

**BEFORE G. S. HANGE JUDGE, LABOUR COURT AT ALIBAG, DIST –
RAIGAD**

COMPLAINT (ULP) NO. 07/2025
(CNR No. MHLC060000612025)

Zakirhusain Ibrahim Shaikh

Age- 50, Occ.- Service (Driver)

R/a- Ner SaibabaMandir, G-Triveni CHS

Hanuman Nagar, Kandivali East,

Mumbai 400101

Complainant...

V/S.

1. Divisional Controller, (DC)

MSRTC, Mumbai Division,

Near premier company, Vidyavihar(West)

Mumbai 400086

2. Divisional Traffct Superintendant, (DTS)

MSRTC, Mumbai Division,

Near premier company, Vidyavihar(West)

Mumbai 400086

Respondent(s)...

Order below Exh. U-2

(Passed on 12/12/2025)

The complainant presented this application for restraining the respondents from giving effect to show cause notice of dismissal dtd. 11/08/2025 and also to restrain them from giving effect to the charge sheet dtd. 16/04/2025 under section 30(2) of the MRTU and PULP Act, 1971. (Hereinafter referred as to “the Act”)

Facts in brief

2. The complainant is a Driver in employment of respondent no. 1. On 16/04/2025 he was charge sheeted for misconduct. It has

been alleged that on 07/04/2025 he was on duty on Uran-Borivali route and was driving the bus MH 20 BL 3262 on that route. On 08/04/2025 he was plying the bus from Borivali to Uran after night halt at Borivali and when the bus came at Kesar mill, Thane the diesel of the bus finished and the bus stopped. When it was asked to the complainant about the incident he told that on 07/04/2025 he had taken the possession of the bus for duty no. 53/54 as the Vehicle Supervisor Mr. Sanjeevan Gonjari assured him about sufficient diesel in the bus therefore, he did not check the availability of diesel, and thereafter took the bus for duty. Thus, because of the negligence of the complainant of not checking the availability of diesel in the bus prior to beginning of his duty on 07/04/2025 the inconvenience was caused to the passengers and it also damaged the image of the corporation in the eyes of public and the corporation also sustained economic loss due to cancellation of one trip of Uran-Thane-Uran.

3. According to complainant the charges leveled against him are false and vague. The real fact is that on 07/04/2025 he joined duty and had asked the Vehicle Supervisor Mr. Gonjari about the availability diesel in the bus. Mr Gonjari told him that there was sufficient diesel in bus for his duty. The complainant believed him and took the possession of the bus and started his duty as usual. Before joining the duty there was no employee of the corporation present to check and fill the diesel at Uran depot and therefore, he asked Mr. Gonjari about the diesel availability and only when Mr. Gonjari gave a green signal he moved ahead with his duty. According

to him the corporation without taking any action against Mr. Gonjari or the absent employee responsible for checking the availability of diesel the took action against him and indulged in his victimisation.

4. According to complainant on 07/04/2025 he finished three trips from Uran to Thane and Uran to Borivali without any problem. He had night halt at Borivali on 07/04/2025 and on the next day he started his duty at 6:45 AM for Borivali Uran but there was no facility available at Borivali station to check and fill the diesel. Therefore, due to less average of diesel or the mechanical fault the bus was stopped at Kesar Mill, Thane for non availability of diesel. The complainant took the efforts and started the bus and took it to the Thane station. No inconvenience was caused to the passengers as all reached Thane safely. There was little delay to reach Uran as he went to Khopat to fill the diesel in the bus.

5. According to complainant the respondent no. 2 DTS had issued him chargesheet and conducted the enquiry. The Enquiry Officer considered all the facts, and, thereafter the punishment of stoppage of one yearly increment for short period of six months was imposed on him by order dated 22/05/2025. Thereafter, the respondent no. 1 issued notice dated 23/07/2025 and the enquiry was kept on 04/08/2025 as per the review of earlier order of imposing punishment. However, without examining any witness and without considering final defense statement of the complainant the show cause notice was issued to him on 11/08/2025 for his

dismissal. The respondents imposed punishment for the second time on him for the same chargesheet and same misconduct which is illegal and liable to be set aside.

6. According to complainant the enquiry was completed hurriedly and only in one seating by respondent no. 2 management. The reporter admitted that the Vehicle Supervisor Mr. Gonjari had told complainant about availability of diesel in bus, and, thereafter the complainant started his duty. He states that the dismissal notice is issued against him for patently false reasons and it is clear cut victimisation under Item I of the Act. According to him in his service of 16 years no memo, chargesheet or show cause was issued against him. The Enquiry Officer did not examine Mr. Gonjari. The Enquiry Officer examined the reporter Mr. Garade who was not eye witness to the incident and his admission was also ignored. Further the enquiry was conducted in utter disregard of the Principles Of Natural Justice and was conducted without following due process of law. The findings are based on without reasons and upon surmises and conjectures. Considering all these grounds the complainant prayed for restraining respondents from giving effect to show cause notice of dismissal dated 11/08/2025.

7. Respondents filed their reply at Exh. C-7. According to them the complainant has made out a false story as the departmental enquiry was conducted by following the principles of natural justice and as per D and A Procedure of the Corporation. According to them

the charges leveled against the complainant are duly proved and the findings drawn by the enquiry officer are proper and not perverse. They contended that the complainant committed misconduct by not examining the availability of diesel in the bus when he was on duty. They contended that due to stoppage of the bus for non availability of diesel the passengers in the bus faced inconvenience and the image of the corporation was also maligned in the eyes of public and at the same time the corporation sustained economic loss for cancellation of Uran-Thane-Uran bus service on that day.

8. According to respondents in the departmental enquiry the complainant was allowed to represent him by the union representative to defend the case. He was allowed to secure the presence of witnesses to defend his case. He was given full opportunity to cross examine the witnesses. The enquiry officer has considered oral as well as documentary evidence brought before him. The respondents have reiterated the alleged facts of misconduct in their written statement and have contended that the complainant has committed misappropriation of amount.

9. According to respondents the charge sheet was served upon the complainant on 16/04/2025. He replied to the charge sheet. The departmental enquiry was conducted as per the principles of natural justice. The opportunity of being heard and to lead evidence was also given to him. Therefore, the findings recorded by the enquiry officer are not perverse. The complainant has caused loss to the corporation and has been found guilty in the enquiry.

Therefore, there is no *prima facie* case in his favor. On the other hand if the interim protection is given to the complainant it will cause irreparable loss to the corporation. The act of the complainant is serious in nature. If the complainant is continued in service he will indulge in similar act in future and will cause financial loss to the corporation. Considering all these grounds the respondents prayed for rejection of the application.

10. Considering rival pleadings of both the parties following points arose for consideration. I have recorded my findings thereon for the reasons noted above.

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether the complainant proves that there is a prima facie case in his favor ?	"Yes"
2. Whether the complainant proves that the balance of convenience lies in his favor ?	"Yes"
3. Whether the complainant proves that he will suffer irreparable loss if the application is rejected ?	"Yes"
4. What Order ?	As per final order

11. Learned advocates of both the sides advanced their arguments. Both the parties relied upon the departmental enquiry papers.

ISUUE NOS. 1 TO 3 (Collectively)

12. All these issues are related to each other, therefore, for

the sake of brevity and convenience they are discussed together. The charge-sheet dated 16/04/2025 for alleged misconduct was served upon the complainant. It is a case of the complainant that when he was on Borivali Uran duty he asked Vehicle Supervisor Mr. Gonjari about diesel position in the bus and he had told him about sufficient availability of diesel. Therefore, he believed him and took the possession of bus and commenced his duty. He has not committed any negligence and misconduct alleged by the corporation. On the other hand the respondents contend that it was responsibility of the complainant to check the status of diesel in the bus, but he failed to take proper precaution and started his duty without checking the position of diesel. Therefore, the complainant has committed misconduct under Clause 10, 11, 22 and 57 of D and A Procedure of the Corporation, and therefore, the show cause notice of dismissal issued to him after finding him guilty in the enquiry is legal.

13. I have carefully gone through the proceedings of the matter. It is pertinent to note that the respondent corporation had issued a chargesheet to the complainant on 16/04/2025 and on the basis of same charges the enquiry was conducted against him and he was found responsible in the enquiry for the misconduct mentioned in the chargesheet and the Enquiry Officer gave opinion of stoppage of yearly increment for the period of six months and accordingly by order dated 22/05/2025 the respondent imposed punishment on the complainant and his yearly increment for the period of six months was withheld. In fact after imposing punishment the respondent

corporation should have closed the chapter but surprisingly the review order was passed on 04/08/2025 on the ground that the imposed punishment of one increment is not consistent with the misconduct committed by the complainant and again his enquiry was scheduled and he was asked to remain present for the same. However, no further enquiry was conducted and only the respondent asked the complainant to give his defence statement. Thereafter, on the basis of earlier enquiry conducted by the corporation and on the basis of which he was punished the show cause notice of dismissal was issued to him on 11/08/2025.

14. On careful perusal of the proceedings it can be gathered that the respondent had already imposed the punishment of stoppage of yearly increment for the period of six months on the complainant and still on the basis of same enquiry and same misconduct and same incident the new punishment of dismissal was proposed against him by virtue of review order dated 04/08/2025. In brief the complainant was punished twice for the same misconduct and for the same chargesheet which at first place violates his fundamental right guaranteed under the Constitution Of India. If the punishment of stoppage of increment of one year was lesser punishment imposed on him in light of the misconduct committed then the respondent should have initiated the fresh enquiry but it appears that the show cause notice of dismissal was issued on the basis of same findings of the Enquiry Officer made on the basis of same enquiry proceedings. Therefore, in my opinion the proposed punishment of dismissal from

service is against the Principles Of Natural Justice and Principles Of Equity.

15. The proceedings of departmental enquiry shows that the complainant before going on his duty on 07/04/2025 have asked Vehicle Supervisor Mr. Gonjari about the availability of diesel in the bus and on his assurance the complainant started the bus. Further it appears that on 07/04/2025 the complainant has made three trips from Uran-Thane and Uran-Borivali and he had halt at Borivali on the night of 07/04/2025. On 08/04/2025 in the morning he started his duty and when he reached at Kesar Mill Thane the bus was stopped for shortage of diesel. It has come in his statement that there was no facility available at Borivali station to measure the diesel in the bus. It is true that the complainant failed to check the availability of diesel before he went on to his duty. However, he believed the assurance of his senior Vehicle Supervisor Mr. Gonjari which he was not supposed to do at the first place. It was his personal responsibility to verify the diesel in the bus and then proceed with his duty. It appears that the complainant presumed certain facts without personally checking availability of diesel in the bus. The proceedings reveal that he had no such a intention to cause inconvenience to the respondents and the passengers.

16. If it is assumed that the complainant did not take proper care and caution by not examining the condition of the bus especially the availability of diesel in the bus before going on duty the

imposition of punishment in the form of dismissal from service is certainly grave in nature and not warranted at all when his yearly increment for the period of six months has already been stopped for the same misconduct. Imposing the punishment of dismissal for the charges mentioned in the chargesheet when earlier punishment was in force is like using rights for the victimisation of the employee. Therefore, it is necessary to restrain respondents from giving effect to said notice of dismissal of service dated 11/08/2025 till the final disposal of the complaint.

17. The complainant has raised prima facie case in his favour by bringing on record the documents of previous punishment and at the same time for the charges leveled against him and the enquiry conducted against him need intervention for want of preventing respondents from using their rights to victimise the complainant. As far as balance of convenience is concerned it lies in favour of the complainant as comparative mischief which will be caused by rejection of the application will be more to him than respondents. If the application is rejected the respondent may give effect to the notice of dismissal and ultimately the complainant will suffer irreparable loss when he has already suffered the punishment stoppage of increment for the alleged misconduct and for the same chargesheet. All these facts need to be considered and the interest of the complainant at this stage required to be protected. In background of this situation I answer issue nos 1 to 3 in the affirmative and pass the following order.

ORDER

- 1) Application is allowed.
- 2) The respondents are directed to restrain from giving effect to show cause notice of dismissal dtd. 11/08/2025 issued to the complainant and they are also restrained from giving effect to the charge sheet dtd. 16/04/2025 till the conclusion of the the matter.
- 3) In the circumstances no order as to costs.

Alibag.
Date. 12/12/2025

(G. S. Hange)
Judge
Labour Court, Alibag-Raigad