

BEFORE THE JUDGE, LABOUR COURT CHANDRAPUR.

(Presided over by Smt. R. V. Mete)

Complaint (ULP) No. 05/2024

(CNR NO.MHLC340000102024)

Exh. O-01

Ravindra S/o. Hiranman Gowardhan,
Aged about- 41 years, Occu- Service.
R/o. Ward No. 17,
near Dr. Ambedkar Putala,
Tadali Road, Mul, Distt : Chandrapur.

.... Complainant.**-:- VERSUS -:-**

1. Maharashtra State Road
Transport Corporation.
Through its Divisional Traffic Superintendent,
M.S.R.T.C., Gadchiroli.
2. Maharashtra State Road
Transport Corporation.
Through its Divisional Traffic Officer,
M.S.R.T.C., Gadchiroli.
3. Maharashtra State Road
Transport Corporation.
Through its Divisional Controller,
M.S.R.T.C., Gadchiroli.

..... Respondents.**CORAM** :- Smt. R. V. Mete, Judge.**Appearance** :-

Shri. M. M. Wankhade Ld. Adv. for Complainant.

Shri. U. V. Deshpande Ld. Adv. for Respondents .

(ORDER BELOW EXH.U-2)

(Passed on 28 March, 2025)

The present application has been filed by the

complainant under Section 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, (for Short "MRTU & PULP Act") for quashing and setting aside impugned show cause notice of dismissal dated 02.01.2024 of respondent no. 2, till decision of main complaint.

02. The case of the complainant in brief can be described as follows :-

The complainant is filing this complaint in the capacity of workman under the Industrial Disputes Act, 1947. The complainant is in the employment of respondent corporation as a conductor since 2007 and presently attached to Gadchiroli depot. Respondent no. 1 is the authority who initiated with departmental enquiry and respondent no.2 is the authority who issued with impugned order though they are not competent to do so and respondent no.3 is the appointing authority as well as divisional head. The service record of complainant is clean and unblemish.

03. It is submitted that the complainant was served with charge sheet dated 19.11.2016 thereby alleging that on 26.08.2016 when the complainant was discharging his duty as a conductor on bus bearing No. MH-40/Y-5604 plying from Dharampuri to Gadchiroli, which was checked by the checking staff at Kagajnagar Road and thereby found that out of 28 passengers 5 were travelling on without ticket. It was further alleged that the complainant had recovered total fare charges of Rs. 196/- from the alleged without ticket passengers at the time of boarding but did not issue tickets to them till the point of checking. It was further alleged that cash of the complainant

was tallied. On this set of allegations, the complainant has been levelled charges under clauses 7(a), 7(c), 7(d) and 12(b) of Discipline and Appeal Procedure of MSRTC.

04. The complainant has denied the charges by submitting his reply to charge sheet and brought the factual position to the notice of respondents but the respondents did not consider his reply and material placed on record while recording its findings and directly issued impugned show cause notice of dismissal dated 02.01.2014 received by the complainant on 08.01.2024, which is illegal and void ab initio.

05. It is submitted by the complainant that charge sheet was issued on 19.11.2016 and whereas enquiry has been completed in the year 2024, which is after a period of more than 7 years, which is not permissible in the eyes of law. As per settled principle of law enquiry should have been completed within a period of 6 months but in the present matter enquiry is completed after a period of 7 years. Moreover, all the alleged without ticket passengers have made their statement in English on spot whereas, all the without ticket passengers are illiterate one as per report and if this is so then on what basis they knew the wording stated in English. This material controversy has not been proved in the course of enquiry and therefore, findings drawn by the enquiry officer are perverse. It is submitted that none of the passenger has been examined as a witness in the course of enquiry by the respondents to prove charges levelled against the complainant, despite that position the enquiry officer came to a conclusion that all the charges are proved, which is totally illegal. Unless and until alleged without ticket passengers

are examined in the enquiry none of the charges are proved due to language problem. As such, this material aspect has not been considered by the enquiry officer before recording its findings.

06. It is further submitted that the new Discipline and Appeal Procedure has come into existence on 31.12.2019 and it was implemented with retrospective effect w.e.f. 01.06.2019. As such, on and after 31.12.2019, the respondents should have adopted entire procedure of enquiry by new Discipline and Appeal Procedure. But in the present matter the respondents have adopted old Discipline and Appeal Procedure since from levelling charges till issuance of charge sheet, which is against the procedure of MSRTC.

07. It is further submitted by the complainant that his statement was recorded by the checking staff under pressure. The complainant had not collected the fare charges from the alleged without ticket passengers as he do not know the language of them, as they are using Telgu language. The complainant was unable to issue tickets to the alleged without ticket passengers as their destination point was not known and in the meantime his bus was checked. As such, there was no fault on part of the complainant while discharging his duty. The complainant was directed by the checking staff to give note on statements of alleged without ticket passengers, on the contrary he do not know English language in proper manner as statement made in English. The checking staff not translated the statement of alleged without ticket passengers in vernacular of the complainant, which was mandatory as per Discipline and Appeal Procedure. The checking staff pressurized the complainant to

sign on statement of alleged without ticket passengers. As such, entire checking procedure adopted by the checking staff is contrary to the rules.

08. It is further submitted by the complainant that there is no rule prescribed in the law to allow the enquiry officer to cross examine the delinquent employee. The enquiry officer acted in dual role as a Judge and Prosecutor by putting questions to the complainant by way of cross examination thereby trying to get some admissions, which is not permissible in the eyes of law. Moreover, the enquiry officer has taken into consideration the material which are favouring the respondents. The enquiry officer has not taken into consideration reply to charge sheet submitted by the complainant as well as his defence statement while recording its findings. It is a settled principle of law that when enquiry officer acted as a prosecutor then enquiry be declared as illegal and unfair.

09. It is further submitted by the complainant that the checking members have not followed the checking procedure as contemplated in the Discipline and Appeal Procedure of the respondent corporation. The checking members have not recorded the proper addresses of the passengers while recording their statements. As per clause 6(B) & sub clause 24 of new Discipline and Appeal Procedure of the respondent corporation it was mandatory on the part of enquiry officer to give chance to the delinquent employee to cross examine the witnesses upon which the charges are levelled in the charge sheet. But, no such material witnesses were examined in the enquiry including the

without ticket passengers and other witnesses. As such, the enquiry officer has committed grave error while dealing with the enquiry by not granting opportunity to the complainant to cross examine the witnesses on whom the charges are levelled against the complainant.

10. It is further submitted by the complainant that the respondent corporation has not obtained any type of written order from the appointing authority before issuance of this major punishment like proposed punishment of dismissal. The impugned punishment is against the principles of natural justice and especially when there was nothing on record to show that the charges are proved against the complainant. The impugned punishment is shockingly disproportionate. Fair and proper opportunity was not granted to the complainant to defend his case in the enquiry. During enquiry material and relevant documents were not supplied to the complainant. The enquiry conducted against the complainant is not fair, proper and according to principles of natural justice and findings recorded by the enquiry officer are perverse.

11. The complainant has submitted that he has a prima facie case and balance of convenience lies in his favour. If impugned show cause notice of dismissal dated 02.01.2024 is not stayed he will suffer irreparable loss in the event of non grant of interim relief, till decision of main complaint. On these grounds, the complainant has prayed to allow the application for interim relief till decision of main complaint.

12. The respondents have filed their reply cum written statement vide (Exh. C-05) and denied all adverse allegations

levelled against them. It is denied that the complainant is filing this complaint in the capacity of workman and complainant is working with the respondent corporation as a conductor since 2007 and presently attached to Gadchiroli depot. It is denied that complainant falls within the definition of 'workman' under the Industrial Disputes Act, 1947 and that his service record is clean and unblemish. It is denied that the complainant given reply to charge sheet in the enquiry and denied all the charges levelled against him and brought factual position to the notice of respondents but the enquiry officer has not considered it in proper perspective while giving its finding and directly issued impugned show cause notice of dismissal dated 02.01.2024, which is illegal and void ab initio. It is denied that enquiry has been concluded after a period of more than 7 years. It is denied that enquiry should have been completed within a period of 6 months. It is denied that new Discipline and Appeal Procedure has come into existence on 31.12.2019 and it was implemented with retrospective effect w.e.f. 01.06.2019. It is denied that the enquiry officer acted as a prosecutor by putting questions to the complainant by way of cross examination and thereby tried to get some admissions, which is not permissible in the eyes of law. It is denied that the enquiry officer has not taken into consideration reply to charge sheet given by the complainant and his defence statement while recording its findings. It is denied that as per clause 6(B) and sub clause 24 of the new Discipline and Appeal Procedure of the respondent corporation it was mandatory on the part of enquiry officer to give chance to the delinquent employee to cross examine the witnesses upon which the charges are levelled in the charge sheet. It is denied that

material witnesses were not examined in the enquiry including without ticket passengers and other witnesses. It is denied that impugned punishment is shockingly disproportionate. It is denied that the enquiry officer has committed grave error while dealing with the enquiry by not granting opportunity to cross examine the witnesses on whom the charges are levelled against the complainant. It is denied that enquiry officer has not followed the principles of natural justice while dealing with the enquiry. It is denied that the enquiry conducted against the complainant is not fair, proper and according to principles of natural justice and findings recorded by the enquiry officer are perverse.

13. By special pleadings the respondents have submitted that the complaint as well as an application as framed and filed by the complainant itself is not tenable in the eyes of law or on facts. It is submitted by the respondents that the complainant was appointed as a conductor by the respondent corporation. On 26.08.2016 when the complainant was discharging his duty as a conductor on bus bearing No. MH-40/Y-5604 plying from Dharampuri to Gadchiroli his bus was checked by the checking staff of respondent corporation at Kagajnagar road and thereby found that out of 28 passengers five passengers were travelling on without ticket. The respondents have issued a charge sheet to the complainant and conducted fair and impartial departmental enquiry against him. The complainant has participated in the enquiry and given reply to charge sheet. On conducting fair and impartial enquiry it was found that the charges levelled against the complainant are proved . Thereafter, the respondents had

issued show cause notice of dismissal dated 02.01.2024 and thereby decided to dismiss the complainant from service. Now, the complainant is asking for main relief in the interim relief which is not tenable in the eyes of law. It is submitted that the complainant was given fair, proper and reasonable opportunity to the complainant while conducting departmental enquiry against him. The enquiry conducted against the complainant is fair, proper and in accordance with the principles of natural justice and the findings drawn by the enquiry officer are just, legal and proper. It is further submitted that even though this Hon'ble court comes to a conclusion that the departmental enquiry is unfair and improper then at that time this Hon'ble Court may grant them an opportunity to prove charges against the complainant by adducing evidence before the court.

14. The respondents have further submitted that the complainant has not made out a prima facie case, balance of convenience does not lie in his favour. Irreparable loss or injury would be caused to the respondents in the event of grant of interim relief, till decision of the complaint. On these grounds, the respondents have prayed for rejection of the application.

15. Following points arise for my determination. They are answered with my findings thereon for the reasons given below :-

POINTS

FINDINGS

- | | |
|--|-----------------------|
| 1) Whether complainant has made out prima facie case ? | : In the affirmative. |
| 2) Whether balance of convenience lies in his favour ? | : In the affirmative. |

- 3) Whether he will suffer irreparable : In the affirmative.
loss, in case application Exh.U-
2 is not allowed ?
- 4) What order ? : As per final
order.

REASONS

16. I have heard Shri M. M. Wankhade, learned counsel for the complainant and Shri U. V. Deshpande, learned counsel for respondents.

17. In support of his case the complainant has relied upon following documents:-

- 1] Copy of Charge Sheet dated 19.11.2016.
- 2] Copy of Report dated 01.09.2016
- 3] Passengers statement dated 26.08.2016
- 4] Complainant statement dated 26.08.2016
- 5] Cash check form dated 26.08.2016
- 6] Copy of enquiry proceedings dated 26.08.2016.
- 7] Impugned show cause notice dated 02.01.2023.
- 8] findings of enquiry officer.

AS TO POINT No.1 :-

18. Needless to state that this Court is empowered to entertain application filed under Section 30(2) of MRTU and PULP Act regarding interim relief. The principle behind granting interim relief is to provide preventive relief of the aggrieved party. Even if complainant is very vigilant and approaches the Court without losing any time, the Courts take time in adjudicating the rights of parties. For this reason, application

for interim relief is generally used to be filed. If essential conditions such as prima facie case, balance of convenience and causing of irreparable loss, in case application is not allowed, are fulfilled, then application for interim relief can be granted in order to preserve the rights of the parties as on the date of filing complaint. So far as making out of prima facie case is concerned, prima facie means the existence of circumstances justifying the trial of the question of facts and law raised in the litigation. In other words, Court has to consider whether there is a serious question to be tried in the litigation. In the light of these legal principles, material available in case in hand needs to be examined.

19. Perusal of record shows that complainant has challenged the impugned show cause notice of dismissal. According to respondents, it was issued by them, when charges of misconduct were proved against complainant on the basis of evidence available in the enquiry proceeding. Against this, complainant submits that there was violation of principles of natural justice and there was no evidence available in enquiry to prove alleged charges of misconduct. No opportunity was given to the complainant to defend enquiry. Therefore, consequently, issuance of impugned show cause notice of dismissal is illegal one. Thus, apparently, it is explicit that base of issuance of impugned show cause notice lies in enquiry proceeding. Therefore, Court has to enter into enquiry proceeding to some extent in order to determine whether complainant has made out prima facie case.

20. The counsel for the complainant argued that the enquiry

conducted against the complainant was against the principles of natural justice. He has pointed out that the enquiry officer has acted as a prosecutor during the enquiry. He has put up the questions to reporter in order to get answers against the complainant.

21. Per contra, the learned counsel for respondents argued that the enquiry was conducted in accordance with the principles of natural justice. The complainant was provided the charge sheet and all the documents relied upon by respondents. He was given reasonable opportunity to defend the enquiry. As such, the enquiry is fair and proper.

22. In this context, on going through the enquiry proceeding, it appears that the enquiry officer has examined the reporter and cross-examined the complainant. The questions were put up to the reporter in the form of leading questions directly suggesting the answers. Thus, the enquiry officer has acted as a prosecutor. It is well settled principle of natural justice that the prosecutor can not be a judge in his own case. If such practice is adopted, the possibility of being biased or predetermined conclusion against the delinquent can not be ruled out. As such, I found force in the submission of learned counsel for complainant.

23. Secondly, perusal of the record, it appears that another charge leveled against the complainant under clause 12(b) for misappropriation of the amount of corporation. But, perusal of the report, no where it is mentioned that complainant misappropriated the amount of corporation. Therefore, from this

prima facie, it appears that the charges are different than the report. From this material infirmity it is clear that the complainant made prima facie case.

24. Thirdly, while going through the record, it is seen that second and third charge levelled against complainant is as per clause 7(C) & 7(d) i.e. 1) After recovering fair charge not issuing thicketts to the alighting passengers, 2) Not to issue ticket to the alighting passengers within stipulated time is concerned, in this case the bus of complainant is checked Kagajnagar but the alleged without ticket passengers were not alighting at the spot where bus was checked. The journey of the said passengers yet not completed. Perusal of record it appears the in the charge-sheet and in the report no where it is mentioned that the alleged passengers were alighting passengers. Therefore, it is clear that they were not alighting at at the spot where bus was checked. Therefore, it can not be said that complainant after recovering fair charge not issued tickets to alighting passenger. Therefore, the charge levelled against the complainant is not proper. On that ground also, complainant had made out a prima facie case.

25. Fourthly , on perusal of charge-sheet, it will find that it is alleged that while checking bus by officers of flying squad, it was found on 26.08.2016, he was on duty on bus bearing no. MH-40-Y-5604. Total 28 passengers were travelling in such bus. Out of which 5 passengers traveling on without ticket The complainant recovered full fare charges of Rs.196 from alleged 5 passengers but not issue ticket till checking spot. Such allegations are seriously disputed by complainant. As such, there was controversy regarding the fact that whether

complainant intentionally not issued tickets the said passengers In such facts and circumstances, best witnesses would be alleged passengers for proving disputed fact. But, enquiry proceeding discloses that the said material witnesses was not examined in the enquiry. Therefore, it was not possible for inquiry officer to hold that complainant had intentionally not issued tickets to the alleged passengers. Therefore, in the absence of positive evidence against complainant, it appears that inference drawn by inquiry officer that complainant has committed misappropriation of alleged amount, prima facie appears to be not based on evidence available before him.

26. On perusal of the finding of enquiry officer, it is revealed that he has just mentioned the stages carried out by him in the enquiry. He has nowhere discussed evidence. On the contrary, he has merely relied on the spot statement of the alleged passengers. In fact, there are no reasons for his conclusion. The requirement of recording reasons is also one of the facets of natural justice. The reason is the very life of law. When the reason of law once ceases the D. and A. procedure itself generally ceases. Such is the significance of the reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoid uncertainty. When reasons are announced and can be weighed, the complainant can have assurance that the process of correction is in place and working. The reasons for a finding would ensure and enhance the confidence of complainant and would provide due satisfaction to him under our justice dispensation system. What is revealed from the above discussion and from the tenor of the report of enquiry

officer that he had already made up his mind to find the complainant guilty. The aforesaid discussion leads the Court to come to the conclusion that this is a case which is reasonably arguable and involves serious issues which also enables the complainant to say something in his favour during trial of the case and therefore, it necessitates the matter to proceed the trial. Therefore, at this stage, the complainant has made out prima facie case in his favour. Consequently, point no.1 is answered in the affirmative.

AS TO POINT NOS.2 & 3 :-

27. So far as, balance of convenience is concerned, in view of the aforesaid discussion, the complainant has prima-facie shown that his proposed dismissal is illegal. Therefore, in my opinion, balance of convenience certainly lies in favour of the complainant rather than respondents. Moreover, in my opinion, no comparative hardship will be caused to the respondents, if the complainant is continued till the decision of main complaint. Consequently, points no.2 and 3 are also answered in the affirmative.

AS TO POINT NO.4 :-

28. In the result, the application (Exh. U-2) deserves to be allowed. Hence, I pass the following order.

ORDER

- 1) Application Exh.U-2 is allowed in following terms :-
- 2) Respondents are hereby restrained temporarily from dismissing the

complainant from his services in pursuance of the impugned show cause notice dated 02.01.2023 till the decision of main complaint.

3) No order as to costs.

C H A N D R A P U R.
Date :- 28.03.2025.

(Smt. R. V. Mete)
Judge
Labour Court, Chandrapur.