

**BEFORE THE JUDGE, LABOUR COURT**  
**CHANDRAPUR.**

**Complaint (ULP) No.04/2023**  
(CNR NO.MHLC340000772023)

Shital Prashant Ballaar ,  
Aged about 43 years, Occu : Service,  
R/o C/o,Dhale, Siddhi Plaza,  
Arvindnagar, Mul Road, Chandrapur. .... **Complainant.**

**-:- VERSUS -:-**

1. Maharashtra State Road  
Transport Corporation.  
Through its Divisional Traffic  
Superintendent,  
MSRTC, Chandrapur.
2. Maharashtra State Road  
Transport Corporation.  
Through its Divisional Traffic Officer,  
MSRTC, Chandrapur.
3. Maharashtra State Road  
Transport Corporation.  
Through its Divisional Controller,  
MSRTC, Chandrapur.  
Chandrapur. .... **Respondents.**

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

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**Appearance :**

Shri. M. M. Wankhede, Ld. Counsel for the complainant.

Shri. B. M. Patil, Ld. Counsel for the respondents.

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**(ORDER BELOW EXH.U-2)**

(Passed on 16<sup>th</sup> March, 2024)

This is an application under section 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971 ( for short hereinafter referred to as 'MRTU & PULP Act') praying for quashing and setting aside show cause notice of dismissal dated 10.03.2023, till decision of main complaint.

2] The brief facts of the present application are as under :

The complainant is working as conductor with the respondent corporation since the year 2017. At present she is attached to Chandrapur depot and is working under the control and supervision of the respondent no.1. Her service record is clean and unblemished. Respondent corporation has issued charge sheet dated 02.11.2022 under clauses 62(1), 62(3), 62(4), 63(b) and 25 of of Schedule-A of the Discipline and Appeal Procedure of the respondent corporation levelling false and concocted charges against her. It was alleged in the charge sheet that on 17.10.2022, when the complainant was discharging her duty as conductor on the bus bearing No. MH-40/N-9420 plying on Wani -Chandrapur route, the said bus was checked by the checking squad at Ghugus Bus Stand. At the time of checking it was found that, there were total 80

passengers travelling in the bus, out of them, 9 passengers who were travelling from Wani -Chandrapur were found without ticket. It was alleged that the complainant has collected fare charges of Rs. 810/- from them but did not issue them tickets till checking of the bus. It was further alleged that one blank ticket was recovered from the group of alleged without ticket passengers wherein ticket number 3851 was written by the complainant. It was further alleged that the alleged passengers have paid Rs. 1000/- to the complainant towards fare charges but complainant issued blank ticket by mentioning number 3851 upon that ticket and also on back side of ticket refund amount of Rs. 200/- was mentioned. It was also alleged by the respondent that when the checking staff was busy in checking the bus, at that time complainant hurriedly tried to obtain tickets from ETI machine, but during that transaction wrong ticket was printed from Ghuggus to Chandrapur vide denomination of Rs. 360/-. It was further alleged that when the checking staff demanded the said ticket denomination of Rs. 360/- then she chewing that ticket and picked it. It was further alleged that the complainant has committed various irregularities while discharging her duty. It was alleged that the complainant has tried to misappropriate the amount of Rs. 810/-.

3] Complainant has submitted reply to the said chargesheet on 03.02.2022. Without conducting his reply to the chargesheet the respondent has initiated departmental enquiry against him. Enquiry conducted against him is not legal, fair, proper and in accordance with the principles of natural justice. The findings recorded by the enquiry officer

are perverse. The enquiry officer has played a role of enquiry officer as well as prosecutor, who himself put questions by way of cross examinations to the complainant. The impugned punishment order dated 10.03.2023 is illegal. The complainant was awarded two different punishments for single misconduct which is nothing but double jeopardy, which is not permissible in the eyes of law.

4] Bare perusal of reports it reveals that in first report it is mentioned that there was total 108 passengers travelling in the bus, in second report it shows 54 passengers were travelling and in the third report it shows 80 passengers were travelling in the passengers. As such, the checking staff trying to entangle the complainant in false case. The complainant had already issued tickets to all the alleged 9 ticket passengers vide ticket bearing No. 3883 for Ghuggus to Chandrapur as they were boarded from Ghuggus but the checking staff trying to create picture that all 9 passengers were boarded from Wani which is totally illegal. Bare perusal of inspection report as well as ticket wise collection report it reveals that more than 100 passengers were travelling in the bus but same were not considered by the enquiry officer before recording its findings. There was no intention of the complainant to grab or misappropriate the amount of respondent corporation.

5] The complainant has submitted that he has a prima facie case and balance of convenience lies in his favor. He would suffer irreparable loss in the event of non grant of interim relief, as prayed, in his favor till decision of main complaint. On these grounds, the complainant has prayed for

grant of interim relief by quashing and setting aside show cause notice of dismissal dated 10.03.2023, till decision of main complaint.

6] The respondents have resisted the application by filing composite reply cum written statement at Exh. C-6. It is not denied that at present complainant is attached to Chandrapur depot and is working under the control and supervision of respondent no.1. It is denied that the service record of the complainant was clean and unblemished. All adverse allegations made by the complainant are denied.

7] It is mentioned that charge sheet dated 02.11.2022 under clauses 62(1), 62(3), 62(4), 63(b) and 25 of Schedule-A of the Discipline and Appeal Procedure of the respondent corporation was issued to the complainant. It is submitted by the respondent corporation that, on 17.10.2022, when the complainant was discharging her duty as conductor on the bus bearing No. MH-40/N-9420 plying on Wani -Chandrapur route, the said bus was checked by the checking squad at Ghugus Bus Stand. At the time of checking, it was found that, there were total 80 passengers travelling in the bus, out of them, 9 passengers who were travelling from Wani -Chandrapur were found without ticket. It is submitted by the respondent corporation that despite collecting fare charges of Rs. 810/- from these 9 passengers at the time of their boarding place but did not issue them fair and proper tickets till the checking of the bus. The complainant allowed them to travel without ticket near about 35 km. despite collecting fare charges from them. There was intention of the complainant to grab that amount. The complainant was received two currency

note of Rs. 500/- from the group leader of these 9 passengers towards fare charges from Wani to Chandrapur at the time of their boarding and write back side of the ticket as refundable amount of Rs. 200/-, which was issued while checking the bus by checking squad by taking disadvantage, as the checking party was busy in the checking of bus. By this way the complainant has tried to issue ticket to those 9 passengers of Rs. 810/- for save herself from the consequences of such misconduct. Reply given by the complainant to the charge sheet was not satisfied and hence departmental enquiry was conducted against him. Complainant participates in the enquiry. Full and fair opportunity was granted to the complainant to participate in the enquiry. Enquiry conducted against the complainant was fair, proper, legal and according to the principles of natural justice. The findings recorded by the enquiry officer are just and proper.

8] It is submitted by the respondents that the complainant while acting as a conductor of the said bus, she was duty bound to discharge her scheduled duties as per the rules of the respondent corporation, but she was made default willfully on her own accord, while discharging her respective duties, which resulted into misconduct as to misappropriation of public fund. Her service record was very bad and blemished. She was lightly punished from time to time for the similar nature of misconduct and was also issued warning from time to time with an intention to improve herself but, in vain. Thus, fine was also imposed upon her. She is not entitled for any relief as prayed.

9] 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.

10] On going through the contentions of rival parties following points arose for my determination and I record my findings thereon as under for the reasons to follow :

<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1) Whether complainant has made out prima facie case ?	Yes
2) Whether balance of convenience lies in her favour ?	Yes
3) Whether she will suffer irreparable loss, in case application Exh.U-2 is not allowed ?	Yes
4) What order ?	: As per final order.

### **REASONS**

11] I have heard Shri M. M. Wankhede counsel of the complainant and Shri B. M. Patil, learned counsel for respondents.

12] The complainant relied upon the documents. Those documents are – Charge sheet dated 02.11.2022, Reports

dated 17.10.2022,18.10.2022, Statement of W.T. passenger and driver of bus dated 17.10.2022, Inspection report dated 09.05.2022, Way bill ticket wise report dated 17.10.2022 Reply to the charge sheet dated 09.11.2022, Letter dated 26.11.2022 and 12.12.2022, Application dated 30.11.2022, Enquiry proceeding dated 06.01.2023, 09.01.2023 & 16.01.2023, Transfer Order dated 29.11.2022 Show cause notice dated 10.03.2023 & findings drawn by enquiry officer.

**AS TO POINT No.1 :-**

13] 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.

14] 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.

15] The learned 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.

16] 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. She was given reasonable opportunity to defend the enquiry. As such, the enquiry is fair and proper.

17] In this context, ongoing 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 cannot be a judge in his own case. If such practice is adopted, the possibility of being biased or predetermined conclusion against the delinquent cannot be ruled out. As such, I found force in the submission of learned counsel for complainant.

18] Secondly, while going through the record, it is seen that second and third charge levelled against complainant is as per clause 62(3) & 62(4) i.e. After recovering fair charge not issuing ticket to the alighting passenger and not issuing ticket to the alighting passenger within stipulated time, while in this case the bus of complainant is checked at Ghugus but the alleged without ticket passenger were alighting at Chandrapur. The journey of the said passengers yet not completed. Therefore, it is clear that alleged without ticket passengers are not alighting at Ghugus where the bus is check. Therefore, the said charges levelled against the complainant are not proper. On that ground also, complainant had made out a prima facie case.

19] Thirdly, on perusal of charge-sheet, it is alleged that while checking bus by officers of flying squad, it was found that on 17.10.2022, complainant was on duty on bus bearing no. MH-40-N-9420. Total 80 passengers were traveling in such bus. Out of them, 09 passengers traveling without tickets. Complainant has collected fare charges of Rs. 810/-

from them but did not issue them tickets till checking of the bus. The alleged passengers have paid Rs. 1000/- to the complainant towards fare charges but complainant issued blank ticket by mentioning number 3851 upon that ticket and also mentioned refund amount of Rs. 200/- on back side of ticket. Thereafter, when the checking staff was busy in checking the bus, at that time complainant hurriedly tried to obtain tickets from ETI machine, but during that transaction wrong ticket was printed from Ghuggus to Chandrapur vide denomination of Rs. 360/- and when the checking staff demanded the said ticket denomination of Rs. 360/- then complainant chew that ticket and picked it. Therefore, complainant has tried to misappropriate the amount of Rs. 810/-. Such allegations are seriously disputed by complainant and according to her, the said passengers were travelling from Ghugus to Chandrapur. She had issued ticket to alleged 9 passengers but checking officer made false case against her. As such, there was controversy regarding the fact that whether complainant not issued tickets to the said passengers or not. In such facts and circumstances, best witnesses would be alleged passengers for proving disputed fact. But, enquiry proceeding discloses that the said material witness was not examined in the enquiry. Therefore, it was not possible for inquiry officer to hold that complainant had intentionally not recovered fair charge and not issued tickets to the alleged without ticket passengers. Therefore, in the absence of positive evidence against complainant, it appears that inference drawn by inquiry officer that complainant was liable for such loss of alleged amount, by not issuing tickets to the said passengers, prima facie appears to be not based on

evidence available before him.

20] Secondly, perusal of the record, it appears that another charge leveled against the complainant under clause 63(b) for misappropriation of the amount of corporation. But, perusal of the report and statement of allegation in the charge sheet, it is mentioned that complainant tried to misappropriate the amount of corporation. Also, the cash of the complainant was not checked at the time of checking. Therefore, it is doubtful that how the enquiry officer given finding that charge 63(b) is proved against the complainant. Therefore, from this prima facie, it appears that the charges are different than the statement of allegation in the charge sheet. From this material infirmity it is clear that the complainant made prima facie case.

21] Perusal of the record it appears that checking officer prepared three different reports and in all the reports there was difference in the number of passengers travelling in the bus of complainant. Bare perusal of reports it appears that in the first report it is mentioned that 108 total passengers travelling in the bus. In the second report it is mentioned that 54 total passengers were travelling in the bus and in the third report it is mentioned that there were 80 passengers were travelling in the bus of complainant. From this, it appears that the checking officer and the reporter who has prepared said reports were not confirmed about the total number of passengers travelling in the bus of complainant. From this material infirmity it is clear that whatever the contention of the complainant that checking officer tried to

indulge the complainant in false case prima facie appears to be true.

22] 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 ticket less 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 favor 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 favor. Consequently, point no.1 is answered in the affirmative.

**AS TO POINT NOS.2 & 3 :-**

23] So far as, balance of convenience is concerned, in view of the aforesaid discussion, the complainant has prima-facie shown that her proposed dismissal is illegal. Therefore, in my opinion, balance of convenience certainly lies in favor 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 :-**

24] 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 her services in pursuance of the impugned show cause notice dated 10.03.2023 till the decision of main complaint.
- 3) No order as to costs.

CHANDRAPUR.  
Date :- 16.03.2024.

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