

BEFORE THE JUDGE, LABOUR COURT
CHANDRAPUR.

Complaint (ULP) No.58/2022
(CNR NO.MHLC340001712022)

Anand Jagdish Joshi,
Age 51 Years, Occu : Service,
R/o. Vitthal Mandir Ward,
Chandrapur,
Tah. & Dist. Chandrapur.

.... **Complainant.**

-:- VERSUS -:-

1. Maharashtra State Road Transport Corporation, Chandrapur Division Chandrapur – through its Divisional Controller.
2. The Divisional Traffic Officer, Maharashtra State Road Transport Corporation, Chandrapur.
3. The Divisional Traffic Supdt.(Dfl.) Maharashtra State Road Transport Corporation, Chandrapur.
Office of all above at Tukum,
Durgapur Road, Chandrapur,
Tah. & Dist. Chandrapur.

..... **Respondents.**

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

Appearance :

Shri. V. M. Shikare, Ld. representative for the complainant.

Shri. U. V. Deshpande, Ld. Counsel for the respondents.

(ORDER BELOW EXH.U-2)

(Passed on 3rd February, 2023)

The present application has been filed by employee under Section 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, (for Short "MRTU & PULP Act") for seeking relief of staying the effect, operation and implementation of impugned show cause notice of dismissal dated 23.11.2022.

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

The complainant is working with the respondents as a Conductor continuously from the year 2022. His service record was clean and unblemished. The respondent no.1 is the representative of MSRT Corporation for Chandrapur Division and also appointing authority of the complainant. The respondent no.2 is the authority who acted as a Disciplinary Authority. The past service record of the complainant is clean and unblemished.

03. It is contended that respondents issued charge-sheet to the complainant on 29.06.2022, alleging that while performing his schedule duty on 26.05.2022 on Gondpipri to Rajura route on Bus bearing no.MH-07-C-9378. His bus was checked at Somanpalli and found that out of in all 53

passengers in the bus, a group of 6 passengers found travelling on lower denomination of tickets from Gojoli to Somanpalli instead of Gondpipri to Somanpalli. The complainant after seeing the checking squad issued this lower denomination of tickets by collecting full fare from these passengers. When the ST cash of complainant verified, which was found to be correct.

04. The complainant has replied the to the aforesaid charge sheet and denied the charges leveled against him. It was specifically mentioned that the false case is book by the checking squad and hence the complainant has demanded the chance of cross-examined of all the concern and relevant witnesses in the enquiry. The respondent no.3 has conducted illegal enquiry and therefore the respondent no.2 has issued impugned show cause notice dated 23.11.2022 proposing punishment of dismissal of the complainant which is illegal, unlawful and against the principles of natural justice. The respondent no.1 being appointing authority has not appointed to the enquiry officer. The respondent no.2 is not the appointing authority of the complainant. The respondent no.2 also can not act as a disciplinary authority. The enquiry officer has failed to call the relevant witnesses in the enquiry and also not given the chance of examination of the concern passengers.

05. On 29.06.2022, the respondents issued the charge sheet with the alleged misconduct falling under Item no.62(1),

62(3), 62(4), 63(b) and Section 25 of Schedule of Discipline and Appeal Procedure of MSRTC. The complainant replied the charge sheet on 30.07.2022 and denied the charges leveled against him. The respondents conducted the enquiry against him and thereafter issued impugned show cause notice dated 23.11.2022. According to him, impugned show cause notice dated 23.11.2022 is illegal and unlawful.

At present, complainant is in service. On the basis of impugned show cause notice, respondents are intending to dismiss the complainant from service. Lastly, prayed for restraining respondents from dismissing the complainant from service on the basis of impugned show cause notice dated 23.11.2022 till decision of his main complaint by allowing his application (Exh.U-2).

06. The respondents have filed their written statement vide (Exh.C-6) and resisted the claim. It is denied that complainant is working with the respondents as a conductor from the year 2002 continuously with the unblemished past service record. It is denied that the respondent no.1 is the representative of MSRT corporation for Chandrapur Division and also the appointing authority of the complainant. It is denied that respondent no.2 is the authority who acted as a disciplinary authority.

07. It is submitted that in the special pleading that the complainant has appointed as a conductor by the respondents. On 26.05.2022 when the complainant was discharging his

duty as a conductor on bus bearing no.MH-07-C-9378 running from Gondpipari to Rajura which was checked by the checking staff of respondent and they found that out of 8 passengers travelling on lower denomination of tickets from Gojoli to Somanpalli instead of Gondpipari to Somanpalli and the complainant after seeing the checking squad issued this lower denomination of tickets by collecting full fare from these passengers. Therefore, checking staff recorded the statement of passengers. The respondent issued the charge sheet to complainant of dated 29.06.2022 and conduct the fair departmental inquiry against the complainant. The complainant was participated in that departmental proceeding and filed the reply before the departmental proceeding this is headed by the respondent. After that, the enquiry officer founded that charge upon the complainant for 8 passengers travelling on lower denomination of tickets from Gojoli to Somanpalli instead of Gondpapari to Somanpalli and the complainant after seeing the checking squad issued this lower denomination of tickets by collecting full fare from these passengers. The charges are proved against the complainant after the conduct of fair enquiry. Thereafter, respondent had issued the show cause notice of dismissal show cause notice dated on 23.11.2022 and thereby decided to dismiss the complainant from service. That the enquiry officer has been followed the principles of natural justice and conducted the fair and impartially departmental proceeding against the complainant. The complainant has given fair, proper and reasonable opportunity while conducting departmental enquiry

and thereby principles of natural justice was followed and the enquiry conducted by the respondent is legal, fair and proper and the findings drawn by the respondent is absolutely on the basis of record available in departmental enquiry and as such no perversity as alleged has been done by the respondents. Therefore, no prima facie case in favour of the complainant. Lastly, prayed to reject the application.

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

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

REASONS

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

10. The complainant relied upon the documents :-

Charge sheet dated 29.06.2022. Checking report dated 03.06.2022, Statement of passengers dated 26.05.2022, Inspection report dated 26.05.2022, Cash verification report dated 26.05.2022, Reply dated 30.07.2022 to the charge sheet, Enquiry proceeding dated 02.09.2022, Defence Statement dated 15.09.2022, Enquiry proceeding dated 15.09.2022, Findings drawn by the enquiry and show cause notice of dismissal dated 23.11.2022.

AS TO POINT No.1 :-

11. 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.

12. 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.

13. The learned representative 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.

14. 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.

15. 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.

16. 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. Therefore, from this prima facie, it appears the charges are different than the report and the statement of allegation in the charge sheet. From these material infirmity it is clear that the complainant made prima facie case.

17. Thirdly , 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 26.05.2022, he was on duty on bus bearing no. MH-07-C-9378. Total 53 passengers were traveling in such bus. Out of them, group of 6 passengers were traveling from Gojoli to Somanpalli found traveling on lower denomination

ticket, the complainant collected the fare of Rs.120/- from the said six passengers who were traveling from Gondpipri to Somanpalli, but the complainant did not issue ticket from Gondpipri to Somanpalli and issued tickets of lower denomination from Gojoli to Somanpalli of Rs.60/- to the said six passengers. Hence, the said six passengers who were traveling from Gondpipri to Somanpalli found traveling on lower denomination ticket at the time of checking of bus to the checking authority. Such allegations are seriously disputed by complainant and according to him, he had issued proper ticket to all passengers. As such, there was controversy regarding the fact that whether complainant issued proper ticket to the said passenger 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 not issued proper tickets to the alleged without ticket passengers and misappropriated such amount. Therefore, in the absence of positive evidence against complainant, it appears that inference drawn by inquiry officer that complainant was committed misappropriation of alleged amount, by not issuing tickets to the said passenger, prima facia appears to be not based on evidence available before him.

18. While going through the record, it is seen that the first charge leveled against complainant is as per clause 62(1) i.e. without any reason complainant at fault to issue any ticket

to the passenger and given freedom to the said passenger to travel without ticket, while in this case it is the contention and allegation in the charge sheet of the respondent that complainant issued lower denomination tickets to that alleged 6 passengers. Therefore, from this prima facie, it appears the charges are different than the report and the statement of allegation in the charge sheet. From these material infirmity it is clear that the complainant made prima facie case.

19. Also while going through the record, it is seen that second and third charge levelled against complainant is as per clause 62(3) and 62(4) i.e. after taking fare amount not issuing ticket to the alighting passenger and not issuing ticket to the alighting passenger within stipulated time, but in the statement of allegation in charge-sheet it is mentioned by the respondents that complainant issued lower denomination to the said passengers. Therefore, the charge levelled against the complainant that he had not issued tickets to the said passengers is not proper. On that ground also, complainant had made out a prima facie case.

20. 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 and the complainant. 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 :-

21. 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 :-

22. 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 23.11.2022 till the decision of main complaint.
- 3) No order as to costs.

C H A N D R A P U R.
Date :- 03.02.2023.

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