



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**WRIT PETITION NO. 687 OF 2020**

Brihan Mumbai Electric Supply  
and Transport Undertaking

....Petitioner

: *Versus* :

Smt. Suvarna Sambhaji Yadav

....Respondent

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**Mr. Vishal Talsania** (Through VC) with Ms. Meghna Vijan i/b Mr. Sagar Shetty, for the Petitioner.

**Mr. Chandrakant G. Jadhav** with Mr. Sunil V. Patil, for the Respondent.

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**CORAM : SANDEEP V. MARNE, J.**

**Reserved On: 17 April 2026.**

**Pronounced On: 29 April 2026.**

**Judgment:**

1) Brihan Mumbai Electric Supply and Transport Undertaking (BEST) has filed the present Petition challenging the judgment and order dated 13 February 2019 passed by the President, Industrial Court, Mumbai, allowing Complaint (ULP) No.24 of 2017 and directing the Petitioner to reinstate the Respondent on the post of Bus Conductor with full backwages w.e.f. 9 April 2016.

2) Petitioner-BEST is public utility, which distributes and supplies electricity in the island city of Mumbai and provides mass public transportation in the city of Mumbai and in the neighboring areas. Husband of the Respondent Mr. Sambhaji Yadav was employed as



Bus Conductor with the Petitioner. He passed away while serving with the Petitioner. The Respondent applied to the BEST for compassionate appointment. She was engaged on contract basis since August-2011 as a Sweeper in the Traffic Department. It is the case of the Petitioner that the Respondent remained absent from July-2014. She was issued Memorandum dated 14 August 2014. She failed to report for duties. By letter dated 9 October 2014, her services were terminated.

3) The Respondent made Application dated 15 January 2015 for appointment on the post Bus Conductor on compassionate grounds. Her application was considered and she was made to fill up a Declaration Form in which she declared that no police case was pending against her and that she was not an ex-employee of BEST. She was subjected to medical examination. She was deputed for training on 14 March 2016. She successfully completed the training. However, the Petitioner did not appoint her. She filed Complaint (ULP) No.24 of 2017 under Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act,1971 (**MRTU & PULP Act**) before the Industrial Court, Mumbai. The Complaint was resisted by the Petitioner by filing written statement. The Respondent examined herself. The Petitioner led evidence of two witnesses. After considering the pleadings, documentary and oral evidence, the Industrial Court proceeded to allow the Complaint (ULP) No.24 of 2017 vide judgment dated 13 February 2019. The Industrial Court has held that the Petitioner has indulged in unfair labour practices under Item 9 of Schedule 4 of the MRTU & PULP Act. The Industrial Court has directed reinstatement of the Respondent on the post of Bus Conductor with directions to pay full backwages w.e.f. 9 April 2016. Aggrieved by the



judgment and order dated 13 February 2019 passed by the Industrial Court, Petitioner has filed the present Petition.

4) By order dated 6 February 2020, the Petition came to be admitted, and the impugned judgment and order of the Industrial Court was stayed. The Petition is called out for final hearing.

5) Mr. Talsania, the learned counsel appearing for the Applicant submits that the Industrial Court has erred in allowing the Complaint filed by the Respondent. He submits that the Respondent was not offered appointment by the Petitioner at any point of time. The Respondent grossly suppressed the factum of she being an ex-employee as well as about pendency of the FIR against her. That the BEST is entitled not to appoint a candidate, who has indulged in gross suppression of facts. The Industrial Court has erroneously arrived at a surmise that the appointment order was issued to the Respondent but the same was taken back. That such interference is raised on the basis of probability in absence of any concrete evidence. He submits that the Industrial Court has erroneously proceeded to ignore the issue of suppression of FIR by holding that the Respondent was never arrested and that mere registration of the FIR cannot be a reason for non-appointment of the Respondent. He further submits that the findings recorded by the Industrial Court on the issue of suppression of past employment in paragraph 15 of the Judgment is perverse. That the Industrial Court has perversely held that there was no column seeking details of previous employment. He submits that the Petitioner was not under any obligation to communicate result of selection of the Respondent. That mere non-grant of written intimation about refusal



to appoint cannot be a ground for granting relief of appointment in favour of the Respondent. He submits that the Industrial Court erroneously directed 'reinstatement' to the Respondent ignoring the position that she was never appointed. That direction to pay full backwages is also erroneous considering the fact that the Respondent did not work even for a single day. That the impugned order has directed the Petitioner to pay 100% backwages for the last 10 long years even though she has not worked with the Petitioner at any point of time. He therefore prays for setting aside the impugned order.

6) The Petition is opposed by Mr. Jadhav, the learned counsel appearing for the Respondent, who submits that the Industrial Court has correctly appreciated the entire evidence on record for holding that the Petitioner has indulged into unfair labour practices. He submits that the Declaration Form was submitted by the Respondent on 23 April 2015 whereas false FIR is lodged against her on 1 April 2016. That therefore there is no question of suppression in respect of the FIR. The FIR is otherwise false as the money was allegedly taken by Sharad Rajguru and the FIR does not indicate that any money is paid to the Respondent. That the Respondent was not an ex-employee of the BEST and therefore there was no need to make any declaration in that regard. Mere engagement of Respondent on daily wage basis does not convert a person into 'employee' of BEST. That therefore there is no suppression in the present case. He submits that the Respondent is a widow, who is denied compassionate appointment on erroneous considerations. That the Petitioner did not even bother to give an intimation to the Respondent with regard to outcome of her selection. The Respondent has admittedly undergone training. That she is poor lady, who is made



to suffer because of the arbitrary actions of the Petitioner. That the Respondent was admittedly never arrested and mere lodging of a baseless FIR cannot be a reason for denial of employment on compassionate basis. On above broad submissions, Mr. Jadhav would pray for dismissal of the Petition.

7) Rival contentions of the parties now fall for my consideration.

8) The case involves peculiar circumstances where the Respondent is not appointed on the post of Bus Conductor on compassionate grounds but on account of declaration made by her in the Verification Form submitted on 23 April 2015. The Petitioner did not give any written intimation to the Respondent communicating decision of non-appointment on compassionate grounds. However, after filing of complaint of unfair labour practice, the Petitioner divulged the reason for non-appointment of the Respondent by pleading in paras-6, 7(c) and (d) of Written Statement in Complaint (ULP) No. 24 of 2017 as under:

6. With reference to paragraph 2 of the Complaint, the Respondent specifically denies that it has engaged in any unfair labour practices under Item No.9 of the schedule IV of the MRTU & PULP Act, 1971 on and from 12.04.2016. The complainant be put to strict proof thereof.

7 (c) Thereafter, the Complainant made a fresh application dated 15.01.2015 for the post of Bus Conductor on compassionate grounds. As per the procedure followed in the Respondent Undertaking, the Complainant was called for verification of documents on 23.04.2015. At the time of verification, the candidates are given a form in which they are required to fill in details regarding name, address, date of birth, qualifications, details of licence issued by Regional Transport Authority as also other details such as whether or not any police case pending against the applicant and whether the candidate has worked previously in the Undertaking. The Complainant did not disclose that



she had previously worked in the Respondent Undertaking on the said form and has signed the same stating that the information furnished by her in the said form is correct and if found false, her selection and appointment to the post of bus conductor will stand terminated forthwith.

d) Since there was nothing adverse on the basis of information provided by the Complainant in the form, she was referred to the Medical Department for ascertaining her physical/medical fitness for the post of Bus Conductor. On receipt of the Fitness Certificate of the Complainant, she was posted for training from 14.03.2016. During the fag end of the training period of the Complainant, it was brought to our notice that the Complainant had worked previously in the Respondent Undertaking and was doing cleaning/sweeping job on daily wages from August 2011 to September 2014 As per the order of the Industrial Court in Complaint (ULP) No.546 of 2012, the widows who were engaged for cleaning/sweeping work were absorbed in regular employment and paid arrears. Accordingly, the Complainant who had worked on daily wages in the Undertaking for doing cleaning/sweeping work is also entitled for arrears as per the Court's order The Complainant was informed vide letter No.AM(Tr.) (Gen.)/22273/2016 dated 28.07.2016 to collect her arrears Hereto annexed and marked ANNEXURE-III is the copy of Memorandum dated 28.07.2016 alongwith receipt of Registered A.D. and acknowledgement dated 08.08.2016. Subsequently, she was informed vide another letter No.AM(Tr)/Gen./25067/2016 dated 25.08.2016 that her arrears payment is ready and she should collect the same. Hereto annexed and marked ANNEXURE-IV is the copy of letter dated 25.08.2016. However, she has not collected the same till date. Subsequently, it was also brought to the notice that an FIR has been lodged against the Complainant in the Govandi Police Station under Section 420, 465, 468, 471 and 34 of the Indian Penal Code for demanding and accepting bribe of Rs.50,000/- for providing employment in Government Offices and thereafter offering transfers as desired Hereto annexed and marked ANNEXURE-V is the copy of FIR No.69/16 dated 01.04.2016 alongwith statement of Kum. K.R. Makandar dated 01.04.2016, letter by Govandi Police Station dated 10.08.2016, application dated 21.08.2016 etc. She has also prepared false documents (Employment Order) by using fake Government seals and authentications. The said case is still pending. In view of the serious nature of complaint against her as also that she has intentionally withheld the fact that she had previously worked in the Undertaking, the Complainant was not considered for employment as Bus Conductor in the Undertaking

The Respondent further submits that on 12.09.2016, a reply to the notice issued by the Complainant's advocate was also sent to him.



9) Thus, the Written Statement filed before the Industrial Court stated two reasons for non-appointment of the Respondent viz. (i) pendency of serious nature of complaint against her by FIR dated 1 April 2016 and (ii) intentional withholding of the fact that she had previously worked with the Undertaking.

10) There is allegation that Respondent has suppressed the information relating to pendency of FIR. This is based on the Verification Form submitted on 23 April 2015 whereas, the FIR came to be lodged on 1 April 2016. As of filing of the Verification Form, no FIR was pending against the Respondent.

11) So far as the ground of non-disclosure of previous employment with the Undertaking is concerned, in my view, denial of appointment on that ground is totally arbitrary. The Respondent was merely engaged on daily wage basis as a Cleaner/Sweeper vide order dated 13 September 2011. The engagement was not at a fixed place and for the purpose of cleaning bus stops, refilling of drinking water, filling of water in radiator of buses at different bus stations of BEST such as Ghatkopar Railway Station, Ghatkopar Road-4, Santacruz, Vikhroli, etc. She was supposed to attend to different Bus Stations from Monday to Saturday and was not entitled to any pay for Sundays. The appointment was on consolidated wages of Rs.4,000/- per month. The engagement was on contract basis from 14 September 2011 to 31 December 2011.

12) Mere engagement on contract basis cannot be treated as attaining the status of 'ex-employee' within the meaning of Column-11 of the Verification Form. Column-11 of the Verification Form was as under:



११. आपण उपक्रमाचे माजी कर्मचारी आहात का? (असल्यास तपशिल द्यावा).  
नाही.

11. Are you ex-employee of Undertaking (if yes give details).  
NO

**13)** Thus, only an ex-employee of BEST was required to make a positive declaration as per the Verification Form. The Respondent was engaged on contract basis from 13 September 2011 to 13 July 2014 and did not attain status of employee of BEST. In my view, therefore mere negative declaration given in the Verification Form clearly could not have been a reason for denial of compassionate appointment for the Respondent.

**14)** Also of relevance is the fact that the Form was supposed to be filled up only by 'Badli' Conductor whereas the case of the Respondent was being considered for grant of compassionate appointment on permanent basis. Therefore, it is highly questionable as to whether filling up of such Declaration was really necessary by the Respondent. In my view therefore non-disclosure of information relating to contractual engagement could not have been a reason for denial of compassionate appointment to the Respondent. As a matter of fact, Petitioner had erroneously engaged Respondent on mere contract basis instead of considering her case for permanent appointment on compassionate grounds. It is only after Petitioner received a slap on the wrist vide order dated 30 October 2014 passed by the Industrial Court in Complaint (ULP) No. 546 of 2007 that it decided to consider cases of widows for compassionate appointment.



15) In such circumstances, Petitioner cannot be permitted to take benefit of its own wrong in utilizing the services of the Respondent on contract basis and thereafter cite the pretext of non-disclosure of details of that engagement as a ground for not appointing Respondent on compassionate ground. The termination of Respondent as contract Sweeper would also hardly matter. The engagement itself was casual in nature on meagre amount of consolidated wages. Therefore the disinterest shown by the Respondent in continuing in service as contractual sweeper cannot be ground for attaching any disqualification to her.

16) So far as lodging of FIR against the Respondent is concerned, the same was registered at the behest of Ms. Kausabi Makandar. Her broad allegation in the FIR is that she met Respondent on 18 August 2015 at Govandi Railway where Respondent promised her to assist in securing job and introduced her to Mr. Sharad Rajguru. It appears that Mr. Sharad Rajguru showed the complainant fictitious appointment order at Vardha and inquired with the Complainant as to whether she was willing to accept posting at Vardha. Upon Complainant expressing desire to work at Mumbai, he promised to secure transfer order of the Complaint at Mumbai and accepted Rs.50,000/- and thereafter disappeared. Since, the prosecution in respect of the complaint is still pending, it is premature to make any observations about contents of the FIR. However, it is seen that the main allegations in the FIR in respect of preparation of fictitious appointment order and receipt of Rs.50,000/- are against Mr. Sharad Rajguru. Beyond introducing the Complainant to Mr. Rajguru, it does not appear that there is any allegation against the Respondent in respect of the



preparation of fictitious appointment order or acceptance of Rs.50,000/- from the Complainant.

17) No doubt, the employer is entitled to consider the factum of registration of FIR and it can deny appointment to a selected candidate. Registration of FIR during selection process and before actual appointment can be a ground for acquiring disqualification for being appointed in government service. However, in the present case, the Respondent is not a candidate for direct recruitment. She is a widow of ex-employee of BEST. Her case was being considered for compassionate appointment in order to provide support to the family due to demise of the bread earner. Therefore, the case of the Respondent cannot be put on the same pedestal as that of a candidate selected in a selection process. Considering the role attributed to the Respondent in the FIR and the fact that her case was being considered for compassionate appointment, in my view, denial of appointment to the Respondent even on the ground of filing of FIR against her does not appear to be in order.

18) In the present case, the Petitioner did not even take pains to inform the Respondent the outcome of the case for compassionate appointment. It is only after the Respondent issued notice through Advocate on 11 June 2016 that Petitioner divulged the reason for not making appointment vide reply dated 12 September 2016. In that reply, Petitioner falsely stated that '*similarly your client also hides the details of FIR lodged against her in the Govandi Police Station*'. As observed above, the FIR was lodged on 1 April 2016 whereas the Verification Form was



submitted on 23 April 2015. Therefore, the allegation of suppression in relation to the FIR is clearly erroneous.

19) Considering the fact that the Respondent sought compassionate appointment, in my view, denial of appointment only on account of registration of FIR, not involving any serious allegations against her, cannot be a ground for denial of compassionate appointment to the Respondent. The Industrial Court has rightly allowed the Complaint filed by the Respondent.

20) It is not really necessary to delve deeper into the aspect as to whether appointment order was indeed issued to the Respondent or not and whether it was taken back. This Court proceeds on an assumption that no appointment order was actually issued to the Respondent. However, denial of appointment on compassionate grounds to the Respondent on both grounds of suppression of information relating to ex-employment and pendency of FIR is found to be not in order.

21) The Industrial Court has committed a slight error in using the word 'reinstatement' in the impugned judgment and order dated 13 February 2019. Since the Respondent was never appointed in service of BEST, there is no question of her reinstatement. Mere imparting of training required for the post of Conductor cannot lead to a presumption that Respondent was appointed in services of BEST. Similarly, her past engagement as Sweeper on contract basis has no connection with her regular appointment on compassionate grounds. Therefore, instead of directing 'reinstatement', the Industrial Court ought to have directed grant of appointment to the Respondent.



22) The Industrial Court has awarded 100% backwages to the Respondent from 9 April 2016. Considering the fact that the Respondent has got herself embroiled in a criminal case, in my view, award of 100% backwages in her favour does not appear to be in order. By now, the period during which backwages would become payable is also unduly long. Considering the peculiar facts and circumstances of the case, in my view, ends of justice would meet if direction is given for payment of 30% backwages to the Respondent from 9 April 2016.

23) Accordingly, I proceed to pass the following order:

- (i) The judgment and order dated 13 February 2019 passed by the Industrial Court, Mumbai in Complaint (ULP) No. 24 of 2017 is modified to the limited extent of reduction in the amount of backwages from 100% to 30%.
- (ii) Petitioner shall accordingly appoint the Respondent on the post of Bus Conductor w.e.f. 9 April 2016 with only 30% backwages from 9 April 2016 onwards.
- (iii) The necessary order of appointment of the Respondent shall be issued within a period of 6 weeks.
- (iv) The entire period from 9 April 2016 onwards shall be treated as period spent on duty for all purposes except for 100% backwages.

24) The Writ Petition is **partly allowed** in above terms. Rule is made partly absolute. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]