

ORDER ON EXH.No.U-2
IN COMPLAINT ULP No.195 OF 2017

1) The Complainant has challenged the legality of the Order of Punishment bearing No. जा.क्रं./रा.प./आप्र/I/अपराध/12/17/1853 दिनांक 15-5-2017 issued against him by the Respondents.

2) The Application Exh.No.U-2 is filed by the Complainant for Interim Relief. The Prayer Clause Nos. (b) & (c) of the Application are as under :-

“b) Pending the hearing and final disposal of the main Complaint, order dated 15/5/2017 may kindly be stayed.

c) Any other Suitable relief to which the applicant are entitled may kindly be passed in the interest of Justice.”

3) Briefly stated, the Case of the Complainant is as under :-

That, the Complainant is appointed as Driver by the Respondents. He is working at MSRTC Aurangabad Division. He is 'Workman' within the meaning of Section 2(s) of the

Industrial Disputes Act, 1947 and the MSRTC is an 'Industry' within the meaning of Section 2(j) of the said Act. The Complainant has further contended that, with intend to harass him the Respondents have conducted his Departmental Enquiry. After the Departmental Enquiry, the Respondents have decreased his Basic Pay as per the impugned Order of Punishment dated 15-5-2017. The act of Respondents amounts to unfair labour practice under Item Nos.1(a) (b) (d) (f) (g) & 5, 6, 9 of Schedule IV of the MRTU & PULP Act. Therefore, according to Complainant, he is entitled for Interim Relief as prayed.

4) The Respondent No.1 has opposed the Application for Interim Relief by filing 'Say' at Exh.No.C-6. The Respondent No.1 has contended that, the Complainant gave false information to the News Paper namely 'Dainik Sakal' against the MSRTC. The Charge of misconduct is proved against him. Therefore, he is punished as per the impugned Order of Punishment dated 15-5-2017. The Order of Punishment is already executed. Therefore, the Application for Interim Relief is liable to be rejected.

5) The Written Note of Arguments filed by the learned Advocate for the Complainant Sou.S.M.Sonpethkar is at Exh.No.U-12. The sum and substance of the Arguments is that, Complainant filed Public Interest Litigation against the MSRTC before the Hon'ble High Court. Therefore, the

Respondents levelled false Charges against the Complainant and punished him vide impugned Order. The impugned Order of punishment is illegal and as such it is liable to be stayed. Sou.Sonpethkar, Advocate relied on *Himachal Pradesh State Electricity Board Ltd. -Vs- Mahesh Dahiya* reported in 2017(2) *Mh.L.J.674* in which it is held that, *before making opinion with regard to punishment which is to be imposed on a delinquent, delinquent has to be given an opportunity to submit representation/reply on enquiry report which finds a charge proved against delinquent.* The facts of the case in hand are totally different and as such, the ratio laid down in this case is not helpful to the Complainant.

6) Sou.M.B.Ambekar, the learned Advocate for the Respondent No.1 submitted that, the disciplinary enquiry is conducted against the Complainant as per the rules framed under MSRTC. As per principles of natural justice, the opportunity of defence was given to the Complainant/ Delinquent. The Order of Punishment is already executed. There is no prima facie case for grant of Stay. Therefore, the Application for Interim Relief is liable to be rejected.

7) The following points arise for my determination. I have recorded findings thereto along with reasons as under :-

Points	Findings
(1) Whether the Complainant is entitled for Interim Relief as prayed ?	No
(2) What Order ?	As per Final Order

Reasons

8) **As to Point No.1 :-**

Admittedly, the Complainant is employee of the MSRTC and he is serving as a Driver at Aurangabad Division. It is not in dispute that, the Complainant is 'Workman' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and the MSRTC is an 'Industry' within the meaning of Section 2(j) of the said Act.

9) It prima facie appears from the record that, the Respondents conducted Departmental Enquiry against the Complainant for his alleged misconduct and imposed punishment on him vide impugned Order of Punishment dated 15-5-2017.

10) The Complainant has challenged the legality of the impugned Order of punishment dated 15-5-2017 before this Court. Whether the impugned Order is legal or not ? will have to be decided on merits. Therefore, it will not be proper, legal

and justifiable to grant Stay to the impugned Order of Punishment.

11) The interest of both Parties can be protected even without grant of Stay (to the impugned Order), if the quantum of amount to the extent of which the Monthly Salary of the Complainant is to be reduced by virtue of the Order of Punishment dated 15-5-2017 is ordered to be deposited in this Court till final decision of the Complaint. Thus, I record negative finding to Point No.1 and pass following Order:-

Order

- (a) The Application is Partly Allowed.
- (b) The Respondents are hereby directed to draw the Monthly Salary of the Complainant from the month of May 2017 onwards as per the Pay Scale which was applicable to him prior to the Order of Punishment bearing No. जा.क्रं./रा.प./आप्र/1/अपराध/12/17/1853 दिनांक 15-5-2017 till final decision of the Complaint.
- (c) The quantum of amount to the extent of which the Monthly Salary of the Complainant is to be reduced vide the Order of Punishment (*supra*) shall be regularly deposited by the Respondents in this Court w.e.f. Salary of May 2017 till final decision of the Complaint.

- (d) The deposited amount shall be kept in Fixed Deposit in any Nationalized Bank as per Rules.
- (e) The Prayer made by the Complainant for grant of 'Stay' to the impugned Order of Punishment dated 15-5-2017 is hereby rejected.

Sd/-

(D.J.Shegokar)

Member,

Date: 28-07-2017

Industrial Court, Aurangabad.