



BEFORE JUDGE, SECOND LABOUR COURT, AT KOLHAPUR.
(Presided over by – K.B. Kamgauda)
(JO Code – MH-1894)

Complaint (ULP)No.09/2017
CNR No. MHLC090000512017

Smt. Ranjana Krishnat Patil,
R/o.- A/p. Yelavade, Post.-Kodavade,
Tal. Radhanagari, Dist. Kolhapur.

... Complainant

Versus

1. Divisional Controller Office,
Maharashtra State Road Transport
Corporation, Kolhapur.
Near Kolhapur Bus Stand, Kolhapur,
Through
The Divisional Controlling Officer.
2. Division Controller Office,
Maharashtra State Road Transport
Corporation,
Near Kolhapur Bus Stand, Kolhapur,
Through
The Divisional Controlling
Officer. (Negligence)

... Respondents

APPEARANCES :-

Adv. D. S. Joshi, for Complainant.
Adv. V. S. Chavan, for Respondents.

: JUDGMENT – PART I :

(Delivered on this 4th day of August, 2025)

1. Being aggrieved with suspension order dated 26/12/2014, Complainant has filed present complaint under

Section 28 read with Schedule-IV, Item No. 1 (a), (b), (d), (f) & (g) of Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act").

Brief facts of the case of Complainant is as follows:-

2. According to Complainant, she is working as a "Traffic Controller" with Respondents. Her service record is satisfactory and unblemished. Respondents issued cryptic and false charge-sheet dated 17/01/2015. Complainant submitted her explanation on 29/01/2015. Enquiry Officer was appointed by order dated 26/12/2014. The said authority submitted his preliminary observations and findings on 07/01/2015. Accordingly departmental enquiry initiated against Complainant on 25/02/2015 and it ended on 13/03/2015. Complainant alleges that during enquiry five witnesses were examined by the respondents. Complainant also examined. The enquiry is conducted in utter disregard of principle of natural justice. The stages of enquiry are not followed by the Enquiry Officer. Respondents have not appointed managements representative to conduct enquiry. Witnesses were examined by the Enquiry Officer himself instead of managements representative. Enquiry Officer has done every job of management's representative. He was not impartial. After completing witness of management, enquiry was posted for arguments of both the sides. At the stage of argument without assigning any reason another witness was examined to fill up the lacuna. Complainant was forced to depose and asked leading questions. Respondents have made breach of principle of natural justice.

3. After closing down enquiry on 13/03/2015, the suspension order dated 27/12/2014 was review and Complainant was allowed to join her duties. During enquiry Complainant not found guilty of alleged misconduct. Complainant surprisingly received final show-cause-notice dated 27/01/2017 along with findings of the enquiry report. It is alleged that Complainant committed misconduct. Corporation has suffered economical loss. Complainant not followed the directions of superior authority. Misappropriated the amount of corporation. These are the charges alleged to be proved against the Complainant. Complainant prayed that enquiry be declared as illegal against principle of natural justice and findings are perverse.

4. The Respondents have submitted their written statement at Exh. C-2 and have denied all the contentions of Complainant. According to it, Complainant was subjected to departmental inquiry due to misconduct committed by her. Complainant was found guilty before the Enquiry Officer. She has committed serious misconduct of misappropriation and fraud. Complainant committed misappropriation while doing the job as Traffic Controller. She has issued passes to students amounting to Rs.360/- each but not mentioned the said amount in relevant registers. Complainant committed misappropriation of Rs. 53,760/-. She admitted the amount of misappropriation and accepting the guilt she has subjected the entire amount towards the corporation. Complainant failed to perform duty correctly. She has issued illegal passes to the workers and relatives. Respondent Corporation used to issue concessional passes to students on the basis of their educational documents. Complainant without verifying the educational documents issued students passes to

working persons. Therefore, corporation suffered huge loss of Rs. 53,760/-. Enquiry conducted against her was in accordance with principles of natural justice. Complainant was given fair opportunity to defend herself. The report of the Enquiry Officer is legal, fair and proper. Therefore, no interference is called for at this stage. Complainant has committed serious misconduct of misappropriation and fraud. There is no unfair labour practice on the part of Respondents. Therefore, Respondents have prayed for confirming the legality of the enquiry.

5. In view of rival pleadings, following preliminary issues are framed at Exh. O-2, to which findings are recorded alongwith reason given below :-

<u>SR. NO.</u>	<u>ISSUES</u>	<u>FINDINGS</u>
(1)	Whether the Complainant proves that, she is covered under the definition of an 'employee' as per Section-3(5) of the MRTU & PULP Act, 1971 and 'workman' as per Section-2(s) of the Industrial Disputes Act, 1947 ?	Yes
(2)	Whether the Complainant proves that, the enquiry conducted against her is illegal and improper ?	Yes
(3)	Whether the Complainant proves that the findings recorded by the Enquiry Officer are perverse ?	Yes
(4)	What order ?	As per final order.

-: REASONS :-

AS TO ISSUE NOs. 1 :-

6. Respondents challenged her status in written

statement at Para No.10. She is working under capacity of Traffic Controller. She does not come under the ambit of definition of employee and workman. Therefore, preliminary issue regarding workman is framed. Both parties have submitted respective evidence on the point of workman. In the course of arguments, advocate appearing for respondents submitted fairly that Complainant come under the ambit of employee and workman. Therefore the preliminary issue regarding status of the Complainant has to be answered in her favour. Hence, Issue No. 1 is answered in "Affirmative."

AS TO ISSUE NOS. 2 & 3 :-

7. Procedure for carrying out domestic inquiry has not been prescribed under any statute or notification and has been evolved through practice and judicial precedence. It is well settled principle of law that unless following points are not fulfilled the enquiry conducted cannot be said to be legal and proper :-

- i) the inquiry should be fair, impartial and should not be conducted in undue haste
- ii) person issuing charge sheet has authority to issue the same
- iii) the employee proceeded against has been informed clearly of the charges levelled against him and there should not be any ambiguity
- iv) opportunity must be given to employee of being defended by the person of his choice
- v) witnesses are examined ordinarily in the presence of the employee – in respect of charges
- vi) the employee is given fair opportunity to cross examine witnesses
- vii) the employee is given a fair opportunity to examine witnesses including himself in his defence and to produce relevant documents
- viii) the Enquiry Officer must be an independent person and

ix) the Enquiry Officer must record his findings, alongwith reasons, on some evidence.

8. From the same it is manifest that the departmental/domestic enquiry must be conducted strictly in adherence with the rules of natural justice. Fair opportunity and fair trial are elements of principles of natural justice. If above quoted legal mandates are not strictly followed then it can be construed that the principles of natural justice are not followed, invalidating the whole enquiry.

9. On this backdrop of settled legal propositions, facts of present matter must be scrutinized. Admittedly, Complainant is working with Respondents as Traffic Controller. Before going through the charge-sheet dated 17/01/2015, I would like to refer the preliminary enquiry and its report dated 07/01/2015. Charge-sheet is sum ans substance of report dated 07/01/2015. The concerned officer submitted his report alleging various misconducts against the Complainant. In the said report it is alleged that Complainant working since June 2013 at Rankala Bus Stand. She having authority to issue passes to the students and reservations to the passangers. It is further reported that she has not verified the bonafide certificates and document submitted by the students and issued concessional passes to the person who are not entitled. It is also reported that while issuing labour passes she has suggested to take students passes which are less value than labour passes. This is a misconduct on the part of Complainant. It is also reported that she has received extra amount from the pass holders. Accordingly respondents issued charge-sheet on the basis of preliminary report dated 07/01/2015. It is legally settled that

charge-sheet shall contain details of each and every misconduct of the delinquent. Charge-sheet is not issued as per the report dated 07/01/2015. Therefore, charges are vague and obscure. The charge-sheet issued by the respondents dated 17/01/2015 not specifying the details of misconduct or misappropriation.

10. Complainant alleges that management representative was not appointed to conduct the enquiry. Respondents have relied on the judgment of Hon'ble Bombay High Court in case of *Sandip Vasant Bhole V/s. Divisional Traffic Superintendent MSRTC and Anr, reported at WP No. 12302/2021* in which Hon'ble Bombay High Court is held that, "petitioner is estopped raising this plea directly before the Court. Even otherwise petitioner has not been able to show any prejudice being caused to him on account of disciplinary authority performing role of presenting officer. It is tried that mere minor infraction of principle of natural justice would not rendered the enquiry invalid in the absence of prejudice being caused to the delinquent employee." In present matter Complainant is also estopped raising plea directly before this Court. She failed to show what prejudice caused to her. Therefore, the minor infraction or principle of natural justice would not rendered invalid.

11. First witness Mr. Pauskar, who has submitted preliminary report dated 07/01/2015 has given admission that Complainant deposited the entire amount to the corporation. He also admitted that Complainant has no power to verify the document submitted by the concessional pass holders. Another witness Mr. Vinayak Sadashiv Patil, who is the pass holder. He has

been examined during the course of enquiry. He has admitted that Complainant has not accepted excess amount than the pass amount. Witness Shri. Prakash Khabdade, he is working in MIDC, Shirola availed concession pass by submitting bonafide certificate. Witness Khabdade submitted bonafide certificate of Typing Institute. He has admitted that Complainant has not asked extra or excess amount other than the pass amount. He also admitted that Complainant has no concern with the bogus bonafide submitted by him. It is no duty of the Complainant to verify the correctness of the bonafide submitted by the pass holder. It is duty of the Complainant to issue passes on the basis of certificate issued by the concerned authority. She has no authority or power to verify its correctness and validity.

12. Witness Harish Vijay Jadhav, who is also one of the pass holder. It is alleged that he has submitted bogus ITI bonafide certificate. He also admitted that the fact of bogus bonafide certificate is not within the knowledge of Complainant. He submitted said certificate on his own risk. He obtained bonafide certificate from his friend. He also admitted that Complainant not asked extra amount for pass. Complainant conducted cross-examination of all the witnesses. In spite of admissions by the witnesses favouring the Complainant, Enquiry Officer submitted his positive report. Complainant strongly objected the enquiry report submitted by the Enquiry Officer.

13. Complainant strongly objected the report submitted by the Enquiry Officer. Enquiry Officer submitted report without mentioning date on it. After perusal of enquiry report, it appears

that report is undated and without reference of date of submission. Therefore, the objection raised by the Complainant about the undated report has substance. Departmental enquiry considered to be quasi judicial proceeding. Enquiry Officer shall have to follow procedure established by law. Enquiry Officer submitted his report without mentioning date. Therefore, the report submitted by the Enquiry Officer is not as per law. He also suggested the punishment in the report itself. Suggesting punishment by Enquiry Officer is against the principle of natural justice. Enquiry Officer only having authority to find out guilt or innocence of the delinquent workman. He cannot suggest the punishment in his report. On this count also procedure is illegal and improper.

14. As in earlier discussion, we found that enquiry conducted against Complainant is improper and illegal. Now, deal with the findings recorded by the Enquiry Officer. Firstly, it is necessary to highlight the report of the Enquiry Officer. It is submitted without mentioning date. Report of the Enquiry Officer is undated. The basic principle of enquiry has not been followed by the Enquiry Officer. Various admissions given by the witnesses favourable to the Complainant has been ignored by Enquiry Officer. He recorded his findings without evidence.

15. The findings of the Enquiry Officer in last para, he suggested the punishment of termination to the Respondents. Enquiry Officer cannot play dual role of Enquiry Officer and judge. Even he also suggested to issue final show-cause-notice to the Respondents. The dual role played by the Enquiry Officer

prejudice to the Complainant. Enquiry Officer acted and conducted enquiry in a bias mind. The enquiry conducted against the Complainant is not proper and legal.

16. When inquiry conducted against Complainant is held to be not fair, findings drawn by person playing dual role of prosecutor and judge, cannot be said to be reasonable. Even charge-sheet issued to the Complainant is vague. It is obscure and vague. Enquiry Officer not appreciated the evidence in proper manner. He ignored admissions given by the witnesses. The enquiry conducted against Complainant is not proper and legal. Findings recorded by the Enquiry Officer are perverse and without there being any evidence. Therefore, Issue Nos. 2 and 3 are answered accordingly and following order is passed:

: ORDER :

1. The Complainant is covered under the definition of an 'employee' under Section 3(5) of the MRTU & PULP Act and 'workman' as per Section 2(s) of the I.D. Act.
2. The enquiry conducted against the Complainant is not in consonance with principles of natural justice.
3. The findings recorded by Enquiry Officer are unjust, improper and perverse.

Kolhapur
Date :-04/08/2025

(K. B. Kamgauda)
Judge,
Labour Court No. II, Kolhapur

Argued on :- 28/07/2025
Judgment Dictated on :- 04/08/2025
Judgment transcribed on :- 04/08/2025
Judgment checked & signed on :- 05/08/2025