



Received on :- 23.12.2019
Registered on :- 23.12.2019
Decided on :- 08.08.2022
Duration :- 02Y. 07 M. 16D.

THE COURT OF LABOUR COURT NO. II, KOLHAPUR

AT - KOLHAPUR

(Presided over by – Archana G. Behere)

(JO Code – MH-1873)

Complaint (ULP) No. 94/2019

CNR NO. MHLC090004252019

Exh. No. O -

Ajit Vilas Patil

Age : 34 Years, Occupation : Service,

R/o. A/p. Titawe, Gari Galli,

Tal. Radhanagari, Dist. Kolhapur

... Complainant

Versus

The Divisional Traffic Officer,

M.S.R.T.C., Kolhapur Division,

Kolhapur.

... Respondent.

APPEARANCES : -

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

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

: JUDGMENT – PART I :

(Delivered on this 08th day of August, 2022)

1. Being aggrieved with show cause notice of termination dated 16/12/2019, 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").

2. According to complainant, since 1994 he is honestly serving as Driver in respondent corporation. His service record is satisfactory, clean and unblemished. 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 overtake 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 to side and therefore he had to apply sudden break. However, unfortunately 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. Even then, 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. The report of inquiry officer is based upon presumption, surmises and conjectures. Without there being any evidence

to prove charges levelled against complainant, inquiry officer has wrongly recorded his findings. Alleged inquiry is illegal and findings drawn by enquiry officer are perverse and even then respondent has issued show cause notice of termination. Thus, respondent has indulged into unfair labour practices. Therefore, complainant is constrained to file present complaint.

3. The respondent corporation submitted its written statement at Exh. C-8 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 through co-employee of his choice. Opportunity to cross-examine witness was given to complainant. 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. On the contrary respondent has not committed any unfair labour practice. Therefore, it has prayed for rejection of application.

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

<u>SR. NO.</u>	<u>ISSUES</u>	<u>FINDINGS</u>
(1)	Whether enquiry conducted against complainant is in utter disregard of principles of natural justice ?	No
(2)	Whether findings of enquiry officer are perverse ?	No

-: REASONS :-

AS TO ISSUE NOS. 1 & 2 :-

5. 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 inquiry officer must be an independent person and
- ix) the enquiry officer must record his findings, alongwith reasons, on some evidence.

6. 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.

7. On this backdrop of settled legal propositions, facts of present matter must be scrutinised. Admittedly, complainant was served with chargesheet dated 09/12/2017 alleging rash and negligent driving of bus and thereby causing death of pillion rider of motorcycle and causing injury to motorcyclist. Admittedly, complainant has given his reply/explanation thereto on 13/12/2017. Thus, it is clear that complainant had received copy of charge sheet and he was given opportunity to submit his reply thereto.

8. The purpose of chargesheet is to notify a person of charges levelled against him. The issuance of chargesheet acts as the official commencement of departmental proceeding. It is settled law that, the rules of natural justice are not embodied rules and it is sufficient if the delinquent employee knew the nature of accusations and he was given opportunity to state his case.

9. It is not the contention of complainant that due to vagueness, he was unable to understand charges levelled against him and therefore, could not have given proper reply. From the perusal of inquiry proceeding it is clear that charges levelled against complainant are specific and to the point. Complainant was and is fully aware that he is chargesheeted for the accident that had taken place on 09/10/2017. The same is evident from the reply given by complainant to chargesheet and from the contents of present complaint. Thus, chargesheet issued against complainant is not obscure.

10. The authority of respondent issuing chargesheet is not at all challenged by the complainant. It is not the case of complainant that respondent was having no authority to issue chargesheet against him. Hence, question of raising any doubt upon the authority of employer does not arise.

11. From the perusal of inquiry proceeding it is clear that on 09/12/2017 chargesheet was served on complainant. Complainant was asked to remain present in inquiry proceeding alongwith his representative. Accordingly, complainant has appointed his co-employee Dilip Patil as representative of his choice. From the same it is clear that, complainant was given opportunity to defend himself through the person of his own choice. During inquiry respondent has examined one witness namely D. S. Ghatge, who admittedly was a reporting officer. Complainant was given fullest opportunity to cross-examine respondent's witness and to lead defence evidence. From the perusal of inquiry proceeding it is clear that entire inquiry proceeding was conducted in the presence of complainant and his defence representative.

12. From the perusal of inquiry proceeding it is clear that on 27/12/2017 evidence of reporting officer was recorded. The reporting officer has clearly stated as to how said accident had taken place and how complainant is solely responsible for said mishap. So also he has referred to the report submitted by him. Thereafter, inquiry officer has asked him some explanatory questions regarding the contents of his report. Thereafter, complainant was allowed to cross-examine said reporting officer. On next date i.e. on 28/12/2017 complainant has examined one witness namely, Aniket Bodhale and thereafter, statement of complainant was recorded. From the perusal of questions asked by inquiry officer to reporting officer, complainant and complainant's witness, it is clear that those were introductory in nature and were seeking explanation of facts alleged against complainant. Since then till filing of present complaint on 23/12/2019, complainant has not raised any objection regarding the manner in which inquiry officer has conducted the inquiry. Neither before respondent corporation nor before any other authority, complainant has made any

complaint regarding the questions asked by inquiry officer to witnesses of both sides. So also in present complaint, complainant has not specified as to what prejudice is caused to him due to said questions asked by inquiry officer. Therefore, merely because inquiry officer had asked some questions to witnesses, it cannot be said that he has acted as prosecutor cum judge. In such circumstances contentions of complainant that inquiry officer asked leading questions by using pressure etc. appears to be afterthought, cool calculated and therefore, appears to be not inspiring confidence.

13. Besides vague contention that inquiry officer has acted as prosecutor cum judge, complainant has not raised any objection regarding independentness of inquiry officer. From the above discussion it is clear that, such type of vague and unsupported objection raised for the first time in complaint appears to be not reliable. Therefore, allegation of complainant regarding biased approach of inquiry officer appears to be not true. Thus, complainant has failed to impeach the impartiality of inquiry officer. In *Union of India v. Mohd. Naseem Siddiqui – (2005) ILLJ 931 MP*, relied upon by Ld. Advocate for complainant, following principles are summarised :-

“ 16. We may summarize the principles thus :

- (i) The Inquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor.
- (ii) It is not necessary for the Disciplinary Authority to appoint a Presenting Officer in each and every inquiry. Non-appointment of a Presenting Officer, by itself will not vitiate the inquiry.
- (iii) The Inquiry 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. In the absence of a Presenting Officer, if the Inquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.

- (iv) If the Inquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case employee, the Inquiry Officer acts as prosecutor thereby vitiating the inquiry.
- (v) As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognised that the Inquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Inquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry.”

14. Applying said principles to the facts of present complaint, if we peruse the inquiry proceeding, it will be clear that in departmental inquiry conducted against complainant, respondent corporation has not appointed representing officer and therefore, inquiry officer had to ask some questions to witnesses of both sides. All the questions asked by inquiry officer appears to be of permitted character given in above quoted principles.

15. From the above discussion it is clear that, opportunity to cross-examine respondent's witness was given to complainant. So also opportunity to lead defence evidence to substantiate his defence was also given to complainant. Accordingly, complainant has examined one witness and himself in inquiry proceeding. Thus, it is clear that, after giving fullest opportunity to both sides, inquiry is conducted on merit. Thus, it can be gathered that the delinquent employee i.e. complainant was given fair opportunity to participate in the enquiry proceeding and entire inquiry proceeding was conducted in his presence and before the representative of complainant.

16. Admittedly, inquiry proceeding is concluded in two sittings i.e. on 27/12/2017 and 28/12/2017 and thereafter, complainant is served with

show cause notice of dismissal dated 16/12/2019. Even then for the first time on 23/12/2019 by filing present complaint, complainant has contended that inquiry was conducted illegally and without following principles of natural justice. If complainant was having any objection or was considering himself aggrieved by manner in which inquiry was conducted and concluded, he could have raised prompt objection thereto. However, since 27/12/2017 till filing of present complaint, complainant has not raised any objection as to manner in which inquiry was conducted and concluded. Thus, complainant has failed to made out as to how his defence was prejudiced.

17. Further it is the contention of complainant that all documents relied upon by the respondent were not given to him. However, from the perusal of inquiry proceeding it is clear that, during inquiry complainant has not raised any such objection before inquiry officer. Even since commencement of inquiry till filing of present complaint, complainant has not raised such objection either before inquiry officer or before respondent. Therefore, objection regarding non supply of documents, raised for the first time in present complaint, appears to be not reliable. From all the above discussion it is clear that, all the above legal formalities are fairly and duly complied in its true sense during inquiry proceeding. Therefore, it can be concluded that inquiry conducted against complainant is legal and is conducted by following principles of natural justice.

18. There is no dispute that, on 09/10/2017 complainant was on duty on bus bearing registration no. MH-06/S-9522 on Barshi – Malwan route. Admittedly, when his bus passed Kuchi village, one motorcycle bearing no. MH-10/C-2255 slipped in front of the bus as one dog suddenly came before motorcycle and as the motorcyclist lost his control over the same. Admittedly, complainant applied sudden break, however his bus went

on stomach of pillion rider of motorcycle causing his death and on leg of motorcyclist. According to complainant, he is not at all responsible for the said accident and he was not driving his vehicle rashly or negligently. On the contrary according to respondent, said accident had taken place as complainant failed to keep safe distance between two vehicles and failed to control his vehicle.

19. To prove alleged misconduct of complainant, respondent corporation has examined the reporting officer. The reporting officer has categorically stated that the accident dt. 09/10/2017 had taken place as the complainant has failed to keep safe distance between two vehicles and has failed to control the speed of his bus. His deposition is duly corroborated by his report submitted on the same day. From the perusal of inquiry proceeding it is clear that complainant though have cross-examined said reporting officer, has failed to impeach the credibility of his testimony and report submitted by him. During his cross-examination questions regarding admitted factual condition are asked. In such circumstances, merely because reporting officer has admitted that the speed of the bus in dispute was locked at 60 k.m. and none of the passengers travelling in said bus were injured, it cannot be said that complainant was not driving rashly or negligently. It is settled legal position that speed of the vehicle is not the only criteria for deciding rashness or negligence on the part of driver of the vehicle.

20. It must be noted that in his reply dt. 13/12/2017 given to chargesheet, complainant has merely denied the charges levelled against him and has not given any explanation regarding allegations made against him nor has raised any specific defence. For the first time, complainant's witness Aniket Bodhale has stated in his deposition that, complainant applied the break, but bus slipped and further mishap took place. During his

statement before inquiry officer, for the first time complainant has stated that when he applied break, only one side break worked and therefore, bus slipped. However, it must be noted that since accident upto the recording of evidence before inquiry officer, complainant has not brought to the notice of respondent corporation that said accident had taken place as the breaks of said bus did not work properly or that breaks of said bus are not working properly. It is not even contention of complainant that at any time prior to said accident he had noticed some defect in application of break. During cross-examination of reporting officer also not a single question was asked regarding said defect in break application.

21. During his statement before inquiry officer, complainant has stated that he was looking that motorcycle from the distance of 25 to 30 feet and on the spot of accident there was 61 feet long breakmark of bus wheel. From the same it is crystal clear that motorcycle riders did not fall in immediate front of bus driven by complainant and inspite of 61 feet long skid bus went on the motorcycle riders. This fact itself is sufficient to prove rash and negligent driving on the part of complainant.

22. From the perusal of inquiry reports as well as inquiry proceedings it is clear that inquiry officer has duly considered the rival contentions of both sides, the oral as well as documentary evidence on record. Charges levelled against complainant are duly corroborated by oral as well as documentary evidence produced on record by both sides. Inquiry officer has perused evidence thoroughly and thereafter, had given detailed reasoning before coming to the conclusion of complainant's guilt. Inquiry officer could not find out any reason to disbelieve evidence produced by respondent and comes to the conclusion that complainant is guilty of misconducts charged against him. In such circumstances it cannot be said that inquiry officer has not applied his mind while appreciating evidence.

Therefore, there appears no infirmity with the appreciation of evidence done by the inquiry officer.

23. Therefore, approach of the inquiry officer appears not to be unreasonable or perverse. The findings are based on sufficient evidence on record. In service law, the standard of proof is not proving anything beyond reasonable doubt but the findings of enquiry proceeding must be based upon preponderance of probabilities and strict rules of law of evidence are not applicable. In evidence, there may be either no evidence or there is some evidence. If earlier is prevailed then certainly entire course of enquiry gets vitiated, however, if later is followed it cannot be construed that the findings are utmost perverse. From above discussion it is clear that in present matter there is enough evidence to prove misconducts alleged against complainant. Aforesaid evidence is acceptable and it is not the position that there is no evidence at all against the complainant. In the event, it is not open for this court to doubt evidence which is acceptable on the preponderance of probabilities. Ultimately, there was some evidence available to enquiry officer to raise the probabilities and render his findings against the complainant. It cannot be said that the enquiry officer had misdirected himself while assessing the evidence and other material before him. It is settled position of law that judicial authority cannot sit in appeal over the findings recorded by the enquiry officer. If the findings recorded by the enquiry officer are such which would be drawn by a man of ordinary prudence, such findings are not to be interfered by the judicial authority.

24. As discussed above, during departmental inquiry against complainant, respondent has examined the reporting officer who has prepared the report of said accident on the same day. It is not the contention of complainant that reporting officer has prepared his report relying upon police papers only. Therefore, reliance placed by Ld. Advocate

for complainant on *G. R. Swamy v. The Presiding Officer & anr. - Writ Petition No. 17902 of 2009 decided by Hon'ble Madras High Court on 13/03/2012* appears to be misplaced and not helpful to present complainant. In the case before Hon'ble Madras High Court, no witness was examined, the management witnesses merely tendered the documents and did not prove the contents thereof and inquiry officer has placed reliance on the FIR which could not have been treated as evidence. Such is not the factual condition in the matter before this court. Therefore, ratio laid down by Hon'ble Madras High Court is not applicable to the facts of present complaint.

25. It is settled proposition of law that, in cases of dismissal on misconduct, the Tribunal does not, however, act as a Court of Appeal and substitute its own judgment for that of the management. It will interfere (i) when there is a want of good faith, (ii) when there is victimisation or unfair labour practice, (iii) when the management has been guilty of a basic error or violation of a principle of natural justice and (iv) when on the materials the findings is completely baseless or perverse. In present matter, there appears no such extraordinary reason to interfere with the findings recorded by the enquiry officer as they do not exhibit any perversity or impropriety. Findings of enquiry officer are based upon sound evidence and justifiable grounds.

26. From the above discussion it is eminent that all the objections raised by the complainant regarding the legality of inquiry and findings of inquiry officer are the outcome of afterthought and cool calculation. From the perusal of inquiry report it is evident that the enquiry officer has considered all evidence in complete perspective. The evidence is reasonably assessed and thereafter the enquiry officer has substantiated the findings. The enquiry officer was within his empowerment. Ultimately, it reveals that

findings are not perverse. Therefore, issue nos. 1 and 2 are answered accordingly and following order is passed :-

: ORDER :

1. The enquiry conducted against the complainant is in consonance with principles of natural justice and is legal.
2. The findings recorded by enquiry officer are just and proper without there being any perversity.

Kolhapur

Date :- 08.08.2022

(A. G. Behere)

Judge,

Labour Court No. II, Kolhapur

Argued on :- 25.07.2022

Judgment Dictated on :- 08.08.2022

Judgment transcribed on :- 08.08.2022

Judgment checked & signed on :- 08.08.2022