

BEFORE THE JUDGE, LABOUR COURT, AMRAVATI.

Complaint (ULP) No. 12 of 2021

CNR No.MHLC270000632021

Nitin Ganeshrao Umbarkar

Age about 43 Years,

R/o Santosh Bhavan Galli,

Gadge Nagar, Amravati.

... **COMPLAINANT**

Versus

The Divisional Controller,

Maharashtra State Road Transport

Corporation, Amravati.

... **RESPONDENT**

ORDER BELOW EXH.U-2

(Passed on 21.09.2021)

The complainant has prayed for interim injunction and prayed to stay the effect and operation of show cause notice of dismissal till the decision of main complaint.

2] The complainant has adopted the averments made in the complaint for the purpose of this application. In the complaint, it is averred that the complainant is serving as 'Driver' with the respondent. The respondent is indulged in unfair labour practices due to issuance of show cause notice of dismissal to the complainant. It is submitted that on 02-10-2016 the complainant was on duty on the bus bearing no.MH-40-Y-5615 plying from

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Amravati to Nanded. It was checked at Ardhapur. It is on the complaint of one passenger namely Sunil Kumar Bilaliker. It was 2.30 A.M. It was found that the complainant was under the influence of alcohol. The bus was taken to Ardhapur depot along with complainant and Conductor. The police referred the complainant to Government Hospital, Nanded for medical examination. Thereafter, report was submitted against the complainant that he was found drunken liquor while driving the bus. Thereafter chargesheet was issued and complainant was asked to submit explanation. The complainant submitted his reply to the chargesheet and denied all the charges. Thereafter enquiry was conducted against the complainant.

3] According to complainant, proper chargesheet was not issued to him. Details of charges were not mentioned. As such prejudice has been caused to him. The enquiry was not conducted on fixed dates. In absence of complainant, statement of reporter was recorded. He was not given opportunity to cross examine the reporter. In fact in the enquiry procedure the complainant was not given full opportunity to defend himself and cross examine witness. The enquiry was kept pending without any reason. Thereafter in the month of April 2021 inspite of nation wide lock-down due to Covid-19 the enquiry was fixed on 15-04-2021. On that day statement of complainant was recorded. The enquiry was not conducted by following the principles of natural justice. Without giving proper opportunity enquiry was completed. The evidence was not properly considered by the Enquiry Officer. On the basis of false complaint enquiry was initiated and show cause

notice of dismissal is issued to the complainant. The proposed punishment of dismissal is very harsh and shockingly disproportionate to the charges levelled against the complainant. The complainant has not committed any misconduct. The findings of Enquiry Officer are perverse and based on doubt only. On these grounds, the complainant claims prima facie case and that the balance of convenience lies in his favour. If, injunction as prayed is not granted then he will suffer irreparable loss. Therefore, he has prayed to stay the effect and operation of the show cause notice of proposed dismissal till the decision of main complaint.

4] The respondent submitted reply vide Exh.C-6 and strongly opposed the application. All the averments made by the complainant is denied by the respondent. It is admitted that the complainant is working as 'Driver' with the respondent. According to respondent, on 02-10-2016 the complainant was working as driver on the bus running from Amravati to Nanded. On the complaint of passenger said bus was checked at Ardhapur. The complainant was found drunken the liquor. The bus was taken to Ardharpur depot along with complainant and conductor. The police got medically examine the complainant at Government Hospital, Nanded. It was found that the complainant had drunken the liquor. Statement of complainant and conductor of the bus were recorded. Thereafter report was submitted against the complainant. On the basis of said report, chargesheet was issued to the complainant. It is submitted that in the enquiry, reporter was examined on behalf of respondent. Full opportunity was given to the complainant. The enquiry was fair and proper. The findings

of Enquiry Officer are based on the evidence on record and documents produced in the enquiry. The Enquiry Officer inferred that charges against the complainant stands proved. Considering the gravity of misconduct committed by the complainant punishment of dismissal is proposed. It is valid and it is not necessary to interfere in it. It is denied that that the respondent has engaged in unfair labour practice. According to respondent, at this stage merits in the complaint cannot be looked into. It is submitted that the complainant had received show cause notice on 05-05-2021. He was given time to file reply till 12-05-2021. The respondent has passed dismissal order on 12-05-2021 with effect from before noon of 13-05-2021. It was communicated to the complainant by registered post. As such show cause notice challenged by the complainant has now been merged into dismissal order. Thus, the complaint is infructuous. At the most, if the complainant succeeds, he can be granted monetary benefits and wages. The complainant has failed to show prima facie case. Therefore, it is prayed that application be rejected.

5] 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 ?	... No.5/-

- 3] Whether complainant will suffer irreparable loss, if relief of injunction as prayed is not granted ? ... No.
- 4] What order ? ... Application is rejected.

REASONS

6] **As to point Nos. 1 to 4** : Heard the learned representative for the complainant and learned Advocate for the respondent. Gone through the enquiry papers produced on record. It is undisputed that the complainant was working with the respondent as Driver. Further, it is undisputed that he was on duty on the bus plying from Amravati to Nanded on 02-10-2016. It is the case of respondent that on the complaint of passenger that the complainant had drunken the liquor, said bus was checked at Ardhapur. The complainant has denied that he had drunken the liquor. According to him, prior to Ardhapur, he had visited many bus depots but he was not found drunken the liquor. According to complainant, false complaint is recorded against him. The complainant as well as respondent has produced copy of enquiry papers on record. It is seen that one Mr.Sunil Kumar Bilalika had lodged written complaint against the complainant that he had drunken the liquor at the relevant time. Thereafter the complainant was medically examined at Government medical Hospital, Nanded. Statement of complainant and Conductor were recorded. In the medical examination it was found that the complainant had drunken liquor but he was not under the influence of it.

Accordingly, chargesheet was issued against the complainant. The charges levelled are under the clauses 10 and 42 of the Discipline and Appeal procedure of the respondent. The complainant replied the chargesheet and denied all the charges levelled against him.

7] After going through the enquiry papers, it is seen that in the enquiry reporter was examined on 09-11-2016. Except him, no other witness was examined by the respondent. The complainant had given his defence statement on 15-04-2021. After going through page no.17 of the proceedings, it is seen that six dates were given for appearance of reporter in the enquiry. However, he failed to remain present in the enquiry. Therefore suspension of complainant was revoked on 13-02-2017. Thereafter on 18-02-2017 evidence of reporter was recorded. Question no.1 was not answered by him. Two other questions were asked to him wherein he has stated that the complainant was driving the bus after drinking the liquor and, therefore, image of the Corporation tarnished in the eyes of public at large. It is seen that on that day the complainant and his representative were absent. Page no.20 shows two incomplete question allegedly posed by complainant's representative. It is seen that the reporter was not cross examined by the complainant. Thereafter enquiry was kept pending till 15-04-2021. No reason is given by the respondent for it. It is seen that on 15-04-2021 statement of complainant came to be recorded. He denied that he had drunken the liquor at the relevant time. Further, he denied that full

opportunity was given to him including the opportunity to cross examine the reporter.

8] Prima facie, it is seen that the enquiry was not prima facie conducted properly. It was kept pending for long time without reason. The enquiry was adjourned many times and on one occasion when the complainant was absent reporter was examined. He was not given opportunity to cross examine the reporter. Prima facie it is seen that the enquiry was conducted against principles of natural justice. The findings of Enquiry Officer are based on the evidence of reporter, defence statement and report of medical of examination of the complainant. As stated above, the reporter was not cross examined, the necessary documents are not proved in the enquiry. Prima facie it is seen that the findings of the Enquiry Officer are not based on evidence.

9] The main issue of this case is dismissal of the complainant. The complainant has submitted copy of show cause notice as document no.1 wherein acknowledgment of 06-05-2021 is seen. The respondent has produced copy of show cause notice of dismissal at page no.26, which shows acknowledgment dt. 05-05-2021 by the complainant. If, it is considered then it appears that it was necessary for the complainant to submit reply on or before 12-05-2021. Present complaint is filed on 13-05-2021 and on that day status quo order was passed. The respondent submitted copy of dismissal order dt. 12-05-2021 during the hearing and submitted pursis Exh.C-3 that the complainant is dismissed from the service and order is dispatched to him by

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registered post. Further, copy of panchnama is produced at page no.29 about publication of order at the notice board of respondent. It is seen that prior to filing of the complaint itself the complainant was dismissed from the service. As such show cause notice of dismissal dt. 30-04-2021 is already executed. Though the complainant has shown prima facie case in his favour but now at this stage there is nothing remain to stay. The application has become infructuous. Therefore it is liable to be rejected. Hence, point nos. 1 to 3 are answered accordingly and in answer to point no. 4 following order is passed.

ORDER

The application Exh.U-2 is rejected.

Sd/-

(M.M.Shaikh)

Judge,

Labour Court, Amravati.

Amravati.

Date : 21.09.2021.

UWB/-

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