



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

Writ Petition No.5579 of 2022

The Maharashtra State Road Transport Corporation and another
vs.
Sk. Matin-Ur-Rehman

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. R.S. Charpe, Advocate for the Petitioners.
Mr. C.V. Jagdale, Advocate for the Respondent.

CORAM : ROHIT W. JOSHI, J.
DATE : 30th SEPTEMBER, 2025.

Heard the learned Advocates for the parties.

02. The present respondent was appointed with the petitioners-Corporation as a Head Mechanic. His services were terminated vide order dated 24/09/2009, which was subject matter of challenge in Complaint (ULP) No.157/2009. The complaint was partly allowed by the learned Labour Court, Nagpur vide judgment and order dated 16/10/2014. The learned Labour Court granted the relief of reinstatement in service without back wages.

03. The respondent-employee reported for joining duty pursuant to the said order on 28/10/2014. It is undisputed that he was not allowed to join duty on 28/10/2014, although there was a favourable order in his favour and ultimately he has resumed services with effect from 12/03/2015. It will be pertinent to mention that the respondent-employee had filed revision challenging said order to the extent of denial of back wages. The said revision was allowed and the matter was remanded to the learned Labour Court to decide the issue of back wages afresh. After the remand, the learned Labour Court vide

judgment and order dated 21/12/2017 held that the respondent-employee was entitled to 50% back wages from 24/09/2009 i.e. the date of termination, till 12/03/2015 i.e. the date of reinstatement in service. Both the parties i.e. the present petitioners and the respondent-employee filed separate revisions challenging the said order dated 21/12/2017 passed by the learned Labour Court. The learned Industrial Court has dismissed both the revisions vide judgment and order dated 20/06/2019.

04. In the meantime, the respondent-employee filed a complaint being Complaint (ULP) No.230/2016 claiming salary from 28/10/2014 till 11/03/2015 i.e. for the period intervening the date on which he had approached the petitioner-employer for joining in service and the date on which he was actually reinstated in service in compliance of the order passed by the learned Labour Court.

05. The learned Industrial Court has allowed the complaint vide judgment and order dated 10/01/2020 *inter alia* directing the petitioner-employer to pay salary to the respondent-employee for the period from 28/10/2014 to 11/03/2015.

06. Mr. Charpe, learned Advocate for the petitioners contends that the order dated 10/01/2020 directing the payment of salary for the said period is completely illegal. He contends that in the earlier round of litigation, the issue had attained finality between the parties inasmuch as the learned Labour Court had directed payment of 50% back wages to the respondent-employee from 24/09/2009 up to 12/03/2015 and the said order was confirmed by the learned Industrial Court on 20/06/2019. He, therefore, contends that the issue is foreclosed by *res judicata* and, therefore, a contrary order than the one, could not have been passed.

07. *Per contra*, Mr. Jagdale, learned Advocate for the respondent contends that the dispute before the learned Labour Court in ULP Case No.157/2009, after the remand, was restricted to determining the quantum of back wages. He contends that the learned Labour Court was to decide the issue of back wages i.e. wages from the date of termination till the date of adjudication of the complaint, which was adjudicated vide order dated 16/10/2014. Mr. Jagdale, therefore, contends that the issue of payment of salary from 17/10/2014 and onwards was beyond the jurisdiction of the learned Labour Court. He, therefore, contends that since the order with respect to back wages from 17/10/2014 and onwards is beyond the jurisdiction of the Labour Court, the same will not operate as *res judicata*. Apart from this, Mr. Jagdale also contends that the said contention was never raised before the learned Industrial Court.

08. In the considered opinion of this Court, it is not necessary to go into the larger question of jurisdiction of the learned Labour Court to consider the claim of back wages from 17/10/2014 and onwards in Complaint (ULP) No.157/2009. It is well settled that *res judicata* is a mixed question of law and facts. It is also well settled that the issue of *res judicata* is specifically required to be raised and unless the said contention is raised, no case can be foreclosed on the basis of *res judicata*. The legal position in this regard is settled by the Hon'ble Supreme Court in the matter of *Jamia Masjid vs. Sri K.V. Rudrappa (Since Dead) by Legal Representatives and others – (2022) 9 SCC 225*, in which several other judgments have been discussed on this point viz. *Madhukar D Shende vs. Tarabai Aba Shedage – (2002) 2 SCC 85*, *Ram Harakh vs. hamid Ahmed Khan – (1998) 7 SCC 484* and *Sushil Kumar Mehta vs. Gobind Ram Bohra – (1990) 1 SCC 193*.

09. Since, the issue of *res judicata* was not raised before the learned Industrial Court, in the considered opinion of this Court, the said issue cannot be raised for the first time in the present petition.

10. As regards merits of the matter, it is clearly proved on record that after the order of reinstatement in service was passed in favour of the respondent-employee vide order dated 16/10/2014 in Complaint (ULP) No.157/2009, he had approached the petitioners-employer for resuming his services on 28/10/2014. The respondent-employee was kept out of employment without any justifiable reason till 12/03/2015. In that view of the matter, the respondent-employee is entitled for full salary for the intervening period between 28/10/2014 and 11/03/2018. The petitioners-employer have failed to make out any case on merits. The petition is, therefore, liable to be dismissed and is dismissed accordingly. There shall be no order as to costs.

11. However, in the event, 50% amount of salary for the period between 28/10/2014 and 11/03/2018 is already paid, then the petitioners-employer will be entitled to set off with respect to the said amount.

JUDGE

**sandesh*