



IN THE LABOUR COURT-1 AT AURANGABAD.
(Presiding Officer D. S. Khedekar)

Com ULP No. 35 of 2025
CNR No. MHLC20000209-2025

Satyanarayan Bharat Gurkhude,
Age : 37 yrs, Occu. Service,
R/o Bundelpura, Beed.
Tq. & Dist. Beed.

...**Complainant**

And

- 1. The Divisional Controller,**
Divisional Office, Beed.
M.S.R.T.C. Beed.
- 2. The Assistant Mechanical Engineer,**
(Competent Authority)
S. T. Divisional Workshop,
Barshi Naka, Beed
Tq. & Dist. Beed.

...**Respondents**

Advocates : Shri. A. N. Survase Advocate for Complainant
Shri A. K. Shaikh Advocate for Respondents

ORDER ON INTERIM RELIEF APPLICATION (EXH.U-2)

(Dtd. 31/10/2025)

The complainant has filed application under Section 30(2) of MRTU & PULP Act, 1971 for granting interim releif against the respondents.

2] The respondent has filed reply to the interim relief application at Exh. C-3 and resisted application.

3] The complainant has filed documents on record at Exh. U-4. Whereas the respondent has filed documents at Exh. C-4 in support of their statement. I have heard learned Advocate for complainant and respondent at length. The complainant has relied upon decision filed at U-14, U-15 in the case of :

- 1) **Ravindra Nandkishor Gupta V/s Executive Engineer Maharashtra State Electricity Distribution Company Ltd. And Anr., [2025 (1) Bom. LC 662(Bom)],**
- 2) **Press Trust of India Employees' Union V/s Press Trust of India Ltd. And Anr., 2007(2) Mh. L.J. 674,**
- 3) **Krushnakant B. Parmar V/s Union of India & Anr, 2012 (7) LJ Soft (SC) 129,**
- 4) **Chairman-cum-Managing Director, Coal India Ltd. & Anr. V/s Mukul Kumar Choudhuri & Ors., 2009(6) All MR 451,**
- 5) **M. C. Charati V/s Personnel Manager & Disciplinary Authority, Syndicate Bank & Ors., 2001 I CLR 535,**
- 6) **Copy of Discipline and Appeal Procedure of S. T. Corporation.**

4] Whereas the respondent has relied upon decision filed at Exh. C-5 :

- 1) **Maharashtra State Road Transport Corporation V/s Maharashtra State Road Transport Kamgar Sanghatana, Pune Division, [1999(2) Bom LC 433 (Bom)],**

- 2) **Amulakhrai D. Desai V/s Municipal Corporation of Brihan Mumbai and another, [2007 (1) Bom. LC 396 (Bom)],**
- 3) **United Ink & Varnish Co. Pvt. Ltd. V/s Chandrashekhar Juvre and others, 2007 I CLR 503,**
- 4) **Sheshrao Motiram Jadhav V/s Division Controller MSRTC and Anr., Writ Petition No. 4617 of 2015,**
- 5) **Municipal Committee, Bahadurgarh V/s Krishnan Behari & Ors., 1996 I CLR 667,**
- 6) **Mahadeo Krishna Naik V/s Maharashtra State Road Transport, Writ Petition No. 154 of 2007,**
- 7) **Lamikant Jalindhar Mule V/s The Divisional Controller MSRTC Osmanabad, Writ Petition No. 2093 of 2019,**
- 8) **Amal Chowdhury V/s Union of India and Ors., [2008 (117) FLR 846],**
- 9) **Workmen represented by the Ananda Bazar Group of Publications Employees Union V/s Ananda Bazar Patrika Limited & Ors., 1999 II CLR 79,**
- 10) **Mohani Devi & Ors. V/s Prem Kumar & Anr., 1991 I CLR 603,**
- 11) **Channabasappa Basappa Happali V/s The State of Mysore, 1970 STPL 2601 SC,**
- 12) **Nazir Abdul Karim Shaikh V/s Pimpari Chinchwad Municipal Transport, 2000(4) Bom CR 436,**
- 13) **M. D. Kawade & Another V/s Mahindra Engineering and Chemical, 2000(2) BomCR 166.**

5] I have gone through the pleadings, allegations of the complainant and objection of respondent. In the light of documents

filed on record and on the basis of submissions of learned Advocate for parties proceeded to decide application of interim relief on merit.

6] On the basis of the contentions of both the parties, following points arise for my determination. I have recorded my findings against each of them for the reasons given below :-

Sr No	Points	Findings
1	Whether the complainant proves that there is a prima facie case in his favour ?	In the affirmative
2	Whether the complainant proves that balance of convenience lies in his favour ?	In the affirmative
3	Whether respondent will suffer irreparable loss if interim relief is granted in favour of the complainant ?	In the negative
4	What order ?	As per final order.

REASONS

AS TO POINT NOS. 1 TO 3 :-

7] The complainant has filed complaint under Section 28 and 30 read with item 1 (a), (b), (d), (f) and (g) of Sch. IV of MRTU & PULP Act, 1971 against the respondent by challenging the show-cause notice of dismissal dtd. 08/07/2025 received on 11/07/2025 and alleging committed unfair labour practice by respondent while issuing show-cause notice of dismissal and therefore, claimed declaration, quashing and setting aside notice of dismissal and in support of that

filed interim application for claiming interim relief against the respondent by contending that the complainant was appointed in the year 2011 as Assistant on compassionate ground at Divisional Workshop and later on promoted as Assistant Craftsman in respondent corporation and satisfactorily performed and completed 14 years of service without blot.

8] The complainant contended that he has not committed any misconduct and not remained absent intentionally or deliberately from duty. However, respondent has issued false and vague charge-sheet to the complainant on 23/08/2023 and conducted enquiry after lapse of one and half year. The respondents have failed to prove the charges and willful absence of the complainant for 70 days, for the absolute during the period from 03/06/2023 to 11/08/2023 wherein he is not guilty as alleged by virtue of charge-sheet and without evidence enquiry officer has drawn findings which is perverse and intentionally issued show-cause notice of dismissal which amounts to capital punishment and disproportionate one and therefore, challenged the dismissal order.

9] It is contended by the complainant that the dismissal order of punishment proposed but for absenteeism charge under clause 10, 22 and 35 of D & A Procedure does not provide dismissal punishment, hence, the complainant has claimed that the issuing of show-cause notice is act under the unfair labour practice by the respondent and therefore, requires to be stayed by virtue of interim relief. Consequently filed application which shall be part and parcel of the contentions of the complainant.

10] The respondent contended by filing written statement at Exh. C-3 that the complainant committed misconduct by remaining absent for 70 days period without submitting leave application and prior intimation therefore, it has caused inconvenience and financial loss to the corporation and therefore, misconduct of absenteeism by virtue of charge-sheet was served upon the complainant on 26/08/2023 to which he has replied on 03/09/2023 and in the reply the complainant has admitted absenteeism and mentioned due to illness he remained absent and therefore, he could not file leave application. It is contended that due to the absentee of complainant for 70 days AWS DWB Beed has submitted report on 18/08/2023 and thereupon after receiving reply the enquiry was conducted and complainant was called upon by issuing letters as referred in reply by the respondent.

11] It is contended that on 21/11/2024 the reporter had submitted report and the complainant was present on the day and submitted he does not want to ask any question to the reporter and lastly say that he does not want to say anything more. In the enquiry charges of absenteeism are proved and the complainant has admitted himself as he had remained absent and could not file leave application. It is contended that in working unit if employee remained absent then it is difficult to run and operate working units and it would affect quality, work, checking likeage of engine oil, likeage of air pressure, springing and repairing of break down buses came from depots could not be sent by ready and it would become difficult to run transport business.

12] It is contended that the complainant had admitted the fact of not filing leave application and absent therefore, enquiry was held and by virtue of findings show-cause notice of dismissal is issued and therefore, on service of notice present complaint is become premature and not maintainable. The respondent denied all the contentions of the complainant and claimed that in view of decision reported in the case of 1) MSRTC V/s R. M. Bhagwatkar, 2003 II CLR 797, Bombay High Court, 2) Cambata Aviation Pvt. Ltd. V/s Vijar Nadar, 2008 II CLR 261, Bombay High Court, 3) United Ink Co. V/s Chandrashekhar Kurve, 2007 I CLR 503, Bombay High Court, 4) A. D. Desai V/s Municipal Corporation, Mumbai, 2007 I 2009 (123) BLC 396 Bombay High Court, 5) State of U. P. V/s Sandeep Kumar, FLR 1046, the Hon'ble Apex Court has refused in the aforesaid cases to grant stay to the dismissal of show-cause notice who has committed serious misconduct of involving negligent on their part.

13] It is also held that the Court should have been very careful before granting stay in the disciplinary proceeding at the interlocutory stage in serious matter and it would be extremely difficult if the serious matters are stayed so lightly to bring any wrong door to book and while deciding interim application only it has to be seen whether opportunity was granted to the employee and whether principles of natural justice are followed or not and tribunal has no jurisdiction to go into the aspect of correctness and truthness of charges and correctness of findings recorded by the disciplinary authority and whether charges are proved or not.

14] It is contended that the principles of natural justice are followed by giving sufficient opportunity charges are proved against the complainant and therefore, the punishment awarded to the complainant considering the gravity of misconduct is legal, proper and as per the discipline and appeal procedure not shockingly disproportionate. The respondent has relied upon number of case laws in the para No. 10 onwards in respect of absenteeism and by taking note thereof the respondent has claimed for rejection of the application.

15] In view of contention of the complainant and respondent it is material to state that initially the complainant had filed application at Exh. C-2 for claiming interim relief after appearance of respondent and on the basis of statement of both the parties since the complainant was in service therefore, respondent was directed not to change the service status of the complainant's service till filing say and it was continued from day to day till today. The complainant is admittedly was appointed as Assistant Craftsman as permanent employee and performed 14 years service in the respondent and claimed that in the month of May 2023 when he was working on his regular duty the spine was injured and he was feeling daizy. He had taken treatment from 03/05/2023 at Beed hospital and he was advised to take rest therefore, unable to remain present on duty in the month of June 2023 28 days, from 01/07/2023 to 11/08/2024 total 70 days and absence of the complainant was not intentional and deliberate and after recovery from illness the complainant had intimated his superior about absenteeism.

16] It is contended by the complainant that the respondent has well knowledge about the illness of the complainant and absentee from duty because of illness and the complainant was taking medical treatment in the Mayuri Clinic, Beed but intentionally without considering the impact, the reporter had submitted report on 18/08/2023 and as per the report charge-sheet has been issued. In view of statement of the complainant it is appeared that the complainant had replied to the charge-sheet on 03/09/2023 and the respondent had held enquiry and decided the conduct of the complainant and issued show-cause notice by holding absenteeism for the period wherein the complainant was ill and taking treatment for his illness. Prima facie there was no allegations of willful misconduct against complainant and the aspect of illness was not considered by the respondent while holding enquiry. It shows that the case of absenteeism was considered unilaterally without taking into account the very cause of absenteeism of the complainant for which he was taking medical treatment and it was sole result of illness due to which he could not remain present on duty.

17] The enquiry was conducted on the ground of absenteeism but a part from procedure fairness the reporter being human should have considered illness while submitting report and the enquiry officer who had held enquiry lost the sight of actual cause of illness of the complainant which has resulted absenteeism of the complainant on duty. In that context prima facie it appears that when the aspect of illness was within the knowledge of respondent it would have been prudent on their part to bring the correct fact before the officer while holding enquiry as regards the cause of illness and it

would have been prudent if the reply of the complainant could have been considered during investigation by the enquiry officer then the correct aspect of illness might have changed the thought of enquiry officer, but it appears that there is lack of consideration of sound principle of natural justice being human by the enquiry officer who has lost sight for consideration of illness of complainant and recorded finding about absenteeism without looking to the cause of illness which has resulted due to the injury and for which the medical treatment was taken by the complainant.

18] The action of respondent was to find out guilt on the statement of complainant who fairly admitting absenteeism and treating it as willful misconduct without having intentional and deliberate act on the part of complainant has really caused prejudice. The very purpose of holding enquiry for the cause of absenteeism or finding misconduct through holding enquiry is not considered and therefore, the action of enquiry officer and proposing punishment on the admission of complainant for absenteeism without finding willful negligence or intentional absenteeism prima facie does not amount to misconduct for holding guilt and awarding capital punishment of dismissal.

19] For the aforesaid reasons, I am of the prima facie opinion the issuance of show-cause notice without finding of willful negligence on the part of complainant or without serving notice for holding willful negligence and even without finding of willful negligence by the enquiry officer is prima facie against the principles of natural justice and it does not permit for taking drastic step of dismissal

to the services of employee who has rendered services for more than 14 years. In that context if the conduct of the enquiry officer is taken into account prima facie shows that the very intention of legislature for holding enquiry is lost sight and therefore, on the fair admission of the complainant as regards absenteeism has indirectly presumed misconduct against the complainant without proving willful misconduct only to award punishment which does not amount to following of principles of natural justice. Mere holding enquiry for taking care of the employee being institution and without the proper findings recorded by the respondent corporation in respect of misconduct I am of the view that issuing show-cause notice without looking to the grievance of the complainant would amount to unfair labour practice and therefore, I am of the view that complainant has made out prima facie case for seeking interim relief.

20] The learned Advocate for complainant and respondent have relied upon number of case laws in support of their case which may be on the different set of facts. However, considering the issue involved of absenteeism, the consideration of case laws relied by the respondent about enquiry and the procedure of enquiry followed for holding enquiry and the aspect of unauthorized absenteeism from duty from the prospective aspect is necessary however, unless the willfulness of the employee is established for the alleged absenteeism, the entire process of holding enquiry on the fairness of admission in respect of absenteeism does not empower respondent for awarding capital punishment.

21] Even though the complainant did not produce any documentary proof before the enquiry officer for the illness as a defence, however, in the process of investigating the allegations it was duty of the enquiry officer to give fairness and thoughtful consideration for all aspect and in that view of matter consideration of reply of complainant was necessitated to enquire upon real cause of absenteeism and fairly the reasons could have been investigated for coming to the corret conclusion, however, the enquiry officer has lost sight by virtue of this angle which has resulted for issuing show-cause notice on the finding of the enquiry officer hence, this would not be justifiable punishment for the employee who is rendering service for last 14 years.

22] It is material to note that the absenteeism is established without willfulness and directly by holding dishonest act of the complainant, the punishment of dismissal is proposed which shows that the action of respondent is prima facie not showing the consideration of all aspect of the employees and falls in the concept of unfair labour practice for getting benefit against the employee and amounts to colourable exercise for the reasons known to them. The learned Advocate for complainant has relied upon the decision in the case of **Krushnakant B. Parmar V/s Union of India, reported in 2012(7) LJ Soft (SC) 129** the Hon'ble Supreme Court while considering the case under the Central Civil Conduct Rules, 1961 had occasion to decide the unauthorized absenteeism of the employee and considered the disciplinary proceeding conducted against the employee and hold that the absence of employee from duty without prior permission or any application may amount to unauthorized absence but it does not always

mean willful. The disciplinary authority required to prove that the absence is willful in absence of such findings the absence will become will not amount to misconduct and on that basis the disciplinary authority who had failed to prove the absence from duty willfully and no findings on the said aspect by the enquiry officer or the appellate authority has resulted setting aside of the impugned order of dismissal and the appellant therein was reinstated. This precedent squarely applicable to the present case in hand.

23] The learned Advocate for complainant relied upon Appeal and Discipline Rules at Exh. U-14 and on the basis of procedure of enquiry contemplated in rule 7 the punishment for misconduct provided as per the rule prima facie shows that for absenteeism the awarding punishment of dismissal of employee, is not provided. On this aspect also the dismissal proposed by the respondent corporation by issuing show-cause notice prima facie contrary to their rule of discipline and appeal provided under rule 7 and the clauses mentioned therein as per schedule A annexed to the rules.

24] By considering the Discipline and Appeal Rules the decision relied upon by the respondent, if consider by all angle prima facie I am of the view that the facts set out in the decision relied upon by the respondent is altogether different and therefore, it is not helpful to the respondent to maintain the enquiry conducted against the complainant which is prima facie hold without serving notice against complainant by showing willful negligence or willful misconduct of the complainant. The punishment proposed for the complainant is prima facie contrary to their rules and therefore, in such circumstances

execution of show-cause notice against the complainant would be injustice against the complainant and when the aspect of willful negligence is not proved before the enquiry officer and no such finding is recorded against the complainant.

25] On the statement of complainant and the procedure followed by the respondent corporation for holding enquiry, I am of the view that the respondent has prima facie committed unfair labour practice for proposing punishment against the complainant and therefore, the complainant has made out a prima facie case for staying operation and execution and implementation of show-cause notice of dismissal dtd. 08/07/2025 during the pendency of complaint and till decision of the complaint on merit. The complainant has claimed withdrawal of the show-cause notice during the pendency of the case temporarily which is within the domain of respondent and such direction at this interim stage would amount to admitting entire allegations of complainant against the respondent without holding trial which is not permissible.

26] The complainant has made out prima facie case and balance of convenience lies in favour of the complainant by virtue of rendering service to continue render service during the pendency of complaint and till time outcome or decision of complaint on the basis of interim relief. The respondent would not suffer any prejudice if interim relief is granted since the holding of enquiry and proposing punishment of dismissal prima facie found to be contrary to their rules. For the aforesaid reason I answer point No. 2 affirmatively and 3 negatively and proceed to pass following order;

ORDER

1. The application is partly allowed.
2. The operation, execution and implementation of show-cause notice of dismissal dtd. 08/07/2025 is stayed with direction to the respondent not to dismiss the complainant during the pendency of the complaint and till decision of the complaint on the basis of enquiry held against the complainant.
3. Application is disposed of accordingly.

Dictated and declared in open Court.

Place: Aurangabad
Date: 31/10/2025

(D. S. Khedekar)
Judge,
Labour Court-1, Aurangabad