

IN THE COURT OF JUDGE, LABOUR COURT, BHANDARA.

(Presided over by : U.N. Patil)

Criminal Complaint. No. 06 of 2019

(CNR NO : MHLC 36-000025-2019)

Prashant Pandey .. Vs .. M.S.R.T.C., Bhandara

ORDER BELOW EXHIBIT NO. U-2

(Passed on 07.03.2019)

1. This is an application filed by the complainant under section 30(2) of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 for directing the respondent to stay the effect and operation of the impugned show cause notice of dismissal dated 23.02.2019 till the final decision of this complaint. The respondent has filed reply at Exhibit No. C-2. Heard Shri. Raghorte learned counsel for the complainant and Shri. Bhure learned counsel for the respondent.

2. Learned counsel for the complainant argued that, the respondent has appointed the complainant on the post of bus conductor since 31.12.1997 at Gondia Bus Depot and presently he is working at Bhandara depot. The entire service record of the complainant is clean and unblemished. On 13.12.2018, the respondent has served a charge sheet issued by the Divisional Traffic Officer, Bhandara under Clause 10(a), 22(a) and 42(a) of the MSRTC Discipline and Appeal Procedure. It is alleged by the respondent that, while discharging the duty on 25.11.2018,

at the bus bearing registration No. MH-40/Q-6421 plying from Paratwada to Bhandara the passengers complained that the complainant was found under the influence of liquor. The respondent has levelled the charges of misconduct, disobedience of official orders and consuming liquor while on duty.

3. Learned counsel for the complainant further argued that, the complainant denied the charges levelled against him by submitting his reply and thereby brought the factual position to the notice of the respondent that, he was not under the influence of liquor. The complainant specifically submitted in his reply that neither the medical officer nor reporting officer has issued any certificate showing him under the influence of liquor. Further, no forensic report was obtained by the respondent to prove that the complainant was under the influence of liquor. While conducting the inquiry proceeding, the Competent Authority has not considered this fact and issued notice of dismissal dated 23.02.2019 as to why the complainant should not be dismissed from service. Departmental enquiry was not fair and proper. The complainant is having apprehension that, the respondent is going to terminate his service. If the complainant is dismissed from service, he will be thrown on street to suffer financial crisis which can not be compensated in terms of money.

4. Learned counsel the respondent argued that, the complainant

was on duty under the influence of liquor. The passengers of bus have made complaint to the Authority about this fact and therefore, the respondent Authority has proceed to take medical examination. In the medical examination, it was found that the complainant has consumed the liquor. The medical officer has issued the medical report in this regard. This fact shows that, the complainant was under the influence of liquor while discharging his duty. The departmental enquiry initiated against the complainant. The respondent has given fair opportunity to the complainant. During the departmental enquiry, it is proved that, the complainant was under the influence of liquor. Therefore, the respondent has rightly issued the notice of dismissal on 23.02.2019 calling upon the complainant as to why he should not be dismissed from service. The complainant has not yet been dismissed from service.

5. Learned counsel for the respondent further submitted that when the respondent had issued the notice of dismissal, the complainant is bound to give reply to the notice so that there should be an end to the departmental proceedings. Irrespective of submitting reply, the complainant has approached this court seeking stay to the effect and operation of impugned notice of dismissal. This is again misconduct on the part of the complainant. The departmental inquiry will not be completed if the notice of dismissal is stayed by this court. The complainant is bound to submit reply to the notice of dismissal. The complaint is premature and therefore, it is not maintainable at this stage.

6. On the basis of rival submission of both the parties, following points arose for my determination and I have recorded the findings with reasons as under :

<u>Sr. No.</u>	<u>POINTS</u>		<u>FINDINGS</u>
1.	Does the complainant is having strong prima facie case in his favour ?	:	In the affirmative.
2.	Does the balance of convenience lies in favour of complainant ?	:	In the affirmative.
3.	Does the complainant will suffer irreparable loss, if the interim relief prayed is not granted ?	:	In the affirmative.
4.	What order ?	:	As per final order.

REASONS

AS TO POINT NO. 1 to 4 :

7. Perused the rival submissions of both the sides and the documents submitted on record. Admittedly, the complainant was employed by the respondents on the post of bus conductor with effect from 31.12.1997. The respondent has issued notice on 23.02.2019 calling upon the complainant to show cause as to why he should not be dismissed from service. Prior to the issue of notice, the respondent has initiated

departmental enquiry against the complainant and on the basis of said enquiry, the respondent has issued notice of dismissal dated 23.02.2019 to the complainant.

8. Learned counsel for the respondent argued that, the complainant has not been dismissed from the service and therefore, the complaint is not maintainable as it is premature complaint. The respondent is not able to complete the departmental proceedings initiated against the complainant. The complainant is bound to submit reply to the impugned notice of dismissal. Learned counsel for the complainant argued that, the complaint is not premature. It is maintainable even on the basis of apprehension of termination of services of the employee. He has placed reliance on the Hon'ble authority reported in **Hindustan Lever Limited .. Vs .. Ashok Vishnu Kate and others 1995 II CLR, 823.** Admittedly, the complainant has not been dismissed from service on the basis of the departmental enquiry. The respondent had issued notice of dismissal from service to the complainant. It appears that the complainant is having apprehension in his mind that he would be dismissed from service. Therefore, he has filed this complaint before termination of his services by the respondent.

9. In the Hon'ble Authority **Hindustan Lever** supra, the Hon'ble Supreme Court held that :

Para No. 18 : *A mere look at Item 1 of Schedule IV shows that it would be general unfair labour practice on the part of the employer to discharge or dismiss employees on any of the grounds mentioned in clauses (a) to (g) of this Item. On this aspect there is no dispute between the parties. The moot question is whether the sweep of the time can cover any of the alleged general unfair labour practices on the part of the employer, before the employer concerned actually discharges or dismisses the employee on any of the grounds enumerated in clauses (a) to (g). Let us take an illustration to see how this item operates. If an employer discharges or dismisses an employee by way of victimization it would be a complete unfair labour practice on his part as contemplated by clause (a) of Item 1 of Schedule IV. As we have seen above, the Act is enacted with a view to prevent such unfair labour practice. Therefore, the question squarely arises as to how such an unfair labour practice of discharge or dismissal of an employee by way of victimization can be prevented. If it is to be prevented, it has to be prevented from taking effect or getting completed. Therefore, the intervention of the Labour Court can be sought where the concerned general unfair labour practice on the part of the employer to discharge or dismiss an employee by way of victimization has not resulted into its culmination but it is in pipelines or process. Under the standing orders governing the concerned industries, before an employee can be discharged or dismissed on the ground of any misconduct, departmental enquiry has to be held. Consequently, taking the initial step towards the direction of discharging or dismissing of any employee on the ground of any misconduct by issuing a charge sheet can be said to be the first action taken by the employer towards such ultimate discharge or dismissal of an employee. It can then be said that the process of alleged unfair labour practice on the part of the employer to discharge or dismiss an employee on ground (a) mentioned in Item 1 of Schedule IV is started or has got initiated or is triggered off by the employer. If an employee can make out a strong prima facie case for interdiction of such a process, he can legitimately invoke the jurisdiction of the Labour court for preventing such an unfair labour practice from getting fructified or completed. In this connection, it is necessary to note that the general unfair labour practice on the part of the employers as mentioned in Item 1 of Schedule IV pertains to different types of objectionable actions based on grounds which are indicative of unfair labour practices and any action based on such grounds with a view to discharge or dismiss an employee is considered by the Act to be an unfair labour practice on the part of the employer.*

It was further held that :

Para No. 24 : *It becomes, therefore, obvious that, general unfair labour practice on the part of employer to discharge or dismiss the employee on any of the grounds listed in clauses (a) to (g) of Item 1 of Schedule IV would include any step towards or in the direction of ultimate discharge or dismissal of the employee on that ground and even before such discharge or dismissal is finally arrived at. It is not possible to accept the contention of the learned counsel for the appellant that discharge or dismissal of any employee would only mean the confirmed act of discharge or dismissal on any of these grounds and not a penultimate step taken by the employer concerned in that direction on that ground. Therefore, on the express language of Item 1 of Schedule IV the general unfair labour practice on the part of the employer "to" discharge or dismiss an employee on any of the listed grounds would include both the final act of discharge or dismissal of employee on any of these grounds as well as any penultimate step taken towards that destination and object by starting the process of disciplinary enquiry on giving the chargesheet to the employee and/or suspending an employee pending or in contemplation of such enquiry and all further steps during such departmental enquiry about which a complaint can be made on permissible grounds.*

Para No. 39 : *As already dismissed earlier, it is trite to say that if to discharge or dismiss an employee by way of victimization is a general unfair labour practice on the part of the employer as laid down by Item 1(a) of Schedule IV and if such an unfair labour practice is to be prevented then action for such prevention has to be taken prior to the ultimate commission of such unfair labour practice. It is difficult to agree with the contention of the learned counsel for the appellant that such prevention can be made only after the actual order of discharge or dismissal of the employee is passed. At that stage there is no question of preventing the commission of such unfair labour practice, but it would be a case of setting aside or quashing such already committed unfair labour practice. It is difficult to appreciate how a discharge or dismissal of an employee by way of victimization can be prevented after such discharge or dismissal has already taken place. Once such an unfair labour practice is completed and if final order is to be set aside it would amount to curing the melody rather than preventing it. As the saying goes 'prevention is better than cure', and that is the very purpose of the Act. Or in other words, prevention of commission of such unfair labour practice is the heart of the Act. The interpretation tried to be put by the learned counsel for the appellant on the relevant provisions of Item 1 of Schedule IV would result in stultifying the very purpose and scope of the Act.*

10. In the Hon'ble Authority **Hindustan Lever** supra, the Hon'ble Supreme Court held that, even if the notice of dismissal of employee is issued by the employer, the complaint is maintainable. Therefore, with due respect to the ratio of decision of Hon'ble Authority, I conclude that, the complaint is maintainable on the basis of show cause notice of dismissal date 23.02.2019 issued by the respondent even if the complainant is not dismissed from service. Learned counsel for the respondent has placed reliance on the Hon'ble Authority **Sachin Mahajan ..Vs.. M.S.R.T.C. Writ Petition No. 5724/2014** and five more petitions decided on 20.01.2015 by the Hon'ble Bombay High Court. However, the judgment of Hon'ble Supreme Court is binding and therefore, the ratio of decision of Hon'ble Authority decided in Writ Petition No. 5724/2014 is not applicable to this case. Hence, I conclude that the complaint is maintainable.

11. It is observed that, the respondent has conducted departmental enquiry against the complainant. The misconduct of the complainant proved in departmental enquiry. Therefore, the respondent has issued notice of dismissal from service against the complainant. Learned counsel for the complainant argued that, the service record of complainant is clean and unblemished. He was not under the influence of liquor on the day of incidence. The forensic report is not available to establish that he was under the influence of liquor. It is observed from the medical examination report, issued by the medical officer, that there was

smell of alcohol from the mouth of the complainant but his behavior was natural. When the behavior of the complainant was natural and when the forensic report was not available, then, the doubt arise over the fact that the complainant had consumed the liquor on the date of incidence. It appears that, while conducting the departmental enquiry, the Enquiry Officer has not considered the fact that the forensic report was not available the report of medical officer can not be relied upon. Therefore, it appears that the findings recorded by the enquiry officer are perverse. Hence, prima facie, it is evident that the respondent is engaged in unfair labour practice against the complainant while issuing the notice of dismissal from service.

12. In Hon'ble Authority Hindustan Lever supra, the Hon'ble Supreme Court held that:

Para No. 32 : *It becomes, therefore, obvious that if an employer is alleged to be engaged in discharging any employee then even before the actual order of discharge is passed he can be said to be engaged in such discharge if it is shown that an attempt is made towards such a discharge with an intention to ultimately discharge the employee.*

Para No. 49 : *Submission made on the scheme of Section 30(2) to the effect that interim order can be passed in connection with the practice complained of, also cannot advance the case of the appellant for the simple reason that if the practice complained of is of any firm step taken by the employer towards the ultimate object of dismissing or discharging the employee on any of the grounds covered by clauses (a) to (g) of Item 1 of Schedule IV, interim relief can be granted in connection with such practice complained of and would not mean that till the practice gets fructified and translated into final act of dismissal or discharge, the Labour Court cannot pass appropriate interim relief orders under Section 30(2) as submitted in the written submissions.*

Thus, with due respect to the ratio of decision of honorable authority supra, I conclude that issue of show cause notice for dismissal of complainant with perverse findings recorded in the departmental enquiry is nothing but an unfair labour practice adopted by the respondent. Hence, the complainant has successfully established strong prima facie case in his favour.

13. The complainant is still in the employment of the respondent. If he is dismissed from service, then he will be deprived from the service and not able to earn the bread as he is earning from his employment and there is no alternative employment available for him. Thus, the balance of convenience and reasonable apprehension of irreparable injury appears in favor of the complainant. Looking to these facts, I conclude that, the complainant successfully established strong prima facie case, balance of convenience and reasonable apprehension of irreparable injury in his favour. Learned counsel for the respondent has filed the judgment of this Court passed in Com. ULP No. 06/2018 and the judgment of Hon'ble Industrial Court delivered in Revision (ULP) No. 140/2014. But the matter in dispute is not synonymous with the case in hand. Hence, I have answered the point nos. 1, 2 and 3 in affirmative.

14. It is observed that the respondent has issued show cause notice of dismissal on 23.02.2019. The complainant has not filed the reply to the show cause notice. Learned counsel for the respondent

submitted that the respondent will not complete the departmental enquiry if the show cause notice is stayed and if the complainant does not submit his reply to the show cause notice of dismissal. I think that there is substance in the submission of learned counsel for the respondent that the departmental enquiry will not be completed if the impugned notice of dismissal is stayed. Therefore, I think that the ends of justice would be met by directing the complainant to submit reply to the impugned show cause notice of dismissal and temporarily restraining the respondent from dismissing the complainant from service till the final decision of this complaint case.

15. In the result, I proceed to pass the following order:

ORDER :

1. The application Exh. U-2 is allowed.
2. The respondent is temporarily restrained from dismissing the complainant from service till the final decision of this complaint case.
3. The complainant shall submit the reply to the impugned show cause notice of dismissal dated 23.02.2019 to the respondent.
4. The costs on cause.

Place : Bhandara.
Date : 07/03/2019.

(U. N. Patil)
Judge,
Labour Court, Bhandara.