



Received on :- 23.12.2019  
Registered on :- 23.12.2019  
Decided on :- 24.12.2019  
Duration :- 01D.

**IN THE COURT OF LABOUR COURT NO. II, KOLHAPUR**

**AT - KOLHAPUR**

*(Presided over by – A. G. Behere)*

**Comp.(ULP)No.94/2019**

**CNR No. MHLCO90004252019**

Ajit Vilas Patil,  
Age : 34 Years, Occupation : Service,  
R/o. A/p. Titawe, Gari Galli,  
Tal. Radhanagari, Dist. Kolhapur

... Complainant.

V/s.

The Divisional Traffic Officer,  
M.S.R.T.C., Kolhapur Division,  
Kolhapur.

... Respondent.

**APPEARANCES : -**

Mr. S. M. Gaikwad, Ld. Adv. for Complainant.

Mr. V. S. Chavan, Ld. Adv. for Respondent.

**: ORDER BELOW EXH. U-2 :**

(Delivered on this 24<sup>th</sup> day of December 2019)

1. Present application is filed for interim relief under Sec. 30(2) of the MRTU & PULP Act, 1971 to prevent proposed dismissal. Perused application and say. Perused documents on record. Heard Ld. Advocates for both sides.

2. According to complainant, since 1994 he is honestly serving as Driver in respondent corporation. His service record is satisfactory. On 09/10/2017 complainant was on duty on bus bearing registration no. MH-06/S-9522 on Barshi – Malwan route. When his bus passed Kuchi village, one motorcycle bearing no. MH-10/C-2255 overtook his bus in very high speed and slipped in front of the bus as one dog suddenly came before motorcycle and as the motorcyclist lost his control over the same. Since he was on highway complainant could not move his bus and therefore he had to apply sudden break. However, mis-fortunately break not worked properly and consequently his bus went on stomach of pillion rider of motorcycle causing his death and on leg of motorcyclist. The complainant is not at all responsible for the same and was not driving his vehicle rashly or negligently. Accident was reported to the police. Subsequently, complainant was served with charge sheet dt. 09/12/2017 alleging misconduct under clause 11,15, 22 and 39 of the D & A Procedure applicable to respondent corporation. Reporter without carrying out self investigation had merely relied on police papers, which are not at all proved in enquiry. The enquiry conducted by respondent corporation is not legal and proper. It is conducted in violation of principles of natural justice. In the enquiry proceeding the authority has played dual role of prosecutor as well as of judge. The respondent corporation has not examined any independent witness. So also witnesses were firstly examined by enquiry officer by taking examination-in-chief and then complainant was permitted to cross-examine. The procedure adopted by enquiry officer is against the provisions of D & A procedure applicable to respondent corporation and is against the principles of natural justice. In spite of any evidence, complainant is held guilty of committing misconduct. Finally, he was served with show cause notice of dismissal dt. 16/12/2019. Therefore, complainant is constrained to file present application for interim relief.

3. The respondent corporation on the date of filing of complaint itself appeared, submitted its say at Exh. C-3 and have denied all the contentions of complainant. According to it, said accident had taken place as complainant was having no control on speed of the bus. He was and is solely responsible for said accident. Enquiry proceeding conducted against complainant was in accordance with principles of natural justice. Complainant was given fair opportunity to defend himself. 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. Therefore, it has prayed for rejection of application.

4. In view of rival pleadings, following points arise for determination, my findings thereon are as follows :

<u>S.N.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether complainant has made out prima facie case in his favour ?	No.
2)	Whether complainant proves that balance of convenience lies in his favour ?	No.
3)	Whether complainant proves that he will suffer irreparable loss, if no interim relief granted to him ?	No.
4)	What order?	Application is dismissed.

**REASONS :-**

**AS TO POINT NO. 1 TO 4 :-**

5. Admittedly, complainant is working in respondent corporation as Driver since 1994. Admittedly, on 09/10/2017 complainant was on duty on bus bearing registration no. MH-06/S-

9522 on Barshi – Malwan route, when his bus passed Kuchi village, because of lost of control one motorcycle bearing no. MH-10/C-2255 slipped in front of the bus as one dog suddenly came before motorcycle, complainant applied break but could not stop bus and consequently his bus went on stomach of pillion rider of motorcycle causing his death and on leg of motorcyclist. According to complainant, said mishap had taken place only due to misfortune and he is not at all responsible for the same. On the contrary according to respondent, complainant is solely responsible for said accident.

6. The grant or refusal to grant interim relief is covered by three well established principles viz. 1) whether complainant has made out prima facie case; 2) whether complainant would suffer irreparable injury in the absence of interim relief; and 3) whether balance of convenience lies in his favour. The burden to prove these three necessities lies on the person seeking interim relief. The court has to see whether the claim is bonafide and whether there is a fair and substantial question to be tried. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. All that the court has to see is that on the face of it the person applying for an interim relief has a case which needs consideration and which is not bound to fail by virtue of some apparent defects. In arriving at the balance of convenience, the court has to weigh the mischief likely to be caused to the applicant, if the interim relief is refused. At the same time, it has also to compare the injury likely to be caused to the other side, if the interim relief is granted. So also the court has also to consider as to whether grant or refusal to grant interim relief will cause any irreparable injury to party to the proceeding. The injury means a legal injury.

7. Complainant has alleged that respondent corporation has engaged in unfair labour practice and therefore, he is seeking interim relief. Therefore, it is incumbent on the part of complainant to made out some kind of unfair labour practice adopted by respondent corporation. According to complainant, the enquiry conducted by the respondent corporation is not legal and proper and it is conducted in violation of principles of natural justice. To explain the same complainant has further contended that authority has played dual role of judge and prosecutor. Admittedly, reporting officer himself cannot act as an enquiry officer as no person can be a judge of his own case. However, from the perusal of documents produced on record by both sides it is clear that Shri. D. S. Ghatage, the depot manager of Kavathe Mahankal Depot is the reporting officer and the Sindhudurg Regional Transport Officer is the enquiry officer. Therefore, it cannot be said that respondent corporation has played dual role and thereby has caused miscarriage of justice. Therefore, ratio laid down in Hon'ble Supreme Court Appeal (Civil) 18 of 2007 – Cantonment Executive Officer & Anr. V/s Vijay D. Wani & Ors. decided on 16/04/2008 is not applicable to the facts of present complaint.

8. It is the further contention of complainant that in the absence of any provision in D & A procedure, enquiry officer has taken cross-examination of complainant and firstly examined complainant's witnesses by taking examination-in-chief and then permitted complainant to cross-examine his own witnesses. However, from the perusal of entire enquiry proceeding produced by respondent corporation it is clear that evidence of all the witnesses is recorded in question and answer form. From the perusal of statement of complainant it is clear that enquiry officer has asked him questions regarding and incidental to alleged accident and had given fullest opportunity to complainant to answer those questions. Therefore, it cannot be said that enquiry officer has cross-examined complainant. So

also from the perusal of statements of defence witnesses produced by complainant, it is clear that in the form of examination-in-chief, enquiry officer has asked him following introductory questions :-

- 1) आपले नाव काय? पत्ता, शिक्षण व व्यवसाय याबाबत माहिती सांगा.
- 2) आपण ओळखीदाखल आपला दस्तऐवज सादर करू शकाल काय?
- 3) आपण आज या कार्यालयामध्ये उपस्थित राहण्याचे प्रयोजन काय?
- 4) आपण साक्ष कशासंदर्भात देणार आहात?

In answer to question no. 4, complainant's witness has deposed in detail whatever he wanted to tell. Thereafter, again by way of cross-examination complainant has asked leading questions so as to emphasis his defence. In such circumstances it cannot be said that due to same any miscarriage of justice has taken place. Ld. Advocate for complainant has placed reliance on citation reported in (2005) 1 LLJ 931 MP – Union of India V/s Mohd. Naseem Siddiqui, in which itself it is held that the enquiry officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. Therefore, it cannot be said that inquiry officer has adopted any illegal procedure by examining reporting officer, complainant and defence witnesses.

9. 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 material which are logically probative for a prudent mind are permissible. Therefore, examination of passengers, injured, police officers etc. is not compulsory during enquiry. From the perusal of record it is clear that complainant had received copy of chargesheet and documents, he had engaged defence representative of his choice,

charges leveled against him are specific and to the point, he was allowed to submit his written statement. So also full opportunity was given to complainant to examine defence witnesses. Prima facie it appears that respondent corporation has conducted full fledged enquiry and had given fair opportunity to complainant. No undue haste on the part of respondent corporation is alleged and proved by the complainant. In such circumstances complainant has failed to prove any illegality and perversity.

10. It is the contention of the respondent corporation that complainant has failed to take utmost care to control the speed of the bus and to keep safe distance and thereby resulting into accident. He is held guilty for the same. According to the complainant, he is innocent and actually the motorcyclist was responsible for said mishap. Accordingly the complainant has denied the accusation leveled against him. On careful prima facie scrutiny of the record it is clear that said accident had taken place on crowded highway, on the spot of incident there was 61 feet long break mark of bus driven by complainant. Admittedly, bus being driven by complainant went on stomach of pillion rider of motorcycle causing his death and on leg of motorcyclist. Considering these facts it appears probable that the bus must had been running in high speed so as to be out of control of complainant. No doubt, driving rashly and negligently is one of the major misconduct. Complainant has filed copy of judgment to show that in criminal case instituted against him he is acquitted. However, as stated in 2005 I CLR 172 – General Manager, Swadeshi Cotton Mills V/s Presiding Officer, the law is well settled that both departmental proceedings and criminal proceedings are two independent parallel proceedings which could be initiated against an erring employee and neither of the decisions would be binding on the other. The acquittal of the accused in criminal proceedings is based on the view that the charges were not proved beyond reasonable doubt. Since the standard of proof required

to prove a charge of misconduct in departmental inquiry is not the same as that required to prove a criminal charge, the acquittal of the accused in the criminal case could not be made the basis for setting aside the conclusion of departmental enquiry.

11. From the perusal of enquiry proceeding it is clear that reporting officer has personally visited the spot of accident and has inspected the spot. Therefore, the report and evidence of reporting officer appears to be sufficient to prove the guilt of complainant. The reporting officer has not merely relied upon police papers. Therefore, ratio laid down in Hon'ble Madras High Court Writ Petition No. 17902 of 2009 – G.R. Swamy V/s The Presiding Officer & Ors. decided on 13/03/2012 will not be helpful to the complainant in present complaint.

12. The complainant has prayed for interim relief for restraining respondent from terminating his services and for allowing him to join duty till final adjudication of the complaint. Admittedly, respondent has suspended service of the complainant. In this background, the interim reliefs claimed by the complainant are having effect of final reliefs and it is settled legal position that court should not grant interim relief which amounts to final relief. Complainant has failed to made out any exceptional or special circumstance under which said general rule can be departed from.

13. The purpose and object of MRTU & PULP Act is to define and provide for prevention of unfair labour practices as contemplated in Sch. II, III & IV of the Act. The Act further empowers the Industrial as well as Labour Court to adjudicate upon such complaint accusing unfair labour practices and if proved then to issue certain prohibitory directions against the concern employer. In the present complaint complainant has prima facie failed to prove any unfair labour practice

on the part of respondent corporation. It is not the case of victimization. It is not the contention of complainant that the respondent has applied colourable exercise of employer's right. Even it is not asserted by the complainant that he is falsely implicated in any misconduct. Therefore, prima facie none of the ingredients of unfair labour practices are proved against the respondent and therefore complainant is not entitled to any equitable interim relief. Therefore, following order is passed :-

**ORDER**

Application Exh. U-2 is dismissed.

Kolhapur.

Date :- 24.12.2019

( A. G. Behere )

Judge,

Labour Court No. II Kolhapur.

Argued on :- 23.12.2019

Judgment Dictated on :- 24.12.2019

Judgment transcribed on :- 24.12.2019

Judgment checked & signed on :- 24.12.2019