

Received on :- 13/03/2008
Registered on:- 13/03/2008
Decided on :- 06/08/2018
Duration :- 10Y; 6M; 23D.

CNR No. MHLC120000532008

IN THE LABOUR COURT NO.2, PUNE

CORAM:- MRS. SHARAYOO SAHARE, JUDGE

Complaint ULP No.23/2008

Shri. Manesh Krishna Kumbhar
890, Vidyanagar, At.Post. Bhor,
Dist. Pune. ... Complainant

Vs.

Divisional Traffic Superintendent
Maharashtra State Road Transport
Corporation, Shankarshet Road,
Pune – 411 037. ... Respondent.

Appearances :- Shri. A.K. Dixit, Advocate for Complainant.
Smt. V.A. Shah, Advocate for Respondent.

JUDGMENT

(Delivered on 6th August 2018)

This is an application u/s 38(1) of the MRTU & PULP Act with Schedule IV Item 1(a), (b), (d) (f) & (g) seeking declaration that Respondent is engaged in unfair labour practice since 13.03.2008 till date. He seeks declaration that charge-sheet dtd.24.07.2007, departmental enquiry dtd.16.08.2018 and show cause notice dtd. 13.03.2008 are illegal, null and void and the Respondent be restrained from terminating the services of the complainant.

2) In the nutshell the story of the complainant is as under:-

That the complainant is working with the Respondent as permanent conductor since 2004 and has rendered uninterrupted and unblemished service for 04 years without any stigma against him, till the filing of this complaint. It is stated that on 24.07.2007 he was suspended from his services on false charges that on 2.04.2007 while on Shirwal-Bhor route, he has re-issued the tickets which he has already issued on previous trip and thus committed misappropriation of the funds of Rs.26/- of the respondent. It is stated that the charge-sheet is issued upon him along with documents under Rule 7 (c), (b), 9, 10, 12(b), 22, 26 & 28 of the Schedule A of the Discipline & Appeal Rules applicable to the respondent. He has replied the charges leveled against him on 25.07.2007 wherein he has denied all the charges against him.

3) It is further stated that the respondent has failed to consider his reply dtd. 25.07.2007 to the charge-sheet and conducted a departmental enquiry in hush-hush manner wherein the punishment of dismissal is proposed for him vide show cause notice dtd. 08.03.2007. Hence he is constrained to file the present application seeking declaration and the restrain order against the Respondent as stated above.

4) The Respondent has filed the written statement vide Ex. C-5. The defence is total denial. It is stated that the charge-sheet was properly served upon the complainant and departmental enquiry conduct was with all the principles of natural justice and due process of law. It is further stated that on earlier occasions also

the complainant was punished twice as found indulged in activities of malpractice and his increment was stopped for 3 years and for 1 years respectively. Even then he failed to improve his conduct.

5) It is stated that on 22.07.2007 while on bus no. MH-12/U-9762 on Shirwal-Bhor route, when the bus was checked by the staff of flying squad at Utroli, it was found that the complainant has issued tickets of Rs.9/- each, to 2 passengers which he has already issued and sold on 20.07.2007 & 21.07.2007 on same route which he himself has noted in the way-bill. It means he has misappropriated the amount of the tickets and has caused the loss to the Respondent. Moreover,, when he found that the flying squad has detected his mischief, he hurriedly took out 2 tickets 110/032124 & 110/032125 from his tray, made wrong punch on it and threw at the door of the bus, which were seized by the flying squad. Secondly, when the cash in hand was checked, it was found short of Rs.26/- than the tickets sold. Thus, the complainant is indulged in the malpractice and looking into the past record , the charge-sheet was issued and the departmental enquiry was held properly. It is stated that the proposed punishment is as per the evidence found and hence the complaint be dismissed.

6) My learned predecessor has framed issued vide Ex. O-5. The issue no. 2 & 2A are taken as preliminary issues which are decided 22.02.2016 and it is held that the departmental enquiry conducted is fair legal and proper whereas the findings of the Enquiry Officer is not perverse. Thus, I give the findings to the remaining issue against each of the them for the reasons recorded below--

<u>Sr.No.</u>	<u>Issues</u>	<u>Findings</u>
1)	Whether complainant proved that respondent is engaged in unfair labour practices under Item 1(a),(b), (d),(f) & (g) of Schedule IV of the MRTU & PULP Act, 1971?	.. In the negative.
2)	Whether departmental enquiry conducted in this dispute is fair, legal and proper?	... Already decided on 22/02/2016 as preliminary issue.
2(A)	Whether complainant proved that findings of enquiry officer are perverse? If yes, whether respondent proved misconduct before Court?	... Already decided on 22/02/2016 as preliminary issue.
3)	Is complainant entitled for reinstatement with full back wages?	... Only reinstatement in service.
4)	What relief?	... Only reinstatement in service.
5)	What order?	... Complaint is partly allowed as per final order.

REASONS

7) To prove the remaining issues, the complainant has filed his evidence affidavit at Ex.U-19. However, he has not proved any documents at this stage. Whereas the Respondent has not filed any evidence for the remaining issues & have filed pursis Ex.C-20.

8) Heard both sides at length. It is contended on behalf of the complainant that he has challenged the show cause notice dtd. 08.03.2008 about dismissing his services by the Respondent and

thus by the interim order dtd. 24.02.2009, he is protected and is in service. It is contented that the Respondent has not proved as to how the punishment is proportionate for the meager amount of Rs.26/- and hence it is contention of the complainant that harsh punishment has been awarded to him without any reasons. It is stated that as per schedule B of the Discipline and Appeal Rules applicable to the Respondent, any misappropriation of the money below Rs. 100/- is minor offence and the punishment proposed for the complainant is very harsh and hence same be reduced.

9) On the other hand, it is contended on behalf of the Respondent that charge against the complainant is of misappropriation of the amount. It is stated that in such cases, the amount of the money do not matter, it is the intention of the employee which may lead to major offence, if not curbed at right time. It is also stated that as per Discipline & Appeal Rules, dismissal is the only punishment if the employee is found guilty under Rule 12(b) of the said Rules.

10) As to issue no.1-- The General Unfair Labour Practice on the part of the employer is mentioned in Schedule IV. The complainant has mentioned item no.(1)----

(a) by way of victimisation,

(b) not in good faith, but in the colourable exercise of the employer's rights;

(d) for patently false reasons;

(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste.

(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular

misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment.

11) On the other hand it is stated by the Respondent that the complainant is involved in misconduct as mention in Rule 7 (c), (b), 9, 10, 12(b), 22, 26 & 28 of the Schedule A of the Discipline & Appeal Rules, which reads a under;--

7(b):-Not informing the inspector about non-issuance of tickets though fare received and similar misconduct.

(c):- Not issuing tickets to the passenger though fare received.

9 :- Disobeying the orders of senior officers.

10:- Indiscipline;

12(b):-Misappropriation of property / worth of corporation.

22:- Disobedience of administrative order.

26:- Indiscipline and arrogant behaviour.

28:- Arrogant and inappropriate behaviour with co-workers and passenger while on duty.

12) It is seen that at the time of the decision of the preliminary issues, none of the parties have led their evidence and it was decided on the oral argument of the parties. However, at the stage of deciding remaining issues, only the complainant has led the evidence. The Respondent has not led the evidence and has filed the pursis to that effect. It is admitted position that the charge-sheet for the misconduct has been issued against the complainant. Now it is to be seen whether the punishment proposed by Respondent is proportionate to the misconduct or not.

13) The contention of the respondent that the complainant, on 22.07.2007 while on bus with route Shirwal-Bhor, has reissued two tickets of denomination Rs. 9/- each to two passengers, which he has already issued on 20.07.2007 & 21.07.2007 while plying the bus on same route on earlier occasion. It is contended by the Advocate of the Respondent that it has placed all the documents in original, before the court. But it is to be stated that none of the documents are proved by the Respondent. It is to be stated here that mere filing of the documents on record does not mean that the contents of same are proved. As stated above that while deciding the preliminary issues, it is being confirmed that the enquiry against the complainant was done in fair, legal and proper manner and the findings arrived by the Enquiry Officer, is not perverse, then it is to be stated that the Respondent is not indulged in any unfair labour practice, as contended by the complainant. Hence I answer the issue no. 1 in negative.

As to issue No.3 :-

14) As stated earlier, that the Respondent has not led any evidence to show that the punishment proposed for the complainant is proper as per the Discipline & Appeal Rules, applicable to the Respondent. During the course of oral arguments by the Advocate of the Respondent, she admitted that none of the documents are proved through the evidence led by the officer of the Respondent. It is also admitted by the complainant that in departmental inquiry, the charges are proved against him. The charge against the complainant is under clause 12(b) of the Schedule A of Discipline & Appeal Rules. As per such Rule 7 of the

Discipline & Appeal Rules, the punishment prescribed for offence under clause 12(b) is dismissal from the service. However, it is also seen that the conduct of misappropriation of money which less than Rs.50/- is under minor offence. Though it is contended by the Respondent that the complainant is habitual and previously also he was punished twice for such misconduct, but no evidence is led by the Respondent to that effect. If the Respondent relies upon the previous record of the complainant to show that it has arrived at proportionate punishment, then it is the burden on the Respondent to prove the same.

15) The complainant relies upon State of Uttaranchal and others Vs. Khanak Singh, 2008 LLR 1171 (SC) stating that as it is the allegation of the Respondent that the complainant is involved in the misconduct, then it is for the Respondent to lead its evidence first, but in the present matter no evidence is led by the Respondent.

Para 11(iii)– In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

16) He further relies upon Jorsingh Govind Vanjari Vs. Divisional Controller.... Civil Appeal no.11807/2016(SC) and A.P.S.R.T. Corporation Vs. G. Murali, 2017 LLR 1233 (SC) stating that the Respondent has not brought any passenger as the witness whom it alleges that already sold tickets were issued. It was held by the Hon'ble Court that it was the burden on the Respondent to

prove non-issuance of the tickets when conductor has denied the charges.

17) On the other hand the Respondent relies upon Municipal Corporation of Greater Bombay Vs. Om Prakash A. Singh and Ors., 1998 LLR 72 (Bom.) it is held that,

Para 9 :- “.... The opportunities given to him by imposing minor punishments have been misused by the employee by committing further misconduct.”

But it is to be stated here that the Respondent has placed any past record of the complainant, on record neither has proved the same by leading the evidence. Hence, with respect I hold that this authority is not helping the Respondent in the present case.

18) It has further relied upon Brihan Mumbai Municipal Corporation Vs. The General Secretary, BEST Workers' Union & Ors., 2001 I CLR 855 (Bom.) wherein it is held that,

Para 6 :- “..... It has always been mindful of the increase in the public commuters and the human errors in counting money in such situation. At the same time the management cannot allow leniency after certain limit in the interest of revenue.”

19) He further relies upon Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane, 2004 III CLR 772 (SC) wherein it is held that when the person is found guilty, nothing wrong with the Corporation to award the punishment of dismissal. However it is to be stated that in the authority cited, the evidence of the inspector who has checked the bus, is noted, but in the present matter in hand, the Respondent has failed to record any evidence or to prove the relevant documents on which it relies. As stated

above, it is contended by the Respondent that looking into the previous conduct of the complainant and the findings of the department enquiry initiated against him, the proposed punishment as proper, but no past record is placed by the Respondent. Hence I hold that the complainant is entitled for relief and I answer issue No. 3 accordingly.

As to issue No.4 :-

20) As the Respondent failed to produce and prove the past record of the misconduct of the complainant, the complainant's act will fall under minor misconduct for which dismissal cannot be the punishment. He is entitled for minor or lesser punishment. Hence I answer issue no 4 accordingly and proceed to pass the following order;

ORDER

- 1) The complaint is partly allowed with proportionate cost.
- 2) The show cause notice dtd. 08.03.2008 is hereby declared as illegal, null and void.
- 3) The prayer that the Respondent is indulged in unfair labour practice since 13.03.2007 and that the departmental enquiry dtd.16.08.2007 is illegal, null and void is rejected.
- 4) That the increment of the complainant is stopped for further three years and is entitled for taken in service with continuity from 08.03 2008.
- 5) Both parties to bear their own cost.
- 6) Declared on open court.

Sd/---

Place :- Pune.

(Mrs. Sharayoo Sahare)

Judge,

Date :- 06/08/2018.

Labour Court No.2, Pune

IN THE COURT OF LABOUR JUDGE COURT no. 2 PUNE

Complaint (ULP) no.23/2008

Manesh Krushna Kunbhar

-vs-

Divisional Transport Superintendent

Pune

OPERATIVE ORDER

(Passed on 06.08.2018)

1. The complaint is partly allowed with proportionate cost.
2. The show cause notice dtd.08.03.2008 is hereby declared as illegal, null and void.
3. The prayer that the Respondent is indulged unfair labour practice since 13.03.2007 and that the departmental enquiry dtd.16.08.2007 is illegal, null and void is hereby rejected.
4. That the increment of the complainant is stopped for further three years from the date of this order and is entitled for taken in service with continuity from 08.03 2008.
5. Both parties to bear their own cost.
6. Declared on open court.

Sd/---

Date- 06.08.2018

Pune

(Mrs. Sharayoo Sahare)

Judge Labour Court no.2

Pune.