

BEFORE THE JUDGE, LABOUR COURT CHANDRAPUR.**Complaint (ULP) No. 12/2024**

(CNR NO.MHLC340000192024)

Vilas Govindrao Pendam,
Age- 39 years, Occu- Service.
R/o. Bazar Chouk, Ward No.2,
At + Po- Navargaon, Tah : Sindewahi.
Distt : Chandrapur.

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

1. Maharashtra State Road
Transport Corporation,
Gadchiroli Division, Gadchiroli.
Through its Divisional Controller.
Office at near bus stand, Gadchiroli.
Tah. & Distt : Gadchiroli.
2. The Depot Manager,
Maharashtra State Road
Transport Corporation,
Brahmapuri.

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

Shri. V. M. Shikare Ld. Adv. for Complainant.

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

(ORDER BELOW EXH.U-2)(Passed on 03st February, 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

20.01.2024 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 an employee of the respondent corporation. The complainant is working with the respondent corporation as a conductor from 31.03.2014 continuously with clean and unblemished past service record. Respondent no. 1 is the representative of MSRTC. for Chandrapur division and also the appointing authority of the complainant. The respondent no.2 is the authority who acted as an enquiry officer cum Disciplinary Authority in the instant case, who issued impugned show cause notice dated 20.01.2024. The respondent have engaged in unfair labour practice falling in Item-1 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act.

03. It is submitted that the complainant has been issued with charge sheet dated 22.07.2023 whereby he was charged with the alleged misconduct falling in Items- 10, 22 and 35 of Schedule-A of old Discipline and Appeal Procedure of the respondent corporation. It was alleged that the complainant is absent on duties from 01.01.2023 to 22.07.2023 and hence another conductor has to send on double duty and some times kilometers are cancelled and totally 25000 kilometers cancelled, due to which the respondent corporation has to sustain loss of Rs. 4,50,000/-. It was further alleged that there is shortage of driver in the depot and hence, some drivers have to send on double duty.

04. The complainant has replied the said charge sheet on

09.08.2023. It was specifically mentioned in the reply to charge sheet by the complainant that he was on duty till 21.06.2023. He was ill for the period from 22.06.2023 till 08.08.2023 and an intimation of his illness was given to Shri Urkude- Traffic Controller. In spite of aforesaid reply, the respondent no.2 made a show of enquiry on 10.08.2023 only one day and without calling any further witnesses and concerned documents, the complainant has been issued with impugned show cause notice dated 20.01.2024 in which the punishment of dismissal is proposed by the respondents. Impugned show cause notice of dismissal is illegal, unlawful and against the basic principles of natural justice.

05. It is further submitted by the complainant that the charges levelled against him are baseless and without any material on record. Enquiry officer and disciplinary authority is the same and one person, which is not permitted in the eyes of law. The respondent no.2 being enquiry officer cum disciplinary authority acted as a Prosecutor in the instant case by asking direct questions to the Reporter Smt. Puja Wasnik and also by asking direct questions to the complainant in the enquiry dated 10.08.2023. Enquiry officer has failed to record examination in chief of Reporter, which is against the principles of natural justice. The enquiry officer has not called any documents in the enquiry towards loss of respondent corporation as mentioned in the charge sheet. Enquiry officer also failed to call material witnesses. Enquiry officer has failed to call the report of complainant as the report submitted by the Reporter against the complainant is attached with another case and the copy of report against one Mr. S. B. Gawali- conductor is given to the

complainant along with the charge sheet. The proposed punishment of dismissal is shockingly disproportionate. The punishment of dismissal is also not proposed in the Discipline and Appeal Procedure of the respondent corporation for the charges levelled against the complainant in the charge sheet. The complainant has been victimized. The complainant has not received copy of findings of enquiry officer. Fair and proper opportunity was not granted to the complainant to defend his case in the enquiry. During enquiry material and relevant documents were 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.

06. 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 20.01.2024 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.

07. The respondents have filed their reply cum written statement vide (Exh. C-03) 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 from 31.03.2014 continuously with clean and unblemished service record. It is denied that respondent no.2 is the authority who acted as an enquiry officer cum disciplinary authority in the

instant case, who issued impugned show cause notice dated 20.01.2024. It is denied that the respondents have engaged in an unfair labour practice under item-1 of schedule-IV of the MRTU and PULP Act by issuing impugned show cause notice dated 20.01.2024. It is denied that the charges levelled against the complainant are false and baseless. It is denied that the respondents have victimized the complainant. It is denied that in the enquiry reasonable and fair opportunity was not granted to the complainant. It is denied that material witnesses were not examined in the enquiry. It is denied that the enquiry conducted against the complainant is not fair, proper and in accordance with principles of natural justice. It is denied that the findings recorded by the enquiry officer are perverse

08. By special pleadings the respondents have submitted that the complaint as well as the application as framed and filed by the complainant is itself not tenable in the eyes of law or on facts. The complainant was appointed as a conductor by the respondent corporation. It is submitted that the complainant was remain absent on duty intentionally. The respondent issued charge sheet dated 09.08.2023 to the complainant and conducted fair and proper enquiry against him. The complainant has participated in the enquiry proceedings. In the enquiry, enquiry officer found that the charge upon the complainant for absentee inspite of corporation sustained loss of Rs. 55,000/- towards over time wages is duly proved against the complainant. The respondents have issued show cause notice of dismissal dated 20.01.2024 and thereby decided to dismiss the complainant from service. The enquiry officer has followed the principles of natural justice and conducted fair and impartial

departmental enquiry against the complainant. The enquiry officer has appreciated that the complainant has committed serious misconduct.

09. It is further submitted that the complainant has given fair, proper and reasonable opportunity while conducting the departmental enquiry and thereby principle of natural justice was followed. Thus, the enquiry conducted against the complainant is legal, fair and proper, and finding drawn by the enquiry officer just, legal and proper. It is submitted that even though this court comes to a conclusion that the departmental enquiry conducted against the complainant is unfair and improper and findings of enquiry officer are perverse, then respondent corporation may be granted an opportunity to prove charges against the complainant by adducing evidence before the court. The proposed punishment of dismissal is proper and proportionate to the charges proved against the complainant. The complaint filed by the complainant is devoid of merit.

10. 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.

11. 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 : In the affirmative. lies in his favour ?
- 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

12. I have heard Shri V. M. Shikare, Representative of the complainant and Shri U. V. Deshpande, learned counsel for respondents.

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

- 1] Copy of Charge Sheet dated 22.07.2023.
- 2] Copy of Report dated 21.07.2023.
- 3] Copy of reply to charge sheet submitted by the complainant dated 09.08.2023.
- 4] Copy of enquiry proceedings dated 10.08.2023.
- 5] Copy of joining report of complainant after availing leave on medical grounds dated 10.08.2023.
- 6] Copy of Medical Certificate dated 25.07.2023.
- 7] Impugned show cause notice dated 20.01.2024

AS TO POINT No.1 :-

14. While considering the application under section 30(2) of the Act, the Court has to consider the availability of prima facie case in favour of the complainant on the basis of material of the enquiry placed before the Court. After giving anxious consideration to the submissions made by either side and on

perusal of the charge sheet dated 22-07-2023, it is revealed that charges under clause 10, 22 and 35 of the D. and A. procedure were levelled. On perusal of the charge-sheet it is mentioned that complainant was absent from duty from dated 01-01-2023. However, on perusal of the reply dated 22-07-2023 (document no. 3) filed by the complainant to the charge sheet, it is revealed that complainant given information to the respondent about his illness. He has categorically denied all the allegations in the charge sheet. Moreover, it is pertinent to mention here that no action for the said period of absence seems to have been taken by the respondent at that time for the reasons best known to them. Therefore, in absence of any such record, it can be said that the action taken by the respondent on the basis of the report for absence for the said days is unknown to the D. and A. procedure of the corporation. Therefore, the basic document of the respondent itself is doubtful. Consequently, at this stage it can be said that the enquiry conducted on the basis of such report needs adjudication at the hands of the Court after evidence on merit by both the sides.

15. Secondly, the findings of the enquiry officer appears to be based only on the report of reporter. No record of financial loss or extra substitution of duty and inconvenience to passengers was placed before the enquiry officer. Therefore, finding drawn by the enquiry officer appears to be in that evidence. Therefore, at this stage there is prima facie case in favour of the complainant.

16. Thirdly, on perusal of papers of enquiry (document no. 4) it is revealed that, the enquiry was started on 10-08-2023 and was completed on the same day itself. It means it was

completed within one day. Hence, at this stage it can be said that there was undue haste on the part of the enquiry officer in completing the enquiry which cast a serious doubt on its fairness. The complainant has assailed the ground of illness for his leave. Therefore, if the allegations of unauthorized absence from duty is made, the competent authority is required to prove that the absence of the employee was wilful. On perusal of the finding of the enquiry officer, at this stage, it can be said that there was no finding by the enquiry to the effect that the complainant was wilfully absent from duty. Apart from all this, on perusal of rule 7 of D. and A. procedure, I find substance and merit in the contention of the complainant that the said rule nowhere provides punishment of dismissal for the charge under clause 35 of Schedule A of the D. and A. procedure for his alleged absence from duty. The aforesaid discrepancies, lacunaes noted in the departmental enquiry leads the Court to come to the conclusion that the complainant has established that there are serious questions which need adjudication at the hands of the Court after evidence on merit by both parties. In this way, he has shown existence of prima facie case in his favour. Consequently, point no. 1 is answered in the affirmative.

AS TO POINT NOS.2 & 3 :-

17. 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 :-

18. 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 20.01.2024 till the decision of main complaint.
- 3) No order as to costs.

Sd/-

(Smt. R. V. Mete)

Judge

Labour Court, Chandrapur.

C H A N D R A P U R.

Date :- 03.02.2025.