

**HIGH COURT OF MADHYA PRADESH BENCH AT
GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

MISCELLANEOUS PETITION NO.252/2019

MADHYA PRADESH ROAD TRANSPORT CORPORATION AND

OTHERS

VS.

JAGDISH SAVITA

&

MISCELLANEOUS PETITION NO.5422/2018

JAGDISH SAVITA

VS.

**MADHYA PRADESH ROAD TRANSPORT CORPORATION AND
OTHERS**

Appearances:-

*Shri Sameer Kumar Shrivastava – Advocate for the petitioners/
MPRTC.*

Shri Ravi Jain – Advocate for the respondent/ Jagdish Savita.

ORDER

(Delivered on 16th day of June, 2025)

1. Regard being had to similitude of the controversy, both the petitions were heard analogously and are decided by a common

order. For convenience's sake, facts of M.P. No.252/2019 are taken into consideration.

2. The instant petitions are two connected matters in which M.P. No.252/2019 is being preferred by M.P. Road Transport Corporation and M.P. No.5422/2018 is preferred by one Jagdish Savita (hereinafter referred as "employee") against the M.P.R.T.C.

3. Precisely stated facts of the case are that respondent/ employee was working as "**Painter**" in the M.P. Road Transport Corporation (for brevity "MPRTC") since 1987. Since MPRTC was suffering loss thus, introduced the scheme of Voluntarily Retirement Scheme (VRS Scheme) in the year 2000.

4. Respondent/ employee preferred for VRS vide application dated 10/09/2001 (Annexure P/5 of M.P. No.5422/2018), but the same was not accepted by the petitioners/Corporation. Therefore, respondent/ employee filed a writ petition vide No.1854/2003 before this Court, which was decided vide order dated 01/07/2003 and it was directed to the petitioner No.1/ employer to consider the application submitted by the respondent/ employee seeking

retirement under Voluntary Retirement Scheme of the Corporation. It appears that the said application was considered by the petitioners/Corporation and got rejected vide order dated 01/08/2003 due to absence of any specific direction and inadequacy of funds.

5. It further appears from the pleadings and submissions that respondent/ employee wanted to contest the election as Councillor/ Corporator of Municipal Corporation, Gwalior which was likely to be held in the year 2004, therefore, on 03/11/2004, he preferred his resignation and prayed for its acceptance immediately. He also expressed his willingness to dispense with 01 month's salary. The said resignation was placed before the Senior Depot Manager of M.P.R.T.C., Gwalior Depot and the same was accepted vide order dated 03/11/2004 (Annexure P/10 of the employee's petition) by Senior Depot Manager elaborating the reasons for accepting his resignation.

6. Thereafter, it appears that respondent/ employee contested the election of Municipal Corporation, Gwalior and was elected as "Councilor" from Ward No.34 and enjoyed the post for full 05

years' term. However, on 12/08/2005 (when he was a Councilor), he filed an application under Sections 31(3), 61, 62 and 64-A of the M.P. Industrial Relations Act, 1960 (hereinafter referred as "MPIR Act") before the Labour Court, Gwalior.

7. Matter kept pending for 07 years and vide order dated 27/04/2012, the Labour Court passed an order whereby petitioners/Corporation was directed to reinstate respondent/employee with 15% back wages. Labour Court although gave finding that after resignation, all dues were taken by respondent/employee and he remained Councilor of Municipal Corporation, Gwalior, but resignation was accepted by the Senior Depot Manager whereas appointing authority of the respondent/ employee was the Chief Works Manager, therefore, resignation was accepted by the incompetent authority. On this technical ground, Labour Court passed the order of reinstatement of the respondent/ employee with 15% back wages.

8. Against said order of Labour Court, petitioners/ Corporation preferred an appeal before M.P. Industrial Tribunal Gwalior vide

No.21/MPIR/2012 against reinstatement and 15% back wages, whereas respondent/ employee preferred an appeal vide appeal No.23/MPIR/2012 for 100% back wages. Both the appeals were analogously heard and decided by a common order vide order dated 19/07/2018. By the said order, appeal preferred by the respondent/employee was dismissed and it was found that respondent/employee was not entitled to get any back wages, however, order of reinstatement was affirmed. Therefore, petitioner/ Corporation preferred this petition (M.P. No.252/2019) against the order of reinstatement passed by the Industrial Court, Gwalior whereas respondent/ employee preferred petition (M.P. No.5422/2018) for 100% back wages.

8. It is the submission of learned counsel for the petitioners/Corporation that both the Courts below despite appreciating the fact that resignation was given by respondent/ employee in full state of mind, illegally reinstated the respondent/ employee, which is against the dictum of law.

9. It is further submitted that resignation was given by the

respondent employee in writing and he did not give any application for recall of resignation, therefore, resignation was valid. He further submits that respondent/ employee did not produce any document in respect of his mental illness to show that resignation was given by him to the authority under some mental pressure therefore, plea taken by the employee before the Courts below that he was under mental pressure, was without any factual foundation. Both the Courts below erred in accepting such submission.

10. Further submission of learned counsel is that motive of resignation was proved. Respondent/ employee contested the election of Councilor in Municipal Corporation, Gwalior and won the election from Ward No.34. He enjoyed the tenure. Therefore, motive for which respondent/ employee tendered resignation, came to the knowledge of both the Courts below therefore, filing application for reinstatement before the Labour Court by the respondent/ employee was nothing but an abuse of process of law however, both the Courts below gave undue weightage to the mischief of respondent/employee. He enjoyed full tenure of 05 years

as councillor and thereafter, pressed his application for reinstatement before the Labour Court.

11. It is further submitted that after giving resignation respondent/ employee took all his emoluments i.e. his service benefits as well as retiral benefits etc. therefore, he was clear in his thought that what decision he has taken. It is a case of 'Resignation' and not of 'Punishment', whereas Courts below proceeded on the assumption that punishment has been awarded to the respondent/ employee and applied law incorrectly.

12. Further, learned counsel for the petitioners/ Corporation by way of an application under Section 57 of the Evidence Act placed an order dated 22/03/2004 (Annexure P-6) issued by the Managing Director, MPRTC by which taking recourse to provisions of M.P. Industrial Employment (Standing Orders) Rules, 1963 (hereinafter referred as "Rules, 1963"), he appointed Senior Depot Manager Mr. N.N. Rai (Senior Manager Traffic) Division, Gwalior as "Manager" for all the employees for the purpose of disciplinary action.

13. According to learned counsel, as per Clause 1(a) appended to

Annexure of Rules, 1963, "**Manager**" is defined and from perusal of definition of "Manager", it is clear that person who is notified as Manager under this Standing orders, will have all the powers of any act prescribed in the Rules, 1963 which also includes termination of an employee under Rule 11 thereof.

14. Learned counsel also refers the fact that vide order dated 08/03/2019, this Court stayed effect and operation of the order passed in Appeal No.21/MPIR/2012 dated 19/07/2018 and order dated 27/04/2012 passed by the Labour Court No.1, Gwalior in COC/136/A/MPIR/2005, therefore, there is no question of decision to be taken over the application filed by the respondent/ employee purportedly under Section 65(3) of the MPIR Act. He refers judgment of the Division Bench of this Court in the case of **Krishi Upaj Mandi Samiti, Bada Malhara Vs. Yashwant Singh Bundela and Another, 2008(2) MPLJ 282** and order dated 10/11/2017 passed by the Division Bench of this Court in **W.A. No.399/2017 (Punj Llyod Limited thr. Vs. Rakesh Shrivastava)**.

15. On the other hand, learned counsel respondent/employee

opposed the prayer and submits that respondent/employee was harassed by the petitioners/ Corporation and under some mental was pressure, he resigned. Besides that resignation was accepted by the Senior Depot Manager whereas, the appointing authority of respondent/ employee is the Chief Works Manager therefore, resignation accepted by Senior Depot Manager dehors the authority. It is further submitted that the respondent/ employee is entitled to be reinstated with 100% back wages. Both the Courts below ignored this aspect that respondent is an employee and deserves to be reinstated with full back wages.

16. He relied upon the judgment of the Hon'ble Apex Court in the case of **Dena Bank Vs. Kiritikumar T. Patel, 1999 SCC (L&S) 466** and judgment of the Division Bench of this Court in the case of **Secretary General, Family Planning Association, Mumbai and Others Vs. Sunil Kumar Shrivastava and Another, 2007 (113) FLR 119.**

17. Heard the learned counsel for the parties and perused the record/documents.

18. This a case where respondent/ employee is seeking reinstatement with full back wages and petitioners/ Corporation is seeking quashment of both the orders of the Courts below whereby reinstatement was ordered.

19. In the year 2000, financial condition of M.P.R.T.C. became vulnerable and it went on the path of sickness. During that period, many employees took VRS and many attempted to take VRS for some better posture. Respondent/ employee also took his chance but, failed because of the policy issued and paucity of funds. Thereafter, respondent/ employee filed his resignation before the Chief Depot Manager. Main ground of attack of respondent/employee was that the Senior Depot Manager was not the competent authority to accept the resignation. However, going through the order dated 22/03/2004 (Annexure P-6) issued by the Managing Director in which, Chief Depot Manager Mr. N.N. Rai was declared as "Manager" for all the disciplinary action for the employees of Gwalior Division, it is established that such contention of respondent lacks merits. The said order was purportedly passed

under the provision of Rules, 1963, which gives power to the employer to issue such notification.

20. This aspect has been dealt with in a case of **Ram Gopal Sen Vs. M.P.S.R.T.C., 1982 MPWN 181**, in which learned Single Judge considering the definition of "**Manager**" as per the Standing Orders held that under Clause 1(a) of the Rules, 1963, Manager includes as person authorized by the General Manager of the Corporation. Even otherwise, on M.P.R.T.C. (as establishment), M.P.I.R. Act and Rules of 1963 are applicable.

21. As per rule 11(C) of the Rules, 1963, any employee who is desirous to leave the employment can give one month's prior notice to his departmental officer and can further leave the employment. Even, the said employee can be relieved prior to expiry of one month's notice period.

For ready reference, Rule 11 (c) is reproduced as under:-

"11. Termination of employment and the notice thereof to be given by employer and employee

(a).....

(b).....

(c) Any permanent employee desirous of leaving the employment shall give one month's notice to his departmental officer stating the reason for which he is leaving but if he so requires he may be relieved earlier than the date on which the period of notice expires"

22. From bare perusal of the above mentioned provision, it is clear that even no order is required to be passed in case an employee wishes to resign from his employment, the only requirement is to give 01 month's prior notice. Even this requirement can be waived if employee desires so.

23. In the instant case, respondent/ employee made a specific prayer to waive 01 month's salary because he wanted to contest the election of 'Councillor' of the Municipal Corporation, Gwalior therefore, he was in hurry and wanted to get rid of the petitioners/Corporation somehow so that he can file his nomination paper declaring himself as former employee of the MPRTC because

in absence thereof, his candidature as Councillor would have been rejected being employee of the petitioners/Corporation. Therefore, once he himself wanted to get rid of the Corporation and availed the benefit of Councillor of the Municipal Corporation, Gwalior for 05 years term, then the whole story of resignation being guided by the mental illness and harassment shows mischief of the respondent/employees.

24. Respondent/ employee cannot be given premium for any technical gap if at all ensued, because this would be amounting to abuse of process of law. So far as technical objection of resignation by an incompetent authority is concerned, it is a "**Resignation**" not "**Termination**". Therefore, if resignation is placed by the respondent/ employee before the Senior Depot Manger then, it does not constitute any illegality because Managing Director earlier vide order dated 22/03/2004 (Annexure P-6) already declared the " Senior Depot Manager" as competent authority for all disciplinary action for all the employees of Gwalior Division.

25. From perusal of Clause 1(a) of the Rules, 1963 and order dated

22/03/2004 (Annexure P/6), only one inference is drawn that the "Senior Depot Manager" was the competent authority to accept resignation of an employee (respondent in the present case). It has to be remind that it is a case of "**Resignation**" and not "**Termination**", therefore, analogy adopted by the both the Courts below suffered from illegality and perversity.

26. It appears that both the Courts below not only caused illegality but also ignored the mischief committed by the respondent/employee. On the one hand, he cleverly filed resignation, got it accepted and never made any claim for recall of his resignation and contested the election of Councillor, he enjoyed the full tenure and on the other hand, after completion of his tenure, he pressed the application for reinstatement with full back wages, on which Courts below passed the impugned orders. Such mischief cannot be allowed to persist. Therefore, the petition filed by the M.P.R.T.C. (M.P. No.252/2019) is allowed.

27. At this stage, this Court intends to dwell upon the application filed by the respondent/ employee under Section 65(3) of the MPIR

Act, which was filed on 26/02/2019 but on 08/03/2019, this Court passed a specific interim order regarding stay of impugned orders passed by the Courts below despite pending application and being aware of the provision of Section 65 (3) of the MPIR Act.

28. No condition has been put by this Court against the petitioners to comply with Section 65(3) of the MPIR Act while granting stay vide order dated 08/03/2019. Thereafter, matter was pending and Interim Relief remain continued. No efforts have been taken by the respondent/ employee to get the order vacated or matter to be heard finally.

29. Even otherwise, this Court can hear the matter in view of the judgments of the Hon'ble Apex Court in the case of **Hindustan Zinc Ltd. Vs. Industrial Tribunal and Anr., 2001 (10) SCC 211** and Division Bench of this Court in the case of **Krishi Upaj Mandi (supra)** and **Punj Llyod (supra)**.

30. In the present case, for the period which respondent/ employee sought back wages, part of period is Co-terminus *viz a viz* employee of the Corporation and as Councillor of the Municipal Corporation,

Gwalior. He does not deserve any benefit arising out of illegal orders.

31. Therefore, in cumulative facts and circumstances of the case where mischief of respondent/ employee is writ large, no case for interference for reinstatement with back wages is made out. The **Miscellaneous Petition No.252/2019** filed by the M.P.R.T.C., Gwalior is *allowed* and order dated 19/07/2018 passed by the Industrial Court, Gwalior in Appeal No.21/MPIR/2012 and Appeal No.23/MPIR/2012 and order dated 27/04/2012 passed by the Labour Court-I, Gwalior in Case No.136/MPIR/2005 are hereby set aside.

32. *Resultantly*, **Miscellaneous Petition No.5422/2018** preferred by respondent/ employee - **Jagdish Savita** stands *dismissed* in view of the discussion made above.

(ANAND PATHAK)
JUDGE