

**BEFORE THE JUDGE, LABOUR COURT, AKOLA.****Complaint (ULP) No. 01/2014.**

Shrikrushna Natthuji Lavhe,  
Age: 60 Years, Occ. Nil.  
R/o. Gayatri Nagar,  
Mothi Umri, Jathar Peth, Akola,  
Tal. & Distt.-Akola.

----- **COMPLAINANT.**

**Versus**

01) Vice Chancellor,  
Dr. P.D.K.V.,  
Krishi Nagar, Akola,  
Tal. & Distt.-Akola.

02) Registrar,  
Dr. P.D.K.V.,  
Krishi Nagar, Akola,  
Tal. & Distt.-Akola.

03) Associate Dean,  
Post Graduate Education Institute,  
Dr. P.D.K.V.,  
Krishi Nagar, Akola,  
Tal. & Distt.-Akola.

----- **RESPONDENTS.**

**CORAM :- Shri. S. S. Shinde, Judge.**

**APPEARANCES :- Shri. R. T. Itankar, Adv. For Complainant.  
Shri. V. R. Malviya, Adv. For Respondents.**

**: ORDER BELOW EXH. 2 :  
(Delivered on 10/11/2016)**

01] Complainant has filed complaint against respondents under Section 28 read with Section 7 and Item 1 of Scheduled-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. (Herein after called as the said Act in short in order to avoid repetition.) Complainant along with his complaint has

filed application under Section 30 (2) of the said Act for interim relief to give directions to the respondents to release monthly pension as per Rule 130 of M.C.S.(Pension) Rules, 1982 from the date of retirement till pendency of this complaint.

02] It is the case of complainant that he was appointed as a Junior Clerk in the year 1977 by the respondents and he was confirmed as Attendant. It is his further contention that in the year 2005 he was promoted as a 'Section Assistant' on regular establishment of respondent No. 1. It is his further contention that his service record is clean and unblemished. It is his further contention that he has been terminated by the respondents vide order dated 29/07/2011 without conducting any enquiry by way of victimization and not in good faith but in colourable exercise of employer's right. It is his further contention that while performing duty as a Cashier, he used to seek guidance from his superiors i.e. respondent No. 2. It is his further contention that it was alleged that there were some discrepancies in the maintenance of cash records after conducting preliminary enquiry. It is his further contention that on the basis of said report, he was suspended vide order dt. 08/10/2010 without any cause.

03] It is his further contention that in the year January 2011 again preliminary enquiry was conducted and it was alleged that complainant has misappropriated Rs. 4,76,581/-. It is his further contention that on the basis of said allegations, chargesheet dt. 28/03/2011 was issued to him, however, relevant documents were not provided to him. It is his further contention that he submitted his

reply to the chargesheet and denied alleged allegations. It is his further contention that he was not given proper opportunity during the enquiry and Enquiry Officer conducted the enquiry and submitted report on 07/07/2011. It is his further contention that he was due for retirement on 31/07/2011 and therefore, on 01/07/2011, retirement order bearing No. 1058 was issued to him on attaining age of superannuation i.e. on 31/07/2011. It is his further contention that it was ordered to decide his pension case as per the Rule 27, 130 and 132 of Maharashtra Civil Services (Pension) Rules, 1982 (In short MCS (Pension) Rules ).

04] It is his further contention that Enquiry Officer gave report that misconduct against the complainant are duly proved and therefore, proposed recovery of entire amount from the complainant. It is his further contention that show-cause notice dated 19/07/2011 was issued to the complainant with proposed punishment of dismissal and thereafter, dismissal order dated 29/07/2011 was issued to him and he was dismissed from the service. It is his further contention that dismissal order is issued ex-parte without considering retirement order No. 1058 dated 01/07/2011 and therefore, retirement order dated 29/07/2011 was set aside. It is his further contention that after retirement on 31/07/2011, his pension was not released as per Pension Rules and in view of order dated 01/07/2011. It is his further contention that the act on the part of respondents not releasing monetary benefits of the complainant is unfair labour practice. Hence, this application.

05] On the other hand, respondents appeared in the matter and

filed their reply-cum-written statement vide Exh. C/14 and denied all adverse allegations against the complainant. It is their contention that preliminary enquiry was conducted against the complainant and it was found that he has misappropriated an amount of Rs. 4,76,581/- and therefore, he was suspended. It is their contention that Mr. M. S. Raul (Controller) investigated in respect of allegations against the complainant and also collected relevant documents and made a report to the Registrar, Dr. P.D.K.V. on 02/09/2010 wherein he has mentioned in respect of irregularities in the accounts. It is their further contention that on the basis of said preliminary enquiry, chargesheet dated 28/03/2011 was issued by the competent authority to the complainant alongwith all necessary documents. It is their further contention that on 07/05/2011, complainant gave reply and had admitted all the charges levelled against him. It is their further contention that enquiry was fixed on 20/06/2011 wherein complainant had admitted the charges in writing and therefore, on 19/07/2011, show-cause notice alongwith enquiry report was given to the complainant.

06] It is their further contention that complainant had misappropriated an amount of Rs.4,31966/- of the respondents and thus, charges against the complainant are serious in nature. It is their further contention that enquiry conducted against the complainant was in accordance with the principles of natural justice and further punishment of dismissal was proper considering the misconduct of the complainant. It is their further contention that during enquiry, complainant has never taken any objection that documents were not supplied to him. It is their further contention that there is no violation of M.C.S. Rules as alleged

by the complainant. It is their further contention that relief claimed by the complainant by way of interim relief cannot be granted because same relief is asked by the complainant in main complaint. Hence, complaint may be dismissed.

07] In view of the above said facts and pleadings of the complainant and respondents, following points arises for my consideration and I had given my findings to each of them with reasons as stated below.

<b>Sr.No.</b>	<b>Points</b>	<b>Findings</b>
1	Whether complainant proves prima facie case?	Yes.
2	Whether complainant proves balance of convenience lies in his favour?	Yes.
3	Whether complainant proves irreparable loss would cause to him if interim relief is not granted?	Yes.
4	What order.	As per final order.

### **REASONS**

08] Complainant alongwith his complaint to support his contentions has relied on documents vide Exh. U/6-1 to U/6-28 and U/17-1 to U/17-7.

#### **As to Points No. 1 to 4.**

09] It is argued on behalf of the complainant that complainant was working with the respondents and it was alleged that there were some irregularities in maintaining the account records and therefore, after conducting preliminary enquiry, on the basis of preliminary

enquiry, chargesheet was given to the complainant. In order to support his contention, he has filed copy of preliminary enquiry and chargesheet at Exh. U/6-5 & 7. It is further argued that he has replied vide Exh. U/6-8 and denied all allegations against him. It is further argued that on 01/07/2011, retirement order was given to the complainant and it is placed on record at Exh. U/6-11. It is his further contention that on perusing said order, it appears that it is mentioned that complainant is completing 58 years on 27/07/2011 and therefore, he is going to retire on 31/07/2011. It is further argued that it is also mentioned in the said letter that pension will be considered as per the rules of M.C.S. (Pension) Rules, however, respondents have failed to pay pension to the complainant. It is further argued that when said order was issued, respondents conducted the enquiry and issued dismissal order dated 29/07/2011 to the complainant which is at Exh. U-6/13.

10] It is further argued that as per Section 130 (1) (b), interim pension can be granted even though the matter is subjudice before the court. In order to support his contention, he has relied on ratio laid down in **State of Jharkhand and Others -vs- Jitendra Kumar Srivastava and another**, reported in **2013-III-CLR-589 (S.C.)**, wherein Hon'ble Apex Court has observed that,

*“Under Rule 43 (a) and 43(b) of Bihar Pension Rules, there is no power for the government to withhold gratuity and pension during the pendency of departmental proceeding or criminal proceeding. It does not give power to withhold leave encashment at any stage either prior to the proceeding or after proceedings.”*

He further relied on ratio laid down in **Ramlal Sharma, S/o. Late Rastiram Sharma, Raipur -vs- State of Chhattisgarh through Secretary, Department of Revenue Chhattisgarh and Ors.**, reported in **2016-I-CLR-461**, wherein Hon'ble Chhattisgarh High Court has observed that,

*“Gratuity and pension are not bounty, but a hard earned benefit, accruing to employee and it is the nature of property, which cannot be taken away, without due process of law, as contemplated under Article 300-A of the Constitution.”*

He relied on ratio laid down in **Management of Dekhami Tea Estate -vs- Presiding Officer, Labour Court**, reported in **1998-III-L.L.J.-248, Gauhati**, wherein Hon'ble Gauhati High Court has observed that,

*“Labour Court came to the decision that it has jurisdiction to decide matter and further, Labour Court came to the finding that the employer has violated the settlement by withholding the pension of the petitioner without proceeding enquiry.”*

11] It is further argued that as per Section 130 of the M.C.S. (Pension) Rules as well as circular dated 25/06/1992 issued by the State as per Section 133 (1) (b), interim pension can be granted even though judicial enquiry is pending. As per the said circular, head of the office with sanction of Accountant General can extend the period of temporary pension till completion of judicial enquiry. It is further argued that hence, considering the facts and circumstances and in view

of the provisions and ratio laid down cited supra, interim application may be allowed and respondents may be directed to release his pension till the decision of complaint. It is further argued that he has proved prima facie case and balance of convenience lies in his favour. If application is not allowed he may suffer irreparable loss. Hence, application may be allowed.

12] On the other hand, it is argued on behalf of the respondents that it is not disputed that complainant was working with the respondents. It is further argued that complainant while performing as a Cashier had committed some misconducts and therefore, preliminary enquiry was conducted against the complainant. It is further argued that on the basis of report of the preliminary enquiry, chargesheet was issued to the complainant to which he had replied. It is further argued that all necessary document alongwith chargesheet was issued to the complainant. It is further argued that complainant had admitted his misconduct during enquiry. It is further argued that enquiry was conducted in accordance with the principles of natural justice and Enquiry Officer has held that the charges against the complainant are proved.

13] It is further argued that one of the serious allegation against the complainant is that he had misappropriated an amount of Rs. 4,31,966/-, therefore, punishment of dismissal is proper. It is further argued that punishment has been imposed upon the complainant after conducting full fledged enquiry wherein opportunity was given to the complainant to defend himself. It is further argued that complainant

has contended that enquiry conducted by the respondents was not in accordance with the principles of natural justice and therefore, unless enquiry is decided as unfair, interim relief as claimed by the complainant cannot be granted. It is further argued that it is settled law that application under Section 30(2) of the MRTU & PULP Act is not tenable. It is further argued that interim relief claimed by the complainant is of final nature and therefore, it cannot be granted at this stage. They relied on ratio laid down in **Air India Limited -vs- Aditya Beli and Others**, reported in **2012-II-CLR-900**, wherein Hon'ble Delhi High Court has observed that,

*“Interim order staying the order of termination cannot be passed at the initial stage and the final relief sought for, should not be granted at the interim stage.”*

They further relied on ratio laid down in **Divisional Controller, M.S.R.T.C., Aurangabad -vs- Iftekhhar Ahmed Mohammed Isaq, Aurangabad**, reported in **2016-I-CLR-582**, wherein Hon'ble Bombay High Court, bench at Aurangabad observed that,

*“Frequent unauthorised absence from duty by the employee, cannot be dealt with lightly, particularly for the establishments of the State Road Transport Corporation.”*

They further relied on ratio laid down in **Hindustan al Controller, M.S.R.T.C., Aurangabad -vs- Iftekhhar Ahmed Mohammed Isaq, Aurangabad**, reported in **2016-I-CLR-582**, wherein Hon'ble Bombay High Court, bench at Aurangabad observed

that,

*“Frequent unauthorised absence from duty by the employee, cannot be dealt with lightly, particularly for the establishments of the State Road Transport Corporation.”*

It is further argued that therefore, considering the ratio laid down in case laws cited supra, unless and until enquiry is declared as unfair, interim relief cannot be granted to the complainant. It is further argued that complainant has failed to prove prima facie case. Hence, application may be rejected.

14] Perused application, reply-cum-written statement and documents filed on record. Heard both the parties. I have gone through the case laws cited on behalf of both the parties. It is not disputed that complainant was working with the respondents and he has been terminated on 29/07/2011. It is also not disputed that chargesheet was issued to the complainant and after conducting the enquiry, show-cause notice of dismissal was issued to the complainant to which he has filed reply. It is pertinent to note that complainant has filed the complaint and challenged termination order dated 29/07/2011, suspension order dated 08/10/2010 and prayed to set aside the said order as well as to give directions to the respondents to calculate monthly pension as per the M.C.S. (Pension) Rules. It is pertinent to note that complainant has filed an application under Section 30(2) of the interim relief wherein he has claimed to give directions to the respondents to release pension as per the Rule of Section 130 of M.C.S. (Pension) Rules from the date of retirement till the date of disposal of main complaint.

15] Thus, it appears that the only relief claimed by the complainant by way of interim relief is regarding the pension from the date of retirement till the decision of main complaint. On perusing Rule 130 (1)(b) of M.C.S. (Pension) Rules, it appears that head of the office can sanction the pension of the employee who is retired or who is under suspension at the time of retirement from the date of suspension till the date of retirement. Further, it appears that said benefit of pension can be extended for further period with the sanction of Accountant General of concerned Division. Thus, it appears that as per the provision of M.C.S. Rules, complainant is entitled for the pension. Further, on perusing ratio laid down in **Management of Dekhame Tea Estate**, it appears that even Labour Court has jurisdiction to decide the matter. Further, it is observed in the said case law that pension cannot be withheld without conducting the proceeding or enquiry. Further, even as per the circular of Government dated 25/06/1992, interim relief can be granted as per the Rule 130 (1)(b). Admittedly, one of the prayer of the complainant in the complaint is that respondents may be directed to calculate his pension and by way of interim relief, he is claiming same relief.

16] It is settled law that at interim stage, relief which is of a final nature cannot be granted. However, considering the facts in the present case, it appears that by way of interim relief, he has not claimed all the reliefs which are claimed in main complaint. Further, as per Rule 130 (1) (b), Head of the office can grant pension as mentioned in the said Rule, therefore, in my opinion, the complainant has made out prima facie case. Further, it is a settled law that monetary benefit

cannot be withheld except provided by law and therefore, balance of convenience also lies in favour of the complainant. Further, complainant is not in service and therefore, if relief of interim pension is not granted, then complainant may suffer irreparable loss. Therefore, I answer Point Nos. 1 to 3 in the affirmative and in answer to point No. 4, I pass following order.

**: O R D E R :**

- 01] Application (Exh. 2) for grant of interim relief is hereby partly allowed.
- 02] Respondents are directed to calculate the pension of the complainant and to give him part of said pension as an interim pension as per the provisions of Rule 130(1)(b) of M.C.S. (Pension) Rules.
- 03] Respondents are directed to comply with the said order within the period of two months.
- 04] No order as to costs.

**Akola.**

**Date :- 10/11/2016.**

**(S. S. Shinde)  
Judge,  
Labour Court, Akola.**