

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4933 OF 2024

Vijay Ramchandra Bhusnar

....**Petitioner**

**: Versus :**

Maharashtra State Road Transport  
Corporation and Ors.

....**Respondents**

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**Ms. Seema Chopda**, *for the Petitioner.*

**Mr. Yashodeep Deshmukh** *a/w. Ms. Vaidehi Pradeep for the Respondents-  
MSRTC.*

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**CORAM : SANDEEP V. MARNE, J.**

**Dated : 29 November 2024.**

**P.C. :**

1) **Rule.** Rule made returnable forthwith. With the consent of the parties, petition is taken up for hearing and final disposal.

2) The petition challenges the judgment and order dated 8 December 2023 passed by the Member, Industrial Court, Thane dismissing Complaint (ULP) No.10/2019 filed by the Petitioner.

3) Petitioner was appointed on the post of Conductor in the Maharashtra State Road Transport Corporation (MSRTC) on 27 July 2009. He apparently met with an accident and suffered physical disability. It appears that the District Surgeon, Raigad certified Petitioner as *'Unfit for conductor duty. Permanently static. Light duty'*. Instead of granting alternate employment to the Petitioner, the Divisional Controller of MSRTC proceeded to terminate the services of the Petitioner by order dated 29 June 2017 retrospectively w.e.f 3 May 2017. Petitioner filed Complaint before the Disability Commissioner under the provisions of Rights of Persons with Disabilities Act, 2016 seeking reinstatement in service w.e.f 3 May 2017 with all consequential benefits. During pendency of the complaint before the Disability Commissioner, MSRTC on its own reinstated the Petitioner by order dated 19 May 2018 and created a supernumerary post of Additional Peon and posted him as Additional Peon in Shreevardhan Depo by protecting his seniority on the post of Conductor. Since the Petitioner was already reinstated, the limited issue that remained to be decided by the Disability Commissioner was with regard to the intervening period from 3 May 2017 (*date of termination*) till 19 May 2018 (*date of reinstatement*). The Disability Commissioner passed order dated 13 November 2018 directing treatment of intervening period of 398 days as leave by regularising the said period by converting the leave standing credit in the Account of the Petitioner as *'duty'*.

4) Petitioner filed Complaint No.10/2019 seeking wages for the period from 15 May 2016 till grant of alternate employment. He further prayed for releasing his two increments for the years 2016 and 2017 and also prayed for grant of alternate appointment in the same

cadre and for provision of clerical job corresponding to his educational qualifications. The Industrial Court has proceeded to dismiss the Complaint by holding the same to be barred by the principles of *resjudicata* on account of order dated 8 December 2023, the Petitioner invoked the jurisdiction of the Disability Commissioner for the same relief.

5) I have heard Ms. Chopda, the learned counsel appearing for the Petitioner and Mr. Deshmukh , the learned counsel appearing for Respondent-M.S.R.T.C.

6) Ms. Chopda would submit that the only relief that the Petitioner wishes to press in the present petition is for release of his two yearly increments for the years 2016 and 2017. In my view, the prayer for releasing two yearly increments for the years 2016-17 is not hit by the principles of *resjudicata* and the same ought to have been considered and granted by the Industrial Court. The Disability Commissioner has already regularised the intervening period of 398 days by converting the same into leave. Thus, there is no break in service and the intervening period is already regularised. I therefore do not see any reason why the Petitioner can be denied yearly increments in respect of the years 2016 and 2017 since the intervening period is already converted into leave. The Industrial Court has completely misdirected itself by treating the said prayer for grant of yearly increments to be barred by the principles of *resjudicata*. The order passed by the Industrial Court is thus unsustainable in law and is liable to be set aside.

7) I accordingly proceed to pass the following order :

(i) Judgment and order dated 8 December 2023 passed by the Industrial Court, Thane in Complaint (ULP) No.10/2019 is set aside.

(ii) Respondent-M.S.R.T.C. shall grant two yearly increments to the Petitioner for the years 2016 and 2017 and shall re-fix his pay accordingly.

(iii) The arrears of pay and allowances arising out of grant of yearly increments for the years 2016 and 2017 shall be computed and paid to the Petitioner within a period of 3 months.

(iii) The rest of the prayers in Complaint (ULP) No.10/2019 are rejected as not pressed.

8) With the above directions, the Writ Petition is **partly allowed**. Rule is made partly absolute. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

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