

BEFORE THE JUDGE, LABOUR COURT CHANDRAPUR.**Complaint (ULP) No. 67/2023**

(CNR NO.MHLC340003022023)

Sachin Shrawan Kulmethe,
Aged about-42 years, Occu- Service.
R/o. Gurudeo Chowk,
Near old water tank,
Babupeth Ward No. 2, Chandrapur.
Tah. & Distt : Chandrapur.

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

1. The Divisional Controller,
Maharashtra State Road
Transport Corporation.
Gadchiroli Division, Gadchiroli.
Distt : Gadchiroli.
3. The Divisional Traffic Officer,
Maharashtra State Road
Transport Corporation.
Gadchiroli Division, Gadchiroli.
Distt : Gadchiroli.

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

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

(ORDER BELOW EXH.U-2)(Passed on 18th November, 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') filed by the complainant praying for

quashing and setting aside impugned second show cause notice dated 02.12.2023, till decision of main complaint.

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

The complainant has filed instant complaint in the capacity of employee/workman challenging the legality and validity of impugned second show cause notice dated 02.12.2023 issued by the respondent no.2 to him on 14.12.2023 and thereby asked him as to why the punishment of dismissal should not be awarded against him. The respondent corporation is registered under the Companies Act and hence it is an 'industry' u/s 2(j) of the Industrial Disputes Act, 1947 and complainant being a driver is a 'workman' u/s 2(s) of the Industrial Disputes Act, 1947.

03] Initially, the complainant was appointed with the respondent corporation as a driver in the year 2008 and was posted at Brahmapuri. Thereafter, he was transferred to Rajura, Chimur depot and thereafter again he was transferred to Brahmapuri depot in the year 2015 and since then he is attached to Brahmapuri depot within the control of respondent no.1 and was continued therein till the date. His service record was clean and unblemished.

04] A chargesheet dated 15.12.2022 was issued by the respondent no.2 to the complainant levelling charges under clauses 11, 42 and 45 of New Discipline and Appeal Procedure of the respondent corporation for the alleged misconduct dated 07.10.2011. He has replied the chargesheet and thereby brought all true material facts to the notice of respondent

corporation but without considering material facts of the matter, the respondent no.2 himself decided to conduct domestic enquiry and it was conducted itself on 12.08.2023 after lapse of 12 years from the alleged incident.

05] It is submitted by the complainant that, on 07.10.2011, the complainant was discharging his duties as a driver on bus bearing No. MH-20/D-7970 of Chimur depot which was plying from Chimur-Chandrapur. The bus of the complainant was reached at near the bridge of Takdi village within Bhadravati taluka at about 17.30 hours. The complainant was driving his bus within limited controlling speed, a truck bearing No. MH-34/M-5937 was going on in front of the bus of the complainant and there was safe distance between the said truck and the bus of the complainant but the truck driver very surprisingly applied the emergency brake and thus the complainant has tried to save the collision of the said vehicle to prevent from happening any accident. Thus, the complainant taken his bus in one side of the road and while doing so, only craches were caused to the said both vehicles without damaging anything and nobody was caused any simple injuries to the passengers who were boarded and travelling in the bus. Thus, no any loss has to be caused either to the bus or to the alleged truck and thus, the bus was never stopped and stayed for its repairing at any place as alleged. The complainant was driving the bus carefully and by observing traffic rules.

06] The truck driver has reported the matter to Bhadravati police station on the direction of its owner. The police has registered FIR against the complainant under pressure of truck

owner. A Charge Sheet was submitted to the Hon'ble Judicial Magistrate First Class, Bhadrawati for its disposal on merit according to law. The complainant was discharged from the charges by the said court, which also constitute that the complainant was not driving his bus in rash and negligent manner but was driven his bus carefully and by observing safety and traffic rules. At the time of accident he was not under the influence of liquor. The Reporting Officer never came and reach on the alleged spot of the so called accident but he has reported the matter on the basis of FIR and police papers. False charges were levelled against him only to take revenge of union activities. Reporter was not examined in the enquiry.

07] The respondent no. 2 issued a chargesheet to the complainant and was conducted the enquiry against him and thereby acted as a prosecutor and judge. Respondent no.2 deliberately tried to establish and prove the charges against the complainant. Opportunity to defend his case through representative was denied in the enquiry. Enquiry officer acted malafidely and with an ulterior motive to involve the complainant in false charges. Fair and reasonable opportunity was not granted to the complainant to defend his case in the enquiry. All relevant documents were not supplied to the complainant during enquiry. Material witnesses were not examined in the enquiry and thereby the complainant has been deprived to cross examine these witnesses during enquiry. The enquiry conducted against the complainant is not legal, fair, proper and in accordance with the principles of natural justice. The findings recorded by the enquiry officer are perverse. On the basis of false charges and unfair enquiry a second show cause

notice dated 02.12.2023 was issued against the complainant. The proposed punishment is harsh and disproportionate to the charges levelled against the complainant. Charges were not proved in the enquiry.

08] The complainant has a prima facie case and balance of convenience lies in his favour. He will suffer irreparable loss and injury in the event of non grant of interim relief till disposal of main complaint, as prayed by him. On these grounds, the complainant has prayed to grant interim relief application, till disposal of main complaint.

09] The respondents have resisted the application by filing composite reply cum written statement at (Exh. C-03) and denied all adverse allegations levelled against them. It is submitted that the application is false, bogus and baseless and hence, it is liable to be rejected. It is denied that service record of the complainant is clean and unblemished. It is denied that complainant is a 'workman' and respondent is an 'industry' within the meaning of section 2(s) and 2(j) of the Industrial Disputes Act, 1947 respectively. It is denied that respondents did not consider reply to chargesheet given by the complainant in proper manner and directly issued impugned second show cause notice of dismissal dated 02.12.2023 which is illegal and void ab initio. It is denied that his defence statement was not considered in proper manner by the enquiry officer. It is denied that material and relevant documents were not supplied to the complainant during enquiry and he was not given an opportunity to cross examine the material witnesses.

10] By special pleadings the respondent corporation has

submitted that the complaint as well as an 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 driver by the respondent. It is submitted that on 07.10.2011, when the complainant was discharging his duty as a driver on bus bearing No. MH-20/D-7970 plying from Chimur to Chandrapur, the complainant caused the accident by driving the bus in rash and negligent manner. Therefore, the police have registered a case against the complainant. The respondent corporation has issued a charge sheet dated 15.11.2012 to the complainant and conducted fair departmental enquiry against the complainant. The complainant has participated in the enquiry. The complainant has filed reply to charge sheet in the enquiry. In the enquiry charges are proved against the complainant. The enquiry conducted by the enquiry officer is fair, proper and according to the principles of natural justice. The enquiry officer has appreciated that the complainant has committed serious misconduct and negligence while discharging his duty as a conductor and thereby monetary loss has been caused to the respondent corporation, Fair, proper and reasonable opportunities were granted to the complainant while conducting the enquiry. The findings recorded by the enquiry officer are just and legal and not perverse. It is further submitted that if this court comes to the conclusion that the departmental enquiry conducted against the complainant is unfair and improper then reserve its right to prove charges against the complainant by adducing evidence before the court. Punishment proposed against the complainant is proportionate to the charges proved against the complainant. As the charges

were proved against the complainant a show cause notice of dismissal dated 20/08/2020 was issued against the complainant.

11] 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.

12] 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 :

POINTS

FINDINGS

- | | |
|---|-----------------------|
| 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

13] I have heard Shri J. M. Patil learned advocate for the complainant and Shri U. V. Deshpande, learned advocate for the respondents.

- 14] The complainant relied upon following documents :
- 01] Copy of impugned show cause notice dated 02.12.2023.
 - 02] Copy of enquiry proceedings dated 12.08.2023.
 - 03] Copy of Report of Reporting Officer.
 - 04] Copy of of proceeding of accident.
 - 05] Copy of Confidential Accident Report.
 - 06] Copy of F.I.R. dated 07.10.2011.
 - 07] Copy of Crime Details Form 07.10.2011.
 - 08] Copy of Alohoh Examination Certificate Form- 'C' dated 14.10.2011.
 - 09] Copy of details of past misconducts.
 - 10] Copy of charge sheet dated 15.12.2012.

AS TO POINT No.1 to 3 :-

15] 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.

16] 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.

17] Perusal of record it appears that complainant has produced inquiry papers and show cause notice issued to the complainant on record. Complainant has replied the charge-sheet. Documents of enquiry shows that complainant was present in the enquiry but the reporter was absent during the enquiry. The statement of complainant is recorded and the enquiry officer has directly come to the conclusion that the charges levelled against the complainant are proved.

18] Charge-sheet was issued to the complainant and the

same was received by him. Admittedly, no witness has been examined by the respondents in enquiry. On this point this court is guided by the ratio laid down in the case of **Chief Engineer, Latur Zone and Competent Officer, M.S.E.D.C.L. Latur + 1 V/s. - Natthuram Wamanrao Munde, in W.P. Writ Petition No. 11616/2018**. wherein the Hon'ble High Court has given the manner in which the departmental enquiry has to be normally conducted.

19] On perusal of the above judgment relied by this court the detail procedure suggested by the Hon'ble High Court has not been followed by respondent. On the contrary, it is case of the respondent that there is no need to examine reporter as he was absent and as complainant said that he do not want to ask any question to reporter. Also respondent had not examine any other witnesses.

20] Perusal of the record it appears that in the present matter serious charges have been levelled against the complainant. Accordingly, preliminary enquiry was conducted and charge-sheet was issued to him. Enquiry Officer was also appointed but the enquiry officer has not examined any witness during the enquiry. The documents produced by the respondent during the enquiry are sufficient to prove the charges.

21] The enquiry is conducted to give an opportunity to the delinquent employee to put up his defence against the charges levelled against him. If any witness is not examined during the enquiry then how the documents are proved and whether the

principles of natural justice is followed. By not examining any witness the report submitted by enquiry officer is without any proof and cannot be considered as proof of charges. Though for the sake of argument the charges were serious and the complainant was not entitled for continuing his service but without following the due procedure the punishment like termination from service is prima facie illegal. So the complainant has made out prima facie case. He has raised an triable issue whether the procedure was followed during the enquiry. Hence, balance of convenience lies in his favour.

22] Complainant was issued charge-sheet and the enquiry officer has submitted the report on the basis of document produced during the enquiry. If the complainant is not given an opportunity during the enquiry for cross examining the witness or the reporter irreparable loss is going to cause to the complainant. The past record of the complainant can be considered if the charges levelled against him are proved and punishment is to be inflicted upon him. So, at this stage the complainant is entitled for the relief claimed. Hence, I answer points no. 1 to 3 accordingly.

AS TO POINT NO.4 :-

23] 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 02.12.2023 till the decision of main complaint.

3) No order as to costs.

CHANDRAPUR.
Date :- 18.11.2024.

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