

IN THE LABOUR COURT AT MAHAD, DIST - RAIGAD

Com.(ULP) No. 01/2018

CNR No. - MHLC060000012018

Manohar Mahadu Bangare
age- 27 years, Occu- Service
R/o. Karanjai, Post- Pali,
Tal- Sudhagad, Dist-Raigad

... The complainant

Vs.

1. Divisional Traffic Superintendent,
MSRTC, Raigad Division, Competent
Authority Ramwadi, Pen ,Dist- Raigad.

2. Divisional Controller,
MSRTC, Ramwadi, Dist- Raigad.

...The respondents

CORAM :- D. V. KUTE, JUDGE,

Appearance :-

Shri. R.A. Gaikwad:- advocate for the complainant.

Shri. A. Y. Bhosle :- advocate for the espondents.

Judgment on Part-I

Delivered On – 06 /03/2019

This is a complaint under section 28 read with item 1 (a) (b) (d) (f) and (g) of schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as MRTU & PULP Act for short).

Complainant's Case :-

2) In short, the case of the complainant is that he is in employment of the respondent as conductor of the bus. The respondents have issued charge sheet dated 23/10/2017 alleging that the complainant had indulged into misconduct. It was alleged that when on 14/10/2015 his bus was checked by the Inspecting party, it was found that he issued improper tickets & thereby tried to misappropriate the Corporation money. In the enquiry there was no evidence against the complainant. The principles of natural justice have not been followed. The enquiry officer has not given any specific reason to hold the complainant guilty. In fact the statements of the witnesses were incorrectly recorded. There was error in

ticket machine. Inquiry Officer has not considered these aspects & hence findings returned by him are perverse.

3) The respondents filed say at exhibit C-2 and denied the material allegations made in the complainant. According to them proper enquiry was conducted against the complainant. Opportunity to defend the charge has been given to him. The findings of the Inquiry Officer are based on the evidence brought in enquiry.

ISSUES AND FINDINGS :

4) Following preliminary issues are framed at Exh. O-2. Findings thereon are recorded with reasons stated thereunder -

ISSUES	FINDINGS
1) Whether the enquiry conducted against the complainant is fair and proper and in accordance with the principles of natural justice ?	In the affirmative.
2) Whether the findings recorded by the Inquiry Officer are perverse?	In the negative

REASONS

5) Heard learned advocates for both the parties. Perused the papers of inquiry & evidence on record.

As to issue No.1

6) Learned advocate for the complainant has submitted that the complainant has been victimized by the respondents with unfair labour practices by conducting farce of enquiry. According to him this act of the respondents is illegal & is in violation of the principles of Natural justice & fair play .. He then submitted that the enquiry officer was not impartial person. Per contra , learned advocate for the respondents has submitted that due notice of of enquiry was given to the complainant. He was represented by representative . The statement of the complainant has been taken on record.

7) Perusal of enquiry papers showed that the complainant has participated in the enquiry. He was represented by the union representative who conducted the cross examination of the witness of the respondent. Statement of the complainant has been taken on record. Thus, it appears that the principles of natural justice have been complied with while conducting enquiry. It appears from the enquiry papers that the fair opportunity to meet the charges has been given to the complainant. . Hence, issue No.1 is answered in the affirmative.

As to issue No.2

8) Learned advocate for the complainant has submitted that at the time of inspection there were in all 35 passengers in the bus. It was checked very early after its departure and therefore, complainant could not have issued tickets to all the passengers. Learned advocate then submitted that, if the complainant has misappropriated the amount then the amount with him must have to be 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 issue 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

9) 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 further submitted that findings arrived by the Inquiry Officer are not perverse as there is ample evidence against the complainant in the enquiry.

10) At the outset here it is apposite to refer the judgment of the Hon'ble Supreme Court in the case of Kuldeep Singh Vs. The Commissioner of Police & others decided on 17/12/1998. In that case the Hon'ble Supreme Court has dealt with the aspect when the findings of Inquiry Officer can be said to be perverse. The Court has considered its earlier decisions & held that "In Nand Kishore vs. State of Bihar, AIR 1978 SC 1277 = (1978) 3 SCC 366 = 1978 (3) SCR 708, it was held that the disciplinary proceedings before a domestic Tribunal are of quasi-judicial

character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which, and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the Enquiry Officer would be perverse. The findings, recorded in a domestic enquiry, can be characterized as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of the that evidence. This principle was laid down by this Court in *State of Andhra Pradesh vs. Sree Rama Rao*. 1964 2 LLJ 150 = AIR 1963 SC 1723 = 1964 (3) SCR 25, in which the question was whether the High Court, under Article 226, could interfere with the findings recorded at the departmental enquiry. This decision was followed in *Central Bank of India vs. Prakash Chand Jain*, 1969 2 LLJ 377 (SC) AIR 1969 SC 983 and *Bharat Iron Works vs. Bhagubhai Balubhai Patel & Ors.* 1976 Labour & Industrial Cases 4 (SC) = AIR 1976 SC 98 = 1976 (2) SCR 280 = (1976) 1 SCC 518. In *Rajinder Kumar Kindra vs. Delhi Administration through Secretary (Labour) and Others.* AIR 1984 SC 1805= 1985 (1) SCR 866 = (1984) 4 SCC 635, it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are his mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated". It is further held that A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse, But if there is some evidence on record which is acceptable and which could be relied upon, howsoever, compendious it may be the conclusions would not be treated as perverse and the findings would not be interfered with.

11) Perusal of Enquiry report showed 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 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. perusal of the statement filed on record and the application of the complainant moved in the enquiry showed 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 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 enquiry papers showed 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 tickets to them. 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. In the present case the Inquiry Officer has considered whole evidence on record & returned the finding on the basis of said evidence.

12) Thus, at any rate there is evidence with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state. Therefore, this not a case wherein there is no evidence to sustain the charges framed against the complainant. The

evidence on record is reliable since it is based on cogent facts. Considering these aspects the findings of the Inquiry Officer can not be held to be perverse. Accordingly, issue No.2 is answered in the negative & consequently, following order is passed.

ORDER

1. It is held that inquiry is fair, proper & conducted in accordance with the principles of Natural justice
2. It is held that findings of Inquiry Officer are not perverse.
3. Pronounced in open court.

Mahad

(D. V. Kute)

Judge

Date : 06/03/2019

Labour Court, Mahad

Argued on- 05/03/2019

Self typed & Signed on – 06/03/2019