

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6842 OF 2017

Smt. Vaijayanti Mahadev Patil] Petitioner
Vs.
The Divisional Traffic Superintendent]
M.S.R.T.C Kolhapur Division, Kolhapur.] Respondent

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Mr. Manoj A. Patil a/w Mr. Ashish Pawar, for petitioner.
Mr. C.M. Lokesh i/b G.S. Hegde, for respondent.

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CORAM : R.G. KETKAR, J.

DATE : 24th JULY, 2017.

P.C.

Heard Mr. Patil, learned Counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 16th June, 2016 passed by the learned Judge, 2nd Labour Court, Kolhapur below Exhibit U-2 in Complaint [U.L.P] No. 41 of 2014 as also the judgment and order dated 7th April, 2017 passed by the Member, Industrial Court No.2, Kolhapur [for short 'Tribunal'] in Revision [U.L.P] No. 68 of 2016. By these orders, the Courts below rejected the application Exhibit-U-2 made by the petitioner, hereinafter referred to as 'complainant' for seeking interim relief directing the respondent not to terminate services of the

complainant and allow the complainant to join duties, till final disposal of the main complaint.

3. In support of this Petition, Mr. Patil strenuously contended that the same Authority has played role of Inquiry Officer and Disciplinary Authority. He submitted that inquiry is vitiated on this ground alone. He also invited my attention to the statements of following passengers recorded on 30th July, 2013.

[1]Mukesh Kumar Kalwani

[2]Koushalyadevi Chavaria

[3]Maruti Dinkar Patil

He submitted that practice is followed in the respondent's establishment of issuing tickets when ETI machine is not properly functioning. He submitted that if the interim order is not granted, complaint will be rendered infructuous. The respondent will terminate services of the complainant. Lastly, he submitted that in case the Court is not inclined to entertain the Petition, interim order that was operating in favour of the complainant may be continued for a period of 8 weeks.

4. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused material on record. A perusal of the impugned order shows that charge-sheet was issued to the complainant on the ground of misconduct and misappropriation. The charge-sheet was issued to the complainant in respect of tickets amounting to Rs. 1048/- and Rs. 250/- respectively. The complainant was charged that she had issued tickets of Rs. 48/- by accepting amount of Rs.1050/- from two

illiterate lady passengers who were travelling from Mumbai to Kolhapur. Prior to handing over ticket of Rs. 48/-, complainant had written digit "10" prior to digit "48". While checking bus, it was found that she issued ticket bearing No. 008192 amounting to Rs. 1048/-/ Second incident was issuing ticket amounting to Rs. 15/- to one passenger Mukesh Kalwani travelling from Mumbai to Kolhapur. The complainant wrote digit '5' prior to digit '15' . Checking squad found that she has issued ticket bearing No. 008191 amounting to Rs. 515/-. The Labour Court after considering the material on record as also explanation given by the complainant as also her previous misconduct held that no prima facie case is made out. Balance of convenience does not lie in favour of the complainant and no irreparable loss would be caused to the complainant if interim relief is denied to her.

5. Being aggrieved by this decision, complainant preferred Revision Application [U.LP] No. 68 of 2016 before the Tribunal. In paragraph 13, the Tribunal noted the charges levelled against the complainant as also perused the entire material on record. The Tribunal considered the explanation given by the complainant as regards passenger Mukesh Kalwani who boarded the bus at Mumbai for Kolhapur. The complainant gave explanation that he was having less money. He assured that he will pay remaining fair charges after reaching at Kolhapur. The tribunal rejected that explanation on the ground that such explanation could not be accepted as there is no such practice adopted by the respondent. The Tribunal *prima facie* recorded finding that the complainant

committed misappropriation of Rs. 1002/- + Rs. 235/- = Rs. 1237. The Tribunal observed that the complainant admitted that she had put digit '5' prior to the digit 15 by ball pen and that she had put digit 10 prior to 48 by ball pen and issued tickets on the ground that ETI machine was not properly functioning and there was defect in printing on the tickets. She was under impression that if she issues substitute ticket from another machine, she will have to pay penalty of Rs. 1545/-.

6. In paragraph 14, the Tribunal noted that as the complainant had issued these tickets in Mumbai then why she did not take care to provide substitute tickets to the passengers instead of writing figures by ball pen on these tickets.

7. Mr. Patil submitted that the same Authority has played role of Inquiry Officer and Disciplinary Authority. This aspect was considered by the Tribunal in the paragraph 14 of the impugned order and in paragraph 21, the Tribunal recorded a categorical finding that inquiry was properly conducted in a fair and proper manner. The petitioner was not in a position to demonstrate that the findings recorded by the Courts below are perverse, being based upon no evidence or that they are contrary to the evidence on record. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, the Petition fails and the same is dismissed.

8. At this stage, Mr. Patil orally applies for continuation of ad-interim order for a period of 8 weeks. Having regard to the fact

that *prima facie* both the Courts below have held that no case is made out for interim relief, oral application is rejected. Order accordingly.

[R.G. KETKAR, J.]