

BEFORE THE JUDGE, FIRST LABOUR COURT, PUNE.

(Presided over by - Kalpana N. Phatangare)

CNR - MHLC 12 - 002081-2015.

Complaint (ULP) No.:- 25/2017.

Mr. Ashok Bhaskar Makasare,)

R/o.:-House No.:- 235, Datta Society,))

Near Mathesul Hospital,)

Wadgaon Sheri, Pune - 411 014.)..... Complainant

Versus

Pune Mahanagar Transport)

Corporation Ltd.,)

C/o.:- Additional Managing Director,)..... Respondent

Appearances :- Adv. Mr. S. B. Magar for the complainant,

Adv. Mr. S. B. Malegaonkar for the respondent.

ORDER BELOW EXH.:-U-2.

(Passed on this 18th January 2018)

1) The present application is filed for temporary reinstatement in service due to alleged termination of complainant dated 03.04.2013, till final disposal of the main complaint.

2) Brief facts of the application are as under :-

The complainant is in service of respondent from 31.03.2008 as a 'Driver' on contract basis. The other drivers working with complainant are getting salary as per pay band of Rs. 5200 - 20200 on temporary basis. No service conditions were mentioned in his appointment letter.

3) It is submitted that due to ill health complainant was absent. He resumed duty on 18 and 19.03.2013. From 20.03.2013 by giving prior intimation, he informed his seniors that as he is suffering from piles

he cannot attend the duties. Complainant has taken treatment for the same at Shri. Datta Hospital of Dr. Mathesul. This doctor advised complainant to take rest of 18 days. But prior to that on 03.04.2013 his services came to be terminated by respondent. Complainant is terminated as per Section 29 (5) of Model Standing Orders Section 75 (5) of Service Rules. Respondent has used Rules of other as it is not having its own Rules which is illegal.

4) It is submitted that complainant was not given any opportunity of hearing. He was terminated illegally and without giving him any opportunity. Complainant was fit to resume duties on 09.04.2013 as per Certificate of Dr. Mathesul. He was ready to submit the same but officers of respondent denied to accept the same and assured that he will be taken in service afterwards. But till date he was not taken in service. Complainant was ill treated and other drivers were taken back in service pending complaints. Some co-workers were given the opportunity by conducting enquiry which was not offered to complainant. If complainant is allowed to work no loss will be caused to respondent but if he is not allowed to work great prejudice will be caused to him. Further if respondent is not ready to allow to resume his duties, then respondent may be directed to deposit the monthly salary in the Court. Hence, the application.

5) The respondent Corporation appeared and resisted the application by filing 'say' vide Exh.:-C-1. Respondent denied contentions of complainant of alleged unfair labour practice of Schedule IV of the M. R. T. U. & P. U. L. P. Act, 1971. It further submitted that it never indulged in any sort of unfair labour practices.

6) It is submitted that even if it is assumed for the sake of arguments that it is an industry within meaning of Section 2 (j) of The Industrial Disputes Act, the provisions of the MRTU & PULP Act, do not mechanically apply to the respondent institute only on the ground that it is purportedly taken as an industry under the I. D. Act. The definition of 'industry' can not mechanically imported in The MRTU & PULP Act, 1971. Therefore, present complaint is not maintainable in law. The subu Item of Item 1 (a), (b), (c), (d), (f), (g) of Schedule IV do not attract. It is submitted that complaint does not amount to discharge / dismissal even within meaning of Schedule IV. Therefore, complaint is not maintainable in law.

7) It is admitted that complainant was working as driver on contract basis since 31.03.2008. It is submitted that complainant was absent without permission of authorized person from 05.03.2013 to 15.03.2013 and also he was absent from 20.03.2013 to till date. The complainant was habitual of neglect of work of gross or habitual negligence and thereby the concern authorities were charge sheeted for the same on 03.04.2013. Concerned Authority given letter to complainant on 16.03.2013 regarding charges leveled on him. It is denied that complainant had given his reply to charge sheet. It is submitted that complainant has submitted fake medical certificate as he had changed the date on certificate.

8) It is submitted that financial loss has been caused to respondent. It is further submitted that on the basis of charge sheet complainant was given opportunity to defend himself in the proceeding. It is submitted that naturally onus was lying upon respondent to prove the charges against him and complainant was terminated on 03.04.2013.

It is submitted that complainant has performed absolutely blemished service, he had worst service record, therefore, to maintain official decorum and institutional harmony, respondent was constrained to issue charge sheet to the complainant. Therefore, it is submitted that application may be rejected.

9) Considering facts put forth by both parties, following points arise for determination. Those points along with their findings and reasons thereto are as follows :-

<u>POINTS</u>	<u>FINDINGS</u>
1) Whether complainant proves <i>prima-facie</i> case in his favour ?	... Yes.
2) Whether complainant will suffer irreparable loss if the present application is rejected ?	... Yes.
3) Whether balance of convenience tilts in favour of complainant ?	... Yes.
4) Whether the applicant is entitled for interim relief as claimed ?	... Yes.
5) What Order ?	Application Exh.:-U-2 is allowed.

REASONS

AS TO POINT NOS. 1 TO 5 :-

10) All the issues are discussed together as those are interlinked and depending upon each other. It is case of the complainant that he was working as driver on contract basis with respondent. The charges levelled against him are that he was absent without prior permission or intimation.

11) It is argued by Ld. Advocate for respondent that complaint is not maintainable. Complainant was working on contract basis. This fact is admitted in his own complaint in para (1) of complaint. The period of contract was over. Further if the period of contract was over then now how he can take him back in service. It is not made clear that complainant was came through contractor or how. The appointment of complainant is temporary and time being. It is submitted that instead of coming when contract was subsisting, complainant has come after the period of contract was over. Now how the interim relief application can be granted.

12) It is submitted that period from 01.04.2008 to 30.09.2008 of contract is over, the interim relief application has got infructuous. At this moment how complainant can be reinstated. It is submitted that as per Section 2 (oo) (bb) (c) as the contract of employment was not renewed, complainant cannot be allowed to get back in service. Hence, application be rejected.

13) Ld. Advocate for complainant Mr. Magar has argued that complainant was not well hence, he was absent from duty. It is submitted that complainant was directly terminated as per Standing Orders. Thus, the respondent treated complainant as a permanent employee. It is submitted that the respondent is taking stands as per their convenience. Such as when required help of Standing Orders is taken and sometimes directly termination takes place as per Section 2 (oo) (bb) (c) of The I. D. Act, 1947. Thus, the intention of respondent is not bonafide.

14) It is submitted that complainant is in service since 31.03.2008 till termination of his service dated 03.04.2013. Some co-employees of complainant are made permanent as per seniority.

Complainant has submitted his medical certificate in support of his contention. Whereas in termination order it is mentioned that the medical certificate is filed belatedly. Further it is submitted that if the complainant was unauthorizedly absent from duties from 20.03.2013, why he was not served with any memo or warning.

15) It is submitted that in termination order complainant was alleged as 'Habitual' in absenteeism. No evidence in that regard is produced on record by respondent. If complainant is habit of remaining absent from duties unauthorizedly, then, why no enquiry was conducted against him. Back record of complainant was also taken into consideration without giving opportunity of hearing to him. No resolution was passed or no notice was issued to complainant while issuing termination order. Termination order is issued as per Standing Orders which are applicable only to permanent employees of respondent, then why complainant is issued termination order as per Standing Orders when complainant is not permanent employee and alleged to be driver on contract basis.

16) It is submitted thus, when the complainant is not permanent then what it shows that he is terminated as per Standing Orders. Further how any employee can be directly terminated without conducting enquiry by issuing charge sheet for the charges committed by any delinquent. Therefore, if there is no enquiry is conducted, the law can not be used as per convenience. The respondent cannot make illegal termination of complainant using law as per their convenience.

17) In view of abovesaid discussions, it is clear that complainant was given termination letter as per Standing Orders. The Standing Orders are applicable to the permanent employees. Therefore, now respondent cannot turn back saying that complainant was temporary

employee and as the contract was over he cannot be taken back in service as per Section 2 (oo) (bb) (c) of The I. D. Act, 1947. Further respondent has not conducted enquiry or complainant was not given opportunity of hearing. Therefore, the absenteeism even if admitted, complainant has submitted medical certificate which is showing that he was suffering from piles. Therefore, complainant proves that he has strong *prima-facie* case in his favour.

18) Complainant proves that he has strong *prima-facie* case. Therefore, his termination is illegal *prima-facie*. Though he is not in service, he has made out strong *prima-facie* case in his favour, therefore, he should be allowed to resume his duties temporarily till the final decision of the main complaint. Further complainant will suffer irreparable loss if the present application is rejected. In view of this position, balance of convenience tilts in favour of complainant. Therefore, it is desirable to allow complainant to resume duties temporarily, till final disposal of the main complaint. Accordingly, answers to point Nos. 1 to 4 are in affirmative and in the result in answer to point No. 5 following order is passed :

ORDER

- 1) The application for interim relief Exh.:-U-2 is allowed.
- 2) The respondent is hereby directed to allow complainant to resume duties temporarily, till final disposal of the main complaint.
- 3) The effect and operation of this order will take one month after the date of present order.
- 4) No order as to cost.

DATE :- 18 .01.2018.

PUNE.
MIM

....sd/-
(Kalpana N. Phatangare)
Judge,
First Labour Court, Pune.