

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

WRIT PETITION NO.7725/2017

Murlidhar Ramkrushna Dhotre,
aged about 54 years, Occ. Service,
r/o at Post Patur, Near Mata Mandir,
Urkud, Tq. Patur, Dist. Akola.

.....PETITIONER

...V E R S U S...

Divisional Controller,
MSRTC, Divisional Office, Akola.

...RESPONDENT

Mr. B. M. Khan, Advocate for petitioner.
Mr. A. R. Fule, Advocate for respondent.

CORAM:- AMIT BORKAR, J.
DATED :- 11.07.2022

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith by consent of the parties.

2. The employee-Conductor has challenged the order of dismissal of his complaint by the Labour Court, holding the complaint barred by limitation and on the ground that the petitioner failed to the unfair labour practice as alleged. The facts giving rise to the present petition are as under.

3. The petitioner was appointed as a Conductor on 07.06.1988. On 14.05.1996, the petitioner was served with a charge sheet on the ground of misappropriation of the ticket amount. On 15.04.1997, the petitioner was dismissed from service after holding the departmental inquiry. The petitioner challenged the order of dismissal by filing Complaint ULP No.80/1997 before Labour Court, Akola. By judgment and order dated 28.05.1999, Labour Court, Akola, partly allowed the complaint directing the respondent to reinstate the petitioner with continuity of service with effect from 15.04.1997. The relief of back wages was denied.

4. The respondent, aggrieved by the order dated 28.05.1999, filed Revision ULP No. 152/1999. Pending the said revision, the petitioner had, on 16.01.2006, filed an application to settle the matter as per the scheme floated by the respondent in the form of Circular 31/2005 dated 03.12.2005. Accepting the proposal, the respondent, by communication dated 29.04.2006, communicated to the petitioner that if the terms and conditions in a letter dated 29.04.2006 are complied with by the petitioner, he will be reinstated on his original post. However, the petitioner shall not be entitled to claim the monetary benefits. In accordance

with the letter dated 29.04.2006, the petitioner deposited the amount of Rs.5,000/- with the respondent. Despite representation made to the petitioner that on fulfillment of conditions in a letter dated 29.04.2006 that he will be reinstated in service, the respondent issued an appointment order dated 28.09.2006 appointing him on the post of Conducted as “Fresh Appointment”.

5. The petitioner, therefore, on 31.10.2009 filed Complaint ULP No.113/2009, challenging the order of appointment as fresh order of appointment and directing the respondent to reinstate him as per the provisions of Circular No. 31/2005. The said complaint was contested by the respondent, inter alia, raising an objection of estoppel and complaint having barred by law of limitation. It needs to be noted that the petitioner, on 26.07.2013, filed an application seeking permission to file an application for condonation of delay along with the application for condonation of delay. The petitioner filed his affidavit in support of the claim. The respondent adduced evidence before the learned Industrial Court. By the impugned judgment, Learned Industrial Court dismissed the complaint mainly on two grounds. First, the complaint filed by the petitioner is barred by limitation. Second, the petitioner had accepted the

fresh appointment; he is estopped from challenging the validity of the said appointment order.

6. The learned Advocate for the petitioner submitted that the principle of estoppel has no application in the facts of the present case as the order passed by the Labour Court in Complaint ULP No.80/1997 directing the reinstatement of the petitioner was not modified in terms of settlement between the parties. With the result, the effect of the order dated 28.05.1999 remained in force. According to him, by way of the communication dated 29.04.2006, it was agreed by the respondent that in case the petitioner fulfills the terms and conditions of the circular dated 03.12.2005, bearing Circular 31/2005, the petitioner will be reinstated in service. Therefore, according to the petitioner, the cumulative effect of the order of Labour Court in Complaint ULP No.80/1997 read with representation made to the petitioner by the communication dated 29.04.2006 would inure to the benefit of the petitioner, and by giving fresh appointment, the respondent has committed unfair labour practice. Therefore, the petitioner is entitled to reinstatement as per the order of the Labour Court in Complaint ULP No.80/1997. According to the petitioner, since there is non-compliance with the order of the Labour Court, the

cause of action for filing the complaint was recurring in nature. Therefore the Labour Court was not justified in rejecting the complaint on the ground of bar of limitation.

7. I have carefully considered the submissions made by both sides. As a result, the conspectus of the facts narrated above emerge as under:

(i) The Labour Court, by order dated 28.05.1999, had directed the respondent to reinstate the petitioner with continuity of service w.e.f. 15.04.1997, without back wages. The Superior Court did not modify the said order. As a result, the effect of said order remains in force.

(ii) Undisputedly, there is a representation made by the petitioner by communication dated 29.04.2006 by way of reply to the application for settlement filed by the petitioner dated 16.01.2006 that the petitioner would be reinstated to his original post and acting on the said representation, the petitioner deposited the amount of Rs.5,000/- as per Circular 31/2005.

8. In my opinion, therefore, the Labour Court was not justified in invoking the principle of estoppel as it is not the case

where the petitioner got the benefit of the scheme and thereafter resiled from that. On the contrary, the petitioner deposited the amount of Rs.5,000/-. Moreover, according to Circular 31/2005, undisputedly, the petitioner complied with the terms and conditions of the letter dated 29.04.2006. Therefore, it was obligatory for the respondent to reinstate the petitioner to his original post along with continuity of service as directed by the Labour Court in Complaint ULP No. 80/1997. This is coupled with the fact that the order dated 28.05.1999 directing reinstatement of the petitioner has remained in force. Therefore, it was not open for the respondent to deny the petitioner the benefit of reinstatement of service. Therefore, in my opinion, the Labour Court was not justified in recording a finding that the respondent had not engaged in the unfair labour practice.

9. Insofar as the issue of limitation is concerned, undisputedly order of the Labour Court in complaint ULP No.80/1997 dated 28.05.1999 is still in force. Since there is a breach of the order of the Labour Court to reinstate the petitioner, the petitioner had made out a case for the recurring cause of action. Therefore, in my opinion, the Labour Court was not justified in dismissing the complaint on the ground of limitation.

10. In the result, the petitioner is entitled to the relief of reinstatement. I, therefore, pass the following order.

The impugned order dated 28.09.2006 passed by the respondent giving a fresh appointment to the petitioner is quashed and set aside. The respondent is directed to reinstate the petitioner as per the order dated 28.05.1999 passed by Labour Court in Complaint ULP No. 80/1997.

Rule is made absolute in the above terms. No order as to costs.

JUDGE

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