

BEFORE THE JUDGE, LABOUR COURT CHANDRAPUR.

(Presided over by A. D. Tidke)

Complaint (ULP) No. 21/2024

(CNR NO.MHLC340000612024)

Shamal Kartik Mandal
Age: 52 Years, Occu: Service.
R/o. Krsihna Nagar, Mul Road,
Chandrapur.
Tq: & Dist :Chandrapur.

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

1. Maharashtra State Road Transport Corporation, Gadchiroli, Division Gadchiroli
Through its Divisional Controller,
2. The Divisional Traffic Officer of MSRT Corporation, Gadchiroli

Office of both at Near Bus Stand, Gadchiroli,
Tq: & Dist: Gadchiroli.

.... Respondents.**Appearance :-**

Shri. V.M. Shikare Ld. Counsel for the Complainant.

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

ORDER BELOW EXH.U-2(Passed on 20th September, 2025)

This is a complaint filed by the complainant under Section 28 Schedule-IV Item-1 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short hereinafter referred to as 'MRTU & PULP Act')

02] Present application is filed by the applicant under Section 30(2) of the MRTU & PULP Act seeking direction against the respondent to stay the effect and operation of impugned show cause notice of dismissal dated 30.01.2024

till the decision of complaint.

The Complainant's submission in short as follows.

03] The complainant is a bus driver working with the respondent corporation from year 2006 with unblemished past service record. The respondent no.1 is the representative of MSRT Corporation for Gadchiroli Division, and also the appointing authority of the Complainant. The respondent no.2 is the authority who has acted as Disciplinary Authority and Enquiry Officer in the instant matter and who has issued impugned show cause notice of dismissal to the complainant on 30.01.2024.

04] It is further alleged that allegations are made against the complainant under clauses 11,15 and 45 of Schedule 'A' of the Discipline and Appeal Procedure of MSRT Corporation. The Discipline and Appeal Procedure is hereinafter referred to as D & A Rules for the sake of brevity. The allegations that are made against the Complainant, are based on the facts, that on 02.07.2012, when the Complainant was performing his scheduled duty on Aheri to Gadchiroli route on Bus No. MH-40 N-9513, while alighting passengers at Yenapur Bus stop and while starting the Bus, one pedestrian who was running and crossing the Bus from front side to enter the Bus, was given dashed from front right side of the of Bus, and died while undergoing treatment in the Hospital.

05] It is further submitted that the enquiry conducted against the complainant was not fair and proper. It has been submitted that Enquiry Officer and Disciplinary Authority is one and the same person as well as Enquiry Officer has acted as a prosecutor. The Enquiry officer has not called material witnesses and documents during the course of enquiry. The findings drawn by Enquiry officer are perverse. The charges levelled against the Complainant are shown proved against the Complainant by applying colourable exercise of power by the respondents. The Enquiry was conducted

against the Complainant on 05.03.2020, and the show cause notice is issued on 30.01.2024 i.e after completion of near about four year.

06] It is further submitted that the proposed punishment of dismissal is also shockingly disproportionate. The punishment of dismissal is also not proposed in the D & A Procedure of Corporation for charges levelled against the complainant in the instant case. In the above facts and circumstances of the case, it submitted that it is essential to safeguard the employment of the Complainant till the decision of the complaint. As such, the Complainant has prayed for staying effect and operation of impugned show cause notice issued by the respondents to till decision of the main complaint.

Respondent's submission in short.

07] It is not disputed that the complainant has been working as a driver with the respondent corporation. Whatever allegations are made in the compliant and application at exhibit U-2 by the Complainant, that all allegations are denied by the respondents. The respondents have specifically submitted that the compliant as well as the application as framed and filed are not tenable in the eyes of law or on facts. The Complainant is not entitled for any relief as per prayer clause.

08] It is further submitted that the Complainant was appointed by as a driver by the respondent. It is further submitted that the complainant was issued charge sheet on 08.01.2013, and a fair departmental enquiry is conducted against the complainant. The complainant has participated in the departmental proceeding. After that the Enquiry Officer found that the charges against the Complainant are duly proved after conduct of fair enquiry. Thereafter, the respondents have issued show cause notice of dismissal to the Complainant on 30.01.2024 and thereby decided to dismiss the Complainant from service.

09] The Enquiry Officer has followed principle of natural justice and conducted fair and impartial departmental proceeding against the Complainant. The Enquiry Officer has appreciated that the Complainant has committed serious misconduct and it amount to dismiss from his service is legal and correct one. Findings drawn by the Enquiry Officer are absolutely based on record available before the Enquiry Officer. With these contentions, the respondents have prayed for rejection of the stay application.

10] Considering the submissions made and argument advanced by the Ld. Counsel for the complainant and the Ld. Counsel for the respondents, following points arise for my determination. I have recorded my findings against each of them 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 favor ? | In the affirmative. |
| 3) Whether he will suffer irreparable loss, in case application for interim relief is not allowed? | In the affirmative. |
| 4) What order? | : As per final order. |

REASONS

AS TO POINT NOS. 01 TO 04 :-

11] It is undisputed fact that the Complainant has been working as a driver with the respondent corporation. It is also not disputed that Enquiry has been conducted against the Complainant and impugned show cause notice of dismissal dated 30.01.2024 has been issued to him. The Complainant has alleged that the respondents have engaged themselves in unfair Labour practices by issuing such show cause notice of dismissal. It is also pertinent to

note that the departmental proceeding has been challenged on various grounds alleging that the respondents have not given fair and proper opportunity to him and thereby violated the principal of natural justice.

12] When the Complainant has prayed for staying the effect and operation of the impugned show cause notice dated 30.01.2024, it is responsibility of the complainant to show that he has prima facie case and balance of convenience in his favor and he may suffer an irreparable loss, if injunction or stay is not granted to the impugned show cause notice. While considering the principles of prima facie case, balance of convenience and the principle of irreparable loss, the Court has to see, whether the party seeking stay order has a triable case or strong case in his favor. In this view of the matter, the case of the complainant and allegations made by him need to be considered, so as to see these principles.

13] The complainant has produced on record various documents along with exhibit U-3 i.e Copy of charge sheet dated 08.01.2013 issued by respondent no.2 , copy of report dated 07.07.2012, copy of accident report dated 02.07.2012, copy of FIR registered with Police Station dated 02.07.2012, copy of sketch of place of accident prepared by Reporter dated 02.07.2012, copy of reply filed by the Complainant against the charge sheet dated 25.01.2013, copy of enquiry proceeding dated 05.03.2020, copy of findings drawn by the Enquiry Officer dated 05.03.2020 and copy of impugned show cause notice dated 30.01.2024 issued by the respondent Corporation.

14] After going through the oral submissions of the parties as well as documentary evidence on record, it prima facie appears that the alleged incident on the basis of which charge sheet is issued to the Complainant is dated 02.07.2012. However, the impugned show cause notice of dismissal is issued on 30.01.2024. If the date of the incident and the date of issuing show cause notice of dismissal are compared, then it finds that there is near about

gap of 12 years. On going through the record of enquiry proceeding, it appears that confidential report about the incident of accident as well as report of the of accident was prepared on 07.07.2013 by the concern officer. The charge sheet in respect of allegations made was also prepared on 08.01.2013. It also appears from the record that reply to the charge sheet was given by the complainant on 25.01.2013. However, after that the respondents have taken or spent near about seven years period to commence inquiry against the complainant. The record clearly goes to show that statement of the reporter as well as complainant came to be recorded in Enquiry proceeding on 05.03.2020, and thereafter, findings were recorded by Enquiry Officer on 30.01.2024 and show cause notice of dismissal came to be issued on the same day.

15] There is nothing on record to explain that why there was gap of so many years to commence evidence in enquiry proceeding and to record finding. It is seen from the record that on the basis of alleged incident criminal prosecution is initiated against the complainant by way of registration of FIR with Charmoshi Police Station on 02.07.2012. It has been alleged that the Complainant being the ST Bus driver, drove the bus either rashly or negligently and thereby gave dash to the pedestrian resulting in his death. No doubt, offence under section 279 and 304A of IPC are registered against the Complainant.

16] On going through the findings recorded by the Enquiry Officer, nowhere, it is mentioned that for what reason there was such long delay for conducting enquiry proceeding. It is not the case that the enquiry officer was waiting for the result of the criminal prosecution initiated against the Complainant. What happened with the criminal prosecution initiated against the Complainant, whether it is still pending or decided by the Court, there is nothing on record to put light on that aspect. As such, delay in conducting enquiry against the Complainant is not satisfactorily explain on record which prima facie amount colorable exercise of power at the instance of the

respondent corporation.

17] It appears from the charge sheet that allegations are made against the Complainant under clauses 11,15 and 45 of old D & A Procedure. It appears that clause 11 deals with negligent conduct of the employee causing loss to the Corporation or inconvenience to the Public. Further, clause 15 speaks of negligent conduct causing loss to the work, vehicle or property of the Corporation. Moreover clause 45 is regarding contravention of security instruction proclaimed by the Corporation.

18] The facts as set out in the charge are that on 02.07.2012, while the Complainant being driver of the Bus No. MH 40 N 9513 after alighting passengers and while driving the bus to leave from the stop, one pedestrian was running from the right front side of the bus trying to cross the Bus to get in, at that time, dash of the front right side of the Bus was given to the pedestrian who was taken to the Hospital but died while undergoing medical treatment. These are facts on which charges have been levelled against the Complainant under clause 11,15 and 45 of D & A Procedure of the MSRTC. As seen from the facts stated in the charge sheet, the accident occurred when the Bus was about to leave from the spot. It is also prima facie seen from the charges levelled that the deceased passenger was trying to cross the Bus to get in it.

19] It is clear from the facts and charges levelled against the Complainant that the criminal prosecution initiated against the Complainant is about negligent driving of the Bus. The charges levelled itself shows that the act is not committed with an intention to commit said act to yield such result. It is worth to note that the Reporter in his report dated 07.07.2012 has given opinion that the alleged accident could not have taken place, if the Complainant would have seen the right side of the Bus before taking it

forward. Thus, the alleged negligence is that while taking the bus forward, the complainant being the driver of the bus did not see towards the right front side of bus and taken it forward and thereby given dash. While recording such opinion by the Reporter, there should be statement of any witness to show and substantiate the said fact. The enquiry proceeding does find any such statement of the witness throwing light on the actual scene of the occurrence of the incident.

20] No doubt, in enquiry proceeding the proof of a fact is based on probable evidence and it is not required to prove the guilt beyond reasonable doubt. It is quite clear that FIR has been registered and criminal prosecution has been initiated but none of the party disclosed whether it is pending or decided.

21] The submission of the Complainant is that the proposed punishment is shockingly disproportionate and it has not been prescribed in the D.A.Procedure of the MSRTC for the charges levelled against the Complainant. It is pertinent to note here that the findings recorded by the inquiry officer, nowhere disclosed observation that the complainant has committed same type of offence prior to this. The previous service record of the complainant has been taken in to consideration by the Enquiry Officer which shows that the Complainant was punished 37 times with different punishment and he was also suspended on one occasion. The charges levelled against the complainant are solely based on negligence of the complainant while driving of the Bus, therefore, it would be appropriate to consider, whether same type of negligence was committed by the Complainant in the past period, if it is not so then that can be considered as an aggravating circumstance to imposed higher penalty on the complainant. However, the record does not disclose that such type of negligence in driving was committed by the complainant during has past service tenure.

22] After considering the punishment provided for misconduct under clause 11,15 and 45 of the old D.A.Rules, no punishment of dismissal is provided in the old Code. As such, there is prima facie reason to say at this stage that the proposed punishment of dismissal is disproportionate. It is also prima facie seen from the record of enquiry proceeding that the enquiry officer has acted like a prosecutor by putting questions to the reporter as well as delinquent i.e complainant which is not permissible in the eyes of law.

23] Thus, considering the overall facts and circumstances as seen from the record available before this Court, I am of the considered opinion that the complainant has a prima facie case and balance of convenience in his favor. Furthermore, if the impugned show cause notice of dismissal is not stayed till the decision of the complaint, action of dismissal can be initiated at the instance of the respondent corporation. If dismissal action is taken place in accordance with impugned show cause notice of dismissal, then the Complainant may suffer an irreparable loss. As such, I answer point nos. 1 to 3 in the affirmative and pass following order.

ORDER

- 1) Application is allowed as prayed.
- 2) Respondents are hereby temporarily restrained from taking any action against the complainant on the basis of impugned show cause notice of dismissal dated 30.01.2024 till the decision of the Complaint.
- 3) Costs in main cause.

Place; Chandrapur.
Date :- 20.09.2025.

(A. D. Tidke)
Judge
Labour Court, Chandrapur.