

IN THE COURT OF JUDGE, LABOUR CORT, BHANDARA.
(Presided over by : F.K. Shaikh)

COMPLAINT (ULP) No. 06/2019
CNR NO : MHLC 36-000025-2019

Exhibit No. O-

COMPLAINANT : Prashant Devidas Pande,
Aged about 51 years, Occu. Service,
R/o. Bela, Tah. & Dist. Bhandara.

Versus

RESPONDENT : Maharashtra State Road Transport
Corporation, Through its Divisional
Traffic Officer, Bhandara Division, Bhandara.

APPEARANCES : Adv. Shri. S.E. Raghorte for Complainant.
Adv. Shri. P.M. Nichakawade for Respondent.

JUDGMENT ON PRELIMINARY ISSUES.
(Delivered on 12/10/2022)

1. The complainant has filed this complaint under Section 28 read with Item I of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred as "MRTU & PULP Act") for declaration that, the respondent is engaged in unfair labour practices envisaged under Schedule IV Item 1 of MRTU & PULP Act, restraining the respondent from committing unfair labour practices, declaration that, the show cause notice of dismissal dt. 23-02-2019 issued by the respondent as illegal, void and ab-initio.

2. The complainant's case in brief is as under :

. 2 .

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The complainant has joined services of the respondent as a conductor on 31-12-1997 at Gondia Depot. The complainant presently working at Bhandara. The allegations against the complainant is in respect of being under influence of liquor at the time of duty. The respondent has served a chargesheet dt. 13-12-2018 under Clause 10(a), 22(a) and 42(a) of the Discipline and Appeal Procedure. It is alleged that the complainant while discharging his duty on 25-11-2018 on bus bearing No. MH-40/AQ-6421 plying from Paratwada to Bhandara was found under influence of liquor. Therefore, Police Station, Tiwasa conducted medical examination of the complainant. The complainant in his reply dt. 01-01-2019 denied charges against him. The complainant has denied that he was under the influence of liquor. The complainant has stated that neither the Primary Health Centre, Tiwasa nor reporting Officer has issued any certificate that the complainant was found under influence of liquor. There was not a single passenger who has made a complaint regarding improper performance of duty by the complainant.

3. The Enquiry officer has examined only Mr. Jaiswal, Depot Manager, Amravati while conducting enquiry. The respondent has not examined any other witness to corroborate version of Mr. Jaiswal. There was no F.I.R. against the complainant for consumption of liquor at the relevant time. None of the passenger has made a written complaint regarding misbehaviour of the

complainant. In view of all these pleadings, it is prayed that the enquiry be declared as unfair and improper. It is also prayed that the findings of the Enquiry officer be declared as perverse.

4. The respondent Corporation in the written statement at Exh. C-9 has denied the contention of the complainant. In addition to denial, the respondent Corporation has stated that the complainant while discharging his duty as a conductor with driver Sachin Sukhdeve on 25-11-2018 on bus bearing No. MH-40/AQ-6421 was under the influence of liquor. It is stated that telephonic information was received from the passenger of the said bus that the conductor as well as the driver of the said bus were under the influence of liquor. The Depot Manager, Amravati Shri. Nitin Jaiswal along with driver from Depot Mr. M.R. Rathod reached at Mozari Bus Stop. The incident has been reported by Mr. Nitin Jaiswal to Police Station, Tiwasa. The complainant and the driver Sachin Sukhdeve were medically examined by Police Station, Tiwasa. The complainant as well as driver Sachin Sukhdeve were found to be under the influence of liquor.

5. Therefore, the chargesheet was rightly issued. As the reply of the complainant was unsatisfactory, departmental enquiry was initiated. The complainant participated in the enquiry. Full opportunity was given to the complainant during enquiry. The complainant conducted cross examination and filed his defence statement. The respondent has followed principles of natural justice

while conducting enquiry. In view of all these pleadings, it is prayed that findings of both the issues are given in favour of the respondent.

6. On the basis of rival pleadings of parties, my learned predecessor has framed the preliminary issues at Exh.O-3 and after hearing the arguments of both the sides, I have recorded the findings with the reasons as under :

ISSUES.

FINDINGS.

- | | | | |
|----|--|---|---------------------|
| 1} | Does complainant proves that the enquiry was conducted in violaton of principle of natural justice ? | : | In the Negative. |
| 2} | Does complainant proves that findings of Enquiry Officer are perverse ? | : | In the Affirmative. |

: REASONS :

AS TO ISSUES NO.(1) :

7. Heard learned advocate Shri. Raghorte for the complainant and Shri. Nichakawale for the respondent Corporation. The enquiry papers are produced on record. After perusal of entire enquiry papers, it is revealed that, the Competent Authority has given full opportunity of hearing to the complainant. It also appears that, the complainant has fully participated in the departmental enquiry. From perusal of the enquiry papers, it is further revealed that the complainant had appointed one representative Shri. Raju

Tomar. It also appears that, said representative Shri. Raju Tomar defended the complainant during the enquiry. It also appears that, on every date notices were issued to the complainant about intimating the date of enquiry. The complainant was duly present during the enquiry. Therefore, it reflected that the respondent Corporation has awarded full opportunity to the complainant and followed principle of natural justice while conducting enquiry.

8. From perusal of papers of the departmental enquiry, it does not appear that, the Competent Authority who was holding enquiry has performed its role as a investigation officer, prosecutor or a judge against the complainant for holding him guilty for the charges levelled against him. The questions which were asked to the complainant during enquiry were not such questions asked for collecting evidence against the complainant. In view of these observation, it is held that enquiry which was conducted against the complainant was fair and proper. So, issue no. 1 is answered in Negative.

AS TO ISSUES NO.(2) :

9. The complainant was chargesheeted under Clause 10(a), 22(a) and 42(a) of the Discipline and Appeal Procedure. From the perusal of the chargesheet, it is clear that main charge against the complainant was under Clause 42 for consumption of liquor at the time of duty. The findings of the Enquiry Officer are filed by the respondent at Exh. C-3/63. The findings of the Enquiry Officer are

running into 5 pages. But there is only one reasoning is being given for holding the complainant guilty under Clause 42 of the Discipline and Appeal Procedure. The Enquiry Officer has recorded a findings that, there is a medical certificate wherein it is mentioned that the complainant's breath was smelling of alcohol. On this only reason, the Enquiry officer has concluded that every thing against the complainant and under Clause 10(a), 22(a) and 42(a) of the Discipline and Appeal Procedure is proved.

10. As the Enquiry officer has solely relied upon medical certificate. It would be proper to go through the said medical certificate at Exh. C-3/33. No doubt it is mentioned in the said medical certificate that the complainant's breath was smelling of alcohol. But it is also mentioned in the same medical certificate that speech of the complainant was not in incoherent. It is also mentioned in the same medical certificate that gait of the complainant was not unsteady. It is also mentioned in the same medical certificate that pupils of the complainant were not dilated. It is also mentioned in the same medical certificate that the complainant was not under influence of liquor. Moreover, the report of the chemical analysis of the complainant is not on record. The complainant in his reply to the chargesheet at Exh. U-3/3 has specifically stated that he was not under the influence of liquor. The complainant during the course of enquiry has submitted defence statement and stated that as he was having cough and fever, he had

taken cough syrup. Therefore, the breath of the complainant was having smelling of alcohol.

11. Moreover, the Enquiry Officer has not examined doctor during the enquiry for proof of medical certificate. It would also be pertinent to note here that the complainant as well as driver of the bus Sachin Sukhdeve were medically examined by the Police Station, Tiwasa. But, F.I.R. was only lodged against the driver of the bus i.e. Mr. Sachin Sukhdeve. There was nothing convincing before the Enquiry Officer to hold that the complainant was under the influence of liquor. Despite that the Enquiry Officer held the complainant guilty. Because of these observations, it is held that the findings of the Enquiry Officer are perverse.

12. On the basis of findings recorded on preliminary issue nos. 1 and 2, I proceed to pass the following order :

ORDER

1. It is hereby declared that the enquiry conducted by the Enquiry Officer against the complainant is fair, proper and in accordance with the principles of natural justice.
2. It is hereby declared that the findings recorded by the enquiry officer are perverse.
3. Case to proceed futher for remaining issues.

BHANDARA.
DATE : 12/10/2022.

(F.K. Shaikh)
Judge,
Labour Court, Bhandara.

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Order Below Exh. U-1

This Court has given judgment on preliminary issues at Exh. O-2. This Court has held that the findings recorded by the Reviewing Authority are perverse. Therefore, it is necessary to give an opportunity to the respondent Corporation to lead evidence in order to justify their action against the complainant. Therefore, the respondent Corporation is hereby directed to lead evidence, if any, on next date.

BHANDARA.
DATE : 13/09/2022.

(F.K. Shaikh)
Judge,
Labour Court, Bhandara.