



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 WRIT PETITION NO. 9110 OF 2018

RAZA ALI NISSAR ALI BAIG

VERSUS

M/S AURANGABAD TRANSPORT SYNDICATE THROUGH IT PARTNER
SYED SALIMUDDIN S/O HABIBUDDIN

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Mr. V. P. Latange, Advocate for the Petitioner

Mr. Shantaram R. Dheple, Advocate for Respondent

CORAM : R. M. JOSHI, J.

DATE : 18th SEPTEMBER, 2025

P.C. :-

1. By consent of both sides, heard finally at the stage of admission.

2. This Petition takes exception to the order dated 07/03/2018 passed by the Industrial Court, Aurangabad in Revision (ULP) No. 28/2013, whereby the order passed by the Labour Court dated 04/03/2013 in Complaint (ULP) No. 7/2003 came to be set aside and the complaint was dismissed.

3. The facts which led to the filing of this Petition can be narrated in brief as under:-

(i) The Petitioner was admittedly an employee of the Respondent working as a driver. There is settlement between a Trade Union Bhartiya Kamgar Sena with the Respondent and the terms and

conditions of the employment are governed by the said settlement of August, 1996. The said settlement provides for the right of the employer to prematurely retire the employee on completion of age of 55 years in case the employee is medically unfit to perform his duties.

(ii) On 10/03/1998, notice of premature retirement/superannuation was issued to the Petitioner claiming that he has poor/weak eyesight and that on account of continued ill health and in different health, he is irregular in the attendance. With these allegations he was superannuated from service premature. There is no dispute about the fact that the Respondent paid legal dues of the Petitioner who accepted the same. Petitioner, however, took exception to the said premature retirement by filing Complaint (ULP) No. 7/2003. The said complaint was resisted by the Respondent by filing written statement. Parties led evidence. Learned Labour Court held that the termination of the Petitioner is illegal, however, in view of the fact that the Petitioner has already attained the age of superannuation, he was directed to be paid Rs.84000/- towards back wages along with interest and Rs.50000/- towards compensation. The Respondent being aggrieved by the said judgment, preferred Revision (ULP) No. 28/2013. Learned Industrial Court reversed the order passed by the Labour Court and dismissed the complaint, hence this Petition.

4. Learned Counsel for the Petitioner submits that even if it is

accepted that there is service condition in the agreement entered into between Respondent and Union representing the workman, there could not have been premature retirement of the Petitioner unless it was proved that on account of ill health, he is rendered unfit to perform his service. It is further argued that there is allegation in the order of premature retirement that there was absenteeism on the part of the Petitioner, unless an inquiry was conducted, no termination could have been legally effected. It is his further submission relying upon the judgment of the Hon'ble Supreme Court in case of ***Nar Singh Pal Vs. Union of India***¹ that acceptance of retrenchment compensation does not operate as estoppel against an employee in challenging legality of termination of his service and in view of this judgment, the impugned judgment and order passed by the said Court in Revision (ULP) No. 28/2013 is not sustainable.

5. Learned Counsel for the Respondent supported the impugned order. According to him the agreement of August, 1996 in no uncertain terms provides for the early retirement of the employee. It is his submission that at no point of time till filing of the complaint any objection was raised by the Petitioner with regard to the premature retirement of his service. It is his submission that the Petitioner has also accepted the legal dues without any demur and therefore, the judgment

¹ 2000(2) CLR 15

impugned deserves no interference.

6. Perusal of the record indicates that there is agreement entered into between the Respondent and Trade Union representing the workman of the Respondent. This agreement no doubt permits the employer to prematurely retire the driver. However, inclusion of such term in the agreement would not give a license to the employer to terminate the services of the employee on such ground without substantiation thereof. In this case what is alleged against the Petitioner is that he was having weak eyesight and that on account of ill health he was remaining absent. These allegations are not substantiated in any manner much less by conducting any inquiry. Moreover, in order to invoke the said provision, at first place it ought to have been established that the Petitioner was unfit to perform his duty till his regular date of superannuation. In absence of any such proof and any attempt made by the employer to retire an employee permanently, such order or premature retirement cannot sustain.

7. The Revisional Court has caused interference in the order passed by the Labour Court solely on the ground that the Petitioner has accepted the superannuation notice as well as legal dues. This reason recorded by the Industrial Court is not sustainable in view of the position of law on the point being fairly settled by the Hon'ble Supreme Court. In judgment cited supra in case of *Nar Singh Pal Vs. Union of*

India it is held that mere acceptance of the retrenchment compensation does not operate as estoppel against an employee in challenging legality of termination of his service. In view of this settled position of law, the judgment and order passed by the Revisional Court cannot sustain and deserves to be set aside.

8. Coming back to the order passed by the Labour Court, the Labour Court has rightly taken into consideration the subsequent fact including the fact of his regular retirement. The Labour Court has granted back wages to the Petitioner so also the compensation of Rs.50000/-. In the facts of the case, the said exercise of the jurisdiction by the Labour Court is reasonable and proper and therefore cannot be faulted with in order to cause any interference therein.

9. As a result of above discussion, Petition stands allowed. The impugned order dated 07/03/2018 passed by the Industrial Court in Revision (ULP) No. 28/2013 is set aside. The judgment and order passed by the Labour Court stands restored.

(R. M. JOSHI, J.)

ssp