

IN THE LABOUR COURT AT MAHAD, DIST - RAIGAD

Com.(ULP) No. 2/2021

Shri. Jitendra Jayant Deshpande

Age : 50years, Occu. Service,
R/o. 101, Ganganarayan Co. Housing Society,
Ziral Lane, PenTal. – Pen, District – Raigad

... Complainant.

V/s.

- 1] **Divisional Controller**
MSRTC, Raigad Division,
Ramwadi – Pen, District - Raigad
- 2] **Divisional Traffic Superintendent**
MSRTC, Raigad Division,
Ramwadi – Pen, District - Raigad
- 3] **Maharashtra State Road Transport Corporation**
Ramwadi – Pen, District – Raigad

... Respondents

CORAM : D. V. Kute, Judge

**Appearances : 1] Mr. V. R. Mehta, Adv. for the complainant.
2] Mrs. Shubhada Mokal, Adv. for the Respondents.**

Order Below Exh. No. U-2

(Dt.08/01/2021)

Read the application and say of the respondents. Perused the record. Heard Mr. V. R. Mehta, learned advocate for the complainant and Mrs. Shubhada Mokal, learned advocate for the respondents.

02. By this application, the complainant has sought interim relief vide Section 30(2) of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as M.R.T.U. & P.U.L.P. Act).

Complainant's case:-

03. In short, the case of the complainant is that, he is working as

conductor in the respondent depot since 1997 till today. On 26/ 08/2020, the respondents issued charge-sheet to him alleging that on 29/01/2020, when he was on duty to issue passes in Pen depot issued pass No. 893375 for Pen – Khopoli route by accepting Rs. 4,000/- (Rs. Four Thousand only) from one Sagar Damodhar Mhatre by misusing office copy of said pass which was already issued to Pradhnya Prabhakar Shukla for Pen Gadab route by accepting Rs. 1000/- (One Thousand) It is then alleged that the complainant had issued passNo.844154 to Prathmesh Chandrakant Mhatre without using carbon & therefore it became possible o misuse it's office copy & accordingly said copy has been misused for issuing pass to one Rahul Gurav. Thus, it is alleged that the complainant has misappropriated Rs.4000/ (Rs. Four thousand) and also responsible for misuse of other pass.

04. According to the complainant, the said charge is false. He has issued pass No. 893375 to one Prdhyana Prabhakar Shukla & it's office copy also bears her name. It is further contended that third copy of the said pass has been misused by someone & he has no role in it. It has not been checked within time by one Aparna Vartak. It is then contended that he never issued any pass to Sagar Mhatre. It is contended that farce of inquiry has been conducted & the Inquiry Officer has not allowed the request of the complainant to examine Sou. Wartak, & passengers. The Inquiry Officer has not allowed the request of the complainant to examine the Hand wrting expert. The Inquiry Officer has not followed the principles of Natural Justice . It is contended that the Inquiry Officer has recorded the incorrect findings against him. Thus, according to the complainant he has proved strong prima facie case in his favour.

Case of the respondents:-

05. The respondents in the written statement denied the allegations in the complaint. According to them, the complainant has mis-appropriated Rs. 4000/- (Rs. Four thousand). He misused office copies of the passes. The concerned passengers , in their respective statements stated that they

have obtained those passes from “Pass window” of Pen Depot. It is contended that the said fact came to the knowledge of the depot when the passengers came to the depot for cancellation of the said passes. It is then contended that fair opportunity has been given to the complainant in the inquiry and the Inquiry Officer has recorded finding that misconduct is proved after considering the evidence on record and the defense of the complainant. It is contended that if the complainant is kept in service, the respondents will suffer irreparable loss.

06. Having heard learned advocates for both the parties, following points arise for the determination and findings thereon are recorded with reasons stated thereunder:

SR No.	Points	Findings
1	Whether the complainant prove strong prima facie case in his favour ?	In the Negative.
2	Whether the balance of convenience lies in his favour ?	In the Negative.
3	Whether irreparable loss will cause to the complainant if the application is rejected ?	In the Negative.
4	What order ?	As per final order.

Reasons

As to point No. 1 :-

07. At the outset, it is necessary to state that in the case of **Hindustan Lever Ltd. Vs. Ashok Vishnu Kate & Ors. Decided on On 15th September 1995**, the Hon’ble Supreme Court has held that:-

“Before parting with this case, however, we must strike a note of caution, as has been done by the Division Bench of the Bombay High Court. It could not be gainsaid that the employers have a right to take disciplinary actions and to hold domestic enquiries against their erring

employees. But for doing so, the standing orders governing the field have to be followed by such employers. These standing orders give sufficient protection to the concerned employees against whom such departmental enquiries are proceeded with. If such departmental proceedings initiated by serving of chargesheets are brought in challenge at different stages of such proceedings by the concerned employees invoking the relevant clauses of Item 1 of Schedule IV before the final orders of discharge or dismissal are passed, the Labour Court dealing with such complaint should not lightly interfere with such pending domestic enquiries against the concerned complainants. The Labour Court concerned should meticulously scan the allegations in the complaint and if necessary, get the necessary investigation made in the light of such complaint and only when a very strong prime facie case is made out by the complainant appropriate interim orders intercepting such domestic enquiries in exercise of powers under Section 30(2) can be passed by the Labour Courts. Such orders should not be passed for mere askance by the Labour Courts. Otherwise, the very purpose of holding domestic enquiries as per the standing orders would get frustrated.”

08. Thus, unless and until strong prima facie case has been made out, the Labour Court cannot intercept any pending domestic inquiry. In the light of the aforesaid principles, present case is required to be considered.

09. Learned advocate for the complainant has referred the papers of inquiry filed on record and submitted that the the complainant since beginning has denied his hand writing & signature on the passe issued by misusing office copies. He submitted that the complainant has requested the Inquiry Officer to send those passes to Hand writing Expert for ascertaining whether it bears his hand writing & signature but the said request has been turned down by the Inquiry Officer. It is then argued that the Inquiry Officer has also not considered the report of Hand writing expert brought

by the complainant which specifically states that the hand writing & signature on the pass issued by misusing office copy is not of the person who issued original pass i.e. the complainant. It then argued that the Inquiry Officer refused to call the witnesses & also to adjourn the matter for the examination of the witness on behalf of the complainant. Then it is argued that the complainant himself send the documents to hand writing expert & requested the Inquiry Officer to adjourn the Inquiry till the receipt of report of the Hand writing Expert, however, this request is also turned down . It is then submitted that the statement of the complainant has been obtained by misrepresentation & the alleged misused pass was not shown to the complainant while recording his statement. It is then argued that the complainant has no concern with issuance of pass to one Rahul Gurav as it was not issued in his working tenure. He then relied on the clause 22 of MSRTC Discipline & Appeal Rules & submitted that unless criminal case is decided, no punishment can be imposed on the complainant in domestic Inquiry. He then submitted that the complainant is a conductor and without any training he has been deputed to work as Traffic Controller for issuance of passes. He then submitted that the passbooks of the depot are missing and someone might have misused the same. It is submitted that the complainant is working with the depot since last 23 years and in that period no such incident had noticed by the respondents. According to him, this is a case wherein the complainant has been victimized to save the Superior Officers. He then submitted that in the police case, no progress has been made by the police. It shows that the complainant has been victimized by the respondents. According to him, the complainant has proved strong prima facie case in his favour.

10. Per contra, learned advocate for the respondents has referred to the documents filed in the inquiry and specially copies of passes and submitted that the pass issued to Sagar Mhatre & Prdhnya Shukla have

been issued by same person I.e by the complainant. She then submitted that the those passengers have given their respective statements that they obtained the passes from Pass window. She then submitted that the complainant himself in his statement dated 13/07/2020 admitted that he has issued pass to Sagar Damodhar Mhatre & denied that he issued passes to Vidhya Dabade, Rahul Gurav & Nandkumar Mhatre. She submitted that the said statement bears his signature & therefore it was not necessary to seek and consider the opinion of the Handwriting expert. She then submitted that the complainant was permitted by Inquiry officer to examine the witnesses & it is not necessary in domestic inquiry to have report of hand writing expert when other evidence is available. It is submitted that the statements of the passengers & statement of the complainant is sufficient to conclude that the complainant has misappropriated the Corporation money. It is then submitted that it is not necessary for the respondents to examine the passengers in the inquiry. In the written statement, reliance is placed on the judgment reported in the case of State of Haryana & Anr. Vs. Rattan Singh, AIR 1977 Supreme Court 1512.

11. At the outset, it is necessary to state that it appears from the inquiry papers that the complainant has been represented by his Union Representative who conducted the cross-examination of the witnesses of the respondents. It further appears that the statement of the complainant has been taken on record in the inquiry. It then appears that the inquiry proceeding has been adjourned time to time on the request of the complainant. It then appears from inquiry papers that the complainant was permitted to examine passengers Prdhanya Shukla & Sagar Mhatrer & the proceeding was adjourned for their examination as per the request of the complainant. However, on adjourned date the complainant has not produced the witnesses & therefore second adjournment was refused to him & inquiry proceeded further. Thus, it cannot be said that fair opportunity has not been

given to the complainant.

12. In so far as sending of documents to handwriting expert is concerned, said request of the complainant has been turned down by the Inquiry Officer on the ground that in departmental inquiry other evidence is available and therefore, it is not necessary to send the documents to handwriting expert. However, then the complainant has himself sought sending of those documents to handwriting expert & sought copies thereof from the respondent. Those copies were provided to him. Then complainant has sought stay of proceeding till the report of Hand writing expert is received. However, said request has been turned down by the Inquiry officer. It is well settled law that strict principles of Evidence Act are not applicable to the departmental proceedings. Hence, in the departmental inquiry it is not necessary to prove the misconduct beyond reasonable doubt. The disciplinary proceedings before a domestic Tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence. Considering these aspects it can not be said that only on the ground that the proceedings has not been stayed till the receipt of report of Hand writing expert, strong prima facie case is made out by the complainant. Thus, it prima facie appears that fair and reasonable opportunity to meet charges has been given to the complainant.

13. In so far as, findings of the Inquiry Officer are concerned, it appears that he has considered the evidence in the inquiry alongwith the statement of the complainant that the pass No.893375 issued to Sagar Damodhar Mhatre is issued by him & it bears his handwriting & signature. He referred to the documents and found the complainant guilty of the misconduct charged. It appears from the inquiry papers that the complainant was on duty of issuing passes from Feb.2019. It further appears that the pass No. 893375 has been been issued in the working tenure of the complainant. It further appears from the statement of concern

passengers viz. Sagar Mhatre & Pradhnya Shukla that they have obtained their respective passes from Pass Window of Pen Depot. It may be noted that pass issued to Sagar Mhatre has been issued by misusing office copy of pass issued to Pradhnya Shukla. Both those passes have been issued in the working tenure of the complainant. In the statement dated 13/07/2020 the complainant has admitted the issuance of pass to Sagar Mhatre.. The amount of Rs.4000/- obtained for pass has not been deposited to MSRTC. However, later on the complainant tried to deny the fact that he has issued pass to Sagar Mhatre. In answer dated 11/9/2020 to chargesheet he contended that his statement was recorded without showing pass issued to Sagar Mhatre. He also alleged threatening. However, it appears that in the same statement dated 13/07/2020 he denied that passes issued to Vidya Dabade, & Rahul Gurav. Thus, at this stage it can not be accepted that the statement of the complainant was got recorded without showing him the passes & on threat. It may be noted that according to the complainant, he has only issued the pass No. 893375 to one Pradhnya Shukla & not to Sagar Mhatre . However, passes issued to Smt. Shukla & Sagar Mhatre bears same numbers. So also, it appears that the said Sagar Mhatre has given his statement in the inquiry wherein he stated that he paid Rs. 4,000/- (Rs. Four thousand) to the concerned officer and obtained pass. So also another misconduct of the complainant is that he has issued pass No.844154 to Prathmesh Mhatre, however, said pass has been issued without using Carbon for Office copy .Therefore, later on said office copy has been misused & the pass of same number came to be issued to Rahul Gurav. Those passes are filed in the inquiry papers. Thus it prima facie appears from the inquiry papers that due non use of carbon, office copy of pass issued came to be misused which caused loss of Rs, 4500/ . All these facts are established in the inquiry. Thus, all these aspects appears to be considered by the Inquiry Officer. Therefore, It can not be prima facie said that the complainant has proved strong prima facie case in his favour.

14. Learned advocate for the complainant has strongly relied on the report of Handwriting Expert filed alongwith complaint & submitted that said report has been given to the Inquiry Officer , however he has not considered it. It is submitted that said report shows that pass issued to Sagar Mhatre did not bear the hand writing & signature of the complainant. It appears that the complainant has done private expert examination of the Colour copies of the passes as provided to him by the respondents. Smt. Neha Menon, Forensic Expert, of Square company done the examination of the copies & opined that the signature & handwriting on the passes issued to Sagar Mhatre & Pradhanya Shukla are not of the same person. It appears that said report has been received by the respondents on 24/12/2020. However, as stated earlier at initial stage of the inquiry, the Inquiry Officer has refused to send the documents to Handwriting Expert on the ground that there is other evidence against the complainant. As stated earlier in the domestic inquiry strict principles of Evidence Act are not applicable. There is statement of the complainant, statement of passenger Sagar Mhatre which on probability / prima facie proves the misconduct of the complainant. Hence, non consideration of report of Private Handwriting Expert by the Inquiry Officer will not prove strong prima facie case in favour of the complainant.

15. In so far as, the non examination of passengers by the respondents is concerned, in the case of Ratan Singh (supra), it is held by the Hon'ble Supreme Court that it is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. Therefore non examination of other passengers is not fatal. There is confidential report of the department

wherein the all these passes have been specifically mentioned.

16. In so far as, the contention of the complainant that he has no training and still he was directed to issue the passes is concerned, in the inquiry, said aspect appears to be made clear by the reporter. He stated that the complainant was appointed as temporary Divisional Controller

17. Another contention of the learned advocate for the complainant is as to the delay in the notice of the mis-appropriation. However, the said aspect cannot be considered as strong prima facie case when there is some evidence on record before the Inquiry Officer to held the complainant guilt of the mis-appropriation. Another submission of learned advocate for the complainant is that 15 copies of passbooks are missing from the office of respondents. According to him, due to which someone has misused the said receipt books and the complainant has been victimized. However, this contention cannot be accepted in view of evidence available in the inquiry against the complainant.

18. In so far as reliance on the clause 22 of MSRTC Discipline Appeal Rules is concern , according to it when the criminal case & proceeding of Anti Corruption Department is pending against the delinquent, departmental inquiry can be conducted but no punishment can be imposed until the final order of the court. However, it appears from the papers on record that the criminal case is not only against the complaint but also against other employees. The evidence relied in the inquiry is independent & no where the evidence collected by the police has been filed or relied in the inquiry. In the case of Depot Manager, A.P. State Road Transport Corporation. Vs. Mohd. Yousuf Miya & Ors., (1997) 2 SCC 699. the Hon'ble Supreme Court in paragraph 8 held as under: "The purpose of departmental inquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offense for violation of a duty, the offender owes to the society or for breach of which law has

provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. In the present case departmental inquiry has started on the confidential report of Security Officer and on the evidence collected by department. No evidence collected by the police has considered. In such circumstances the departmental inquiry has been conducted independently without any reference to police case filed. Evidence in the inquiry is independent. Therefore, it can not be said that on the basis of clause 22 referred above, the complainant has proved strong prima facie case in his favour.

19. Thus, considering all these aspects it prima facie appears that the complainant has issued pass by misusing office copy of those pass and mis-appropriated the corporation amount of Rs. 4000/-. So also he has not used carbon while, issuing pass No. 844154 and therefore, latter on it's office copy came to be misused. In such circumstances, the complainant has failed to prove strong prima facie case in his favour. Accordingly, point No. 1 is answered in the negative.

As to point Nos. 2 & 3:

20. Inquiry officer found the complainant has been guilty of mis-appropriation of corporation amount. In such circumstances, balance of convenience will not lie in his favour. So also no irreparable loss will cause to him, if the application is rejected. Therefore, point Nos. 2 & 3 are answered in the negative and in answer to point No. 4, following order is passed.

ORDER

1. The application is rejected.
2. This order will be enforceable from 20/01/2021.
3. This order be published on the notice board of this Court.
4. Pronounced in open Court.

Mahad.
Date: 08/01/2021

(D.V. Kute)
Judge
Labour Court, Mahad,

Argued on : 07/01/2021
Self typed and signed on : 08/01/2021