



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 878 OF 2024

Divisional Controller,
Maharashtra State Road Transport
Corporation, Buldana Division,
Malkapur Road Buldana.

.... **PETITIONER**

// **VERSUS** //

Haribhau S/o. Laxman Lonkar,
Aged about 60 years, Occ.- Ex Driver,
R/o. At Post Near New Police Colony,
Ganpati Mandir, Jalgaon Jamod Road,
Nandura, Tq. Nandura, Dist. Buldana.

.... **RESPONDENT**

Mr. Vivek Kedar, Advocate for the Petitioner.
Mr. M. V. Bute, Advocate for the Respondent.

CORAM : SMT. M.S. JAWALKAR, J.
DATE : 06th FEBRUARY, 2025.

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the parties.
2. By this petition the petitioner is challenging the order dated 04.01.2023, passed by the Labour Court, Buldana in Application I.D.A. No.3/2022.
3. The respondent/applicant is appointed as a “Driver” by the petitioner/non-applicant initially on 09.08.1995 on daily-wages,

thereafter the applicant was made permanent in service vide order dated 01.10.1995. He has retired on 04.06.2020. The applicant/respondent has filed an Application under Section 33-C(2) of the Industrial Disputes Act, 1947 to grant amount of benefit of leave encashment at his credit at the time of his retirement. It is the contention of the applicant that total earned leave at his credit of 213 days but the non-applicant has shown only 58 days rounding the figure 213 at his credit. The applicant/respondent herein was terminated on 15.03.2007 from the service, as his claim of “Koli Mahadeo” Schedule Tribe was invalidated. The said termination was challenged by the applicant by filing Writ Petition No.3430/2016. In the said writ petition the order came to be passed on 07.07.2016. This Court observed in para 7 as under :

“7. For the reasons aforesaid, the Writ Petition is allowed. The respondent no.2 is directed to reinstate the petitioner on the post of Driver on the condition that the petitioner furnishes an undertaking in this Court and before the respondent no.2 within a period of four weeks that neither the petitioner nor his progeny would seek the benefits meant for ‘Koli Mahadeo’ Schedule Tribe, in future. The respondent no.2 is directed to reinstate the petitioner on his original post of Driver within a period of one week from the date of furnishing of the undertaking. Since the petitioner was out of service from the date of his termination of his service till he would be reinstated in services, the petitioner would not be entitled to the arrears of salary or any other monetary benefits flowing from his reinstatement, though he would be entitled to the continuity of service.”

4. As such the applicant/respondent herein furnished an undertaking that he or his progeny will not seek any benefit meant for 'Koli Mahadeo'. It was directed that after furnishing such undertaking, the respondent No.2 reinstate the applicant. However, the applicant would not be entitled to the arrears of salary or any other monetary benefits flowing from his reinstatement though he would be entitled to the continuity of service. It appears that the learned Labour Court, Buldana though observed in para 12 that there is the direction not to claim any arrears of salary however further held that it is not mentioned therein that the applicant is not entitled for leave encashment for the period of 15.03.2007 to 23.09.2016. However, in my considered opinion, the learned Labour Court failed in interpreting the order passed by this Court in Writ Petition No.3430/2016. It is specifically directed that applicant/respondent herein is not entitled to the arrears of salary or any other monetary benefits flowing from his reinstatement. The leave encashment cannot be claimed by the applicant as of right, moreover, in view of the directions issued by this Court, the applicant/respondent is not entitled for leave encashment for the period of 15.03.2007 to 23.09.2016. In view of this direction, it is the leave in the credit of applicant calculated by the department cannot be faulted with.

5. In view of these above observations, it would be proper to remit the matter back to the learned Labour Court, only to calculate amount towards leave encashment excluding the leave in the credit of applicant for the period of 15.03.2007 to 23.09.2016.

6. Accordingly, the Writ Petition is allowed. The order dated 04.01.2023, passed by the learned Labour Court, Buldana in Application I.D.A. No.3/2022 is hereby quashed and set aside.

7. The matter is remitted back for limited purpose to calculate amount towards leave encashment excluding the period from 15.03.2007 to 23.09.2016.

8. The parties to appears before the learned Labour Court on **24.02.2025 at 11.00 am.**

9. The Writ Petition stands disposed of in the above terms. No costs.

(SMT. M.S. JAWALKAR, J.)