

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3514 OF 2020

Shri. Siddhanna Shankar Birajdar

..Petitioner

Versus

Divisional Controller Maharashtra State
Road Transport Corporation

..Respondent

Mr. Suhas Inamdar, for the Petitioner.

Mr. Y. D. Deshmukh a/w Vaidehi Pradeep & Aditi Athawale, for the
Respondent/MSRTC.

CORAM : SANDEEP V. MARNE, J.

DATE : 5th DECEMBER, 2023

PC.

1. By this petition, petitioner challenges judgment and order dated 8th February, 2019 passed by the Member, Industrial Court, Solapur dismissing Complaint (ULP) NO.97 of 2011. The complaint was filed by petitioner claiming wages in respect of period from 10.11.1992 to 04.04.2011 as well as the difference of wages in the posts of Driver and Peon during period from 09.04.2011 to 31.05.2011.

2. I have heard Mr. Inamdar, the learned counsel appearing for the petitioner and Mr. Deshmukh, the learned counsel appearing for the respondent.

3. It is seen that the petitioner had filed Complaint (ULP) No.1 of 2004 seeking reinstatement/alternate job when he was terminated from service owing to acquisition of disability in the accident caused while driving the bus. The Industrial Court proceeded to allow Complaint (ULP) No.1 of 2004 and directed the respondent/Corporation to provide suitable alternate job to the petitioner keeping in mind his disability. It appears that in pursuance of the order dated 10th September, 2009, the respondent/Corporation provided appointment to the petitioner on the post of Peon with effect from 05.04.2011. Shortly after his appointment as Peon, petitioner retired on attaining age of superannuation on 31.05.2011. He later filed Complaint (ULP) No.97 of 2011 seeking difference of wages for the period between 10.11.1992 to 04.04.2011 as well as difference of pay in the posts of Driver and Peon from 09.04.2011 to 31.05.2011. The Industrial Court has proceeded to dismiss the complaint.

4. In my view, when the petitioner filed Complaint (ULP) No.1 of 2014 seeking reinstatement/alternate job, he ought to have prayed for payment of back-wages from the date of termination till the date of grant alternate job. Petitioner has not placed on record copy of Complaint (ULP) No.1 of 2004 and it is difficult to comprehend as to whether petitioner did pray for back-wages. If the complainant had prayed for grant of back-wages and since the same are not granted, the issue of payment of back-wages from 10.11.1992 would be barred by the principles of *res-judicata*.

5. On the other hand, if the petitioner omitted to seek back-wages from 10.11.1992 in Complaint (ULP) No.1 of 2004, the same would be barred by the principles of constructive *res-judicata*. In my view, therefore, petitioner could not have sought back-wages in respect of the period from 10.11.1992 on-wards by filing a fresh Complaint bearing Complaint (ULP) No.97 of 2011.

6. However, it must be noted here that the Industrial Court had directed provision of alternate job to the petitioner by its order dated 10.09.2009. The alternate appointment seem to have been granted belated on 05.04.2011. The delay in grant of alternate appointment is squarely attributable to the respondent/Corporation alone. In that view of the matter, petitioner would be entitled to salary and allowances during the period from 10.09.2009 till 04.04.2011.

7. So far as the prayer for payment of difference of wages in the posts of Driver and Peon during the period from 09.04.2011 to 31.05.2011 is concerned, I do not find any merit in the said prayer. Firstly, the Industrial Court while passing order dated 10.09.2009 had granted liberty to the respondent/Corporation to offer suitable alternate job to the petitioner keeping in view his earlier disability. Thus, it was for the respondent/Corporation to decide the appropriate post on which the petitioner could be reinstated. The Industrial Court did not direct that if the petitioner is not reinstated on a post below the rank of Driver, he would be

entitled to difference of wages. Secondly, the period from the date of reinstatement till the date of retirement is otherwise not substantiated. In my view, the prayer for difference of wages in the posts of Driver and Peon does not merit any consideration.

8. The writ petition is accordingly partly allowed by directing the respondent/Corporation to pay to the petitioner salary and allowances for the period from the date of the order of the Industrial Court i.e. 10.09.2009 till 04.04.2011. The amount towards such salary and allowances shall be paid by the respondent/ Corporation to the petitioner within a period of two months from today.

9. With the above directions, the Writ Petition is disposed of.

[SANDEEP V. MARNE, J.]