

IN THE LABOUR COURT AT MAHAD, DIST - RAIGAD**Com.(ULP) No. 01/2018**

Shri. Manohar Mahadu Bangare
Age : 27 years, Occu. Service,
R/o. Karanjai, Post Pali,
Tal. Sudhagad, Dist Raigad.

.... The complainant

V/s.

1] Competent Authority,
Divisional Transport Officer,
MSRTC, Pen Division,
Dist. Raigad.

2] Traffic Controller,
MSRTC, Raigad, Pen Division,
Ramwadi, Pen, Dist Raigad.

..... Respondents.

CORAM : SHRI D. V. Kute, Judge**Appearances :****1] Mr. R. A. Gaikwad, Adv. for the complainant.****2] Mr. Aadesh Bhosale, Adv. for the Respondents.****Order below Exh. U-2 in Com. (ULP) No. 01/2018**

Read the application and say thereon vide Exh. C-2. Perused the record. Heard Mr. Rajendra A. Gaikwad, learned advocate appearing for the complainant and Mr. Aadesh Bhosale learned advocate appearing for the respondents.

2. This application is moved under Section 30 (2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. (hereinafter referred to as the Act for short). The complainant has sought interim relief against the respondents to stay the operation of notice dated 05.01.2018 whereby the respondents have proposed to dismiss him from service.

3. In short, the case of the complainant is that, he is working as conductor in the respondent corporation. On 23.10.2017 the respondents corporation has issued chargesheet to him on the ground that when on 14.10.2015 his bus was checked by the inspecting party it is found that he issued improper tickets to the passengers and thereby tried to misappropriate the corporation money. It is contended that on the basis of said chargesheet inquiry was conducted which was not fair and proper. No fair opportunity was given to the complainant. It is further contended that statement of the witnesses recorded by the inspection squad are incorrectly recorded by threatening them as to police case. It is further contended that, there was error in ticket machine and therefore, while the complainant was giving tickets to the passengers manually it caused delay. The Inquiry Officer has not considered these aspects and therefore, findings of the inquiry officer are perverse. If, on the basis of that inquiry, complainant is dismissed, he will suffer irreparable loss.

4. The application is opposed by the respondent vide their say and written statement. It is contended that the findings of inquiry officer are correct and are not perverse. The respondents come with a case that the statements of the complainant and other passengers have been recorded by the inspecting officer. Principles of natural justice have been followed while conducting the inquiry and findings are properly arrived at. It is contended that the complainant tried to misappropriate the corporation and therefore no relief can be granted to him. Accordingly, respondents prayed for rejection of application.

5. After hearing both the parties, following points arise for determination and findings thereon are recorded with reasons stated thereunder:

<u>POINTS</u>	<u>FINDINGS</u>
1) Whether the complainant prove strong prima facie case in his favour?	: No.
2) Whether the balance of convenience lies in his favour?	: No.
3) Whether the irreparable loss will cause to the complainant if the application is rejected?	: No.
4) What order?	: Application is rejected.

R E A S O N S**As to point no.1 :**

6. Learned advocate for the complainant has submitted that at the time of inspection of bus there were in all 35 passengers in the bus, the bus was checked very early after its departure and therefore, complainant could not have issued tickets to all the passengers. He submitted that, inquiry officer has not allowed the complainant to examine allegedly ticket less passengers. In this respect statement of passenger filed on record is relied upon. The learned advocate then submitted that, if the complainant has misappropriated the amount then the amount with him must have to increased. However deficiency of Rs. 65 has been noticed by the inspection party. He then submitted that, one can safely gather that ETM machine some time is not working properly. Therefore, the conductor has to issued the tickets manually. These aspects have not been considered by the inquiry officer. Thus, according to the learned advocate for the complainant, the complainant is improperly held guilty by the inquiry officer and if he is removed from the service his family will face starvation. Accordingly, he submitted that there is strong prima facie case in favour of the complainant and till the decision of the complaint interim relief in favour of the complainant is required to be passed.

7. On the other hand, learned advocate for the respondents has submitted that the complainant was found issuing improper tickets. He accepted more amount from the passengers

and issued them ticket for luggage. He submitted that in the in the inquiry, fair opportunity was given to the complainant and the principles of natural justice have been followed. He further submitted that findings arrived by the inquiry officer are not perverse as there is ample evidence against the complainant in the inquiry. He then submitted that, considering the act of the complainant as to misappropriation no sympathy can be granted to the the complainant. He submitted that the corporation has lost faith on the complainant and therefore at this stage no interim relief can be granted in his favour and corporation can not be forced to retain the complainant as he found misappropriating the corporation money.

8. At the outset it is necessary to state that in the case of Hindustan leaver Vs. Ashok Kate reported in AIR 1996 Supreme Court 285 the Hon'ble Supreme Court has held that, If departmental proceeding initiated by serving chargesheets brought in challenged at different stages of such proceedings by the concerned employees invoking the relevant clauses of item I of schedule IV before the final order of discharged or dismissal are passed, the Labour Court dealing with such complaint should not lightly interfere in such pending domestic inquiries against concerned complainants. It is further held that an interim order should not be passed mere askance by the Labour Courts. Otherwise, the very purpose of holding domestic inquiry as per the standing order would get frustrated.

9. In the light of this principle present complaint is required to be considered. It appears that on 14.10.2015 the inspecting party of the corporation has checked the bus No. MH-20/D/9451 on Kevele to Pali road. The inspecting party has found complainant while issuing improper tickets to the passengers by accepting full amount from them. It appears from the inquiry papers filed on record that tickets issued by the complainant to the passengers have been filed on record. It further appears that, the complainant has been given an opportunity to conduct cross examination of the witnesses by the corporation. He was represented by union representative Mr. Suryawanshi who conducted cross examination of the witnesses. It further appears that the statement of the complainant is also considered by the inquiry office and then the inquiry officer held the charges proved. The thrust of the learned advocate for the complainant is on the point of non examination of ticket less passengers. However it is well settled law that, it is not necessary to examine ticket less passengers before inquiry officer. There are two factors first one is whether there is no evidence against the delinquent and second is whether the evidence on record is sufficient to prove the guilt of delinquent. The labour Court can intervene in the domestic inquiry only when there is no evidence on record. It is settled that, sufficiency for otherwise of the evidence has not the matter which is to be considered while deciding the interim application.

10. Even otherwise perusal of the statement filed on record and

the application of the complainant moved to the inquiry officer shows that the complainant has forwarded the statement of one passenger namely Atish Eknath Gaikar and requested to respondents to consider that statement and he also requested that if the corporation requires said witness be called for the cross examination. It appears that in that statement dated 09.12.2017 the said witness stated that, inspecting officer had recorded his statement stating that if he has not given statement he will have to face police case. However, perusal of inquiry papers shows that, the statement of Laxmi Raju Pawar and statement of this witness dated 14.10.2017 is to the effect that the complainant has not issued proper ticket to them. Considering these aspects at this stage no strong prima facie case is made out to grant interim relief. Accordingly, point no. 1 is answered in the negative.

As to point no.2 & 3:

11. While considering the balance of convenience it is necessary to consider as to whom more hardship and irreparable loss will cause. In the present case it appears from the inquiry conducted by the corporation that there is prima facie substance in the allegations. In such circumstances if the respondents are forced to retain the complainant more hardship will cause to respondents corporation. The complaint, if finally allowed then the complainant will be entitled for the back wages. Therefore, no irreparable loss (that which can not be compensated in terms of money) will cause to the complainant. Therefore, point Nos. 2 &

3 are answered in the negative and in answer to point No.4, following order is passed:

ORDER

1. Application is rejected.
 2. In the facts of present case there is no order as to costs.
 3. This order be published on notice Board of this Court.
- (Dictated and pronounced in open Court)

(D.V. Kute)

Mahad. Judge Labour Court, Mahad, on
Date: 15.01.2018 deputation Civil Judge, Sr.Dn.Mahad (Camp)

Argued on : 11.01.2018.
Dictated and signed on : 15.01.2018.