

SHRI. P.M. MAINDARGI, PRESIDING OFFICER,
LABOUR COURT NO. 1, AT : KOLHAPUR.

Complaint (ULP) No.09/2017

Smt. Ranjana Krishnat Patil,

.....Complainant

V/s.

1. Division Controller office
Maharashtra State Road
Transport Corporation,
Near Kolhapur Bus Stand,
Kolhapur and Ors.

....Respondents

:- ORDER BELOW EXH. U-2 :-

(Dated:-06/04/2017)

Complainant (hereinafter referred as an applicant) filed the present application under section-30(2) of the M.R.T.U. & P.U.L.P. Act, 1971 for interim relief against respondents. Applicant prayed to the Court to stay show cause notice dated 27/01/2017 and further, prayed that respondents be directed not to take any action on the basis of charge-sheet, enquiry officer's report and final show cause notice. Applicant also prayed that respondents be directed not to terminate the applicant from the service till the final disposal of main complaint.

2. Brief facts of the application are as follows :-

Applicants version in her Interim relief Application - Applicant is in service with respondent from November, 2009. Respondent has given false charge-sheet and harassed the applicant. While working on the post of Traffic Controller, applicant has to work various clerical types of work as to accepting forms from passengers for passes, making entries in the relevant register, issuing them monthly traveling passes as per instructions of superiors etc. Now, the applicant is performing the duties of data entry of the daily regular transactions received from the conductors. Applicant further stated that respondent suspended her from the service on 27/12/2014 by an order dated 26/12/2014 in order

to initiate the departmental enquiry. Thereafter, the cryptic and false charge-sheet dated 17/01/2015 issued to her. The Regional Traffic Officer was appointed as Authorized Officer to inquire into the said matter by the respondent. The said authority submitted his preliminary observation and findings on 07/01/2015 to the respondent and thereafter, departmental enquiry was initiated against the applicant on 25/02/2015 and it ended on 13/03/2015.

3. The applicant further stated that total Four sittings for enquiry took place. During these Four sittings, Five witnesses were examined by the respondent and finally, the applicant was also examined. The enquiry conducted is in utter disregard of the principles of natural justice. The respondent has not appointed the management's representative to conduct the deposition of the witnesses. The enquiry officer himself has conducted all the depositions on behalf of the respondent. The enquiry officer has done every job of the management's representative in this enquiry. Hence, he has not done this with impartial view. Three witnesses were cross examined by the enquiry officer on 12/01/2015. Thereafter, the enquiry was to be kept for the arguments of both the sides. Instead, the enquiry officer examined management's another witness named Shri. V.B.Hawaladar on 13/01/2015 only with a view to make cure lacunas and loopholes that came in the light after examining the applicant's witnesses. The enquiry officer then on 13/01/2015 forced the applicant to depose and asked the searching questions in the manner of cross examination.

4. The applicant further stated that she was allowed to join her regular duties from onwards. When the enquiry ended, it was revealed to the respondent that the applicant is not guilty of alleged misconduct and they were compelled to withdraw their suspension order. A sum of Rs. 53,760/- is due to the respondent No.1 was due to technical error and she has submitted that sum on the same day to the respondent. As nothing has come on record to prove the alleged guilt of the applicant the said issue was dormant during the 22 months, nothing took place regarding the charge-sheet, enquiry and further steps. Surprisingly, the

applicant has received the final show cause notice dated 27/01/2017 alongwith the findings of the Regional Traffic Officer who was appointed as Authorized Officer to enquire into the matter which bears no date at all.

5. The applicant further stated that she was denied proper opportunity to defend herself in the said departmental enquiry. The departmental enquiry was not done in good faith and without following principles of natural justice. Enquiry officer not being as an independent person has acted partiality during the course of enquiry as well as while considering and appreciating the explanation filed by the applicant in the enquiry. The enquiry officer in his findings has held that all the allegations enumerated in the charge-sheet are proved against the applicant. The said findings is baseless, illegal and not maintainable.

6. The applicant further stated that witnesses examined during the enquiry have made it clear that they have not submitted any document as per the order or suggestion of the applicant. Yet no any kind of action has been taken by the respondents against those people who actually cheated on the respondent as well as the applicant. The applicant is a widow. She has to work and run her family on her own. She has two daughters. The applicant has full responsibility of her family and having not support from anybody else. Lastly, Applicant has prayed that interim relief application is allowed and final show cause notice dated 27/01/2017 be stayed pending the complaint.

7. The respondents by giving say at Exh. C-2 denied all the contentions of the interim relief application. It is contended by the respondent that application is not maintainable in the eyes of law also it is false, frivolous and therefore, deserves to be dismiss in toto. There is no any cause of action arose to the applicant to file the present complaint also the respondent has not committed any unfair labour practice as alleged by the applicant.

8. It is further contended by the respondents that complaint is filed under apprehension of termination due to show cause notice of dated 07/10/2016. Complaint filed by the complaint is premature. The

respondent submits that charge-sheet was given to her on 20/09/2016 for the alleged misconduct that while she was incharge controller at Bambawade post, she has issued passes to the Two students amounting to Rs.360/- each i.e. of Rs.760/- but has not mentioned the said amount in the CWA register and therefore, committed misappropriation of Rs.760/-. The respondent as per the said charge-sheet leveled the charges upon her as per clauses 4, 7(H), 10, 12B, 22 and 48 of D & A procedure applicable to the respondent corporation.

9. It is further contended by the respondents that after analyzing materials on record, enquiry officer submitted his report. The report submitted by the enquiry officer is legal, fair and proper and also findings given by him are based on evidence. The respondent submits that it has issued show cause notice dated 07/10/2016 and called her explanation. But, without giving the explanation to the same, she has directly approached before the Court. Therefore, this is clear cut violation of D & A procedure applicable to the respondent corporation and hence, he is not entitled for any relief from this Court.

10. It is further contended by the respondents that since she is working in the capacity of Traffic Controller, she does not come under the ambit and definition of an 'employee' as per section-3(5) of the M.R.T.U. & P.U.L.P. Act, 1971 as well as section-2(5) of the Industrial Disputes Act, 1947. Therefore, this Court is having no jurisdiction to try and entertain the present complaint. Hence, preliminary issue regarding maintainability of the complaint may kindly be framed and decide at the first instance. Being a Traffic Controller, she is required to report the higher authorities regarding status of transport to arrange the duties of driver, conductor and other subordinate staff and hence, considering the nature of duties of her, she is outside the scope of an employee.

11. It is further contended by the respondent that considering the documents on record and averments, legal submissions of the respondent, the applicant is not entitled to sought any interim relief as there is no any alleged cause of action remains. Applicant has not made out any prima-facie case also balance of convenience not lies in his

favour. No irreparable loss could be cause to the applicant, if interim relief application is not granted. If interim relief application of the applicant is granted, irreparable loss will be to the respondent. Therefore, interim relief application and relief sought by her may kindly be rejected.

12. While deciding application for interim relief, it is well settled that Court has to see whether the applicant has shown prima-facie case, balance of convenience and principles of natural justice lies in his/her favour. Accordingly, following points arise for my consideration and I have given my findings thereon and answered points accordingly.

	<u>POINTS</u>	<u>FINDINGS</u>
1)	Does Applicant is entitled to get the interim relief against respondents as prayed in the application?	.. In the affirmative
2)	What order?	.. As per final order.

REASONS

As to Points No.1 :-

13. To show prima-facie case, applicant has relied on the documents at Exh. U-4. Applicant relied on show cause notice dated 27/01/2017. Applicant has also produced certain documents at Exh. U-12 and also relied on the said documents to establish prima-facie case. It is the grievance of applicant that relying on the final show cause notice dated 27/01/2017, respondent may terminate the services of the applicant. The learned advocate for the applicant submitted that applicant received enquiry report after 22 months from completion of enquiry. The said enquiry report was issued to her along with show cause notice dated 27/01/2017. Further, it was argued that enquiry officer in the enquiry acted himself in dual capacity as an Enquiry Officer and Management representative. It was further argued that enquiry conducted against the applicant is not bona-fide and legal one. Person who has issued charge-sheet is also enquiry officer. The enquiry officer himself took chief examination of management witness. Findings

of the enquiry officer are perverse and enquiry officer wrongly presumed that charges against the applicant are proved.

14. The learned advocate for respondent submitted that all the charges against the applicant are proved. Enquiry officer rightly held that section-4, 6, 7H, 9, 10, 12B, 15, 21 and 22 are proved. The learned advocate for the respondent further submitted that applicant was given every opportunity to participate in the enquiry, to take cross of the management witness and to produce the documents as and when necessary. Hence, enquiry conducted against the applicant is legal one. The enquiry officer has rightly held that findings of the enquiry officer are based upon the document before him and there is no perversity in the findings of the enquiry officer. Applicant has not shown prima-facie case, no balance of convenience lies in her favour. Hence, learned advocate for the respondent argued that interim relief application may be rejected.

15. I have gone through the final show cause notice, charge-sheet issued to the applicant as well as all the proceedings of departmental enquiry against the applicant. In the charge-sheet, it was alleged that applicant has committed misconduct as per section-4, 6, 7H, 9, 10, 12B, 15, 21 and 22 . After issuance of charge-sheet, applicant gave explanation dated 29/01/2015 which is at Exh.U-12. Thereafter, enquiry started on 11/03/2015 and it was completed on 13/03/2015.

16. It is pertinent to note that in departmental enquiry, it is revealed that Five passengers has given statement informing that they have admitted that false bona-fide certificates for obtaining travel pass from respondent. Further, it is revealed that Digvijay Patil, Vinayak Patil, Prakash Khabdare have deceived respondent by issuing bogus bona-fide certificate. It was stand of the respondent that it was the duty of the applicant to verify the doubtful documents . However, in the enquiry it is revealed that all the Five persons who have deceived respondent by submitting bogus documents were ready to compensate the loss cause to respondent. Further, it is also revealed in the enquiry that management witness has stated that applicant committed

misappropriation of Rs.53,707/- but the charge against applicant is of dishonesty. The charge against the applicant is not of misappropriation. In such circumstances, I have to find out whether the charge of dishonesty and other charges are proved against the applicant. But the same cannot be done at this stage. Whether applicant was really responsible for loss of Rs.53,707/- by giving student pass instead of worker pass can be decided at the time of final hearing of the complaint.

17. After completion of enquiry, applicant received report of enquiry officer along with show cause notice dated 27/01/2017. It means applicant received enquiry report after 22 months. I have gone through the enquiry report. Enquiry officer has not even whispered about the explanation given applicant to the charge sheet was acceptable or not. Enquiry officer has not stated as to what was the reason for the delay in submitting enquiry report after 22 months. Moreover, the said enquiry report is undated, hence, it is difficult to understand as to when the report was prepared and what were the reasons for delay in giving enquiry report. Defense of the Respondent regarding compliant being premature is not acceptable at this juncture when Respondent himself kept the applicant in the service for 22 months after the charges were proved against the applicant. Learned advocate for respondent was also unable to convince me for delay in supply of enquiry report.

18. To prove the charges against the applicant, it was expected that the respondent should have appointed management representative to conduct deposition of witness. It reveals that enquiry officer himself has conducted all depositions on behalf of the respondent. Further, it reveals that in the present case, enquiry officer is the person who has issued charge-sheet to the applicant. Further, it reveals that three witnesses were cross examined by the enquiry officer on 12/01/2015. Further, it reveals that after recording applicant's evidence, enquiry officer examined management's another witness Shri. V.B. Hawaldar on 13/01/2015. While, reopening the evidence of said witness, enquiry

officer has not given any cogent reason.

19. It reveals that applicant was suspended on 27/12/2014 but later on, respondent withdrawn their suspension order. After completion of enquiry. The respondent has alleged that applicant was dishonest and she has caused financial loss amounting to Rs.53,760/-. In the show cause notice itself in bold line explanation was called from applicant as to why she should not be dismissed from service for the alleged charge of dishonesty. It is pertinent to note that till date of issuance of final show cause notice dated 27/01/2017, applicant is in the service with the respondent. Applicant was working with the respondent since 2009 and she is appointed on the post of Traffic Controller on compassionate ground.

20. Admittedly, in domestic enquiry, enquiry is to be conducted in domestic manner and enquiry officer has to give his report on preponderance of probabilities. In my opinion, person being enquiry officer who has given charge-sheet, also recorded deposition of management witness, further he open evidence after all witnesses were examined, is not expected in domestic enquiry. The person who has issued charge-sheet must not be interested in the result of enquiry. In such circumstances, prima-facie, it can be said that a there is violation of principles of natural justice in the conduct of domestic enquiry which will be decided at proper stage. It is always expected that enquiry officer should be an independent enquiry officer, who has to give enquiry report impartially without being prejudiced against the delinquent employee. It is always probable that person who had issued charge-sheet must have some favor or disfavor against the delinquent employee. It was for the enquiry officer to be aloof and to act impartially in the conduct of the domestic enquiry. On the above factual aspects and my observations, it will be decided later on that whether the enquiry officer was biased, whether he was interested in the result of enquiry, whether he acted as Judge in his own case and all other points regarding legality and

perversity of enquiry. Documents before me prima-facie shows that domestic enquiry was not conducted in domestic manner. Also it shows that the said enquiry was not conducted in accordance with rules and provisions framed by respondent in D & A procedure. Looking to the length of service of applicant and documents before me, I am of the opinion that service of the applicant needs to be protected.

21. Applicant has shown prima-facie case, balance of convenience lies in her favour. The respondent have not given proper reason as to why they kept applicant in service for 22 months even after charges are proved according to them. It means, it clearly shows that there will not be prejudice to the respondent if the services of the applicant is protected and continued by way of interim relief. I have gone through the case laws cited by learned advocates of both the sides.

22. The learned advocate for the applicant relied on following case laws :-

1) **Motiur Rahman V/s. United Commerical Bank and Ors. (2003 II CLR 430)**. In the said citation, Hon'ble High Court observed that copy of the enquiry report to be furnished to the delinquent employee before disciplinary authority makes up it's mind to impose penalty- in the instant case the said notice violated principle of reasonable opportunity and quashed. I have gone through the entire Judgment cited by learned advocate for applicant. In para-7 of the said judgment, Hon'ble High Court observed that disciplinary authority appears to be determined the culpability of the Writ Petitioner without furnishing him copy of enquiry officer's report. The facts and circumstances of above case are applicable to the facts and circumstances of the case in hand. Rightly the applicant is entitled to the doctrine of reasonable opportunity prior to issuance of final show cause notice.

2) **Babanrao Budhajirao V/s. Adinath Sahakari Bank Ltd. (1995 II BomLR 260)**. In the said citation, Hon'ble Bomay High Court observed that dishonesty necessarily requires advertence of mind

and an intention to cause wrongful loss to the employer and wrongful gain to the employee himself all to someone else. Admittedly, it is on record that applicant has deposited the amount, although as per her opinion she was not responsible for the loss. It does not reveal from record that someone else or applicant himself is benefited because of alleged misconduct of applicant.

23. The learned advocate for the respondent relied on the following case laws :-

1) **Sheshrao Motiram Jadhav, Washim V/s. Divisional Controller, MSRTC, Akola and Ors. (2016 III CLR 958)**. In the said citation, Hon'ble Bombay High Court observed that without making of strong prima-facie case and balance of convenience in his favour for grant of interim relief, no relief can be granted to the applicant at prima-facie stage. As I have already observed above, applicant has prima-facie case and balance of convenience lies in her favour. In the above citation, factual aspects relating to petitioner were not supplied necessary documents and his services came to be terminated without granting him proper opportunity in that regard. Facts of present case are different from facts mentioned in above citation.

24. Learned advocate for respondent also relies on one citation of Writ Petition No.1680/2017, in the said writ petition, it was observed that petition itself is premature. Further, it was observed that Industrial Court directed petitioner to submit his explanation to final show cause notice, if he desires. However, facts mentioned in the Writ Petition are not clear as to what was the situation before Industrial Court in regard to final show cause notice. Hence, I am unable to rely on the citation submitted by learned advocate for respondent. I am unable to apply my mind only on the final show cause notice, on the basis of above citations. Final show cause notice is outcome of charge-sheet given to employee. Consequently to find out prima-facie case, I have to go through charge-sheet, explanation and proceedings.

25. Accordingly, as per my observations, I am of the opinion that applicant is entitled for interim relief. Hence, I answered point No.1

in the affirmative and proceed to pass the following order,

ORDER

1. Interim relief application is hereby allowed.
2. Respondents are hereby directed not to terminate the services of the applicant till final disposal of present complaint.
3. No order as to costs.

Date:-06/04/2017
Kolhapur

Sd/-
(P. M. Maindargi)
Judge,
Labour Court No.1, Kolhapur