

**BEFORE A.A. VYAS, JUDGE,
LABOUR COURT, SOLAPUR.**

COMPLAINT (ULP) NO.47 OF 2023

CNR NO : MHLC13-000142-2023

Smt. Sangita Suryabhan Ghadge,
Age. 48 Years, Occu. Service,
R/o. 44, Vitthal Nagar, Jamgaon Road,
Tq.Barshi, Dist. Solapur.

... Complainant.

Versus

1. Depot Manager (Sr.)
M.S.R.T.C., Barshi, Dist. Solapur.

2. Divisional Controller
M.S.R.T.C., Budhwar Peth, Solapur.

... Respondents.

Appearances : Advocate V.R. Deshpande for Complainant.
Advocate R.V. Damle for Respondents.

ORDER BELOW EXH.U-2

(Passed on 11th October 2023)

This is an application filed by complainant U/s. 30 (2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (*hereinafter called as "the Act"*) and sought to stay the effect and operation of show cause notice of dismissal.

2. Complainant has filed present complaint against the show cause notice of dismissal dated 08.08.2023. Complainant is working as Conductor with respondent from May-2005 at Barshi Depot. It is submitted that respondents have falsely levelled incorrect and baseless charges against her by chargesheet on 23.05.2023 and her services came to be suspended. It is alleged that false allegations of indiscipline and absenteeism for 84 days has been levelled against complainant. The enquiry was conducted against the principles of natural justice with intention to take action against complainant. Complainant submits that she had undergone with an accident during her service as a conductor in

2018 and received serious injuries. As per complainant, respondents as well as enquiry officer has not considered that her physical condition was not good to work as a conductor due to the medical treatment on account of serious accidental injuries. Complainant submitted that due to the accidental injuries, she is unable to work in standing position as a conductor as required and has been given certificate by treating doctor to that effect. It is further submitted that after the accident she was advised for sitting job and respondents have also allotted such job for some period. It is alleged that without considering her physical condition, she was allotted with duty as a conductor only, apart from giving sitting job and false record of absenteeism has been prepared. As per complainant, the departmental enquiry has not been conducted with principles of natural justice. Complainant submits that her past service record is very good which also was not considered in the enquiry. As per complainant, she has strong prima-facie case, balance of convenience lies in her favour, so also there will be irreparable loss if her services are not protected. Complainant prayed to allow the interim relief application and stay the notice of dismissal.

3. Respondents filed say at Exh.C-4. It is submitted that, complainant remained absent from her duties from 01.03.2023 to 23.05.2023 for 84 days without any leave application or prior information to respondents. It is submitted that respondent is a public establishment and involved in public transportation, hence due to absence of complainant it has received financial loss. As per respondents, the absenteeism of complainant is for many days without intimation which cannot be accepted. Respondents have admitted about receiving accidental injuries by complainant. It is specifically submitted that complainant has been declared fit to work as a conductor and there

is no certificate declaring her unfit for the job. Therefore, complainant has to remain present on her duties as conductor which was not done, in fact she remained absent for several days without leave. As per respondents, she was issued chargesheet and independent enquiry has been conducted wherein she has participated and was given sufficient opportunity. As per respondents, enquiry officer has found sufficient evidence against her regarding charges and hence, charges are held to be proved. Respondents submits that charge of absenteeism is serious because it relate with public transportation, so proposed punishment of dismissal is appropriate. Respondent denied that complainant has prima-facie case, balance lies in her favour and there would be irreparable loss to her if the interim relief application is not granted. Hence, respondents prayed to dismiss the application for interim relief.

4. Upon rival contentions of both parties, following points arise for determination and my findings with reasons are as under;

POINTS	FINDINGS
1) Whether complainant has made out strong prima facie case to grant interim relief ?	: “In affirmative”
2) Whether balance of convenience lies in favour of complainant ?	: “In affirmative”
3) Whether any irreparable loss would be caused to the complainant if interim relief, as prayed for is not granted ?	: “In affirmative”
4) What order ?	: “As per final order”

REASONS

5. Complainant filed documents with list Exh.U-4 & U-13 which are part and parcel of enquiry proceedings and respondents filed copy of enquiry proceeding with list Exh.C-6. Heard ld. Advocates for parties.

As to Points no.1 to 3 :

6. It is argued by advocate for complainant that, she has been issued with chargesheet on 23.05.2023 under false and baseless allegations. Thereafter enquiry was conducted without complying principles of natural justice and enquiry officer arrived at incorrect conclusion. It is submitted that the fact of receiving accidental injuries by complainant while working as a conductor is not disputed. As per complainant, the injuries have affected her spine and she is taking treatment for the injuries till date and doctors have advised to avoid working in running bus as it may affect the injured part. Thereafter, due to her treatment and medical advise not to work as a conductor, she was given sitting job for some period and thereafter, she was asked to work as a conductor which was not possible for her. It is argued that absenteeism of complainant was not intentional but, due to medical reason. It is also submitted that her past record prior to accident is very good which was not considered. As per complainant, the punishment proposed is highly excessive considering the charges. She submits that if interim relief is not granted, she will lose service and it will be irreparable loss. According to her, she has strong prima-facie case, balance of convenience also lies in her favour. Hence, protection from termination of service be granted.

7. On the contrary, it is argued by advocate of respondents that complainant has been allowed to join duties after accident since she was given fitness certificate by the Civil Surgeon. It is submitted that the fitness certificate issued by the Civil Hospital nowhere shows that complainant is unable to work as conductor. As per respondents, after examination the Civil Surgeon has not referred to give complainant any sitting job which means that she is fit to work. It is also submitted that

complainant had not appealed against the certificate issued by the Medical Board which was available to her if she had disputed the certificate. It is also submitted that the certificate issued by private doctor does not show that complainant had taken treatment with those doctors for the injuries. As per respondents, fitness certificate issued by Civil Surgeon, then other certificates issued by private doctor cannot be taken into consideration. It is submitted that considering her medical reason she was given sitting job for some period but, that cannot be done for further period. Respondents submit that complainant is absent till date and this conduct shows that she has no prima-facie case. Due to continuous absenteeism, complainant has no balance of convenience in her favour. The enquiry has been conducted with principles of natural justice and by giving sufficient opportunity. She was given all the documents and was allowed to engage representative. It is submitted that the loss, if any can be compensated if complainant succeed in the litigation. As such complainant is not entitled for relief.

8. Perused pleadings of both parties and documents. It is a fact that complainant is working as conductor with respondent. She was issued with chargesheet under Clauses 10, 22, & 35 of D & A Procedure. It is alleged that complainant was absent for 84 days continuously without permission or leave application. To counter the allegation of absenteeism, complainant contended that she had met with an accident during her service as a conductor wherein, she had received serious injuries to her spine. Therefore, it was not possible for her to appear and work as a conductor in moving bus. It is her contention that she has advised by her treating doctor that if she continued to work as a conductor there is possibility that her physical condition would get deteriorated and the effect of injuries may increase. As per complainant,

she may be given any other sitting job which is equivalent to job of bus conductor due to medical reason.

9. According to her contention, the enquiry papers including chargesheet and other documents are perused. Though issues in respect of fairness of enquiry and perversity of findings are yet to be decided, but without looking into the enquiry proceedings, the application for interim relief cannot be decided. The charge levelled against complainant is in respect of absenteeism without intimation or permission. According to the charge, respondent has produced documentary record alongwith oral evidence in the enquiry which is attendance card of complainant. Considering these aspects, it can be said that there is absenteeism of complainant for the alleged period and apparently, it can be said that the period of absenteeism is not disputed by complainant. So far as enquiry proceedings are concerned, it is seen that complainant has been given opportunity to defend the charges in enquiry. Contention in respect of non compliance of required procedure and principles of natural justice can be seen at the time of deciding issues of fairness of enquiry and perversity of findings.

10. Considering the charges levelled against complainant at this juncture of deciding interim relief application, it would be proper to see the contention of complainant with regard to misconduct. As per complainant, she has received serious injuries while working as conductor in an accident. It is her contention that due to the injuries she has undergone medical treatment but has not recovered till date and she is taking further treatment about the injuries. The fact of accident with complainant has not been disputed by respondents. It is contention of respondents that she is fit to work as conductor as the fitness certificate has been given by Civil Surgeon. As she is fit to serve in the job, she

cannot be given any other work and that too for permanent nature. Respondents submits that the fitness certificate does not show that complainant has become unfit to work on her job as a conductor. Therefore, she has to be allotted the work as conductor and she has to perform the same. In support of her contention complainant has enclosed copies of medical certificate issued by private hospital which shows that a job of conductor having travelling is not good for her physical condition and she has to do sitting job.

11. It is a fact on record that after completion of her treatment, she already had joined the service and has been allotted with sitting job. This fact is transpired in the evidence of management witness in the enquiry. Respondents relied upon the examination by Civil Surgeon and his opinion that complainant is not disqualified from working as a conductor. At this stage of interim relief application without having detail evidence on record, the documentary evidence cannot be harped upon. It is necessary to be seen whether complainant has prima-facie case, whether balance of convenience lies in her favour and whether she suffers irreparable loss if application is not granted. In present case, the charge levelled against complainant is about absenteeism for 84 days for which, show cause notice of dismissal has been issued. It would be proper to mention here that, the charges are not so serious and grave such as misappropriation or riotous activity etc. which would seriously affect the administration of respondent. It is also fact that when complainant joined after her treatment for accidental injuries, she was given other work apart from conductor in running bus for some period. The point of prima-facie case does includes host of factors such as conduct of the employee, gravity of charges and also the past service record of the employee. While considering the interim relief application

against show cause notice of dismissal the charges levelled against complainant has a formidable part to be considered.

12. According to these aspects, it is to be noticed that the charge of absenteeism is considerably has lower seriousness as compared to other charges. The conduct of complainant also shows that she had joined service after the accident and worked on allotted work without any further absenteeism. Advocate of complainant drawn attention to document of punishment imposed upon complainant during her service period. On perusal of the said document it is seen that prior to the absenteeism for which she has been given notice of dismissal, there is only one misconduct which is absenteeism for one day. This fact clearly shows that complainant has very good past service record. In accordance with the discussion, it can be noted that these aspects are going in favour of complainant.

13. Hon'ble Bombay High Court in *Mahindra and Mahindra V/s Dwarkanath Dalvi* (2006 III LLJ 177) observed that, "*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. The balance of convenience also has to be looked into.*" After considering the observation of Hon'ble Bombay High Court it can be said that complainant has sufficient weightage in her contention regarding protection from dismissal. At this stage, if service of complainant is not protected she would lose her service and it will be irreparable loss. There is apparently no dispute in respect of conducting the enquiry of absenteeism but, rather there is point for discussion that whether conductor can be given any sitting job if the physical condition does not allow for the job in moving bus. Considering all these factual aspects, it can be opined that complainant has prima-facie case. The

balance of convenience also lies in her favour which is parallel to the point of irreparable loss, because if service is not protected object of the litigation would get frustrated

14. It is also to be seen whether and how much hardship is likely to be caused by the person seeking interim relief. In present case, if interim relief is not granted, complainant would be suffered more as compared to respondents. Therefore, due to the above discussion I am of opinion that all three ingredients are in favour of complainant and hence, she can be held to be entitled for the reliefs prayed by her. At the same time, it has to be opined that there is possibility of delay in trial by complainant taking cover of the protection of interim relief. Therefore, it is made clear that both parties are directed to co-operate the Court to dispose of the matter expeditiously and to proceed with the trial without lingering the case. Both parties to co-operate to dispose of the complaint within a period of ten months from the date of this order without seeking for unnecessary adjournment. According to the discussion above, I answer the Points No. 1 to 3 in 'affirmative' and in answer to Point No.4 following order is passed.

ORDER

- (i) Application Exh.U-2 is hereby allowed.
- (ii) Respondents are directed not to give effect to the show cause notice of dismissal of complainant till final decision of the complaint.
- (iii) Parties to co-operate with the Court to dispose of the complaint expeditiously without seeking adjournment.
- (iv) No order as to costs.

(A. A. Vyas)
Judge,
Labour Court, Solapur.

Dated : 11/10/2023
Kvj/-