

**BEFORE THE MEMBER INDUSTRIAL COURT, MAH., AT
SANGLI**

Complaint (ULP) No.18 Of 2023

(CNR No.MHIC100000402023)

Shri Vilas Maruti Kadam

A/p : Koutholi,

Tal. : Atpadi, Dist. : Sangli.

..Applicant

V/s

Maharashtra State Road Transport

Corporation, Sangli

..Opponents

Order Below Ex.U-2

(Date : 19th June 2024)

This application is filed u/s 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. By filing this application the applicant has prayed to direct the opponents not to give effect to the show cause notice dt.06/05/2023 and not to inflict any punishment in pursuance thereof and to maintain status quo with respect to service conditions of the applicant.

2. It is the case of the applicant that he has joined the services of opponent Corporation since 21/12/1989 as a Daily Wager Driver, thereafter he was taken as temporary driver since 14/11/1991 and was made permanent on the time scale w.e.f. 01/04/1998. Since then the applicant is in continuous service of the opponent till today. He is a workman within the meaning of

provisions of Industrial Disputes Act, 1947. In the matter of March 2023 the applicant demanded leave to get treatment of his wife. However, the leave was denied by the concerned officer on the count of duty allocation and the applicant was forced to attend duty. On 12/03/2023 the applicant was sent on duty on bus No. MH-14/BT/0911 and it was alleged that he was driving the bus and at that time was found talking on his mobile phone and due to his negligence there was possibility of the bus meeting with accident causing threat to the lives of the passengers.

3. A charge sheet was issued to the applicant on 01/04/2023 alleging charges under clauses 10, 11, 22 and 45 of Sch.A of Discipline and Appeal Procedure. The applicant denied the charges and filed explanation, however, enquiry was conducted against him and finally by show cause notice dt.06/05/2023 the applicant was asked as to why his basic pay shall not be brought down permanently by three stages.

4. The opponent Corporation resisted the application by filing written statement / say at **Ex.C-3** and denied each and every allegations of unfair labour practice levelled in the complaint. According to opponents the charges levelled against the applicant were serious in nature and it was observed that

while driving the bus bearing No.MH-14/BT/0911 the applicant was found using his mobile phone. This is serious breach of conduct as it jeopardize the safety of passengers and increases the risk of potential accident. It is imperative for every employee to ensure safety and well being of all the individuals involved in the travelling. Therefore, the applicant was issued with charge sheet dt.01/04/2023 alleging clauses under 10,11, 22, and 45 of Sch.A of Discipline and Appeal Procedure applicable to the employees of opponent Corporation. The reply filed by the applicant is evasive, misleading and far away from truth. The applicant consequently suspended considering the gravity as his misconduct was recorded and the video of the applicant talking on mobile phone was wide spread on social media. The charges levelled against applicant were proved in the enquiry. Hence finally a punishment of bringing down the basic wages of the applicant by three stages was proposed. According to opponents the said proposed punishment is commensurate with the gravity of misconduct in which applicant was involved. Hence the applicant has no prima-facie strong case, balance of convenience do not lies in his favour and he will not be put to any irreparable loss if interim application is rejected. Hence opponents prayed to reject interim relief application.

5. Considering rival pleadings of the parties following points for determination are taken for consideration. My answers to them with reasoning thereon are as under -

<u>Points</u>	<u>Findings</u>
(1) Whether the applicant has made out strong prima-facie case in order to grant interim application ?	In the Affirmative
(2) Whether balance of convenience lies in favour of applicant ?	In the Affirmative
(3) Whether the applicant will be put to irreparable loss in case interim relief is rejected ?	In the Affirmative
(4) What Order ?	As per Final Order

Reasons

6. **As to Point Nos.1 to 3 :-** Heard learned Advocate Mr.S.S. Mutalik for the applicant and learned Advocate Mr.D.S. Yadav for the opponent Corporation. It is vehemently submitted by the applicant that he initially demanded leave to take her wife to the hospital for medical treatment, however leave was denied and applicant was forced to go on duty. The applicant has rendered his duty sincerely and honestly. He was not involved in any kind of misconduct. It is submitted that the alleged video clip which was allegedly made viral was not produced in the enquiry. In none of the clips the applicant was seen talking on mobile phone while driving the bus. Hence the charges levelled against the applicant were not proved in the enquiry. Therefore, the

punishment proposed vide show cause notice dt.6/05/2023 is illegal and requires to be stayed. The applicant claims to have strong prima-facie in his favour, hence prayed to allow interim application.

7. *Per contra*, it is the submission made on behalf of opponent that the passengers have observed the applicant talking on mobile phone while driving the bus. The said conduct of the applicant is very much dangerous as the lives of 50 passengers travelling in the bus as well as thousand of passengers going on the road was at stake. Hence it was clear that the applicant without taking any care and without having regard to his duties has committed a serious misconduct of talking on mobile phone. His clips were made viral on social media. Therefore, he do not have any prima-facie case nor balance of convenience lies in his favour. Hence the interim application deserves to be rejected.

8. After hearing the parties at length, I have gone through the record. The applicant has produced documents alongwith **Ex.U-4**. The applicant was issued with charge sheet dt.11/04/2022 by the Divisional Traffic Officer of the opponent Corporation under clause 10, 11, 22 and 45 of Sch.A of Discipline and Appeal Procedure of the opponent Corporation. It is alleged

therein that on 12/03/2023 the applicant was driving a bus bearing No.MH-14/BT/0911 of Atpadi Depot and at that time a video was recorded in which the applicant was found talking on his mobile phone while driving the bus thereby he caused danger to the lives of passengers.

9. The applicant was suspended by order dt.13/03/2023. He has replied the charge sheet denying the charges levelled against him. An enquiry was conducted against him in which a reporter was examined. The applicant has taken cross-examination of the said reporter through his union representative. The applicant has also examined himself. Thereafter the enquiry officer drawn the findings. In the said findings it appears that the enquiry officer has considered the evidence came on record. However, the findings itself shows that the alleged video clip in which the applicant was observed to be talking on mobile phone while driving was not produced in the enquiry. Considering the charges levelled against the applicant it appears that the said video clip is the basis of issuing charge sheet to the applicant. It was neither produced in the enquiry nor the applicant was given copy thereof. Hence it prima-facie appears that the applicant was not offered an opportunity to defend himself in the enquiry by giving copy of

the alleged video clip. Therefore, prima-facie legality of enquiry is at stake. Secondly, from the findings of enquiry officer it appears that the enquiry officer did not consider the past record of the applicant which is the duty of the competent authority / enquiry officer as per clause 6(b) of Discipline and Appeal Procedure. Therefore, legality of enquiry and findings of enquiry officer is required to be seen. A presumption can be drawn that past record of the applicant is clean. Hence imposing punishment of bringing down his pay scale would amount to heavy financial loss to the applicant. Therefore, I hold that the applicant has a strong prima-facie case, balance of convenience lies in his favour and if interim relief is not granted the complainant will be put to heavy loss. Therefore, I answer point Nos.1 to 3 in the affirmative and in answer to Point No.4, I proceed to pass following order

Order

- (i) Interim application at Ex.U-2 stands allowed.
- (ii) The opponent is declared to have engaged in unfair labour practice under item 9 and 10 of Sch.IV of the MRTU & PULP Act, 1971 and the opponent is temporarily restrained from engaging said unfair labour practice.

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- (iii) The show cause notice dt.06/05/2023 issued by Divisional Traffic Officer, MSRTC, Sangli to the applicant is stayed and the opponent Corporation is directed not to inflict any punishment upon the applicant in pursuance thereof till the decision of main complaint.
- (iv) Complaint to proceed further.
- (v) Dictated and pronounced in the Open Court.

Sangli.

Date : 19th June 2024.

(D.M. Patil)
Member,
Industrial Court Sangli