

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.3623/2019

**(Irshadur Rahim Khan s/o Abdul Karim Khan .vs. Maharashtra State Road
Transport Corporation, through its Reviewing Authority, Divisional
Controller, Bhandara.)**

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders.
and Registrar's orders

Mr. D.P. Bhongade, Advocate for Petitioner.
Mr. A.D. Sonak, Advocate for Respondent.

CORAM : Manish Pitale, J.
DATE : May 13, 2019.

Heard Mr. D.P. Bhongade, learned counsel for the Petitioner and Mr. A.D. Sonak, learned counsel for the respondent- Maharashtra State Road Transport Corporation.

2. The petitioner herein has challenged order dated 20.03.2019 passed by the Industrial Court, Bhandara, whereby an application for interim relief bearing Exh.U-2 filed by the petitioner in Complaint (ULP) No. 65 of 2018, has been rejected and certain consequential directions have been given.

3. The petitioner is working as a Clerk in the respondent-Corporation. He has filed the aforesaid complaint before the Industrial Court, challenging show cause notice dated 12.11.2018 issued against him, proposing enhancement of punishment already awarded to him by order dated 03.10.2018. It is the case of the

petitioner that issuance of such show cause notice under Clause 9 of the Maharashtra State Road Transport Corporation's Employees Discipline and Appeal Procedure amounts to an unfair labour practice. In the said complaint, the petitioner had filed the aforesaid application for grant of interim relief Exh.U-2. Initially, on 22.11.2018, the Industrial Court granted ad-interim relief in favour of the petitioner thereby staying the effect and operation of the show cause notice dated 12.11.2018.

4. But, thereafter by impugned order dated 20.03.2019, the Industrial Court discussed the contentions of the rival parties in detail and rejected the application for interim relief, further directing that the petitioner shall file reply to the aforesaid show cause notice within a period of 15 days and that the respondent-Corporation could pass appropriate order of punishment after taking into consideration the reply of the petitioner along with other relevant factors. It is further directed in the impugned order that punishment order, if any, passed by the respondent-Corporation shall be operative after a period of 15 days from the date of service of such order on the petitioner and that the petitioner would be at liberty to challenge the order of punishment before the appropriate forum along with the application for interim relief, which shall be decided in accordance with law.

5. The principal contention raised on behalf of the petitioner before this Court is that if the impugned

order and the directions given therein are followed, the original complaint filed by the petitioner challenging the very show cause notice would be rendered infructuous. It is submitted that the show cause notice issued by the respondent-Corporation under Clause 9 of the aforesaid Discipline and Appeal Procedure of the respondent-Corporation, was itself unsustainable and that, therefore, the impugned order was required to be interfered with, so as to afford a proper opportunity to the petitioner to pursue his pending complaint before the Industrial Court.

6. On the other hand, it was submitted by the learned counsel appearing for the respondent-Corporation, that the impugned order passed by the Industrial Court sufficiently protects the interest of the petitioner and that even if the said order works itself out, the complaint filed by the petitioner would not be rendered infructuous, as liberty has been granted to him to challenge the order of punishment, if any, that might be passed by the respondent-Corporation after reply is submitted by the petitioner to the show cause notice. It is submitted that the fact that the impugned order itself directs that the order of punishment, if any, shall not be operative for a period of 15 days from the date of service of such order on the petitioner, demonstrates that the petitioner would have opportunity to amend his original complaint or file a fresh proceeding to challenge such an order. In these circumstances, it is submitted that no interference is warranted in the impugned order under writ jurisdiction.

7. A perusal of the impugned order dated 20.03.2019 shows that while rejecting the application for interim relief Exh.U-2 filed by the petitioner, the Industrial Court has held as follows:-

"1) Application Exhibit No. U-2 in Complaint (ULP) No. 65/2018 stands rejected without going into the merits of the matter, with following directions...

(a) The complainant to file the reply to the show cause notice within a period of 15 days.

(b) The respondent, to pass appropriate order of punishment, if any, after taking into consideration the reply of complainant, if filed, and all such other factors i.e. past service record etc., as is required to be taken into consideration under the Rules.

(c) Any order of punishment shall be made operative after a period of 15 days from the date of service of such order upon the complainant.

(d) During the period of 15 days, the complainant shall be at liberty to challenge such an order before the Appropriate Forum along with the application for interim relief, which shall be considered and decided in accordance with law.

2) Application Exhibit No. U-2 in Complaint (ULP) No.65/2018 accordingly stands disposed of."

8. A perusal of the above quoted portion of the impugned order shows that the respondent-Corporation has been directed to take into consideration reply that the petitioner would file to the show cause notice and

other factors before passing order of enhanced punishment, if any. The petitioner has been sufficiently protected for a further period of 15 days by directing that order of punishment, if any, shall be operative only after 15 days from the date of service of such order on the petitioner. This shows that the petitioner would have ample opportunity to challenge any adverse order that may be passed by the respondent-Corporation against him on the question of enhancement of punishment. The petitioner would have an opportunity to challenge such an order and seek interim relief. This could be done by the petitioner either by amending the pending complaint before the Industrial Court or by instituting a fresh proceeding.

9. Even if the petitioner is constrained to challenge the order of punishment, if any, that might be passed against him, he could still contend before the Industrial Court in the pending complaint that the show cause notice itself was unsustainable under Clause 9 of the aforesaid Discipline and Appeal Procedure of the respondent-Corporation. Therefore, the petitioner would have opportunity to demonstrate firstly, that the show cause notice itself was unsustainable and secondly, that the order of enhanced punishment, if any, passed against him, was unsustainable on merits also. Therefore, in the opinion of this Court, no prejudice will be suffered by the petitioner if he submits a reply to the show cause notice and the above quoted portion of the impugned order works itself out.

10. In the light of the above, this Court finds that there is no merit in the present writ petition and it is dismissed. It is made clear that the period of 15 days to reply to the show cause notice as granted/directed in the impugned order, shall commence from today. The other directions in the impugned order shall operate thereafter.

11. Ordinary copy of this order be provided to the parties to act upon.

JUDGE

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