

BEFORE THE MEMBER INDUSTRIAL COURT, MAH., AT SANGLI**Complaint (ULP) No.37 Of 2021**

(CNR No.MHIC10-000059-2021)

Mohan Vasant Patil

A/p : Yedenipani,

Tal. : Walwa, Dist. : Sangli.

..Applicant

V/s

Zilla Parishad, Sangli

Sangli-Miraj Road, Sangli.

..Opponent

Orders Below Ex.U-2 and Ex.U-12(Date : 24th April 2023)

This is an application filed u/s 30(2) of MRTU & PULP Act, 1971 claiming interim relief to stay the recovery from the pay of applicant without passing any final punishment order in pursuance to show cause notice dt.27/01/2021.

2. The case of the applicant in short as under,

The applicant is working as Gramsevak in opponent Zilla Parishad. He has joined the services of Zilla Parishad on 22/08/1986. His back record till date is clean and unblemished. The opponent had worked at Grampanchayat Kande, Tal. Shirala since 2014 to 2016. The opponent Zilla Parishad has issued him show cause notice dt.05/08/2017 alleging financial irregularities in Grampanchayat Kande. The applicant replied the same. According to applicant he did not commit any serious misconduct and there appears to be only technical flaws. Still the applicant owes no responsibility for the same

and he claims that just with political motive he was involved in false action.

3. The applicant has been issued with charge sheet and enquiry is being conducted which is still pending. He has not been granted opportunity as per natural justice, no relevant documents are provided and hence the said enquiry is not legal and proper. However, the opponent started recovery from his pay even prior to finding the applicant guilty of the charges.

4. The applicant has been issued with show cause notice dt.27/01/2021 but without passing any final order thereon the opponent started recovery from his pay which is ex-facia illegal and the applicant is subjected to heavy loss. The applicant has received the said show cause notice dt.27/01/2021 but has not received any final punishment order and still the opponent started recovery from the pay of applicant thereby engaged in unfair labour practice. According to applicant the said action of the opponent is illegal, ex-parte and de hors the rules. The opponent has started recovery from the pay of applicant and amount of Rs.20,000/- are recovered from the pay of August 2021 illegally and therefore the cause of action is continuous. The applicant therefore prayed in the application at Ex.U-2 to stay the recovery started from the pay of applicant.

5. The applicant thereafter filed another application at **Ex.U-12** for interim relief contending therein that the opponent has started

illegal recovery from pay of applicant and therefore the complaint was filed and ex-parte ad-interim orders was passed on 27/09/2021. Meanwhile the opponent has illegally served an order on the applicant on 11/10/2021 which is dt.20/08/2020 thereby punishment of bringing the applicant on his lower pay scale has been imposed. It is also stated therein that on the very same day the opponent has issued to the applicant another order which is dt.30/07/2021 thereby directing the recovery of Rs.9,60,385/- from the pay of applicant. According to applicant, this amounts to double jeopardy especially when the matter is pending before the court. Therefore the applicant has prayed to stay the order dt.20/08/2020 bringing him on lower pay scale till the disposal of complaint.

6. The opponent Zilla Parishad has filed his written statement / say at Ex.C-3 and resisted both these applications. According to opponent it has not engaged in any kind of unfair labour practice as alleged in the complaint. It is contended that opponent has issued charge sheet to the applicant for serious misconduct. On conclusion of said enquiry into the charge sheet the enquiry officer recorded finding holding the applicant guilty of the charges of misappropriation by making alteration in light bill , to show fiscal deposits, not taking approval from the monthly meeting of Grampanchayat to the expenses made on development, to commit misappropriation by making expenses without taking administrative

approval and to commit irregularities in the record. The Competent Authority has agreed with the findings of enquiry officer and vide notice dt.27/01/2021 called upon the applicant as to why punishment of bringing him on lower pay scale shall not be imposed upon him. The applicant had filed a reply on 23/03/2021 stating the findings to be contrary to the evidence brought in the enquiry. According to opponent the said findings are based upon the evidence brought before the enquiry officer. Hence vide order dt.20/08/2021 the punishment of bringing the applicant on basic pay has been imposed. According to opponent the said fact was suppressed by the applicant from the court and filed the complaint on the basis of misleading contents.

7. It is contended by opponent that applicant was working in Grampanchayat Kande since the year 2014 to 2016 during which he has committed serious misconduct. He was issued with a show cause notice calling explanation from him for the said misconduct but his reply was found unsatisfactory, therefore charge sheet was issued to him. Enquiry was conducted by affording opportunity to the applicant as per principles of natural justice. He was supplied with the documents relevant to the charges levelled against him. He was also granted opportunity to examine witnesses and to cross examine the witnesses of opponent Zilla Parishad. However, the allegation of the applicant regarding violation of principles of natural justice is

afterthought. On the contrary, considering the enquiry report and findings contained therein the punishment dt.20/08/2021 is legal, proper and as per rules. The opponent has every right to impose punishment for the misconduct which is proved in the enquiry and to recover loss. Hence no unfair labour practices have been committed under Item 9 of Sch.IV of the MRTU & PULP Act, 1971 by the applicant as alleged in the complaint. According to opponent applicant failed to bring prima facie strong case, no balance of convenience lies in his favour and he will not be put any irreparable loss. It is therefore prayed that interim application be rejected with costs.

8. Considering rival contentions of parties, following points arise for my determination and I record my findings thereon with reasons as follow -

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

Reasons

9. **As to Point Nos.1 to 3** :- Heard learned advocate Mr. R.N. Jadhav for applicant and learned advocate Mr.D.S. Yadav for opponent Zilla Parishad. Perused interim applications at Ex.U-2 and

Ex.U-12. I have also gone through supporting affidavits alongwith documents filed by both the parties. It is vehemently submitted by learned advocate Mr.R.N. Jadhav for applicant that charge sheet dt.30/08/2018 was issued to the applicant containing so called charges of misappropriation and irregularities. However, the applicant was not granted proper opportunities as per principles of natural justice. The charges levelled against him are not proved in the enquiry. Still the enquiry officer has given findings that the charges are proved partly. According to applicant final show cause notice was issued to him on 27/01/2021 to which he has filed reply on 26/02/2021, however, without there being any final order, the opponent abruptly started recovery from his pay. My attention is invited towards contents in written statement in which it is stated that punishment imposed vide order dt.20/08/2021. According to applicant the said order has not been served upon the applicant. By referring to findings of enquiry officer it is submitted that charges of misappropriation are not proved in the enquiry but only due to technicalities like non giving of tender notice in daily newspaper, not taking approval, the charges are held to be partially proved. According to applicant, the enquiry officer has held that there is no misappropriation on the part of applicant. Therefore there is no reason to give positive finding against applicant. It is therefore submitted that findings are vague and hence perverse. Rule 3 and 4

of Zilla Parishad (Punishment and Appeal) Rules are referred to saying that there is no action of recovery provided for the act of misappropriation and recovery can be ordered only with respect to financial loss. It is strenuously submitted that the amounts mentioned in the charge sheet are of gramnidhi, water supply and 14th Finance Commission. It is submitted that all these amounts of Grampanchayat and not belonging to Zilla Parishad. By referring to Grampanchayat Act it is submitted that Zilla Parishad has no power to order recovery and only Collector has power to recover the amount of loss of gramnidhi. It is submitted that there are many questions which are required to be answered for which trial is necessary. Hence there is prima facie strong case in favour of applicant, balance of convenience also lies in his favour. The applicant will be put to great loss in case interim application is rejected. Hence it is prayed to allow the interim application.

10. *Per contra*, learned advocate Mr.D.S. Yadav for opponent Zilla Parishad has submitted that there are 7 charges levelled in the charge sheet against the applicant. He was holding the charge of Grampanchayat, Kande during the period 2014 to 2016. He has been found to be involved in serious misconduct like misappropriation of government funds. The explanation was called from him but he has not given satisfactory reply to the same. Hence charge sheet was issued to him and regular enquiry into the said charges was

conducted by independent authority. The applicant was given all the opportunities as per principles of natural justice and as per Zilla Parishad Rules. The enquiry officer on conclusion of the enquiry has submitted enquiry report dt.14/10/2020 in which he has held the charges Nos.1,2,4,5,6 as partially proved whereas charge Nos.3 and 7 were held as proved. It is submitted that prima facie enquiry is legal and findings cannot be termed as perverse as the enquiry officer on the face of record can be seen to have considered all the evidence brought before him during the course of enquiry. Hence the applicant was issued with show cause notice dt.27/01/2021 calling upon him to submit explanation as to why punishment of bringing him on lower pay scale shall not be imposed ? The applicant submitted unsatisfactory reply to the said show cause notice and therefore, the said punishment was imposed upon him by order dt.30/07/2021. At the same time since the act of misappropriation is proved in the enquiry the Zilla Parishad has issued order of recovery against the applicant. The said act of misappropriation of the amount of Zilla Parishad which is loss caused to Zilla Parishad, hence opponent has every right to recover the amount. It is therefore submitted that no prima facie strong case has been made out, balance of convenience does not lie in favour of applicant and no irreparable loss will be caused to him due to denial of interim application. On the contrary loss will be caused to the Zilla Parishad as it will be deprived of

recovery of its loss. It is therefore prayed that the interim application be rejected.

11. Upon hearing the parties, I have undertaken scrutiny of documents produced by both the parties. Most of the documents are either exchange of correspondence between the parties or the papers pertaining to enquiry conducted against the applicant. Hence at this stage these documents can be considered in order to find out prima-facie case. It is not in dispute that the applicant was working as Gramsevak at Grampanchayat Kande during the period 2014 to 2016. charge sheet was issued to him on dt.30/08/2018. It contains as many seven main charges against the applicant which pertains to misappropriation, fiscal deposits, non-taking approval to the expenses from monthly meeting of Grampanchayat body, non obtaining administrative approval to the expenses and to misappropriate the government fund. The charge No.1 is having 14 imputations pertaining to expenses made from 14th Finance Commission Fund and irregularities found in its inspection. Charge No.2 is having 15 imputations pertaining to alleged misappropriation in Mahatma Gandhi Tanta Mukti Abhiyan Fund. Charge No.3 is having three imputations regarding expenses and misappropriation in 13th Finance Commission Fund. Charge No.4 contains 8 imputations for the year 2014-2015 and 9 imputations for the year 2015-2016 and 3 imputations for the year 2016-2017 regarding Gram Panipurawtha

Nidhi irregularities and misappropriation. Charge Nos.5 contains 6 imputations for the year 2014-2015 and 13 imputations for the year 2016-2016 and 27 imputations for the year 2016-2017 regarding so called misappropriation and irregularities in the expenses made from Gramnidhi. Charge No.6 is regarding misappropriation and irregularities in distributing the grants twice to bogus beneficiaries whereas charge No.7 is committing irregularities in the agreement without taking approval from the body meeting to e-tender process. From the enquiry report it appears that enquiry was conducted before the Asstt. Commissioner (Enquiries), Departmental Enquiries, Parishad Sevak Pune Division, Pune. There were 10 witnesses examined in the enquiry. The applicant has been granted opportunity to cross-examine the said witnesses through his defence assistance Mr.M.M. Shingade. He was also granted opportunity to file his final written statement and thereafter enquiry was closed. Hence on the face of the record I do not find that mechanism of the enquiry is any way prima-facie illegal.

12. In so far as findings are concerned, it can be seen that charge Nos.1,2,4,5,6 are held to be partially proved by the enquiry officer and charge Nos.3 and 7 are held to be proved. It can be seen from the enquiry report that most of the charges are held to be partially proved by holding that there was no misappropriation at the hands of applicant but there is some kind of technical irregularity. Charge No.3

is pertaining to non issuance of public tender for purchase of bulbs of Rs.65,000/- and there is alterations in the resolution in the monthly meeting. Hence the enquiry officer has held that the said charge is proved. Charge No.7 is regarding non taking approval from monthly meeting of Grampanchayat regarding selection of work under Dalit Sudhar Yojana, Road Concrete. The said charge doesn't show that there is any misappropriation. Hence on over all view of the charges levelled against the applicant and the findings drawn by the enquiry officer it prima-facie appears that there is no firm conclusion as to whether any misappropriation committed by the applicant and there is any wrongful gain obtained by the complainant.

13. It is no doubt true that at this stage it is not required to go in details of the findings of enquiry officer but when a notice was issued to recover amount of Rs.9,60,385/- from the applicant out of alleged loss of Rs.15,47,242/-, it is at least required to be shown prima-facie that there is loss caused to the Zilla Parishad of the said amount. It can be seen that the enquiry officer held in his report that in the most of the imputations the amount was spent but there is no approval, and hence the charge was held to be partly proved. It is clearly observed by enquiry officer that there is no misappropriation. Under such circumstances, there is no propriety in ordering recovery of the amount of more than 9 lakhs from the applicant especially when the findings doesn't conclude loss of funds of Zilla Parishad to the tune of

Rs.9 lakhs. The opponent has already imposed punishment of lowering down the pay scale of the applicant and at the same time ordering recovery against him. Had it been the case of actual misappropriation the opponent could not have imposed any other punishment except dismissal. Therefore, legality and propriety of both the orders of recovery and lowering down pay scale of the applicant are required to be tested finally on merit on leading evidence by both the parties.

14. It is also pertinent to note that final show cause notice was issued to the applicant calling him as to why his pay scale shall not be lowered down. However, there is no show cause notice with regard to recovery from his pay. The final order of said punishment has been passed by the Chief Executive Officer by order dt.20/08/2020 and the Inward of Panchayat Samittee, Islampur shows that the said order was inwards on 23/08/2020. On raising said query the opponent Zilla Parishad has filed its note stating that it is inadvertently done and the said date shall be read as 20/08/2021 and it was recommended to issue corrected order. However, the fact remains that there is no show cause notice issued to the applicant prior to ordering recovery against him and the Zilla Parishad has not shown that there is actual loss caused of Rs.9,60,385/-. Therefore, at this stage, I think it proper to stay the action of opponent and to direct the parties to co-operate the court to dispose the complaint finally in

expeditious manner. In the circumstance I answer point Nos.1 to 3 in the affirmative and proceed to pass the following order.

Order

- (i) Interim applications at Ex.U-2 and Ex.U-12 are allowed.
- (ii) The opponent is hereby declared to have prima-facie engaged in unfair labour practice under item 9 of Sch.IV of the MRTU & PULP Act, 1971 and they are temporarily directed to cease and desist from the same.
- (iii) The opponent is restrained from effecting and implementing the order of punishment dt.30/07/2021 qua the applicant and order dt.20/08/2020 bringing the applicant on lower pay scale till the disposal of complaint.
- (iv) Complaint is expedited and parties are directed to cooperate this court to dispose it finally as early as possible.
- (v) Dictated and pronounced in Open Court.

Date : 24th April 2023.

Place : Sangli.

(D.M. Patil)
Member

Industrial Court, Sangli.