

BEFORE THE JUDGE, LABOUR COURT CHANDRAPUR.**Complaint (ULP) No. 14/2023**

(CNR NO.MHLC340001042023)

Jibrail Khan Jahangir Khan Pathan,
Aged about- 57 years, Occu- Service,
R/o. Kurkheda, Tah : Kurkheda,
Distt : Gadchiroli.

.... Complainant.**-:- VERSUS -:-**

1. The Divisional Controller,
Maharashtra State Road
Transport Corporation.
Gadchiroli Division, Gadchiroli.
Distt : Gadchiroli.
2. The Divisional Traffic Superintendent,
Maharashtra State Road
Transport Corporation.
Gadchiroli Division, Gadchiroli.
Distt : Gadchiroli.

..... Respondents.**CORAM :- Smt. R. V. Mete, Judge.**

Appearance : Shri. J. M. Patil, Adv. for the complainant.
Shri. U. V. Deshpande, Adv. for the respondents.

(ORDER BELOW EXH.U-2)(Passed on 26th September, 2024)

This is an application under section 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971 (for short hereinafter referred

to as 'MRTU & PULP Act') filed by the complainant praying for quashing and setting aside impugned second show cause notice of dismissal dated 15.04.2023, till decision of main complaint.

02] The brief facts of the present application are as under :

The complainant has filed instant complaint in the capacity of employee/workman challenging the legality and validity of impugned second show cause notice dated 15.04.2023 passed by the respondent no.2. The respondent corporation is registered under the Companies Act and hence it is an 'industry' u/s 2(s) of the Industrial Disputes Act, 1947 and complainant being a conductor is a 'workman' u/s 2(s) of the Industrial Disputes Act, 1947.

03] Initially, the complainant was appointed with the respondent corporation as a conductor in the year 1993 and he was posted at Gadchiroli depot. At the time of his dismissal, he was attached to Gadchiroli depot. His service record was clean and unblemished.

04] A chargesheet dated 30.12.2022 was issued to the complainant levelling charges under clauses 7(c), 7(d), 12(b) and 10 of Discipline and Appeal Procedure of the respondent corporation for the alleged misconduct dated 10.12.2022. He has replied the chargesheet on 13.01.2023 and thereby brought all true material facts to the notice of respondent corporation. In the chargesheet it was alleged that while complainant was discharging his duties on bus bearing No. MH-07/C-9380 plying from Gadchiroli to Kurkheda via Saverkheda route, the bus was

checked on 10.12.2022 at 17:00:00 hours earlier to reaching the village Kadholi. At that time there were total 38 passengers travelling in the bus. But, reporter alleged that there were only 10 passengers travelling in the bus, out of which five were found without ticket, who were travelling from Armori to Kadholi. Complainant has collected fare of Rs. 200/- at the place of their boarding but did not issue tickets to them till checking of the bus. Actually, there were total 38 passengers travelling in the bus. ETI machine became totally discharged earlier to Armori in the route and thus he has issued tickets manually from his ticket tray to some passengers. There were 28 passengers boarded in the bus from Armori and thus, the complainant was used to issue ticket tray. Since last 10 years the complainant was never used ticket tray for issuing tickets thus delay was caused in issuing tickets to the passengers. Process of issuing tickets was going on in the meanwhile bus was checked. There was no stop where the bus was checked. There was no allegation in the report as well as in the chargesheet that the passengers were found without ticket while alighting them from the bus. The bus was not checked at village Kadholi but was checked earlier to the village Kadholi.

05] The passengers who were alleged to be travelling without ticket were boarded in the bus from Armori towards their further journey till Kadholi. Statement of passengers were obtained under pressure and threatened. Statement of passengers were written by one passenger Sangita Hedau as per the direction and dictation of member of checking squad and complainant was pressurized to sign the same. Passengers are

not examined in the enquiry and hence complainant deprived his right of cross examination of witnesses. Reasonable and fair opportunity was not given to the complainant to defend his case in the enquiry. His defence statement given in the enquiry is not considered by the enquiry officer in proper manner. Amount with the complainant was proper and there was no less cash with him. Relevant and material documents are not supplied to the complainant during enquiry. In the enquiry reasonable and fair opportunity was not granted to the complainant to defend his case. The enquiry conducted against the complainant is not legal, fair, proper and in accordance with the principles of natural justice.

06] Alleged incident took place on 10.12.2022 and hence new Discipline and Appeal Procedure was made applicable to the complainant at the relevant time, but the respondents have issued Chargesheet and impugned show cause notice of dismissal was issued to the complainant under old Discipline and Appeal Rules of the respondent corporation which is contrary to the provisions of law and rules. Complainant never committed indiscipline against the rules of the respondent corporation and hence, clause 10 is not made applicable in the instant case. Findings of enquiry officer are perverse. Enquiry officer himself put leading questions to the reporter, which is contrary to the provisions of law. In the enquiry, though representative of complainant had asked some questions to the reporter and he has answered the questions which were in favour of complainant, but enquiry officer has not taken those

answer on record. Thus, enquiry officer acted malafidely. In the enquiry the enquiry officer has not examined another co-member of checking squad and alleged without ticket passengers though requested by the complainant and thereby complainant has been deprived to cross examine those material witnesses. Statements of passengers were not recorded in presence of complainant. Enquiry officer himself issued chargesheet and also conducted enquiry. Respondent no.2 also issued second show cause notice dated 15.04.2023 calling explanation from the complainant as to why proposed punishment of dismissal should not be imposed against him. Respondent no.2 acted against the settled position of law as well as against their new Discipline and Appeal Procedure. Enquiry officer acted as a Judge and Prosecutor. Enquiry officer has not examined driver of the bus in the enquiry. The complainant has not committed any misconduct. Charges levelled against the complainant are not proved in the enquiry. The punishment is shockingly disproportionate to the charges levelled against him. It is not in good faith but in colourable exercise of employer's right.

07] The complainant has a prima facie case and balance of convenience lies in his favour. He will suffer irreparable loss and injury in the event of non grant of interim relief till disposal of main complaint, as prayed by him. On these grounds, the complainant has prayed to grant interim relief application, till disposal of main complaint.

08] The respondents have resisted the application by filing composite reply cum written statement at (Exh. C-09) and

denied all adverse allegations levelled against them. It is submitted that the application is false, bogus and baseless and hence, it is liable to be rejected. It is denied that service record of the complainant is clean and unblemished. It is denied that complainant is a 'workman' and respondent is an 'industry' within the meaning of section 2(s) and 2(j) of the Industrial Disputes Act, 1947 respectively. It is denied that respondents did not consider reply to chargesheet given by the complainant in proper manner and directly issued impugned second show cause notice of dismissal dated 15.04.2023 which is illegal and void ab initio. It is denied that his defence statement was not considered in proper manner by the enquiry officer. It is denied that material and relevant documents were not supplied to the complainant during enquiry and he was not given an opportunity to cross examine the material witnesses i.e. without ticket passengers, another co member of checking squad and driver of the bus.

09] By special pleadings the respondent corporation has submitted that the complaint as well as an application as framed and filed by the complainant is itself not tenable in the eyes of law. The complainant was appointed as a conductor by the respondent corporation. It is submitted that on 10.12.2020, when the complainant was discharging his duty as a conductor on bus bearing No. MH-07/C-9380 plying from Gadchiroli to Kurkheda, it was checked by the checking squad at Kadholi and it was found that 5 passengers were travelling without ticket. Though complainant has collected fare amount from the alleged without ticket passengers at the place of their boarding but did

not issue tickets to him till checking of the bus. Checking staff recorded the statement of passengers on the spot. Respondent issued chargesheet dated 30.12.2022 to the complainant and conducted enquiry fair, proper and according to the principles of natural justice. The complainant has participated in the enquiry and filed reply to chargesheet in enquiry. Charges were proved against the complainant in the enquiry. Thereafter, respondent corporation had issued second show cause notice of dismissal dated 15.04.2023 and thereby decided to dismiss the complainant from service. Enquiry officer has followed the principles of natural justice while conducting enquiry. Enquiry conducted against the complainant is fair, proper, impartial and in accordance to principles of natural justice. Complainant has committed serious misconduct while discharging his duty, which has been proved in the enquiry and hence impugned punishment of dismissal is legal and proper. Complainant was given fair, proper and reasonable opportunity while conducting enquiry against him. Findings of enquiry officer are based upon record available in departmental enquiry and hence findings of enquiry officer are just and legal. It is further submitted that if this court comes to the conclusion that the departmental enquiry conducted against the complainant is unfair and improper then reserve its right to prove charges against the complainant by adducing evidence before the court. Punishment proposed against the complainant is proportionate to the charges proved against the complainant.

10] The respondents have further submitted that the complainant has not made out a prima facie case, balance of convenience does not lie in his favour. Irreparable loss or injury would be caused to the respondents in the event of grant of interim relief to the complainant, till decision of the complaint. On these grounds, the respondents have prayed for rejection of the application.

11] On going through the contentions of rival parties following points arise for my determination and I record my findings thereon as under for the reasons to follow :

POINTS

FINDINGS

- | | |
|---|-----------------------|
| 1) Whether complainant has made out prima facie case ? | : In the affirmative. |
| 2) Whether balance of convenience lies in favour of complainant ? | : In the affirmative. |
| 3) Whether complainant will suffer irreparable loss, in case application for interim relief Exh.U-2 is not allowed? | : In the affirmative. |
| 4) What order ? | : As per final order. |

REASONS

12] I have heard Shri J. M. Patil learned advocate for the complainant and Shri U. V. Deshpande, learned advocate for the respondents.

13] The complainant relied upon following documents :

- 1] Copy of Chargesheet dated 30.12.2022.
- 2] Copy of Report dated 15.12.2022.
- 3] Copy of statement of alleged without ticket passengers dated 10.12.2022.
- 4] Copy of statement of complainant dated 10.12.2022.
- 5] Copy of cash inspection report dated 10.12.2022.
- 6] Copy of ceased ticket dated 10.12.2022.
- 7] Copy of way bill.
- 8] Copy of reply to chargesheet dated 13.01.2023.
- 9] Copy of impugned show cause notice dated 15.04.2023.
- 10] Copy of findings.

14] In support of their case the respondents have relied upon following documents :

- 1] Copy of letter dated 08.04.2023 issued by Labour Officer to Divisional Traffic Superintendent.
- 2] Copy of report submitted by Divisional Traffic Superintendent, Gadchiroli to Divisional Controller, Gadchiroli dated 06.04.2023.
- 3] Copy of letter dated 06.04.2023 issued by Divisional Traffic Superintendent to Labour Officer, MSRTC, Gadchiroli.
- 4] Copy of attendance report of complainant in enquiry.
- 5] Copy of inspection report dated 15.12.2022.
- 6] Copy of statement of complainant.
- 7] Copy conductor's cash inspection report dated 10.12.2022
- 8] Seized tickets from conductor.
- 9] Copy of Way Bill.
- 10] Copy of chargesheet dated 30.12.2022.

- 11] Copy of suspension order dated 30.12.2022.
- 12] Copy of reply to chargesheet of complainant dated 13.01.2023.
- 13] Copy of letter dated 02.03.2023 in respect of enquiry.
- 14] Copy of letter dated 17.03.2023 in respect of enquiry.
- 15] Copy of enquiry proceedings dated 20.03.2023.
- 16] Copy of past service record of complainant.
- 17] Copy of Show Cause Notice dated 15.04.2023.
- 18] Copy of findings of enquiry officer.

AS TO POINT No.1 :-

15] 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 of the aggrieved party. Even if complainant is very vigilant and approaches the Court without losing any time, the Courts take time in adjudicating the rights of parties. For this reason, application for interim relief is generally used to be filed. If essential conditions such as prima facie case, balance of convenience and causing of irreparable loss, in case application is not allowed, 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 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. In the light of

these legal principles, material available in case in hand needs to be examined.

16] 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, Court has to enter into enquiry proceeding to some extent in order to determine whether complainant has made out prima facie case.

17] The learned Counsel for the complainant argued that the enquiry conducted against the complainant was against the principles of natural justice. He has pointed out that the enquiry officer has acted as a prosecutor during the enquiry. He has put up the questions to reporter in order to get answers against the complainant.

18] Per contra, the learned counsel for respondents argued that the enquiry was conducted in accordance with the

principles of natural justice. The complainant was provided the charge sheet and all the documents relied upon by respondents. He was given reasonable opportunity to defend the enquiry. As such, the enquiry is fair and proper.

19] In this context, on going through the enquiry proceeding, it appears that the enquiry officer has examined the reporter and cross-examined the complainant. The questions were put up to the reporter in the form of leading questions directly suggesting the answers. Thus, the enquiry officer has acted as a prosecutor. It is well settled principle of natural justice that the prosecutor can not be a judge in his own case. If such practice is adopted, the possibility of being biased or predetermined conclusion against the delinquent can not be ruled out. As such, I found force in the submission of learned counsel for complainant.

20] Secondly, perusal of the record, it appears that another charge leveled against the complainant under clause 12(b) for misappropriation of the amount of corporation. But, perusal of the statement of allegation in the charge sheet and report, no where it is mentioned that complainant misappropriated the amount of corporation. Also the cash of complainant is not down by checking officer at the time of checking. Therefore, from this prima facie, it appears that the charges are different than the statement of allegation in the charge sheet and report. From this material infirmity it is clear that the complainant made prima facie case. Also it is the contention of respondents that the complainant misappropriate the amount of corporation.

But perusal of record it appears that if complainant want to misappropriate the amount of corporation by not issuance of ticket to alleged W.T passengers then the cash of complainant needs to be found excess but it is found correct. On that ground also, complainant had made out a prima facie case.

21] Thirdly , on perusal of charge-sheet, it will find that it is alleged that while checking bus by officers of flying squad, it was found on 10.12.2022, he was on duty on bus bearing no. MH-07-C-9380. Total 10 passengers were travelling in such bus. The complainant recovered full fare charges of Rs.200/- from alleged 5 passengers those who are travelling from Armori to Kadholi but not issue ticket till checking spot. Such allegations are seriously disputed by complainant and according to him, he had received fair charge from the said 5 passenger but as he was issuing tickets to the alleged passenger the bus was check by the checking officer and checking officer snatch the ticket tray from the hand of complainant. Therefore, he was unable to issue tickets to the alleged passengers. As such, there was controversy regarding the fact that whether complainant was issuing tickets to the said passengers or not. In such facts and circumstances, best witnesses would be alleged passengers for proving disputed fact. But, enquiry proceeding discloses that the said material witnesses was not examined in the enquiry. Therefore, it was not possible for inquiry officer to hold that complainant had intentionally not issued tickets to the alleged passengers. Therefore, in the absence of positive evidence against complainant, it appears that inference drawn by inquiry officer that complainant has

committed misappropriation of alleged amount, prima facia appears to be not based on evidence available before him.

22] On perusal of the finding of enquiry officer, it is revealed that he has just mentioned the stages carried out by him in the enquiry. He has nowhere discussed evidence. On the contrary, he has merely relied on the spot statement of the alleged passengers. In fact, there are no reasons for his conclusion. The requirement of recording reasons is also one of the facets of natural justice. The reason is the very life of law. When the reason of law once ceases the D. and A. procedure itself generally ceases. Such is the significance of the reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoid uncertainty. When reasons are announced and can be weighed, the complainant can have assurance that the process of correction is in place and working. The reasons for a finding would ensure and enhance the confidence of complainant and would provide due satisfaction to him under our justice dispensation system. What is revealed from the above discussion and from the tenor of the report of enquiry officer that he had already made up his mind to find the complainant guilty. The aforesaid discussion leads the Court to come to the conclusion that this is a case which is reasonably arguable and involves serious issues which also enables the complainant to say something in his favour during trial of the case and therefore, it necessitates the matter to proceed the trial. Therefore, at this stage, the complainant has made out prima facie case in his favour. Consequently, point no.1 is answered in the affirmative.

AS TO POINT NOS.2 & 3 :-

23] So far as, balance of convenience is concerned, in view of the aforesaid discussion, the complainant has prima-facie shown that his proposed dismissal is illegal. Therefore, in my opinion, balance of convenience certainly lies in favour of the complainant rather than respondents. Moreover, in my opinion, no comparative hardship will be caused to the respondents, if the complainant is continued till the decision of main complaint. Consequently, points no.2 and 3 are also answered in the affirmative.

AS TO POINT NO.4 :-

24] In the result, the application (Exh. U-2) deserves to be allowed. Hence, I pass the following order.

ORDER

- 1) Application Exh.U-2 is allowed in following terms :-
- 2) Respondents are hereby restrained temporarily from dismissing the complainant from his services in pursuance of the impugned show cause notice dated 15.04.2023 till the decision of main complaint.
- 3) No order as to costs.

Sd/-
(Smt. R. V. Mete)
Judge

C H A N D R A P U R.
Date :- 26.09.2024.

Labour Court, Chandrapur.