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WP-13710-13660-2023

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13710 OF 2023

1. Divisional Controller

Maharashtra State Road
Transport Corporation
Divisional Office, Latur.

2. General Manager,

MSRTC Central Office,
Maharashtra State Road
Transport Corporation
Maharashtra Vahatuk Bhavan
Mumbai-400 008.

....PETITIONERS

VERSUS

1. Shivraj Jagannath Kamble,

Age: 38 years, Occu: Service,
R/o. Shivpur, Tq. Shirur Anantpal,
Tq. Udgir, Dist. Latur.

....RESPONDENT

WITH

WRIT PETITION NO.13660 OF 2023

1. Divisional Controller

Maharashtra State Road
Transport Corporation
Divisional Office, Latur.

2. General Manager,

MSRTC Central Office,
Maharashtra State Road

Transport Corporation
Maharashtra Vahatuk Bhavan
Mumbai-400 008.

....PETITIONERS

VERSUS

1. Mahesh Bhanudas Polkar

Age: 36 years, Occu: Service,
R/o. Hanuman Nagar,
Near Kumbharbad, Udgir,
Tq. Udgir, Dist. Latur.

....RESPONDENT

Mr. D. S. Bagul, Advocate for the petitioners in both W.P.

Mr. Mangesh G. Patil h/f Mr. A. S. Male, Advocate for Respondent in
WP/13710/2023.

Smt. Poonam V. Bodke Patil, Adv. for Respondent in WP/13660/2023.

CORAM : KISHORE C. SANT, J.

RESERVED ON : 5th MARCH 2025

PRONOUNCED ON : 9th APRIL 2025

ORDER :-

1. Heard the learned Advocates for the respective parties.
2. The point involved in both these writ petitions is the same and facts are also similar and, therefore, both the petitions are taken up together with consent of the parties, for final disposal.

3. The petitioners, in both these writ petitions, have approached this Court challenging the judgment and order dated 12th April 2023 in Complaint (ULP) No.22 of 2017, as well as judgment and order dated 4th March, 2023 in Complaint (ULP) No.42 of 2016, passed by the learned Member, Industrial Court, Latur, thereby allowing both complaints filed by the present respondents.

4. The petitioner No.1 is the Corporation and Petitioner No.2 is the General Manager. The Respondent in both the writ petitions are the employees working in petitioner's Corporation. The respondents approached the Industrial Court, Latur by filing ULP Complaints under Section 28 (1) r/w Item No.5 and 9 of the Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "MRTU and PULP Act") which are allowed.

FASTS IN WRIT PETITION NO. 13710 OF 2023

5. It is the case of the Respondent-employee that, he was appointed on compassionate ground in place of his father on 3rd November 2004.

It is his case that, he was eligible to be appointed to the post of Traffic Controller. However, as the said post was not available, he was appointed as Conductor. At the relevant time, there was a policy of the Corporation to give appointment to the post of Traffic Controller/Clerk by calling applications from Conductors who are desirous. The Corporation also issued a circular bearing No.21 of 2006 dated 24th August 2006 to that effect. Since the respondent was eligible to be appointed to the said post, he filed an application. However, he is not appointed to the said post. Thereafter, Petitioner No.2 also issued one more circular dated 18th November 2008 bearing No.486-E/5111. In view of said circular, it was decided to give an appointment to a person to the post of Traffic Controller, those who have joined as a Conductor for want of vacancy to the post of Traffic Controller/Clerk. Though the respondent made an application on 28th September 2000, still he is not given an appointment to the higher post. Thus, one more circular issued on 1st December 2011 bearing No.486-E/5684. In view of clause (4) of the said circular, the respondent was entitled to get an appointment to further post. He thus, filed a complaint stating that, not giving posting

as Traffic Controller/Clerk, would amount to violation of circular and breach of Item Nos.5 and 9 of Schedule-IV of the MRTU & PULP Act.

FACT IN WRIT PETITION NO.13660 OF 2023

6. It is the case of Respondent-employee that, his father was working as a Clerk. His father was discharged from services as medically unfit. The application was, therefore, made appointment by the respondent-complainant as a Conductor on compassionate ground. He was having a qualification of Bachelor of Art and was eligible to be appointed as Traffic Controller/Clerk. The Divisional Controller had forwarded the information of eligible candidates on 21st September 2006, which includes the name of Respondent-complainant. However, still he was not considered.

7. It is the case in both the writ petitions that, one Conductor namely, *Ram Anandrao Rokde*, who was appointed on 9th July 2003, is reclassified as a Clerk-cum-Typist.

8. The learned Member, Industrial Court proceeded with the

complaint and allowed the complaint. The petitioners-Corporation have, therefore, approached this Court challenging the impugned judgment and order.

9. The learned Advocate for the Petitioner-Corporation vehemently argued that the respondents had applied for the post of Conductor. Now, they cannot claim the higher post. When the Respondents were appointed posts of Traffic Controller/Clerk were not available and, therefore, the Respondents on their own made an application for appointment to the post of Conductor. Learned Member, Industrial Court has committed an error by allowing the application. The promotion could have been given only to a person who fulfill the criteria as per circular dated 1st December 2011. In any case, he submits that the said circular was issued only as a one-time measure and cannot be made applicable in all the cases. He submits that, the learned Member, Industrial Court failed to appreciate this fact and had arrived at wrong conclusion and has passed the order which needs to be quashed and set aside. He invites attention to clause (1) to (4) and (7) of circular dated

1st December 2011 and submits that, the respondents were not entitled to get any relief.

10. The learned Advocate for the Respondents vehemently argued that the application was filed for the post of Conductor specifically for the reason that no post of Traffic Controller/Clerk were available. When the respondents were eligible in view of the circular, they could not have been appointed to the post of Traffic Controller/Clerk. The learned Member, Industrial Court has rightly passed the order considering that in similar case of *Ram Rokde*’ rectification of post was done. By the subsequent circular, the earlier circular is kept intact except minor changes. The policy of giving an appointment was the same. Complaint (ULP) No. 102 of 2010 (*Ram Mohan Suryawanshi*) and Complaint (ULP) No.129 of 2012 (*Balaji Nagnath Jadhav*) had already been decided by the Industrial Court in favour of employees. In such cases, complaints were allowed and the employees were reclassified. He thus submits that, no interference is required in the judgment.

11. This Court has gone through the submissions and the judgment passed by the learned Member, Industrial Court, Latur. In the case of ***Ram Rokde Vs. Vibhag Niyantrak and Anr.*** passed by this court in Writ Petition No.11084 of 2017 on 4th July 2018, this Court had directed the learned Industrial Court to consider the claim of a person like present respondents on its own merit by restoring the complaint that was dismissed earlier. The learned Industrial Court considered the earlier orders passed by this Court. It is also considered that some of the similarly situated persons have been given the benefit of reclassification. The Court considered that the Respondents were qualified to hold the post of Clerk/Traffic Controller. They have completed five years as a Conductor. Circular dated 18th November 2008 was considered. It is further considered that the respondents had reclassified. The employees in the case of *Ram Mohan Suryawanshi* (supra) and *Balaji Nagnath Jadhav* (supra) pursuant to the order passed by this Court in Writ Petition No.11084 of 2017 and allowed the complaints. This Court does not find any illegality committed by the learned Member, Industrial Court Latur. No case is made out calling for interference at the hands of

this Court in the impugned order passed by the Industrial Court. This Court finds that there is no merit in the writ petitions and the same deserves to be dismissed. Hence, the following order:

ORDER

- (i) Writ petitions stand dismissed.
- (ii) No order as to costs.
- (iii) Pending Civil Applications, if any, also stand disposed off.

[KISHORE C. SANT, J.]