

BEFORE THE JUDGE, LABOUR COURT, AMRAVATI.

Complaint (ULP) No. 13 of 2018

CNR No. MHLC270000542018

Hrishikesh Gajanan Holey,
R/o. Prathamesh Apartment,
Durga Vihar, Near Biyani College,
Distt. Amravati. Complainant.

Versus

Maharashtra State Road Transport
Corporation, through its G.M.
(P & R) Central Office, Mumbai
and Anr. Respondents

ORDER BELOW EXH.U-2

(Passed on 07.09.2018)

The complainant has filed the present application for staying the effect and operation of show cause notice of dismissal dated 20.2.2018.

2] According to complainant, the respondents are engaged in unfair labour practice by issuing show cause notice dated 20.2.2018. Said show cause notice is not legal and proper and as per Discipline & Appeal Procedure of the respondent. It is in violation of the principles of natural justice. The show cause notice is issued by authority who is not appointing authority of complainant nor competent authority. The circular referred by the respondent treating employee in the cadre of Jr. Officer (Grade II) is cancelled. The com-

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plainant had opted for grant of earned leave for the alleged strike which are deducted from his salary. Therefore show cause notice of dismissal is illegal and needs to be stayed. The complainant has prima facie case and balance of convenience also lies in his favour. If notice is not stayed then he will suffer irreparable loss which cannot be compensated. On these grounds, the complainant has prayed for staying the effect and operation of show cause notice dated 20.2.2018 issued by respondent no.2 till pendency of main complaint.

3] The respondents opposed the application by filing reply-cum-written statement vide Exh.C-4. It is submitted that complainant is Degree holder in technology of Civil Engineering and he is working on the post of Jr. Engineer (Civil) Class II. His basic pay is Rs.7660-25-20 and he is working at Amravati division office. The nature of his work is supervisory. He is getting work done from the employees who are working under him. Therefore he is not a workman within the meaning of Section 2(s) of I.D.Act. As such complaint is not maintainable and liable to be dismissed. It is admitted that complainant is employee of the respondent Corporation and at present he is posted at S.T. Division office, Amravati. It is denied that respondents engaged in unfair labour practice by issuing show cause notice dated 20.2.2018. It is stated that show cause notice of proposed punishment of dismissal is legal. The complainant is working as Jr. Engineer and highly qualified. He has knowledge that violation of service condition is misconduct. Even then he deliberately took part in the strike started from the mid night of 16.10.2017. Therefore proposed punishment is proper. He has not performed duty for 2 days and therefore his salary is deducted as per the principle of no work no pay. It is stated that as per Discipline & Appeal

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Procedure Divisional Controller is competent authority. Therefore it has rightly issued show cause notice as the complainant has committed misconduct by taking part in the illegal strike. Therefore he is liable for punishment of dismissal. On these grounds it is prayed that application be rejected.

4] The points for determination alongwith findings thereon are as under :

<u>POINTS</u>	<u>FINDINGS</u>
1] Whether complainant has shown prima facie case ?	...Yes
2] Whether the balance of convenience lies in favour of complainant ?	... Yes
3] Whether complainant will suffer irreparable loss, if relief of injunction as prayed is not granted ?	... Yes
4] What order ?	... Application is allowed

REASONS

5] **As to point nos.1 to 4** : Heard the learned advocates for the parties and gone through the documents produced on record. It is undisputed that complainant is working with M.S.R.T.C. on the post of Civil Engineer. Admittedly show cause notice of dismissal dated 20.2.2018 came to be issued to him. It is mentioned in the said show cause notice that complainant had participated in illegal strike which started from mid night of 16.10.2017. In the said show cause notice reference of circular No.32/17 issued on 29.9.2017 is given. The show cause notice refers said circular and states that complainant who was serving in supervisory class is given designa-

tion of Class II officer. Copy of appointment order of the complainant is produced on record which shows that he was appointed on 23.2.2015 on the post of Jr. Engineer (Civil). Further copy of circular No.32/17 dated 29.9.17 is produced on record. By said circular workers who were working on supervisory post were given designation of Class II officer. It is seen that on the basis of said circular show cause notice of dismissal is issued. It is submitted on behalf of complainant that the said circular No.32/17 is subsequently cancelled by the department. In support of said submissions, complainant has produced another circular dated 26.12.17 filed with list Ex.U-3/4. It shows that earlier circular No.32/17 dated 29.9.17 is cancelled by it. It shows that the very basis of issuance of show cause notice by respondent no.2 is not in existence.

6] It is undisputed that there was strike since mid night of 16.10.2017 of the respondent workmen. It is the submission of the complainant that he had not participated in the strike and therefore proposed punishment is illegal. However, it appears that he is taking contradictory stand. The complainant had filed application dated 11.1.2017 at respondent no.2 and submitted that in view of circular No.1647 dated 1.11.17 his leaves can be deducted for his absence. The said letter was forwarded at the respondent no.2 by Divisional Engineer, Amravati. It shows that complainant was absent since 17.10.2017 to 20.10.2017 and he was ready to give 8 days earned leave in view of circular dated 1.11.2017 . Therefore prima facie complainant was absent on duty during the relevant period and as he has referred circular for deduction of leave in respect of workmen who had participated in the strike he has impliedly admitted that he had also participated in the strike. Therefore contention of complainant that he was not part of strike cannot be accepted.

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7] The complainant has disputed issuance of show cause notice on many grounds. According to him, without conducting any enquiry or giving opportunity to show cause directly and respondent has issued notice of dismissal against him which is illegal. After going through the documents on record, it is seen that assuming that complainant is Class II officer directly show cause notice of dismissal is issued to him. It is not the case of respondent that prior to issuing show cause notice of dismissal any enquiry was conducted or opportunity was given to complainant to explain his stand. It is seen that on the basis of letters dated 15.1.18 and 8.2.2018 of superiors show cause notice of dismissal is issued. In the said letters also circular No.32/17 is referred. As stated above, the said circular appears to be cancelled by subsequent circular dated 26.12.2017. Therefore there was no reason to issue show cause notice against the complainant. On the basis of circular No.32/17 it can be inferred that earlier to said circular complainant was not in the cadre of Class II. By said circular it was proposed to convert his post in Class II officer. As subsequently, said circular is cancelled the complainant remains in Class III cadre. Therefore submission of the respondent that complainant is Jr. Engineer and therefore he is Class II officer is not prima facie supported by documentary evidence. At this stage, the respondent has not produced any evidence to show nature of work and duties of the complainant.

8] Learned counsel for the complainant has relied on the decision in the case of **Rajiv Gundewar -Vs- Crompton Greaves Ltd. reported in 2000 CJ (Bom) 629** and submitted that the question as to whether the complainant is a workman or not is required to be decided alongwith other issues. In the cited decision the Hon'ble High Court has held that piecemeal decision on the issue always re-

sults in protracting the litigation and to avoid that it is always advantageous that all issues are decided together. On the point of nature of work, learned advocate for the complainant has relied on the decision in the case of **Batuk Chauhan -Vs- Factory Manager reported in 2009 DGLS (Guj) 695**. In the said decision it is held that merely because Jr. Engineer is assigned with the work to look after and verify work of production activity of work and to report the same or merely because he has been assigned with the duty to allot work to the workmen on the basis of instructions of production Manager or any recommendation were recorded by him for leave report of certain workman are not sufficient circumstances to record conclusion that petitioner was engaged in managerial and supervisory capacity. The pertinent aspect required to be considered is the role of the petitioner in the manufacturing activity whether there was technical involvement of the petitioner or not. The respondent has not produced any evidence at this stage to show work assigned to the complainant. Therefore at this stage merely because he is working as Jr. Engineer prima facie it cannot be said that he ceased to be a workman.

9] On the point of issuance of notice by the authority, it is the contention of the complainant that respondent no.2 is not appointing authority. After going through the order of appointment it is seen that respondent no.1 has appointed the complainant. If D & A Procedure of the respondent is considered then it is seen that Sectional Head not below the rank of Class II (Junior) under whom employee is working is competent authority. The decision in the case of **Krishna kumar -Vs- Divisional Assistant Electrical Engineer reported in 1986 I LLJ 209 (SC)** shows that authority subordinate to appointing authority cannot be delegated powers and status of such

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subordinate authority cannot be enhanced to that of appointing authority.

10] After going through the copy of show cause notice and other documents it is seen that on the basis of cancelled circular, show cause notice of dismissal is issued. Prior to issuing show cause notice opportunity of hearing was not given to complainant. No enquiry was conducted. Prima facie it shows that there is blatant violation of principles of natural justice. In these circumstances, if notice is not stayed then complainant will suffer irreparable loss. He has succeeded in showing prima facie case in his favour. Balance of convenience also lies in his favour. Therefore application deserves to be allowed. Hence point nos.1 to 3 are answered in the affirmative and in answer to point no.4 following order is passed.

ORDER

- 1] Application is allowed.
- 2] The effect and operation of show cause notice dated 20.2.2018 issued by respondent to the complainant is stayed till final disposal of the main complaint.

Sd/-

Amravati

(M. M. Shaikh)

Dated : 07.09.2018

Judge,

Labour Court, Amravati.

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