

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

WRIT PETITION NO.10456 OF 2024

Maharashtra State Road Transport Corporation

Solapur Division

V/S

Milind Jatappa Sonkamble

....Petitioner

....Respondent

Mr. Amit A. Gharte *for the Petitioner.*

CORAM: SANDEEP V. MARNE, J.

DATE : 07 AUGUST 2024.

P.C.:

1 The Petition is filed by Maharashtra State Road Transport Corporation (MSRTC) challenging judgment and order dated 30 August 2023 passed by Member, Industrial Tribunal, Solapur by which direction issued for grant of benefit of permanency to the Respondent on the date of completion of 240 days of service after his appointment as Peon on 13 May 2004.

2 I have heard Mr. Gharte, the learned counsel appearing for Petitioner-MSRTC and I have considered the submissions canvassed by him.

3 It appears that the Respondent was initially appointed on the post of Driver in Petitioner-MSRTC. On account of acquisition of disability of colour blindness, he was dismissed from service. Respondent filed Complaint (ULP) No.40 of 1991 before the Labour Court which came to be dismissed. Revision

Application No.45 of 1995 filed by the Respondent was however allowed by the Industrial Court by judgment and order dated 30 September 2002 directing the Petitioner-MSRTC to reinstate the Respondent with continuity of service. Petitioner-MSRTC filed Writ Petition No.6552 of 2003 before this Court challenging the order dated 30 September 2002 passed by the Industrial Court. During pendency of the said Petition, following Consent Terms dated 5 April 2004 came to be entered between the parties:

- “1. It is agreed that the Petitioners shall appoint the Respondent as a fresh employee on the post of Peon on or before 30th April 2004 and he shall be entitled to receive the salary of a Peon.
2. It is agreed that the name of the Respondent will be placed last in the Seniority List of Peons.
3. It is agreed that the Respondent shall not be entitled to any back-wages or continuity of service or consequential benefits.
4. It is agreed that the Petitioner shall pay the service benefits, if any, during the period from 22.12.1988 to 28.06.1990 to the Respondent on or before 15th May, 2004.”

4 The Writ Petition was disposed of in view of the Consent Terms on 5 April 2004. It appears that Respondent made belated attempt for seeking recall of the Consent Terms by filing Interim Application No.1 of 2019 which came to be rejected by this Court by order dated 20 January 2020.

5 In the meantime it appears that the parties laboured under an absolute misconception that Respondent was not a permanent employee of Petitioner-MSRTC after his fresh appointment as Peon as per the Consent Terms dated 5 April 2004. Out of this misconception, possibly created on account of

arbitrary actions of the Petitioner-MSRTC, the Respondent was driven to another round of litigation when he filed Complaint (ULP) No.73 of 2016 seeking the benefit of permanency on completion of 240 days of service upon his fresh appointment as Peon on 13 May 2004. The Complaint is allowed by the Industrial Court by judgment and order dated 30 August 2023 directing Petitioner – MSRTC to grant the benefit of permanency to Respondent on the post of Peon on completion of 240 days of service after his fresh appointment on 13 May 2004. The judgment and order dated 30 August 2023 is subject matter of challenge in the present Petition.

6 In my view filing of Complaint (ULP) No.73 of 2016 by the Respondent was not at all necessary. There is nothing in the Consent Terms to indicate that Respondent was appointed as a temporary employee on the post of Peon. Mr. Gharte would highlight use of the word ‘fresh employee’ in paragraph 1 of the Consent Terms. In my view, mere use of the word ‘fresh employee’ in the Consent Terms would not mean that Respondent was appointed as temporary Peon. On the contrary the Consent Terms clearly indicate that Respondent was appointed as a permanent Peon in pursuance of the Consent Terms. This is further clear from the contents of paragraph 2 of the Consent Terms which clearly sought to include the name of Respondent in the bottom of the seniority list of Peons. A temporary employee is not to be included in seniority list. This again shows that the Respondent was appointed as permanent Peon on 13 May 2004. The term ‘fresh employee’ is used in the Consent Terms so as to deny any benefit to him in respect of his past services as Driver since the year 1988. However merely because he is treated as a ‘fresh employee’ does

not mean that such appointment automatically became a temporary appointment.

7 The Petitioner-MSRTC has thus unnecessarily driven Respondent to one more round of litigation. Their initial action of terminating services on account of acquisition of disability of colour blindness is itself in violation of provisions of Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Be that as it may. It is now not necessary to delve deeper into that aspect once the parties entered into Consent Terms on 5 April 2004 and this Court has refused to reopen that aspect by passing order dated 20 January 2020. At the same time the conduct of Petitioner-MSRTC in treating Respondent as temporary Peon in fact amounts to breach of the order passed by this Court on 5 April 2004. Their conduct has resulted in the Respondent unnecessarily approaching the Industrial Court for seeking the relief of permanency. Such conduct on the part of officials of Petitioner-MSRTC is required to be deprecated. Therefore while dismissing the Petition, some token costs are required to be imposed on Petitioner-MSRTC.

8 Writ Petition is accordingly **dismissed** by imposing costs of Rs.5,000/- to be paid to the High Court Legal Services Committee within a period of six weeks from today.

(SANDEEP V. MARNE, J.)

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