

**IN THE LABOUR COURT, AMRAVATI.**

**(Presiding Officer – Mr. Sachin S. Patil)**

**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**

**JUDGMENT ON PRELIMINARY ISSUE Nos. 1 and 2 .**

( Delivered on 14-12-2022 )

This complaint is filed under Section 28 r/w Item -1 (a), (b), (d) and (f) of Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971.

2] According to complainant, he was working with respondent as a Driver. The respondent is indulged in unfair labour practices due to issuance of show cause

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notice of dismissal to him. On 02-10-2016 he was on duty on the bus bearing no.MH-40-Y-5615 plying from Amravati to Nanded. It was checked at Ardhapur. It is on the complaint of one passenger namely Sunil Kumar Bilalikaar. 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 him to Government Hospital, Nanded for his medical examination. Thereafter, report was submitted against him 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

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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] In light of rival pleadings of both parties, issues have been framed vide Exh.O-1. Issue no. 1 and 2 are in respect of fairness of enquiry and perversity of findings. They need to be decided as preliminary issue on the basis of record of enquiry. The complainant and respondent have produced copies of enquiry proceedings vide Exh.U-3 and Exh.C-7. I have heard the arguments of both parties at length. Thereupon I record my decisions on the preliminary issues for the reasons as stated under:-

**ISSUES**

**DECISIONS**

- |  |           |
|--|-----------|
| 1] Whether complainant proves that the enquiry conducted by respondents is unfair, improper and not according to the principles of natural justice ? | .... Yes. |
| 2] Whether the complainant proves that findings of Enquiry Officer are perverse ?  | .... Yes. |

**REASONS**

**As to Issue No.1 :**

6] According to complainant, during the departmental enquiry evidence of reporting officer was recorded in his absence and he was not afforded opportunity of cross examination. The enquiry officer has given the findings against him by relying the evidence of reporting officer, who was not cross examined. Hence, the enquiry is against the principles of natural justice and it is liable to be vitiated.

7] The respondent has filed copy of enquiry record vide list Exh.C-7. On perusal of enquiry papers it is clear that, on 18-02-2017 the enquiry officer was examined in absence of complainant. Opportunity of cross examination was not given to complainant. In the deposition of reporting officer complainant is stated as absent. His signature is not obtained on initial statement recorded on 18-02-2017. This shows that complainant was absent at the time recording evidence of reporting officer on 18-02-2017. The opportunity of cross-examination was not given to the complainant. On previous date of 13-02-2017 the complainant was present. However the reporting officer was shown absence since many dates. Hence the suspension order of complainant was revoked. After 18-02-2017 the opportunity of cross-examination was not

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given to complainant by adjourning the proceedings of enquiry. Thereafter on 15-04-2021 the statement of complainant was recorded by the enquiry officer. On that day also reporting officer was absent. The statement of complainant was recorded without giving the opportunity of cross-examination of reporting officer/principal witness of the department. The complainant in his statement in answer to last question of enquiry officer has stated that he was denied the opportunity of cross-examination of reporting officer. In spite of that the enquiry proceedings was closed and enquiry officer has given the findings against the complainant. The opportunity of cross-examination is the basic right of delinquent, which is required for grant of fair opportunity to defend himself. Evidently, said opportunity was denied to the complainant. This act of enquiry officer is against the principles of natural justice. It vitiates the enquiry proceedings. The findings given by the enquiry officer without affording the right of cross-examination are perverse. Hence I answer Issue nos.1 and 2 in affirmative.

8] In light of my answers Issue nos.1 and 2 in my view the departmental enquiry conducted by the respondents against the complainant stands vitiated. The respondents in their written statements have prayed that they may be allowed to prove the charges of misconduct

against the complainant if the enquiry gets vitiated.  
Therefore I pass the followed order.

**ORDER**

- 1] It is declared that the enquiry conducted against the complainant is not just, fair, proper and according to the principles of natural justice. Moreover the findings recorded by the enquiry officer are perverse. Hence the enquiry is vitiated.
- 2] The respondents are permitted to prove the alleged misconduct against the complainant before the Court by adducing evidence.
- 3] Matter is kept for evidence of respondents.

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Amravati.

(Sachin S. Patil)

Date 14-12-2022

Judge, Labour Court,  
Amravati.

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