour Court concluded that it was a serious offence. The past service record of the employee was not produced before the Labour Court. Vide the final judgment dtd 11.9.2015, the Labour Court dismissed the complaint.

7 The MSRTC challenged the Part 1 order delivered by the Labour Court by preferring Revision ULP No.05 of 2012. By judgment dated 2/9/2014, the Industrial Court

dismissed the Revision Petition and sustained the Part-1 order. This judgment has not been assailed by the MSRTC any further.

8 Since the Labour Court finally dismissed the complaint of the employee, he preferred Revision ULP No.94 of 2015. By judgment dated 19.7.2019, the Industrial Court allowed the Revision Petition only to the extent of interfering with the dismissal of the complaint and consequentially, granted limited relief to the employee in the nature of reinstatement in service without continuity and without back wages.

9 As both the parties have approached this Court, i.e. the MSRTC being aggrieved with the entire judgment of the Industrial Court and the employee approached this Court for continuity and back wages, the judgment of the Industrial Court was not implemented. During the pendency of these proceedings, the employee attained the age of superannuation on 30/5/2021. His date of joining service is 11/6/1999. The qualifying service for pensionary benefits is 10 years.

10 Having considered the extensive submissions of the learned counsel for the respective sides on 5/1/2022, I

disclosed the conclusions which I had arrived at, to the parties by informing them that the view taken by the Industrial Court was unsustainable, in the light of the fact that though two charges out of the three held to be proved against the employee, were of a minor or technical character, the charge proved under clause 12b, was of cheating the Corporation. A false medical bill was submitted for reimbursement and after performing the second marriage without intimation to the Corporation, the employee secured a free pass even in the name of the second wife.

11 The learned counsel for the employee sought an adjournment to take instructions. Hence, these matters were adjourned for one day.

12 There is no dispute that the employee belongs to the Muslim religion and the personal law applicable to the Muslim religion permits more than one marriage, limited to a maximum of four according to the learned counsel for the employee. The issue is as to whether the MSRTC has a policy of granting free bus pass to more than one wife of a male employee and whether a male employee who practices muslim faith, would be entitled for free bus passes for more than one wife.

13 The learned counsel for the employee submits that this aspect as to whether a male employee professing muslim religion would be entitled for free bus pass for more than one wife, was not addressed either to the Labour Court or the Industrial Court. However, to put an end to the litigation, she had sought an overnight adjournment so as to take instructions from the employee.

14 Today, it is submitted that the employee is willing to waive all the back wages from the date of dismissal, 26/3/2010 till the day of his superannuation 31/5/2021, with the request that continuity may be granted so that he would be entitled for the gratuity to be calculated on the basis of his salary payable at the time of his dismissal and for retiral/pensionary benefits, by taking into account his service tenure from 11/6/1999 till 31/5/2021.

15 It calls for no debate that an act of cheating would amount to a grave and serious misconduct. The MSRTC has to bring the past service record of the employee before the Court. A blemished past service record would be an aggravating factor and an unblemished record would be a mitigating factor. The employee has put forth a request that

he would not claim any back wages and as he has to support a large family, his retiral benefits may be protected.

16 In a judgment delivered by the Apex Court in the matter of Kum.Pushpa Ramdas Zatake Vs. The Divisional Controller, Maharashtra State Road Transport Corporation in Special Leave to Appeal No.22618/2017 decided on 09.07.2018, it has been held that there could be circumstances wherein a 'quietus' could be granted to the litigation.

17 In the instant case, the employee has superannuated. The Industrial Court has granted reinstatement with effect from 19.7.2019 and the employee attained the age of superannuation on 31/5/2021. Technically, he would be entitled for these wages. However, as the charge has been proved under clause 12b, along with 29A and 38, a strict view could have been taken in this matter in the nature of depriving reinstatement in service to the employee. Considering the comparative hardships and to balance the equities, I am of the view that a 'quietus' be granted to this case by granting notional reinstatement in service to the employee by recording his statement. He would thus be entitled for retiral benefits only in the nature

of gratuity to be calculated on the basis of his last drawn salary at the time of his dismissal, pensionary benefits, post superannuation on 31/5/2021 and other retiral benefits as may be available under the Rules.

18 In view of the above, the petition filed by the MSRTC is partly allowed and the petition filed by the employee is disposed off. The judgment of the Industrial Court dated 19/7/2019 stands modified in the following terms :-

- (a) The employee Jargis Gaffur Mulla would be granted notional reinstatement in service with continuity for the period 26/3/2010 till 31/5/2021 in view of the consenting statement of waiver of back wages for this entire period;
- (b) He would be entitled for gratuity for his entire service, to be calculated at the rate of his last drawn salary when he was dismissed.
- (c) He would be entitled for retiral benefits, save and except leave encashment.
- (d) He would be entitled for PF accumulations, if any, for the period 11/6/1999 till 26/3/2010.

(e) He shall be restrained from re-opening any issue before any Authority, Forum, Court or Tribunal with regard to any matter arising out of his service employment.

19 Rule is made partly absolute in WP No. 318/2020 and stands discharged in WP No. 13013/2019.

RAVINDRA V. GHUGE, J