

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12936 OF 2017

THE DIVISIONAL CONTROLLER, MAHARASHTRA STATE ROAD
TRANSPORT CORPORATION AURANGABAD
VERSUS
MOHAMMAD AKRAM MOHD HASHAM

...
Advocate for the Petitioner : Mrs.Reddy Ranjana D..
None for the Respondent.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 05th June, 2018

Per Court:

1 Even after a passover, none of the two Advocates appearing for the Respondent have appeared in this matter though their appearance has been shown on the daily board.

2 I have, therefore, heard the submissions of the learned Advocate for the Petitioner at length and have gone through the petition paper book with her assistance.

3 The Petitioner is aggrieved by the interim order dated 28.07.2017 passed by the Industrial Court, Aurangabad in Complaint (ULP) No.179/2017.

4 The issues raised by the Petitioner in this petition can be summarized as under :-

- (a) Whether, the Industrial Court could have passed the impugned order without arriving at a conclusion that the two enquiries are vitiated or that the findings of the two Enquiry Officers are perverse.
- (b) Whether, the Industrial Court, while refusing interim relief to the Respondent, could have partly allowed the application for interim relief Exhibit U-2.

5 This Court (Coram : V.K.Jadhav, J.) has passed an order on 05.12.2017 after hearing the learned Advocate for the Petitioner and has stayed clause (b) of the operative part of the impugned order dated 28.07.2017 passed by the Industrial Court by which, the interim application filed by the Respondent has been partly allowed.

6 Insofar as the issue of grant of interim relief without framing two issues with regard to the perversity in the findings of the Enquiry Officer and the vitiation of the domestic enquiry, is concerned, this issue has been settled by this Court vide it's judgment dated 07.05.2018 in Writ Petition No.2730/2004 (Divisional Commissioner, MSRTC vs. Bhushan Jagannathrao Bulbule). The issue as to whether, the interim relief could be granted in the matters of domestic enquiry has also been settled by the Honourable Supreme Court in the matter of Hindustan Lever v/s Ashok.

Vishnu Kate and others, 1995(6) SCC 326 and by this Court in the matter of Mumbai Cricket Association v/s Pramod G. Shinde, 2011 (7) ALL MR. 678.

7 I do not find any dispute about the fact that the Respondent herein was subjected to two domestic enquiries with regard to two different misconducts. Two separate charge sheets were issued and after conducting two enquiries, the orders of punishment dated 21.02.2017 and 30.03.2017 were issued against the Respondent herein.

8 The Industrial Court in the entire impugned order has repeatedly concluded that no interim relief deserves to be granted to the original Complainant and he is not entitled for interim relief. Yet, the Industrial Court has partly allowed the interim relief application and has directed the Petitioner to pay monthly salary as per the pay scale applicable to the Respondent prior to the issuance of the order of punishment dated 30.03.2017. By this order, the Industrial Court has indirectly stayed the order dated 30.03.2017 by which, the basic pay of the Respondent was reduced by three stages. On the one hand, the Industrial Court was convinced that no relief could be granted to the Respondent herein and the impugned punishment orders did not deserve to be stayed and yet, on the other hand, the Industrial Court has indirectly stayed the order dated 30.03.2017 practically rewarding the Respondent. As such, the impugned order to the extent of clauses 11(b) and 11(c)

cannot be sustained and the same are, therefore, quashed and set aside.

9 Insofar as the order of punishment dated 21.02.2017 is concerned, the Industrial Court has directed the Petitioner to deposit the amount of Rs.4000/-, recovered from the original Complainant, in the Industrial Court. I do not find that the said direction could be termed as being likely to cause gross injustice to the Petitioner.

10 In the light of the above, this Writ Petition is partly allowed. The impugned order dated 28.07.2017 is quashed and set aside to the extent of clauses (b) and (c) of the operative part of the impugned order. The direction in clause (d) by which, the Petitioner is directed to deposit Rs.4000/- in the Industrial Court to be invested in Fixed Deposit Receipt in any nationalized bank, is sustained.

11 Needless to state, the Industrial Court would follow the law laid down by this Court in Divisional Commissioner, MSRTC vs. Bhushan Jagannathrao Bulbule (supra) and by the Honourable Supreme Court in Hindustan Lever (supra) while deciding Complaint (ULP) No.179/2017 on it's own merits..