

**ORDER BELOW EX.U-2 IN COMPLAINT (ULP) NO. 53/2015**

**(Dictated & Pronounced in Open Court on 08.09.2017)**

Bapu S/o Ashok Gavali

**-Vs.-**

M.S.R.T.C. Through its Divisional Controller,  
MS.R.T.C.Aurangabad & another.

1 This is the application u/s 30(2) of the MRTU & PULP Act, 1971 for grant of interim relief.

2 In short the case of the complainant is that, he was appointed as a conductor on 08.08.2004. On 01.03.2007 he was transferred to Aurangabad Division and posted to Depot No.1 at Aurangabad and since then till today he is serving in Depot No.1 as Conductor. The respondent has issued charge sheet dated 23.05.2013 alleging misconduct under clauses 7(a), 7(s), 10, 11 & 12(b) of Schedule A of the D &A Procedure. The applicant replied the said charge-sheet on 10.06.2013 and denied all the charges leveled against him. Thereafter the respondents have conducted inquiry against the complainant on 24.08.2013. On 19.10.2015 the respondents have issued show cause notice of dismissal along with perverse findings of the respondent No.2. The case of the complainant that, the inquiry conducted against him is in violation of principles of natural justice

and the findings of the inquiry officer are illegal; hence the respondents have engaged in unfair labour practice by issuing second show cause notice dated 19.10.2015. Hence, there is prima facie case in favour of the complainant. Balance of convenience is also lying in favour of the complainant. Hence, he prayed that his application for interim relief may be granted.

3           The respondent filed his Say at Ex.C-4. The contention of the respondent that the complainant is the revenue collector of the respondent and the complainant has committed serious misconduct while performing his duty as a conductor. On 06.05.2013 when his bus was checked at Deolgaon Raja, it is found that, there was 62 passengers with tickets and 5 passengers without tickets. Out of total 67 passengers, the complainant has issued handwriting one ticket to a group of five passengers by taking fare of Rs.1325/- from the said passengers for traveling from Akola to CIDCO Aurangabad. As the misconduct of the complainant is grave hence the inquiry was conducted against the complainant. The inquiry conducted against the complainant was according to the principles of natural justice. Each and every opportunity was given to the complainant. The charges leveled against the complainant are proved before the inquiry officer. Hence the respondent has issued second show cause notice of dismissal. The respondent has not committed any unfair labour practice. Hence, the complainant has no any prima facie case, therefore, the application for interim relief may be rejected.

4           Considering the pleadings 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 ?	... Yes.
2)	Whether the complainant proves that balance of convenience lies in his favour ?	... Yes.
3)	Whether the complainant will suffer irreparable loss if interim relief is not granted in his favour ?	... Yes.
4)	What order ?	As per final order.

### Reasons

5 **As to Point Nos.1 to 3** :- The Learned Advocate of the complainant submits that, the respondent has committed unfair labour practice from beginning i.e. from the time of checking the said bus. At the time of checking the bus they have not recorded the statements of the passengers and the complainant as per their say. The inquiry was not conducted as per the principles of natural justice. Findings of the inquiry officer are not found on the basis of evidence. But, the findings are perverse. Hence, there is strong prima facie case in favour of the complainant. Balance of convenience is in favour of the complainant and if the interim relief is not granted at this stage he will suffer irreparable loss. Therefore, he prayed that the interim relief application may be allowed.

The Learned Advocate of the respondents submits that, the misconduct committed by the complainant is serious in nature and he has misappropriated the amount of Rs.1325/-. Charge sheet was issued against the complainant. The inquiry was conducted as per the principles of natural justice. Sufficient opportunity was given to the complainant to defend his case. The findings of the inquiry officer are based on evidence adduced by the inquiry officer. Hence, the respondent has not committed any unfair labour practice. The show cause notice of dismissal issued by the respondent is proper. He prayed that interim relief application may be rejected.

6 On perusal of entire inquiry papers filed by both the parties, the main allegation against the complainant is that, he has received fare amount of Rs.1,325/- from a group of passengers and issued hand written tickets, thereby misappropriated the fare amount of Rs.1,325/-. On perusal of Say filed by the complainant, it is contention of the complainant that there was 67 passengers in the bus and out of that 62 passengers with tickets and 5 passengers were without tickets. The contention of the respondent itself goes to the root of the case and shows that 5 passengers were without tickets. Further allegation against the complainant that, while checking the cash with the complainant at the time of checking it was found that, the cash with the complainant was found less by Rs.8/-. If the conductor has received the amount of Rs.1,325/- from the passengers and not issued tickets to the passengers then the cash with the complainant may be found in excess of Rs.1325/-. But, in this case the cash with the complainant was found less. It also prima facie seen

that, the inquiry officer has not properly explained the procedure of inquiry to the complainant while conducting the departmental inquiry. As this is the application for interim relief, hence at this stage without discussing the case in detail, prima facie it is seen that inquiry was not conducted as per the principles of natural justice. Sufficient opportunity was not given to the complainant to defend his case. Hence, prima facie it is seen that, the respondent has committed unfair labour practice. Therefore, the complainant has strong prima facie case. Balance of convenience is also lying in his favour. Under these circumstances if the interim relief is not granted at this stage, the complainant will suffer irreparable loss. Hence, I answer the points in the affirmative and pass the following order :

**Order**

- 1 The application Ex.U-2 for interim relief is allowed.
- 2 The show cause notice of dismissal dated 19.10.2015 issued by the respondent is hereby stayed till final disposal of the main Complaint.
- 3 No order as to costs.

Sd/-

( D.V.Joshi )

Judge,

Labour Court-1, Aurangabad

Date : 08.09.2017