

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

WRIT PETITION NO.128 OF 2020

(DIVISIONAL CONTROLLER, MSRTC, WARDHA...VS.. RAMBHAU MAHADEO AGARKAR.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri V.H.Kedar, Advocate for Petitioner.
None for the Respondent.

CORAM : ANIL S. KILOR, J.
DATED : JANUARY 17, 2023.

1. Heard learned counsel for the petitioner.
None for the respondent, though served.

2. In this petition the judgment and order dated 17/06/2019 passed by Member, Industrial Court No.5, Nagpur in Complaint (ULP) No. 178 of 2015 is under challenge, whereby it is directed to the petitioner to extend benefits of Clause 49 of the Settlement of 1956 to the complainant forthwith on completion of 180 days service since appointment in 1980. It is further directed that the respondent shall release all the monetary benefits within two months, else interest at the rate of Rs.8% per cent shall be applicable on due amount from the said two months.

3. The learned counsel for the petitioner submits that the learned Industrial Court has observed that there is no evidence brought by the petitioner/ respondent that

the complainant did not complete 180 days. It is submitted that by observing so the learned Industrial Court has shifted the burden on the petitioner/ employer to prove that the employee did not work for 180 days, which is contrary to law.

4. He has further pointed out that in the earlier round of litigation this Hon'ble Court while considering the challenge raised to the order of reinstatement of the respondent granted by the First Labour Court, Nagpur has observed in clear terms that the respondent was a daily wager and hence, question of grant of continuity in service and back wages does not arise and maintained the order of reinstatement. He, therefore, submits that the Industrial Court has committed an error in allowing the complaint and granting benefits in favour of the respondent-employee.

5. At this stage, the learned counsel for the petitioner makes a statement, on instructions, that from 2017 the respondent is not attending the duties.

6. The Co-ordinate Bench of this Court in the case of *Raghunath ..vs. Divisional Controller*, reported in **2016(2) Mh.L.J. 477** in similar matter, has observed thus:

“19. It is settled law that the Employee has to prove the factum of appointment/ employment and continuity in service.

The onus and burden initially lies on the Employee. In the instant cases, the petitioners have conceded in their cross-examination, which is evident from the observations of the Labour Court in paragraph 14 of the impugned judgments, that they did not have any documentary evidence as regards their appointments since the Respondent/ MSRTC had never issued any appointment order. They also did not have any record pertaining to their purported salaries and attendance since their names were not entered in the salary register or muster roll. They conceded that they used to wash the buses and only after washing the buses, they used to get their remuneration as per the number of buses washed. They have also conceded that they were paid their remuneration every fortnight.”

7. In this case, it can be seen that the Industrial Court has shifted the burden on the employer to prove that the respondent had worked for 180 days with the petitioner/ employer. There is no discussion as regards the observation made by this Court in Writ Petition, particularly to the effect that the respondent cannot claim continuity of service and back wages as he is a daily wager.

8. The learned Industrial Court, contrary to the said finding, has observed that the respondent worked for 180 days continuously. However, there is no discussion about any evidence brought by the respondent to prove the said fact.

9. Thus, in absence of any sufficient evidence to show that the respondent worked for 180 days continuously, I am of the opinion that the Industrial Court has committed error in allowing the complaint of the respondent. Accordingly, I pass the following order:

- i) The Writ Petition is allowed.
- ii) The impugned order dated 17/06/2019, passed by Member, Industrial Court No.5, Nagpur in Complaint (ULP) No.178 of 2015 is hereby quashed and set aside.

The Writ Petition is **disposed of** accordingly.

No order as to costs.

JUDGE

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