

Executive Engineer and anr. Vs. Moreshwar Mahadeorao Wakhare and ors.

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Court : Mumbai

Decided On : Aug-11-2000

Reported in : 2001(2)ALLMR474; 2001(3)BomCR838; [2001(91)FLR596];
(2002)IVLLJ436Bom

Judge : A.M. Khanwilkar, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 10(1); [Constitution of India](#) -
Articles 226 and 227

Appeal No. : W.P. No. 3003/1990

Appellant : Executive Engineer and anr.

Respondent : Moreshwar Mahadeorao Wakhare and ors.

Disposition : Petition dismissed

Judgement :

A.M. Khanwilkar, J.

1. This writ petition under Articles 226 and 227 of the [Constitution of India](#), takes exception to the order passed by the Industrial Court, Maharashtra, Nagpur Bench, Nagpur, dated August 23, 1990, in Revision (ULPN) No. 71/1990.

2. Briefly stated, the respondent No. 1 was appointed as Truck driver by the petitioner No. 1 vide order dated May 17, 1971. The respondent No. 1 continued to work as truck driver until his services came to be terminated by order dated September 3, 1983. The ground, on which, services of the respondent No. 1 have been terminated, is that the respondent No. 1 was found to be medically unfit by the Civil Surgeon at the relevant time. The respondent No. 1 challenged the order of termination by filing complaint (UPLPA) No. 520/1984 before the Labour Court, Nagpur. The Labour Court, by its judgment and order dated February 8, 1990 allowed the complaint and ordered reinstatement of respondent No. 1. Against the said decision, revision application was presented before the Industrial Court. The said revision was resisted by the respondent No. 1 on the ground that it was presented by a person, who was not authorised to file the revision application and as such, the same was incompetent. Even on merits the respondent No. 1 resisted the revision petition. The Industrial Court by impugned order dated August 23, 1990 was pleased to dismiss the revision application preferred by the petitioner. With regard to the maintainability of the revision application, the Industrial Court held that there was no evidence on record to show that Shri Hatwar, who had presented revision application was authorised to file the written statement or the revision application. It has been as further held that the written statement as well as Revision Application have not been signed. Taking all the circumstances into account, the Industrial Court held that the Revision petition, as presented by the petitioners herein, was not maintainable. After having answered the preliminary objections in favour of respondent No. 1, even on merits, the Industrial Court dismissed the Revision petition.

3. The petitioners thereafter carried the matter by way of this writ petition before this Court. Much prior to the impugned order on September, 1990, the respondent No. 1 was reinstated as truck driver and has been working in that capacity since then. It is pointed out by the learned counsel for the respondent No. 1 that the respondent No. 1 would attain the age of superannuation in another about 3 1/2 (three and half) years' time. It is also pointed out that all throughout the service record of the respondent No. 1 is absolutely unblemished. The learned counsel for the petitioners contends that the respondent No. 1 having accepted the order of termination and requested to release the retiral benefits, cannot be

permitted to urge that the termination order was bad on the principle of 'approbate and reprobate'. The learned counsel for the respondent No. 1 rightly points out that this case is being made out for the first time before this Court and there is no assertion to that effect in the written statement. In the circumstances, it is not possible to entertain this contention.

4. To continue with the narration, this Court although admitted the writ petition on , February 8, 1991, refused to grant interim relief. In the circumstances, as aforesaid the respondent No. 1 continued to work as truck driver after reinstatement.

5. It is relevant to point out that it is not in dispute that the Industrial Court in para 10 of its judgment has taken a view that the Revision application, as presented by the petitioners was not maintainable, however, the writ petition does not take exception to the said finding. In my view, on this limited ground the writ petition deserves to be dismissed inasmuch as if the revision application was not maintainable at the instance of the person who had presented the same for the self-same reason, the present writ petition is incompetent inasmuch as there is no challenge to the conclusion reached by the Industrial Court that the revision application was incompetent. Moreover, the writ petition, as presented in this Court is supported by an affidavit of Shri Bhagwan Deshpande, Executive Engineer, but the affidavit does not, once again, indicate as to whether he was authorised to file this petition. In my view, the Industrial Court having held that the revision was not maintainable, ought not to have examined the matter on merits at the instance of the applicant who was incompetent to maintain the petition. Nevertheless, even on merits, the Industrial Court has negated the stand taken by the petitioners.

6. Since the order passed by the Labour Court, in effect, has gone unchallenged, inasmuch as the present writ petition has taken exception to only the order passed by the Industrial Court, moreover the finding recorded by the Industrial Court that the revision was not maintainable has also not been challenged, therefore, this writ petition must fail. Since the respondent No. 1 has already been reinstated and has been performing his duties to the utmost satisfaction of his superiors, without there being any complaint about his performance, on any count, including his health

ground, in the circumstances, I am not inclined to interfere in this writ petition and, therefore, the same deserves to be dismissed. As aforesaid, the respondent No. 1 is already at the fag end of the service and is likely to attain the age of superannuation in another three and half years time, for which reason also I am not inclined to entertain this writ petition and the same is, therefore, dismissed.

7. Rule stands discharged.

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