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**(1996) 02 BOM CK 0006**

**In the Bombay High Court**

**Case No : Writ Petition No. 2942 of 1989**

Sureshprasad Madhavprasad Shukla

APPELLANT

Vs

Divisional Controller, Msrtc.

RESPONDENT

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**Date of Decision : 12-02-1996**

**Acts Referred:**

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

**Citation :** (1996) 5 BomCR 553 : (1997) 3 LLJ 816 : (1997) 2 MhLj 292

**Hon'ble Judges :** R.M. Lodha, J

**Bench :** Single Bench

**Advocate :** P.C. Marpakwar, for the Appellant; S.C. Mehadia, for the Respondent

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## **Judgement**

1. Taking exception to the order passed by the Industrial Court on September 19, 1989, the petitioner has preferred this writ petition under Articles 226 and 227 of the Constitution of India.

2. The essential facts for disposal of the writ petition are that the petitioner Sureshprasad Madhavprasad Shukla was initially appointed on daily wages as conductor in the Maharashtra State Road Transport Corporation (for short, the "employer") and later on with effect from December 29, 1964, the petitioner was regularised on the post of conductor. After about 8 years of service, from April 1973, the petitioner was assigned the job of Traffic Controller and was paid wages as Controller. In the year 1977, the petitioner filed a complaint u/s 28 read with Items 4 (d) and (e) of Schedule-II and Items 5, 6 and 7 of Schedule IV of the Maharashtra Recognition of Trade Unions And Prevention of Unfair Labour Practices Act, 1971, (for short, the "Act of 1971") seeking regularisation on the post of Traffic Controller. The employer held examination for the post of Traffic Controller, on January 15, 1978 and the said examination was is passed by the petitioner and later on with effect from July 5, 1981, the petitioner was regularised on the post of Traffic Controller. Since the petitioner was regularised on the post of Traffic Controller with effect from July 5, 1981, the employer made

statement before the Industrial Court in the complaint filed by the petitioner that grievance of the petitioner did not survive since he has already been promoted on the post of Traffic Controller and on the basis of that statement, complaint came to be dismissed on September 24, 1982. Later on a question came up before this Court relating to legality and validity of the examination conducted by the employer on January 15, 1978 for the promotional post of the Traffic Controller and this Court in *D. C. Tonge & Another v. The Divisional Secretary, M. S. Transport Kamgar Sangathana & Another* 1984 L. I.C. 1986 held the said examination conducted by the employer on January 15, 1978 as bad in law and in violation of the Settlement between the employer and the unions. This Court further held that any promotion made pursuant to the test held in breach of the rules, was also bad in law. Accordingly, the employer by the order dated March 31, 1987 reverted the petitioner from the post of Traffic Controller to the post of Conductor. This reversion order led second round of litigation between the employer and the petitioner, and the petitioner filed complaint before the Industrial Court on April 23, 1987. There is no dispute that after filing of the said complaint, the petitioner has been promoted on the post of Traffic Controller with effect from June 28, 1989 pursuant to the examination held in the year 1986. The complaint was contested by the employer before the Industrial Court and the Industrial Court to after bearing the parties, by the order dated September 19, 1989 dismissed the complaint.

3. The only contention raised by Mr. P. C. Marpakwar, the learned counsel for the petitioner is that in the previous complaint filed by the petitioner in the year 1977, a statement was made by the employer that the petitioner has already been promoted with effect from July 5, 1981 and on to the basis of the statement made by the employer, complaint filed by the complainant was dismissed on September 24, 1982 and, therefore, it was not open to the employer to revert the petitioner again to the post of conductor on the basis of the judgment of this Court in *D. C. Tonge & Another v. The Divisional Secretary, M. S. Transport Kamgar Sangathana & Another* (supra). In support of his contention, the learned counsel for petitioner has relied upon the judgment of the Apex Court in *Suresh Sakham Chaugule and others Vs. M/s. Parel Cotton Press Factory Pvt. Ltd.*, .

4. There is no dispute that the Petitioner along with others, appeared in the examination conducted by the employer on January 15, 1978 for promotion to the post of Traffic Controller and the petitioner did pass the said examination .On the basis of the result in the said examination, the petitioner was promoted to the post of Traffic Controller with effect from July 5, 1981. There is also no dispute that on that date complaint filed by the petitioner was pending before the Industrial Court and on the basis of the promotion accorded to the Petitioner on the post of the Traffic Controller, with effect from July 5, 1991, the statement was made by the employer before the Industrial Court that the petitioner has been promoted. There is also no dispute that the validity and legality of the said examination held on January 15, 1978 on the basis of which the petitioner was

promoted, came to be challenged before this Court in D. C. Tonge's case (supra). This Court held that the examination held on January 15, 1978 was in breach of the rules and the settlement and consequently, the promotions made pursuant to the said examinations were also bad in law and the employer was required to undo the benefit given to the candidates who passed out the examination on January 15, 1978 for the post of Traffic Controller. Therefore, in view of the undisputed facts it cannot be said that employer passed the reversion order on March 31, 1987 reverting the petitioner from the post of Traffic Controller to Conductor. There is no doubt that any statement made before the Court by a party is solemn statement and is required to be given due effect and ordinarily, if such statement is found false or deliberately made incorrectly to defeat the rights of the other party, serious consequences follow against the party making such false or incorrect statement. But in the present case, there was no incorrect statement made by the employer before the Industrial Court that petitioner was accorded promotion on the post of Traffic Controller on July 5, 1981. It was only because of the subsequent order passed by this Court holding examination dated January 15, 1978 as bad in law and promotion made pursuant to the said examination also bad in law, the petitioner was reverted. In peculiar facts, thus, he cannot claim any benefit of an examination which was held to be illegal by this Court and also, therefore, cannot get any advantage of the statement made by the employer before the Industrial Court that petitioner has already been accorded promotion on July 5, 1981. The judgment of the Apex Court in Suresh Sakharam Chougule's case (supra) and strenuously relied upon by the learned counsel for the petitioner has no application whatsoever in the facts and circumstances of the present case.

5. Looking from other angle, it would be seen that if the petitioner is allowed to take advantage of the examination held on January 15, 1978 which has been held to be invalid and bad in law by this Court and if the petitioner is accorded benefit of that examination and allowed to continue as Traffic Controller with effect from July 5, 1981, he would be given benefit of an examination which was declared invalid and, therefore, an illegality would be perpetuated. The jurisdiction of this Court under Article 226 of the Constitution of India is not meant and cannot be invoked in the set of present facts which, if exercised in favour of the petitioner, may lead in illegality being perpetuated.

6. It may be noted that in the year 1986 the examinations were held by the employer for the post of Traffic Controller and in the said examination the petitioner appeared and passed and his name found place in the list at Sr. N. 95 of the successful candidates, but since there were only 70 vacancies the petitioner could not be promoted immediately, but later on he has been promoted on the post of Traffic Controller with effect from June 28, 1989.

7. The Industrial Court has properly considered all the aspects raised in the complaint and the order passed by the Industrial Court on September 19, 1989 dismissing the complaint, does not suffer from any infirmity warranting

interference by this Court in its jurisdiction under Article 226 of the Constitution of India.

8. No merit is found in the writ petition and the same is dismissed. No costs. Rule is discharged.