

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

WRIT PETITION NO. 18381 OF 2024

Tushar Shrikant Gosavi

... **Petitioner**

Versus

Maharashtra State Road Transport

Corporation Thr Its Divisional Controller

... **Respondent**

Mr. M. S. Topkar *a/w Ms. Pavitra Manesh for the Petitioner.*

Mr. Nitesh Bhutekar *a/w Ms. Priyanka Lanke for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

DATE : 10 DECEMBER 2024.

P.C. :

1) **Rule.** Rule made returnable forthwith. With the consent of the learned counsel appearing for parties, Petition is taken up for hearing.

2) The Petition challenges Order dated 29 May 2023 passed by the Labour Court, Ratnagiri rejecting application at Exhibit U-2 filed by the Petitioner in Complaint (ULP) No. 50 of 2022 thereby rejecting interim prayer for stay on termination. The Order dated 29 May 2023 passed by the Labour Court has been confirmed by the Industrial Court by Order dated 11 November 2024, which is also subject matter of the challenge in the present Petition.

3) I have heard Mr. Topkar, the learned counsel appearing for the Petitioner and Mr. Bhutekar, the learned counsel appearing for the Respondent-Corporation.

4) After having considered the submissions canvassed by the learned counsel appearing for the parties, it appears that the Petitioner was issued a caste certificate certifying that he belongs to Hindu-Gosavi (NT-1) category. In the advertisement issued by the Respondent-Corporation for Ratnagiri (Division), 87 posts of Driver-cum-Conductor were reserved for VJ-A and 26 posts were reserved for VJ-B. Petitioner believed that since he was issued a certificate of NT-1 category, he could apply against posts reserved for VJ-A category and accordingly submitted his application. He was selected for appointment as Driver-cum-Conductor and was accordingly appointed in the service of the Respondent-Corporation. After his appointment, his caste certificate was sent for verification and the Caste Certificate Scrutiny Committee issued Certificate of Validity dated 5 February 2020 certifying that Petitioner belongs to NT-B category. Since there was inconsistency in the category of NT-1 (VJ-A) against which Petitioner had applied and the category NT-B reflected in the Certificate of Validity, Respondent-Corporation issued an Order dated 12 December 2022 directing that his services would be terminated with effect from 16 December 2022.

5) Petitioner filed Complaint (ULP) No. 50 of 2022 in the Labour Court, Ratnagiri and prayed for interim stay on termination Order dated 12 December 2022. It appears that during pendency of application at Exhibit U-2, services of the Petitioner were protected. However, by Order dated 29 May 2023, the Labour Court has rejected the application for interim stay at Exhibit-U-2. In Revision

filed by the Petitioner, he was once again granted ad-interim relief by Order dated 12 June 2023. However, by final judgment and order dated 11 November 2024, the Industrial Court has rejected the Revision Application and has confirmed the order passed by the Labour Court on 29 May 2023.

6) Perusal of the findings recorded by the Industrial Court would indicate that Petitioner had relied upon a specific stipulation in the advertisement about interchangeability of categories of VJ-A, VJ-B, VJ-C and VJ-D in the event of non-availability of the candidates in the particular category. Though the submission is recorded by the Industrial Court in paragraph 12 of its Judgment, it proceeded to deny interim relief in favour of the Petitioner on the ground that interchangeability was permissible only in the event of non-availability of requisite candidates belonging to a particular sub-category. Mr. Topkar would place reliance on information procured under the Right to Information Act, 2005 relating to the concerned selection. The select lists prepared for VJ-A category would indicate that as against advertised 87 posts, select list for only 77 categories was prepared. Similarly, against VJ-B category though 26 posts were advertised, select list of only 22 candidates were prepared. Thus, there was non-availability of sufficient candidates to fill up all the advertised posts in VJ-B category, to which the Petitioner belongs as per the Validity Certificate.

7) *Prima facie*, by applying the principle of interchangeability of sub-categories, Petitioner's appointment will have to be protected. Therefore, while the Labour Court is in the process of hearing and deciding the complaint finally, services of the

Petitioner deserve to be protected. It is also pertinent to note that Petitioner's services are otherwise protected for the last about two years on account of various ad-interim orders passed by the Labour Court and the Industrial Court. In that view of the matter, the Labour Court can be requested to expedite the proceedings in Complaint (ULP) No. 50 of 2022 and during pendency of the Complaint, services of the Petitioner need to be protected.

8) I accordingly proceed to pass the following order:

- i) Order dated 29 May 2023 passed by the Labour Court, Ratnagiri on application at Exhibit U-2 as well as judgment and order dated 11 November 2024 passed by the Member Industrial Court, Kolhapur in Revision Application (ULP) No. 40 of 2023 are set aside.
- ii) There shall be interim stay to the termination order dated 12 December 2022 during pendency of Complaint (ULP) No. 50 of 2022.
- iii) The Labour Court, Ratnagiri is requested to expedite the hearing of Complaint (ULP) No. 50 of 2022, which shall be decided on its own merits, without being influenced by any of the observations made by this Court.

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

[SANDEEP V. MARNE, J.]