

BEFORE THE JUDGE, LABOUR COURT CHANDRAPUR.

Complaint (ULP) No. 57/2023

(CNR NO.MHLC340002662023)

Rajeshwar S/o. Gajanan Dussarwar,
Aged- 33 years, Occu- Service,
R/o. Ward No. 12,
Somanathpur, Rajura.
Distt : Chandrapur.

.... **Complainant.**

-:- VERSUS -:-

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

..... **Respondents.**

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

Appearance : Shri. M. M. Wankhade, Adv. for the complainant.
Shri. U. V. Deshpande, Adv. for the respondents.

(ORDER BELOW EXH.U-2)

(Passed on 07th February, 2025)

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') filed by the complainant praying for quashing and setting aside impugned show cause notice of dismissal dated 27.10.2023, till decision of main complaint.

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

The complainant is working as a conductor with the respondent corporation since long. Presently he is attached to Warora depot. The complainant falls under the definition of 'workman' under the Industrial Disputes Act, 1947. Respondent no.1 is the enquiry officer and respondent no.2 is the authority who has issued impugned order, though they are not competent to do so and whereas, respondent no. 3 is the appointing authority and divisional head. The service record of the complainant is absolutely clean and without any blemish.

03] The complainant served with a charge-sheet dated 04.04.2019 thereby alleging that on 25.02.2019, when he was discharging his duty as a conductor on bus bearing No. MH-40/N-8728 plying from Kagajnagar to Chandrapur, which was checked by the checking staff of the respondent corporation half kilometer before Wakadi Bus Stop. At the time of checking it was found that, out of total 78 passengers 10 were travelling on without tickets. It was further alleged that the complainant has recovered fare charges of Rs. 100/- from the alleged without ticket passengers at the time of boarding of the bus but did not issue tickets to them till the point of checking, On these set of allegations the complainant has been levelled charges under clauses 61(1), 62(3), 62(4), 63(b) and 25 New Discipline and Appeal Procedur of the respondent corporation.

04] The complainant has denied the charges levelled against him by submitting reply to the chargesheet and brought factual position to the notice of respondent corporation. But, the enquiry officer did not consider his reply as well as material placed on record before recording its findings and directly comes to the conclusion that he was

responsible for the alleged misconduct and issued impugned show cause notice of dismissal dated 27.10.2023, which was received by the complainant on 28.10.2023, which is illegal and void-ab-initio.

05] It is further submitted that the instant matter is the burning example of unfair labour practice on the part of respondent. The enquiry officer consumed 4 years to conclude the enquiry, which is against the guidelines of Hon'ble Supreme Court and Discipline and Appeal Procedure of the respondent corporation. The act of the enquiry officer while conducting the enquiry after a period of 4 years is in contravention of provisions of Discipline and Appeal Procedure of the respondent corporation. The complainant specifically requested the enquiry officer to call alleged without ticket passengers and Mr. Gondalwar- co-checker but without calling the said material witnesses the enquiry officer closed the enquiry. The enquiry officer has not recorded the defence statement of complainant.

06] It is further submitted that bus of the complainant has been checked by the checking staff 1 and half kilometer but shown in the report that it was checked half kilometer before Wakadi bus stop. The alleged without ticket passengers were boarded in the bus at Indhani square of Asifabad. The bus was overcrowded and the complainant was busy in issuing tickets when the bus was checked. But checking staff was not ready to accept this factual aspect. The enquiry officer has also not taken into consideration this factual aspect. The checking staff pressurized the complainant to write his statement as per wish of checking staff. This fact is proved in the statement of complainant wherein in the bottom of the statement noted that he had written his statement as per say of checking staff. The checking staff has not checked the cash properly and

prepared a false form by overwriting it which is illegal. The overwriting was done by the checking staff only with an intention to entangle the complainant in false case. The manipulation done by the checking staff in the cash check form is contrary to provisions of law. The enquiry officer has not taken into consideration the seating capacity of the bus and the actual passengers travelling in the said bus. There were 78 passengers travelling in the said bus and the seating capacity of the bus was only 45. As such, the bus was overcrowded when it was checked. It was obligation on the part of enquiry officer to consider that material aspect while recording its findings but the enquiry officer has failed to consider it while recording its findings.

07] It is further submitted by the complainant that the enquiry officer has also failed to consider that the statement which was recorded by the checking staff is also not according to rules framed under the Discipline and Appeal Procedure. The complainant has made a complaint against the checking staff who contravenes the checking rules but same has not been considered by the respondent no.2 while issuing impugned order.

08] It is further submitted that as per new Discipline and Appeal Procedure of the respondent corporation is concerned, especially clause 6(B) & sub clause 24 it was mandatory on the part of enquiry officer to give chance to the delinquent employee to cross examine the witnesses upon which the charges are levelled in the charge sheet. But, no such material witnesses were examined in the enquiry including without ticket passengers and other witnesses. As such the enquiry officer has committed grave error while dealing with the enquiry by not granting opportunity to cross examine the witnesses on whom statement the charges are levelled against

the complainant. The respondent has not obtained any type of written order from the appointing authority before issuance of this major punishment like show cause notice of dismissal i.e. proposed punishment of dismissal. The respondent acted by way of victimization and colourable exercise of powers, not in good faith and on patently false reason. The proposed punishment is shockingly disproportionate. No material witnesses were examined in the enquiry including the without ticket passengers and other witnesses. It is submitted that the enquiry conducted against the complainant is not fair, proper and in accordance to the principles of natural justice and findings recorded by the enquiry officer are perverse.

09] 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 27.10.2023 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.

10] The respondents have resisted the application by filing composite reply cum written statement at (Exh. C-04) and denied all adverse allegations levelled against them. It is denied that complainant falls under the definition of 'workman' under the Industrial Disputes Act, 1947. It is denied that the complainant is working as a conductor since long and attached to Warora depot. It is denied that respondent no.1 is the enquiry officer and respondent no.2 is the authority who had issued impugned order though they are not competent to do so and whereas respondent no.3 is the appointing authority and divisional head. It is denied that the service record of the complainant is absolutely clean and unblemish.

11] It is denied that the complainant was surprised when he was served with a chargesheet dated 04.04.2019 thereby alleging that on 25.02.2019, when the complainant was discharging his duty as a conductor on bus bearing No. MH-40/N-8728 plying from Kagajnagar to Chandrapur, which was checked by the checking staff of respondent half kilometer before Wakadi bus stop and thereby found that out of 78 passengers 10 passengers were travelling on without ticket. It is denied that false allegations have been levelled against the complainant under clauses 62(1), 62(3), 62(4), 63(b) and 25 of new Discipline and Appeal Procedure of MSRTC. It is denied that the complainant has denied the charges levelled against him by submitting reply to the charge-sheet and brought factual facts and position to the notice of respondent corporation. It is denied that the enquiry officer did not consider the reply of complainant as well as material placed on record before recording its findings and directly comes to the conclusion that charges have been proved against the complainant and the respondents had issued impugned show cause notice of dismissal dated 27.10.2023 illegally.

12] It is denied that the enquiry officer consumed 4 years to conclude the enquiry which is against the guidelines of Hon'ble Supreme Court of India. It is denied that the complainant requested the enquiry officer to call alleged without ticket passenger and Mr. Gondalwar, co-officer but without calling the said material witnesses, the enquiry officer closed the enquiry. It is denied that enquiry officer has not recorded the defence statement of the complainant and concluded the enquiry which is completely illegal. It is denied that in the enquiry fair and proper opportunity was not granted to the complainant. It is denied that checking staff pressurize the complainant to give his statement as per wish of checking staff. It is denied that material aspect has not been

considered by the enquiry officer. It is denied that the complainant wants to cross examine co-checker by name Mr. Gondalwar but same was not granted by the enquiry officer.

13] It is further denied that the checking staff has not checked the cash properly and prepared false form by over writing it, which is illegal. It is denied that the enquiry officer has not taken into consideration the seating capacity of the bus and actual passengers travelling in the bus. It is denied that the bus was overcrowded when the bus was checked. It is denied that the checking staff has not followed checking procedure/ rules while checking the bus of complainant and thereby committed grave error while checking the bus. It is denied that no such material witnesses were examined in the enquiry including without ticket passengers and other witnesses. It is denied that the respondent has not obtained any type of written order from the appointing authority before issuance of impugned punishment order like dismissal. It is denied that the impugned punishment is against the principles of natural justice. It is denied that the complainant has not granted fair and reasonable opportunity to defend in the enquiry. It is denied that the enquiry conducted against the complainant is unfair, improper and against the principles of natural justice. It is denied that findings recorded by the enquiry officer are perverse. It is denied that the respondents acted by way of victimization and colourable exercise of powers not in good faith and on patently false reason. It is denied that none of the charges are proved against the complainant. It is denied that impugned punishment is shockingly disproportionate.

14] By special pleadings the respondents have submitted that the complaint as well as an application for interim relief as framed and filed by the complainant is itself

not tenable in the eyes of law or on facts. Thus, the complainant is not entitled to any relief as claimed by him. It is submitted that the complainant was appointed as a conductor by the respondent corporation. It is submitted that on 25.02.2019, when the complainant was discharging his duty as a conductor on bus bearing No. MH-40/N-8728 plying from Kagajnagar to Chandrapur, which was checked by the checking staff of respondent half kilometer before Wakadi bus stop and thereby found that out of 78 passengers 10 were travelling on without ticket. The complainant recovered total fare charges of Rs. 100/- from the alleged without ticket passengers at the time of their boarding but did not issue them tickets till the point of checking. Charges under clauses 62(1), 62(3), 62(4), 63(b) and 25 of new Discipline and Appeal Procedure of MSRTC have been levelled against the complainant. Checking staff recorded the statement of passengers. The respondent issued charge sheet dated 04.04.2019 to the complainant and conducted departmental enquiry against him. The complainant has participated in the enquiry and filed reply before the enquiry officer. After enquiry the charges were proved against the complainant. As the charges were proved against the complainant in the enquiry the respondents have issued a show cause notice of dismissal dated 27.10.2023 and thereby decided to dismiss the complainant from service. The enquiry officer has followed the principles of natural justice. The enquiry officer has conducted enquiry fairly, properly and impartially. The enquiry officer has appreciated that the complainant has committed serious misconduct of negligence in discharging his duties. Due to act of complainant monetary loss has been caused to the respondent corporation. The enquiry conducted against the complainant is fair, proper and in accordance with principles of natural justice and findings recorded by the enquiry officer are just, legal and proper. The respondents have submitted

that even though this court comes to the conclusion that the departmental enquiry is unfair and improper at that time reserve their right to lead evidence before the court to prove charges levelled against the complainant. The respondents have submitted that now the complainant asking for the main relief in the interim application, which is not tenable. If the court will grant any relief to the complainant then grave prejudice would be caused to the respondents.

15] 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 to the complainant, till decision of the complaint. On these grounds, the respondents have prayed for rejection of the application.

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

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

REASONS

17] I have heard Shri M. M. Wankhade learned

advocate for the complainant and Shri U. V. Deshpande, learned advocate for the respondents.

18] The complainant relied upon the following documents :

- 01] Copy of Chargesheet dated 04.04.2019.
- 02] Copy of Report of Checking Staff dated 28.02.2019.
- 03] Copy of Statement of passengers dated 25.02.2019.
- 04] Copy of Statement of passengers dated 25.02.2019.
- 05] Copy of Cash checking report dated 21.02.2019.
- 06] Copy of complaint dated 25.02.2018 addressed to the Divisional Controller, MSRTC, Chandrapur by R. G. Dussawar.
- 07] Copy of inspection report.
- 08] Copy of inspection report.
- 09] Copy of enquiry proceedings.
- 10] Copy of application dated 23.11.2022 submitted by the complainant to the Competent Authority.
- 11] Copy of show cause notice dated 27.10.2023.
- 12] Copy of findings of enquiry officer.

AS TO POINT No.1 :-

19] 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.

20] 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.

21] 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.

22] 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.

23] In this context, on going through the enquiry proceeding, it appears that the enquiry officer has examined the reporter who had check the bus of complainant 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.

24] Secondly, while going through the record, it is seen that second and third charge levelled against complainant is as per clause 7(C) & 7(d) i.e. 1) After recovering fair charge not issuing thicketts to the alighting passengers, 2) Not to issue ticket to the alighting passengers within stipulated time is concerned, in this case the bus of complainant is checked half kelometer before Wakdi bus stop but the alleged without ticket passenger were not alighting at the spot where bus was checked. The journey of the said passengers yet not completed. Perusal of record it appears the in the charge-sheet and in the report no where it is mentioned that the alleged passengers were alighting passengers. Therefore, it is clear that they were not alighting at at the spot where bus was checked. Therefore, it can not be said that complainant after recovering fair charge not issued tickets to alighting passenger. Therefore, the charge levelled against the complainant is not proper. On that ground also, complainant had made out a prima facie case.

25] Secondly, perusal of the record, it appears that another charge leveled against the complainant under clause 12(b) for misappropriation of the amount of corporation. But, perusal of the statement of allegation in the charge sheet, nowhere it is mentioned that complainant misappropriated the amount of corporation but it is mentioned that complainant tried to corporation misappropriate the amount of 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.

26] Thirdly, on perusal of charge-sheet, it will find that it is alleged that when the complainant was discharging his duty as a conductor on bus bearing No. MH-40/N-8728 plying from Kagajnaragar to Chandrapur, which was checked by the checking staff of respondent half kilometer before Wakadi bus stop and thereby found that out of 78 passengers 10 were travelling on without ticket. The complainant recovered total fare charges of Rs. 100/- from the alleged without ticket passengers at the time of their boarding but did not issue them tickets till the point of checking. Therefore, complainant misappropriate the amount of corporation. Such allegations are seriously disputed by complainant. As such, there was controversy regarding the fact that whether the complainant recovered fair charge from the alleged passengers or not and whether complainant intentionally not issued tickets to the said passengers. 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 intentionally after recovering fair charge 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 misappropriate the amount of corporation, prima facie appears to be not based on evidence available before him. Therefore, prima facie the charge levelled against the complainant is not proper. On that ground also, complainant had made out a prima facie case.

27] 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 report of reporter. 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 :-

28] 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 :-

29] 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 27.10.2023 till the decision of main complaint.
- 3) No order as to costs.

CHANDRAPUR.
Date :- 07.02.2025.

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