

BEFORE THE JUDGE, LABOUR COURT CHANDRAPUR.

(Presided over by Smt. S. Z. Khan)

Complaint (ULP) No. 05/2020

(CNR No.MHLC340000572020)

Pramod S/o Vasantao Koyadwar
Aged about 43 yrs. Occ- Service.
R/o Bhiwapur ward, Chandrapur
Tah. & Dist.- Chandrapur.

.... Complainant.

-Versus-

1. The Divisional Controller,
MSRTC, Chandrapur Division,
Chandrapur, Distt.- Chandrapur.
2. The Divisional Traffic Officer
MSRTC Chandrapur Division,
Chandrapur, Distt.- Chandrapur.

.... Respondents.

Appearances :- Shri J. M. Patil Adv. for complainant.

Shri U. V. Deshpande Adv. for respondents.

ORDER BELOW EXH. U-2

(Passed on 16th February, 2021)

01. This is the application under Section 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, (for Short “MRTU & PULP Act”) for grant of interim relief to restrain the respondents from dismissing the

complainant from service on the strength of impugned show cause notice of dismissal dated 29.02.2020.

02. The case of the complainant in brief as under :-

The complainant is working under the employment of respondents on the post of Conductor. At present he is attached to Warora depot. Respondents had issued false chargesheet against the complainant alleging that on 17/12/2019 complainant was on duty on bus bearing no. MH-07-C-938 plying from Chorgaon to Chandrapur route. The bus was checked by checking squad at about 17:13 hours near Shakti Nagar gate, Durgapur. At that time, 40 passengers were traveling in the bus of complainant. Out of which, one passenger was found traveling without ticket. Accordingly, the charges of misconduct under Clause-62(1), 60(4) and 25 of New Discipline & Appeal Procedure of the Corporation were leveled against the complainant.

03. At Sinala stop, more than 10 passengers were boarded in the bus, including 5 pass-holders . The complainant had issued tickets to those passengers and take the entry of passes in the ETI machine in the running bus. After completing the booking, the complainant had asked the passengers as to whether anybody had remained without ticket but, nobody replied. Thereafter, when the complainant counted the passengers, he found the strength of 40

passengers but, ETI machine was showing one passenger less. Therefore, the complainant decided to check the tickets of the passengers in the running bus. Meanwhile bus was stopped by the Checking squad near Shaktinagar gate Durgapur. The complainant had narrated the above facts to the checking squad and thereafter, he along with the checking squad checked the fare tickets of passengers and in the said checking, the without ticket passenger was found by checking staff. The checking squad had collected the fare amount and recovered fine from the said passenger as there was fault on the part of said passenger.

04. The distance of Sinala to Chandrapur is 9 k.m. and from checking spot i.e. Shakti nagar , there is distance of 5 k.m. Thus, the said passenger was not alighting passenger. The distance of of only 4 k.m. was traveled by him and 5 k.m. distance was remained to be traveled. The complainant was checking the fare tickets after finding one passenger less in number, meanwhile the bus was checked. There was no dishonest intention of the part of the complainant to misappropriate the amount of fare.

05. The without ticket passenger was sat on the lasts second seat of the bus. He had narrated the checking squad that he was not feeling well therefore, slept on his seat and he had knowledge as to when the conductor had asked about the fare ticket to him.

Accordingly, he accepted his fault and paid the fine alongwith fare amount. Thus, there was no fault on the part of the complainant. The checking squad had not taken all these facts on record and submitted false report against the complainant.

06. Thereafter, departmental enquiry was initiated against the complainant which was not fair and proper and in accordance with the principles of natural justice. The complainant brought all the aforementioned facts to the notice of Enquiry Officer but, he was restrained by the Enquiry Officer from saying anything more except the reply to the chargesheet and nothing was recorded in the defence statement of the complainant. So also during departmental enquiry, the representative of the complainant had asked the questions to the reporter about the aforementioned facts but, the Enquiry Officer restrained the reporter from answering such question. The complainant due to apprehension had not reported the matter to the higher authority.

07. The Enquiry Officer herself had conducted the departmental enquiry. She put leading questions to the reporter. The important questions asked by the representative of complainant were not taken on record though it was answered properly by the reporter. The Enquiry Officer has acted malafidely to indulge the complainant

into false charges by giving understanding to dispose of the enquiry as there was no misconduct on the part of complainant.

08. The complainant had also narrated to the Enquiry Officer that he wanted to bring the without ticket passenger in enquiry to prove his innocence but, the Enquiry Officer gave understanding to the complainant that there is no need to prolong the enquiry unnecessary for long time and if the passenger was called, heavy punishment would likely to be awarded to him and thereafter enquiry was closed. Thus, fair and reasonable opportunity to defend the enquiry was not given to the complainant.

09. The complainant had never received fare from the without ticket passenger and no excess amount was found with the complainant. The Enquiry Officer had conducted the enquiry and also issued show cause notice in the capacity of DTO but, the required consent of respondent no.1 was never obtained. As such, the provisions of New Discipline & Appeal Procedure was violated.

10. The finding of the Enquiry Officer is also perverse. She had not considered the material facts disclosed by the complainant. On the basis of such perverse findings, the impugned show cause notice dated 29.02.2020 was issued to the complainant by respondents proposing the punishment of dismissal. The said show

cause notice is challenged by alleging that it is illegal. At present, complainant is in service. On the basis of impugned show cause notice, respondents are intending to dismiss the complainant from service. Therefore, the effect of such impugned show cause notice needs to be stayed.

11. Respondents have resisted the claim and contention of complainant by filing their reply cum written statement vide Exh.C-4. They have admitted that the complainant is working under their employment as a conductor. According to them, the complainant has committed misconduct as alleged in the charge-sheet. Therefore, enquiry was conducted against him. They have denied the fact of enquiry having been conducted in illegal manner. According to them, every opportunity was given to the complainant for defending himself, but he failed to establish his defence. During the enquiry, charges about misconduct leveled against him were proved. Therefore, impugned show-cause notice of dismissal was issued to the complainant legally. All the other adverse allegations are denied by respondents. According to them, there is no legal ground to allow the application - (Exh.U-2). Lastly it is prayed for rejecting it.

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

POINTS

FINDINGS

- 1) Whether the complainant has made out prima facie case ? : No.
- 2) Whether balance of convenience lies in his favour ? : No.
- 3) Whether he will suffer irreparable loss, if interim relief as per application –(Exh.U-2) is refused? : No.
- 4) What order ? : Application is rejected.

REASONS

13. Heard the learned counsel for the complainant and the learned Counsel for respondents. Perused the documents.

14. The complainant has placed on record the copy of charge-sheet, copy of suspension order, copy of statement of checking, chart of without ticket passengers, reply to chargesheet, copy of enquiry proceeding, copy of findings, copy of show cause notice, reply to show-cause notice alongwith Exh.U-3. Both the parties have relied upon these documents as per their convenience.

AS TO POINT NOS. 1 to 3 :-

15. 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.

16. 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.

17. The learned counsel for the complainant argued that there was no dishonest intention on the part of complainant to misappropriate the fare amount. The alleged without ticket passenger was not feeling well and was sleeping on the last seat. In all 10 passengers were boarded in the bus including the without ticket passengers and pass holders. The complainant had issued tickets to all the passengers and entry of passes of the pass holders was taken in ETI machine. He had found one less passenger as per the ETI machine. Therefore, he was checking the passengers meanwhile, his bus was checked. Such facts were not considered by Checking squad. He further added that the joint statement of alleged without ticket passenger and complainant was shown to be recorded but the same is in printed form. As such, the factual position was not taken in the statements of without ticket passenger and of the complainant and false report was submitted against the complainant.

18. He further added that enquiry was conducted against the complainant is also not fair and proper. The Enquiry Officer restrained the complainant from calling the without ticket passenger in the enquiry, the material questions asked by the representative of complainant were not taken on record in the enquiry, the Enquiry Officer had put forth leading questions to the reporter and defence of the complainant was not properly recorded and considered by the Enquiry Officer. As such, the enquiry is illegal and the findings of Enquiry Officer is perverse.

19. On the other hand, the learned counsel for respondents argued that the complainant had admitted his negligence in the enquiry as well as before the Enquiry Officer. Fair and reasonable opportunity was given to the complainant to defend the enquiry. He was supplied all the relevant documents along with the chargesheet. The complainant was represented by his representative in the enquiry and thus, the Enquiry Officer had followed the principles of natural justice while conducting the enquiry.

20. On going through the enquiry proceeding, it appears that all the documents as well as statements of witnesses were provided to the complainant along with the chargesheet (document no.1). The complainant has not disputed the receipt of any of those documents. The complainant himself has placed all these documents on record.

Thus, it is clear that the complainant was provided with all the documents including the statements of the witnesses. Admittedly, during enquiry, one of the witnesses i.e. the reporter was examined. It is not the case of complainant that during enquiry any witness whose statement was not provided to him was examined surprisingly.

21. So far as the submission of learned counsel for complainant regarding the illegality on the part of checking squad of not taking the factual position on record is concerned, according to the complainant the without ticket passenger had stated to checking squad that there was no fault on the part of complainant, the passenger was sleeping on the last second seat and had failed to pay the fare when the complainant asked the same. In this context, it is pertinent to mention that if such factual position was not taken into consideration by the checking squad, the complainant could have brought it to the notice of respondent through his reply to the chargesheet or through his defence statement. But, on going through the reply of the complainant to the chargesheet (document no. 6) it is seen that though the complainant had admitted that out of 40 passengers, one passenger was found without ticket and traveling without paying the fare amount but, he nowhere stated that the said passenger had narrated that there was no fault on the part of the complainant and that he was sleeping on the last seat of the bus.

22. Furthermore in his defence statement, during enquiry he had not submitted the alleged factual position to the Enquiry Officer. Per contra, he had adopted his reply to the chargesheet as his defence statement. Though, he had submitted therein that one passenger did not pay fare to him deliberately but, he nowhere stated that any effort was made by him to collect fare amount or to check the bus as to whether any passenger left without ticket.

23. The contention of the complainant is that the Enquiry Officer had restrained him to state the factual position and also to call the alleged without ticket passenger in the enquiry. The complainant had made number of serious allegations against the Enquiry Officer. It is contended that the Enquiry Officer had not taken material facts brought before her through the cross-examination of the reporter by the representative of complainant and also prevented the reporter to state the factual position in the enquiry. If such illegalities were committed by the Enquiry Officer, the question which naturally arise for consideration is as to why the complainant had not made any effort to bring such illegalities to the knowledge of higher authorities. Moreover no material is placed on record showing that the Enquiry Officer was having previous enmity or any sort of grudge against the complainant. Under this backdrop, the contention of the complainant is not appeared to be acceptable and worthy of belief.

24. The next submission of the learned counsel for complainant is that the alleged misconduct was never proved by the Corporation in the departmental enquiry. The material witnesses were not examined. Only the reporter was examined. As such, the enquiry is not fair and proper. In this context, no doubt the Corporation has examined only one witness i.e. the reporter. The reporter being the member of checking squad had narrated about the alleged misconduct. The report prepared by him and statements recorded during the first inspection and other documents were proved through reporter. The opportunity of his cross-examination was given to the complainant and the representative of the complainant had cross-examined the reporter. Furthermore, if the complainant was willing to examine any other witness, he could have call such witness as defence witness. But, there was no deliberation on the part of complainant during enquiry to call any such witness. As such, only on the ground of non examination of any witness as per the choice of complainant, the enquiry can not be held to be illegal. As such, I found no substance in the argument advanced by the learned counsel for complainant in this regard.

25. The learned counsel for complainant further argued that the Enquiry Officer had conducted the enquiry and also issued second show cause notice in the capacity of DTO which is against the settled position of law as well as rules of Discipline & Appeal Procedure of the Corporation. In this context, the complainant prima

facie could not show that the Enquiry Officer has acted with bias mind or committed any illegality while conducting the enquiry. Furthermore, he also could not established as to how prejudice was caused to him. Therefore, at this stage, this submission is not considerable in absence of any evidence to hold that Enquiry Officer has committed any illegality.

26. It is further contended that the findings of the Enquiry Officer is perverse. She had not considered the evidence brought on record and defence of the complainant. In this context, on going through the findings, it appears that the Enquiry Officer on the basis of evidence brought on record in departmental enquiry has given the finding that the complainant had not recovered the fare from the without ticket passengers till completion of 6 k.m. of distance nor issued fare ticket to him. As such, she found negligence on the part of complainant. In this context, on going through the evidence of reporter, it is seen that he had testified that the complainant had not collected the fare from the without ticket passenger till completion of 6 k.m. of distance. Only the distance of 3 k.m. was left to reach his destination. During cross-examination, the suggestion was put forth to the reporter by the representative of complainant that the distance from Sinala to checking spot is 3 k.m. but, the reporter negated the suggestion and deposed that it is 6 k.m. as per stage table. Thus, it appears that the findings given by the Enquiry Officer is on the basis of evidence brought before her in the enquiry

proceeding. As such, I found no prima facie illegality in the finding recorded by the Enquiry Officer.

Considering the aforesaid discussion, I hold that the complainant failed to make out prima facie case in his favour. Accordingly, I answer point no. 1 in negative.

27. The complainant has contended that if interim relief is not granted to him, respondents will dismiss him and he would be deprived of means of his livelihood. In this context, the respondents by issuing the impugned show cause notice had called upon the complainant to submit his explanation on the point of punishment. As such, the possibility of hearing of complainant and considering his explanation by respondents while imposing punishment can not be ruled out. Moreover, the legislation has not curtail the right of employer to terminate the services of employees in the event of proof of misconduct. In certain circumstances, if the termination is by way of unfair labour practices, the interference in such action is justified. But, in the case in hand, no such unfair labour practice is prima facie found on the part of respondents. Therefore, even if their action of proposed punishment is having drastic effect on the complainant, it can not be said to be wrong. Hence, the question of inconvenience is immaterial.

28. Further more, even if it is assumed that, respondents would dismiss the complainant, the complainant has right to

approach the Court, if the punishment is found disproportionate. In service matters, the successful party may get relief which can be computed in terms of money. Hence, no question of causing irreparable loss to the complainant arise. On the other hand, even if in absence of any prima facie material of unfair labour practices on the part of respondents, the complainant is allowed to continue in service by staying the operation of show cause notice, the control and supervision of the respondents would be curtailed and it would have detrimental effect on the efficiency of respondent corporation. Therefore, the public at large would be put to loss. Hence, I hold that the balance of convenience is also not lying in favour of complainant and he would not suffer irreparable loss, if the interim relief is refused. Hence, I answer point nos. 2 & 3 in negative and pass the following order.

Hence considering the aforesaid discussion, I hold that the interim relief as claimed by the complainant is not warranted in the case in hand. Hence, the following order.

ORDER

- 1) Application is rejected.
- 2) No order as to costs.
- 3) This order will take effect from 02/03/2021.

CHANDRAPUR.
Date :- 16.02.2021.

(Smt. S. Z. Khan)
Judge
Labour Court, Chandrapur.

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