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CNR No. MHLC060000422012

## **IN THE LABOUR COURT AT MAHAD, DIST - RAIGAD**

**Com.(ULP) No. 4/2012**

Ramesh Tukaram Pote,  
At: Mandava, Po-Dhokavade,  
Tal-Alibaug, Dist-Raigad

... The complainant

**V/s.**

1. Managing Director,  
Maharashtra State Cooperative  
Marketing Federation Ltd. Kanmir House,  
Near Masjid Station, Mumbai 400009,
2. Maharashtra State Cooperative  
Marketing Federation Ltd.  
District Markets Officer,  
Ramnarayan Patrakar Bhavan,  
Opp. Krida Bhavan, TalAlibaug,  
Dist Raigad 402201.

.... The respondents.

**CORAM** : D. V. Kute, Judge

**Appearances** :

1. Shri. M.M. Golamde Adv. for the complainant.
2. Respondents - Ex parte

### **JUDGMENT**

(Delivered On 10 /04/2018)

This is a complaint in respect of Unfair Labour Practices as contemplated under section 28 r. w. item No.1(a), 1(b), 1(f) and 1(g) of schedule IV of the Maharashtra Recognition of Trade Union & Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as MRTU & PULP Act, for short).

### **Complainant's Case :**

2. The complainant was working Assistant District Marketing officer. He was incharge of the post of District Marketing Officer. While acting as District Marketing Officer, Raigad district, the respondents issued chargesheet to him charging him for two misconducts. The complainant has replied the same. Departmental enquiry was conducted. However, without furnishing copy of findings, the complainant came to be dismissed by order dt. 19.11.11 The copy of findings was later on served upon him. The inquiry was farce. No fair opportunity was given to the complainant. The inquiry officer has not complied with the principles of natural justice. The findings of inquiry officer are perverse. The disciplinary authority while disagreeing with the findings of enquiry officer has not issued notice to the complainant. It has not properly considered the evidence of witnesses. The punishment of dismissal awarded to the complainant is shockingly disproportionate. The respondents are engaged in unfair labour practices.

3. The Respondents initially were appeared in the proceeding & contended that the complainant is not worker. The learned predecessor of this Court framed preliminary issue on the point of workman & answered it in favour of the respondents. The complaint came to be dismissed. However, the Hon'ble Revisional Court at Thane set aside the said order holding the complainant as worker of the respondents. It remanded the complaint for decision on merit & directed the parties to appear before this Court. In spite of such directions & receipt of notice of this court, respondents have not appeared in the proceeding.

4. Following issues are framed, findings thereon are recorded with reasons stated thereunder.

<b>Sr. No.</b>	<b><u>Issues</u></b>	<b><u>Findings</u></b>
1.	Whether the inquiry conducted against the complainant is fair, proper & in accordance with the principles of natural justice?	In the negative.
2.	Whether the findings of inquiry officer are perverse?	Does not survive
3.	Whether the punishment of dismissal from service is shockingly disproportionate ?	Does not survive
4.	Does the complainant prove that the respondents have engaged in doing unfair labour practices ?	In the Affirmative.
5.	Is the complainant entitled for reinstatement in the service with full back wages and continuity of service ?	In the Affirmative.
6.	What order ?	As per final order.

**: REASONS :**

**As to points NO. 1**

5. Learned advocate for the complainant in his written argument (Exh. 27) as well and oral argument has submitted that the inquiry conducted against the complainant is not proper for following reasons :

- i) Non supply of inquiry report to the complainant

ii) inquiry officer was totally partial person & he asked certain questions to the complainant,

iii) The complainant was not allowed to appoint pleader for his defence.

6. So far as second ground is concerned, there is no evidence to show said aspect. On the other hand it appears from inquiry papers that firstly show cause notice was issued to the complainant. Then charge sheet came to be issued to him. The complainant participated in the proceeding, cross examined the witnesses of respondent. It may be noted that the inquiry officer held him not guilty for first charge. He also recommended for lenient view while awarding punishment to the complainant. Hence, it can not be held that the inquiry officer was partial person.

7. In so far as third ground is concerned, it appears from the Employees service rules for respondent federation that rule 36(5) of Service conduct Rules under part III, prohibits appointment of legal practitioner for inquiry. The employee can present his case with the assistance of any other employee. In the present case the complainant has presented his case, cross examined the witnesses. It may be noted that it is not pointed out that the complainant at any time raised this issue in inquiry. Considering all these aspects, on this ground the enquiry can not be held as not fair & proper.

8. In so far as first ground as to non supply of inquiry report is concerned, it is mentioned in the complaint that inquiry report has not been supplied to the complainant till he is dismissed-from the service. It appears from the letter dated-17/1/2012 by manager of the respondent issued to the complainant that inquiry report was supplied to the

complainant only on that day. The complainant has been dismissed from service on 19/11/2011. Thus, it is clear that the inquiry report was not supplied to the complainant prior to his dismissal from the service. Now question remains whether only on this ground inquiry can be held improper?. It is now well settled law that non furnishing of inquiry report to delinquent will not ipso facto vitiate the inquiry unless it is established that some prejudice is caused to the delinquent. Learned advocate for the complainant has submitted that, the complainant on oath submitted that, due non supply of finding of inquiry officer he caused great prejudice as he could not show his innocence and had no opportunity to deal with the disagreement with findings of inquiry officer. It is submitted that, said evidence of the complainant is not challenged by the respondents. Reliance is place on the case of **Sudhakar Nilba Naik and others Vs. Prabhakar Sinari and others reported in 1969 Lab. I.C. 1441 (Vol. 2, C.N. 321)** in that case while dealing with Article 311 of the Indian Constitution and Central Civil Services (Classification, Control and Appeal) Rules 1965 the Hon'ble High Court has held that, the disciplinary authority while serving show cause notice on the delinquent servant as to why he should not be removed from service, is bound by law to supply the delinquent servant a copy of the report of the findings of the inquiring authority as required by the provisions of R. 15 (4) (i)(a). The failure to supply such copy of report amounts to not giving reasonable opportunity of making a representation on the proposed penalty of removal, and therefore, is in contravention of Art. 311 (2).

9. Here is apposite to refer the Judgment of Hon'ble Supreme Court in the case of **Panjab National bank and ors Vs. Kunj Bihari Mishra reported in AIR 1998 SC 2713** wherein the Hon'ble Supreme Court has held that, according to the Constitution Bench decision in

Karunkar case, a delinquent officer is entitled to represent to the disciplinary authority where the finding in the enquiry report are against him. It will not therefore stand to reason that when the findings are in favour of the delinquent officer but they are proposed to be overturned by the disciplinary authority then no opportunity should be granted. According to Karunkar case, disciplinary enquiry is divided into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of evidence, enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard, for otherwise he would be condemned unheard. In departmental proceeding what is of ultimate importance is the finding of the disciplinary authority.

10. In the present case the disciplinary authority has not agreed with the findings of inquiry officer & directly issued notice dated 23/3/2009(Exh.U23/8) which is in respect of proposed punishment. Thus the disciplinary authority has not issued show cause notice to the complainant mentioning its tentative reasons as to disagreement with

the finding of enquiry officer in respect of charge no. 1 which was held not proved by the enquiry officer. In the aforesaid ruling it is held by the Hon'ble Supreme Court that whenever the disciplinary authority disagrees with the enquiring authority on any article of charge then before it records its findings on such charge, it must record its tentative reason for such disagreement and give the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the enquiry officer. The principles of natural justice require that authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its finding on the charges framed against the officer. It may be noted that, in the present case the enquiry officer has hold in favour of the complainant in respect of charge no. 1 which appears to be in respect of negligence and delinquency of duties which cause loss of Rs. 1,17,80,671/- to the federation. He also exonerated the complainant from the second charge partly. However, the disciplinary authority has turned the findings of the enquiry officer. Perusal of order of the disciplinary authority shows that, it has not assigned any separate reasons for disagreement with the enquiry officer held that as the complainant is responsible officer, he is guilty. Thus, it is to be held that, the departmental enquiry conducted against the complainant is vitiated on account of non observance of principles of natural justice. Accordingly, issue no. 1 is answered in the negative.

**As to issue No.2 & 3 :**

11. In view of finding on issue no. 1 this these issues does not survive for consideration therefore, answered accordingly.

**As to Issue No.4 :**

12. In view of findings on issue No.1, the inquiry conducted against the complainant held to be against the principles of natural justice. The complainant has examined himself vide Exh. U-20 and deposed as to the unfair labour practices committed by respondents. The respondents have not conducted the cross examination of the complainant nor led the evidence. It may be noted that, at the time of remand matter the Hon'ble Industrial Court, Thane has directed both the parties to appear before this Court on 11.08.2017. So also notices were also served the respondents. However they choose not to appear before the Court. Therefore, case is proceeded ex-parte further against them. The evidence of the complainant remained unchallenged. Hence, issue no. 4 is answered in the affirmative.

**As to Issue No.5**

13. In view of findings on issue nos. 1 to 4 the dismissal of complainant is vitiated and it is proved that respondents are engaged in unfair labour practices. As the respondents have not appeared in the case after remand of the matter and participated in the proceeding, it is just to decide all the issues. Therefore, complainant is entitled for reinstatement in the service with full back wages. Accordingly issue no. 5 is answered in the affirmative.

**As to issue No.6:**

14. In view of findings on issues No.1 to 5, in answer to issue No.6, following order is passed.

**ORDER**

1. The complaint is allowed.
2. It is hereby declared that the respondents have committed unfair labour practices against the complainant under item No. 1(a), 1(b), 1(f) and 1(g) of Schedule IV of the MRTU &

PULP Act and they are hereby directed to cease & desist from engaging in such unfair labour practices forthwith.

3. The punishment of dismissal from service imposed on the complainant by the respondents is set aside.
4. The respondents are directed to reinstate the complainant in service with continuity of service with effect from 19.11.2011 and to pay full back wages to him.
5. In the peculiar facts of the case, there is no order as to costs.
6. This order is enforceable from today.
7. This order be published by affixing it's copy on notice board of this court vide Rule 69 of the Labour Courts (Practice and Procedure) Rules ,1975.
8. Pronounced in open court.

Mahad

Date : 10.04.2018.

Argued on : 07.04.2018.

Typed and signed on : 10.04.2018.

( D. V. Kute )

Judge

Labour Court, Mahad