

BEFORE THE JUDGE, LABOUR COURT CHANDRAPUR.

(Presided over by Smt. S. Z. Khan)

Complaint (ULP) No. 45/2019

(CNR No.MHLC340001722019)

Chandrashekhar Shrawanji Sarode,
Aged about 41 yrs. Occ- Service.
R/o C/o Shrimati Chikhale, Plot no. 47,
Santoshinagar, Near Hudkeshwar
Police Station, Nagpur,

.... **Complainant.**

-Versus-

1. Maharashtra State Road Transport Corporation though its Divisional Controller, MSRTC, Chandrapur
2. Maharashtra State Road Transport Corporation though its Divisional Traffic Superintendent, (Default) MSRTC, Chandrapur.

.... **Respondents.**

Appearances :- Shri V. M. Shikare Rep. for complainant.

Shri B. M. Patil Adv. for respondents.

ORDER BELOW EXH. U-2

(Passed on 7th January, 2020)

01. This is the application under Section 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, (for Short “MRTU & PULP Act”) for grant of

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interim relief to restrain respondents from dismissing the complainant from service on the strength of impugned show cause notice of dismissal dated 21.11.2019.

02. The case of the complainant in brief is as under :-

The complainant is working as a Conductor under the employment of respondents since the year 1997. His past service record is clean and unblemished. The respondent no. 1 is the appointing authority of the complainant and respondent no. 2 had acted as an enquiry officer and issued impugned show cause notice to the complainant.

03. Respondents have issued the chargesheet dated 29/08/2019 to the complainant for misconduct under clause 7(a), 7(c), 7(d), 10 and 12-B of Schedule-A of Discipline and Appeal Procedure of MSRTC alleging that on 27/03/2019 the complainant was on duty on the bus bearing no. MH-40-Q-6245 plying from Ghot to Katol route. The bus was checked at Bramhapuri by the checking squad and it was found that out of 30 passengers, one group of 6 passengers traveling from Armori to Bramhapuri was found without tickets. Those without ticket passengers were getting down from the bus at Bramhapuri at the time of checking of the bus. The complainant has collected fare amount of Rs. 180/- from them but,

did not issue fare tickets . The cash with the complainant was found correct.

04. The complainant has replied the chargesheet by denying all the charges. He has submitted that the alleged 6 without ticket passengers were boarded in the bus at Bramhapuri when other passengers of the bus were getting down of the bus. In the mean time, the bus was checked by the checking squad and statements of witnesses were taken by the checking squad as per their own accord and only on the basis of suspicion, the case was booked against the complainant. The complainant also demanded ticketwise collection report and cross-examination of those without ticket passengers.

05. Thereafter, the enquiry was initiated against the complainant and was completed in one day only. The said enquiry was not conducted fairly and properly. The principles of natural justice were not followed during enquiry. The copy of ticketwise collection report was not supplied by the enquiry officer to the complainant nor the alleged without ticket passengers were called during enquiry. As such, the complainant could not get opportunity of cross-examination of those witnesses.

06. The findings drawn by the enquiry officer is also perverse. It is not based on the material on record. The reply of the complainant and his defence statement was not considered by the

enquiry officer. The enquiry officer has acted with biased mind and drawn perverse findings against the complainant.

07. On the basis of such findings, the impugned show cause notice dated 21.11.2019 was issued to the complainant by respondents proposing the punishment of dismissal. The said show cause notice is challenged by alleging that it is illegal. At present, complainant is in service. On the basis of impugned show cause notice, respondents are intending to dismiss the complainant from service. Therefore, the effect of the impugned show cause notice needs to be stayed by restraining respondents from dismissing the complainant from service on the basis of impugned show-cause notice till decision of his complaint .

08. Respondents have resisted the claim and contention of complainant by filing their reply cum written statement vide Exh.C-4. They have admitted that the complainant is working under their employment as a conductor. According to them, the complainant has committed misconduct as alleged in the charge-sheet. Therefore, enquiry was conducted against him. They have denied the fact of enquiry having been conducted in illegal manner. According to them, every opportunity was given to the complainant for defending himself, but he failed to establish his defence. In enquiry, charges about misconduct leveled against him were proved. Therefore, impugned show-cause notice of dismissal was issued to the complainant which is legal. All the other adverse allegations are

denied by respondents. According to them, there is no legal ground to allow the application - (Exh.U-2). Lastly it is prayed for rejecting it.

09. Following points arise for my determination. They are answered with my findings thereon for the reasons given on below :-

POINTS

FINDINGS

- | | | |
|---|---|--------------------------|
| 1) Whether the complainant has made out prima facie case ? | : | No. |
| 2) Whether balance of convenience lies in his favour ? | : | No. |
| 3) Whether he will suffer irreparable loss, if interim relief as per application –(Exh.U-2) is refused? | : | No. |
| 4) What order ? | : | Application is rejected. |

REASONS

10. Heard the learned representative for the complainant and the learned Counsel for respondents and perused the documents placed on record.

11. The complainant has placed on record the copy of charge-sheet, copy of report, statement of passengers, cash checking report, inspection report from ETI machine, reply to chargesheet,

copy of enquiry proceeding, copy of findings and impugned show cause notice alongwith Exh.U-3. Both the parties have relied upon these documents as per their convenience.

AS TO POINT NOS. 1 to 3 :-

12. Needless to state that this Court is empowered to entertain application filed under Section 30(2) of MRTU and PULP Act regarding interim relief. The principle behind granting interim relief is to provide preventive relief to the aggrieved party. If essential conditions such as prima facie case, balance of convenience and causing of irreparable loss, in the event of rejection of application are fulfilled, then application for interim relief can be granted in order to preserve the rights of the parties as on the date of filing of the complaint. So far as making out of prima facie case is concerned, prima facie means the existence of circumstances justifying the trial of the question of facts and law raised in the litigation. In other words, Court has to consider whether there is a serious question to be tried in the litigation.

13. Perusal of record shows that complainant has challenged the impugned show cause notice of dismissal. According to respondents, it was issued by them, when charges of misconduct were proved against complainant on the basis of evidence available in the enquiry proceeding. Against this, complainant submits that there was violation of principles of

natural justice and there was no evidence available in enquiry to prove alleged charges of misconduct. No opportunity was given to the complainant to defend enquiry. Therefore, consequently, issuance of impugned show cause notice of dismissal is illegal one. Thus, apparently, it is explicit that base of issuance of impugned show cause notice lies in enquiry proceeding. Therefore, the Court has to enter into enquiry proceeding to some extent in order to determine whether complainant has made out prima facie case.

14. The learned representative for the complainant argued that the enquiry conducted against the complainant was not fair and proper. The principle of natural justice was not followed during enquiry. The enquiry officer has not considered the defence statement of the complainant and drawn the findings against the complainant without considering the material placed before him during enquiry. On the basis of such illegal enquiry and perverse findings, the impugned show-cause notice of dismissal came to be issued to the complainant which is illegal. As such, it is necessary to stay the effect and operation of such notice.

15. On the other hand, the learned counsel for respondents argued that during enquiry, all the documents were supplied to the complainant and fair and reasonable opportunity to defend the enquiry was given to him. The charges of misconduct were proved

during enquiry. Consequently, the impugned show cause notice came to be issued to the complainant which is legal and proper.

16. The learned representative of the complainant has argued that while filing reply to the chargesheet, the complainant has demanded ticketwise way bill collection report and cross-examination of the alleged without ticket passengers. But, the enquiry officer has not supplied such document to the complainant nor called the alleged without ticket passengers. As such, proper and reasonable opportunity to defend the enquiry was denied to the complainant.

17. In this context, on going through the enquiry proceeding, it appears that the complainant was supplied report, statements of witnesses, his statement, copy of inspection report and copy of cash verification form alongwith the chargesheet prior to initiating the enquiry. The complainant during enquiry has admitted receipt of all these documents. He has not demanded the ticketwise way bill collection report during the enquiry nor asked the enquiry officer to call the alleged without ticket passengers.

18. Though in the reply to the charge-sheet, the complainant has demanded the ticketwise collection report. But, he is not able to

show as to what prejudice was caused to him due to non-receipt of such document. So far as the calling of without ticket passengers is concerned, it is well settled that the delinquent in the departmental enquiry can not dictate the enquiry officer to call any witness of his choice. It is the exclusive domain of the corporation or management to examine any witness to prove the charges against the delinquent. Undoubtedly, if the delinquent wants to examine any witness, he is at liberty to call such witness as a defence witness. But, in the case in hand, the complainant has not made any effort to bring the alleged without ticket passengers as a defence witness. He did not seek permission of the enquiry officer to call such witness during enquiry as his defence witness. Hence, the contention of the complainant that he could not get proper and reasonable opportunity during the enquiry proceeding is not acceptable. Rather, it appears that the complainant was given full opportunity to defend the enquiry. All the documents relied upon by the corporation were supplied to the complainant. He was given opportunity of cross-examination of the witness of corporation and to adduce defence evidence. Hence, the contention of the complainant that the enquiry was not fair and proper and was not conducted in accordance with the principles of natural justice is not acceptable.

19. So far as the contention of the complainant regarding the perversity of the findings is concerned, it is argued that the defence of the complainant was not considered by the enquiry officer. So

also the fact that the cash with the complainant was correct at the time of inspection was totally overlooked by the enquiry officer.

20. As per the allegation made in the chargesheet, when the bus was checked the alleged group of 6 passengers was getting down from the bus was found without ticket at Bramhapuri bus stop. Those passengers were traveling from Armori to Bramhapuri and the complainant has recovered fare amount of Rs. 180/- from them.

21. The complainant in his reply cum defence statement has contended that those passengers were boarded in the bus from Bramhapuri bus stop when other passengers were getting down. However, the alleged without ticket passengers in their statement have stated that they have boarded in the bus from Armori bus stop and have paid Rs. 180/- to the complainant. However, the complainant had not issued tickets to them. Such statement of the witnesses bears the signature of complainant and he has admitted that such statement was recorded in his presence. Moreover, the reporter in his report has submitted that the complainant before the checking squad has stated that he had received the amount of Rs. 180/- from the without ticket passengers. But, mistakenly and on account of returning of change to the passengers, could not issued tickets to them. Therefore, the enquiry officer has not accepted the defence statement of the complainant.

22. The enquiry officer further held that during enquiry, the complainant has admitted that six passengers were found without ticket in his bus. In this context on going through the enquiry proceeding, it appears that the complainant during his cross-examination, has stated that his bus was checked at Bramhapuri and six passengers were found without ticket.

23. On perusal of the enquiry proceeding, it appears that though the complainant has taken defence that those passengers were boarded in the bus at Bramhapuri bus stop but, he could not establish the same. As such his defence was not accepted by the enquiry officer.

24. As per the allegations made in the chargesheet, the cash found with the complainant was correct. According to the reporter, the cash with complainant was verified after issuing the ticket by him to the group of alleged without ticket passengers. As such, the cash was found correct. The complainant has contended that his cash was verified prior to issuing of ticket to those alleged without ticket passengers. In this context, the complainant on the cash verification report (document no.4) has admitted the fact that the cash with him was verified after issuing the seized ticket which was issued to the alleged without ticket passengers. He had made the endorsement thereon and signed the same. This fact was also considered and discussed in the findings by the enquiry officer.

Thus, it appears that the enquiry officer has considered the material placed before him during enquiry and properly appreciated the same. Hence, it prima facie appears that the findings of the enquiry officer is legal and proper.

Hence, considering the aforesaid discussion, I hold that the complainant failed to establish prima facie case in his favour. Accordingly, I answer point no. 1 in negative.

25.. The complainant has contended that if interim relief is not granted to him, respondents will dismiss him and he would be deprived of means of his livelihood. In this context, the respondents by issuing the impugned show cause notice had called upon the complainant to submit his explanation on the point of punishment. As such, the possibility of hearing of complainant and considering his explanation by respondents while imposing punishment can not be ruled out. Moreover, the legislation has not curtail the right of employer to terminate the services of employees in the event of proof of misconduct. In certain circumstances, if the termination is by way of unfair labour practices, the interference in such action is justified. But, in the case in hand, no such unfair labour practice is prima facie found on the part of respondents. Therefore, even if their action of proposed punishment is having drastic effect on the complainant, it can not be said to be wrong. Hence, the question of inconvenience is immaterial. Further more, even if it is assumed that, respondents would dismiss the complainant, the complainant

has right to approach the Court, if the punishment is found disproportionate. In service matters, the successful party may get relief which can be computed in terms of money. Hence, no question of causing irreparable loss to the complainant arise. On the other hand, even if in absence of any prima facie material of unfair labour practices on the part of respondents, the complainant is allowed to continue in service by staying the operation of show cause notice, the control and supervision of the respondents would be curtailed and it would have detrimental effect on the efficiency of respondent corporation. Therefore, the public at large would be put to loss. Hence, I hold that the balance of convenience is also not lying in favour of complainant and he would not suffer irreparable loss, if the interim relief is refused. Hence, I answer point nos. 2 & 3 in negative and pass the following order.

Hence considering the aforesaid discussion, I hold that the interim relief as claimed by the complainant is not warranted in the case in hand. Hence, the following order.

ORDER

- 1) Application is rejected.
- 2) No order as to costs.

CHANDRAPUR.
Date :- 07.01.2020.

(Smt. S. Z. Khan)
Judge
Labour Court, Chandrapur.

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