

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

WRIT PETITION NO.3520 OF 2001

Maharashtra State Road Transport Corporation	Petitioner
V/S	
Suryakant Dattatraya Pawar	Respondent

Ms. Pinky M. Bhansali *for the Petitioner-MSRTC.*
Mr. Ravindra S. Pachundkar *for Respondent.*

CORAM: SANDEEP V. MARNE, J.
DATE : 29 AUGUST 2024.

P.C.:

1 By this Petition, Petitioner-Maharashtra State Road Transport Corporation (MSRTC) challenges the judgment and order dated 17 October 2000 passed by the Industrial Court, Solapur by which Complaint (ULP) No.64 of 1997 has been partly allowed and the Petitioner-MSRTC is directed to accommodate the Respondent by giving him alternate employment with effect from 27 February 1997 with continuity of service and backwages.

2 The Respondent was employed as Driver in the Petitioner-MSRTC. It appears that he has indulged in three accidents and one of the accidents had resulted in a death. In respect of the said three accidents, departmental charge-sheets dated 21 July 1989, 20 August 1990 and 13 July 1990 were issued to him. While the enquiries in the said three charge-sheets were under progress, it

appears that Respondent was medically declared unfit by the Competent Authority. It is the case of the Petitioner-MSRTC that on account of repeated accidents being committed by him he was placed under suspension and was sent for medical examination. In such medical examination he was declared medically unfit and was terminated from service on 15 February 1991.

3 Respondent filed Complaint (ULP) No.74 of 1991 before the First Labour Court, Solapur challenging the termination order dated 15 February 1991. The Complaint was dismissed by the Labour Court holding that it did not have jurisdiction to decide the issue of grant of alternate employment for which Respondent ought to have filed Complaint before the Industrial Court under Item 9, Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**). The Labour Court therefore did not find any unfair labour practice in the matter of termination of the Respondent and proceeded to dismiss the Complaint by judgment and order dated 21 January 1997. Respondent thereafter filed fresh Complaint (ULP) No.64 of 1997 before the Industrial Court, Solapur seeking the relief of grant of alternate employment. The Complaint has been allowed by the Industrial Court directing the Petitioner to grant alternate employment to the Respondent with effect from 27 February 1997 alongwith continuity of service and back-wages. The judgment and order dated 17 October 2000 passed by the Industrial Court, Solapur is the subject matter of challenge in the present Petition.

4 The Writ Petition was admitted by order dated 2 August 2001 and impugned order of the Industrial Court was stayed. While admitting the Petition, this Court observed that the Respondent had made an application for grant of alternate employment on compassionate ground and that the Petitioner-MSRTC would consider the same. This Court therefore directed Petitioner-MSRTC to decide such application. It appears that the request of the Respondent for grant of alternate employment was accepted and he was given appointment with effect from 3 November 2001. The same was however a fresh appointment. On attaining the age of superannuation the Respondent has retired from service on 31 March 2010.

5 I have heard Ms. Bhansali, the learned counsel appearing for Petitioner-MSRTC and Mr. Pachundkar, the learned counsel appearing for Respondent-employee.

6 After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that the impugned order of the Industrial Court directs grant of alternate employment to the Respondent with effect from 27 February 1997 and he has actually been granted fresh appointment by Petitioner-MSRTC with effect from 3 November 2001. Respondent continued in service of Petitioner-MSRTC till the age of retirement on 31 March 2010. Therefore the only issue that arises for consideration is the period during 27 February 1997 to 3 November 2001.

7 No doubt the Respondent was charged with commission of misconduct in respect of three accidents and departmental enquiries were under progress at the relevant time. Instead of concluding the said departmental enquiries by taking them to their logical end and punishing the Respondent, it appears that Petitioner-MSRTC adopted a short-cut method of deputing Respondent for medical examination in which he was found unfit. Ms. Bhansali would submit that it was the duty of the Respondent to get himself medically examined every year after crossing the age of 40 and for 12 long years he had not got himself medically examined which is the reason why Petitioner-MSRTC was required to depute him for his medical examination. It however appears that the main reason why he was deputed for medical examination was on account of repeated accidents caused by him. Thus the blame is required to be shared by both the parties. Even though Respondent was declared medically unfit to drive the buses of Petitioner-MSRTC, he ought to have been offered alternate employment commensurate to the degree of disability suffered by him. Terminating his services was not warranted. It appears that the Industrial Court has placed reliance on clause 14 of the Agreement prevailed at the relevant time under which the Petitioner-MSRTC was duty bound of his alternate employment to medically incapacitated staff. Therefore the action of Petitioner-MSRTC in terminating the service of Respondent for having acquired disability was clearly unwarranted.

8 Instead of filing the Complaint under Item 9, Schedule IV of the MRTU & PULP Act before Industrial Court, Respondent committed a mistake of approaching the Labour Court and challenging the termination

order in Complaint (ULP) No.74 of 1991. He continued with his mistake for next six long years till his Complaint was finally dismissed by the Labour Court on 21 January 1997. A fresh Complaint was lodged by him in the year 1997 before the Industrial Court, Solapur. Thus Respondent was responsible for whiling away time in prosecuting remedy in the Court of incompetent jurisdiction during 1991 to 1997. Therefore there is no question of award of any backwages to the Respondent from the date of his termination till the date of filing of Complaint (ULP) No.64 of 1997, which appears to be 27 February 1997.

9 So far as the period after 27 February 1997 is concerned, the Industrial Court has directed grant of alternate employment to him, which was ultimately granted on 3 November 2001. Considering the facts and circumstances of the present case as well as keeping in mind the conduct of Respondent, in my view ends of justice would meet him, the Respondent is awarded 50% backwages during the period from 27 February 1997 till 2 November 2001.

10 Accordingly, I proceed to pass the following order:

ORDER

i) Judgment and order dated 17 October 2000 passed by the Industrial Court, Solapur, in Complaint (ULP) No.64 of 1997 is modified by directing that Respondent shall be entitled to be paid 50% backwages for the period from 27 February 1997 to 2 November 2001.

- ii) Respondent shall not be entitled to backwages or continuity during the period from 15 February 1991 till 26 February 1997.
- iii) The amount of 50% backwages as directed above shall be paid by the Petitioner-MSRTC to Respondent within a period of three months from today.
- iv) Petitioner-MSRTC shall also release all the retirement benefits of the Respondent within a period of three months from today.
- v) The period from date of initial appointment of the Respondent till his termination shall also be computed for the purpose of granting retirement benefits to the Respondent.

11 With the above directions, the Writ Petition is partly allowed and **disposed of**. Rule is made partly absolute.

(SANDEEP V. MARNE, J.)