



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

WRIT PETITION NO. 15192 OF 2023

Ramrao Vitthalrao Waghmode
Age : 46 years, Occ.: S.T. Driver,
Batch No.21496, R/o : Bhakarwadi,
Post, Ajan Sonda, Tq. Chakur, Dist. Latur.

...Petitioner

Versus

1. Maharashtra State Road Transport Corporation,
Through its Divisional Controller,
S.T. Divisional Office, Aurangabad.
2. Divisional Traffic Superintendent,
(D.T.S. Default) (Competent Authority)
Maharashtra State Road Transport Corporation,
S.T. Divisional Office, Aurangabad.

...Respondents

Advocate for Petitioners : Mr. Pradip Shahane a/w Mr. Shahane Parag P.
Advocate for Respondents : Mr. Manoj D. Shinde

CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 10th DECEMBER 2023

PRONOUNCED ON : 22nd DECEMBER 2023

JUDGMENT :

1. Rule. Rule is made returnable forthwith with the consent of the parties. Heard learned counsel for the litigating sides finally.

2. The petitioner is employee of respondent-corporation. He has filed complaint bearing ULP No. 21 of 2023 challenging

show-cause notices dated 27.09.2023, which is pending. His application Exh-U2 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 sake of brevity and convenience) seeking stay to the execution of show cause notice and repudiating it was rejected by learned judge of the labour Court on 10th October,2023. The revision filed by the petitioner against the order was dismissed by judgment and order dated 28.11.2023 by learned member of Industrial Court, Aurangabad. The petitioner has challenged order dated 10.10.2023 and 28.11.2023 in the present petition.

3. The petitioner is working as a driver with the respondent. On 15.07.2023, he was driving bus and met with an accident. He was referred to the medical examination. On the basis of the complaints and the reports, the respondent proposed disciplinary action by appointing enquiry officer. The gravamen of the allegation is that he was driving under influence of alcohol.

4. On 24.07.2023, charge-sheet comprising of five charges was served upon the petitioner. He submitted reply. Thereafter, full fledged enquiry was conducted. Considering the material on

record, report was prepared by the enquiry officer holding him guilty for the charges. The petitioner was served with show-cause notice dated 27.09.2023 for imposing punishment of dismissal. He has challenged the same before the labour Court with interim application Exh-U-2.

5. The respondent is contesting the proceeding before the labour Court. An interim application Exh-U-2 was also contested. After hearing the parties, the application was rejected. It is brought on record that on previous two occasions petitioner indulged in self-same misconduct and the disciplinary action was taken. The opportunity of hearing has been extended to the petitioner during present enquiry. There is strong material on record including report of the enquiry officer to indicate misconduct of a serious nature.

6. There was ad-interim protection to the petitioner pending his application Exh-U-2 before the labour Court. After rejecting application Exh-U-2, the interim protection was extended till 30.10.2023. It was in operation till disposal of revision. Thereafter, also it was extended up to 13.12.2023. It is further extended till final decision by this Court.

7. Learned counsel for the petitioner has advanced following submissions.

a) The allegations against the petitioner are false and the accident was due to the mistake of the truck driver. There was no fault on the part of the petitioner.

b) There is no material against the petitioner. The statements of the passengers were not recorded. No blood or urine samples of the petitioner was collected. Nobody has seen the petitioner consuming liquor. He was not under influence of alcohol.

c) The enquiry is defective and the findings to the charges recorded in the report are perverse.

d) The statement of the conductor supports the petitioner. Medical report is dicey. The cross-examination of a witness is overlooked.

e) The past history of the petitioner is not incriminating. There was only one punishment. In respect of the another incident matter is sub-judiced.

f) The petitioner will suffer irreparable loss and the balance of convenience tilts in his favour. The complaint pending before labour Court can be expedited by permitting the petitioner to render services in some other capacity.

g) The complaint against show cause notice is maintainable before the labour Court under the provisions of section 28 read

with item No. 1 (a), 1(g) of schedule 4 of the Act.

h) There is strong prima facie case in favour of the petitioner. There is bound to be order of dismissal. Hence, replying the show cause notice was an empty formality.

8. Learned counsel for the petitioner has referred to following judgments.

- a. Jai Mangal Ram and Others Vs. State of U.P. and Others
- b. Munna Lal Vs. Union of India
- c. Bacchubhai Hassanali Karyani Vs. State of Maharashtra
- d. Dashrath Singh Vs. State of U.P.
- e. Sangram Yadav Vs. State of U.P
- f. Narendra datta rai vs. Union of India
- g. Mahindra and Mahindra Ltd vs Dwarkanath Babaji Dalvi and Anr.
- h. Hindustan Lever Ltd. Vs. Ashok Vishnu Kate

9. Additionally, learned counsel for the petitioner has referred to different orders passed by single judges in the matters of respondent-MSRTC, to buttress the following submissions.

- a) To expedite the hearing of the main complaint, without disturbing the status of the petitioner.

- b) To continue the interim relief till disposal of main complaint.
- c) To dispose of the petition without entering into merit by directing the parties to co-operate for final disposal of main complaint.

10. Learned counsel for the respondent has advanced following submissions.

- i) The petitioner has a track history of indulging into successive misconduct of similar nature. Driving bus under influence of liquor is extremely serious charge which endangers the lives and the property of the corporation.
- ii) Petitioner was found guilty and punished in the year 2014. In the year 2022, again enquiry was conducted for the same charge and the matter is pending. Within one year, the present incident took place involving accident. This is the gravest form of misconduct.
- iii) Considering the gravity of the charges, and successive indulgence various orders passed by Hon'ble Single Judges referred in the last paragraph by learned counsel for the petitioner cannot be made applicable.
- iv) There is adequate material against the petitioner for holding

him guilty. It includes complaint, statements, medical report, oral evidence and report of enquiry.

v) Due opportunity of hearing was given to the petitioner. There is no apparent defect in the enquiry.

vi) The adequacy of the material to support the charges and findings recorded by enquiry officer cannot be gone into at this stage.

vii) The submissions of the petitioner regarding want of blood/urine sample, want of material to establish consumption of liquor cannot be considered at this stage.

viii) Both the courts below have considered all facets of the matter and passed orders which are plausible. No case is made out to interfere with the findings recorded by the courts below.

ix) The petitioner will get opportunity to make out a case during the course of hearing in complaint or thereafter also.

x) In the judgment cited by the petitioner, there is not against show cause notice.

11. Learned counsel for the respondents seeks to rely

upon following judgments.

- a. Maharashtra State Road Transport Corporation Vs. Sudam Narayan Chaudhari
- b. Vasant Namdeo Chavan Vs. Maharashtra State Road Transport Corporation
- c. Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd. and Anr. Vs. Vasant Ambadas Deshpande
- d. Air India Ltd. Vs. L.R. Solanki and Another
- e. Tata Infomedia Limited (Erstwhile Tata Press Limited) Vs. Tata Press Employees Union & Another
- f. Board of Trustees of the Port of Mumbai Vs. Suryabhan Popat Londhe

12. I have considered rival submissions of the parties. I have given due consideration to the judgments and the orders cited by the petitioner which are focused on the incident dated 15.07.2023 are accident of bus which was driven under influence.

13. There is a material produced against the petitioner in the form of statements, complaint, medical report and depositions and enquiry report. The charges are found to be proved by the enquiry officer. It is not a case that there is absolutely no material

against the petitioner and a disproportionate penalty of dismissal is proposed. Apparently, there is a medical certificate indicating the consumption of alcohol at the relevant time. The complaint of passengers, the statement of traffic controller, statement of conductor make out misconduct against the petitioner. The probative value of the material, the validity of the findings recorded to the charges can be considered at the appropriate stages of the proceedings. Both the courts below, therefore have rightly considered that there is material against the petitioner.

14. The submissions of learned counsel for the petitioner that there is no independent evidence, passengers are not examined, the statement of the conductor supports the petitioner and there is a want of blood/urine report can not be considered at this stage of the proceedings. The submissions on the merits of the charges and the disciplinary action can be dealt with at the appropriate stages of the proceedings by the competent Court. What is the purport of not collecting blood/urine sample, so called admissions given in cross-examination can be assessed either by the labour Court or by the competent forum if the punishment is imposed and challenged.

15. It is not a case of the petitioner that an imaginary incident is shown and there is false implication. Further it is not a case that the respondent is proposing shockingly disproportionate punishment against the petitioner that no employer can ever impose. Pertinently, no submissions are made by learned counsel for the petitioner to show that there is violation of the principles of natural justice or there is utter breach of the procedure prescribed or there is apparent miscarriage of justice. It is concurrently and rightly recorded that there is no prima facie case in favour of the petitioner.

16. The respondent has placed on record track history of the petitioner which is alarming. In the year 2014, the petitioner was found guilty for misconduct of discharging duties under influence of alcohol. A punishment was imposed. In 2022, for self-same charge disciplinary action was taken. A show-cause notice was also issued for imposing major punishment but there was protection by the Court. However, the petitioner has not been exonerated from the misconduct. Within span of one year, again the petitioner is found to be under influence of alcohol. It is the gravest form of misconduct apparently. The track history

demonstrated by the respondent distinguishes present case from the judgments and the orders cited by the petitioner across the bar.

17. The petitioner is a driver. He is repeatedly committing misconduct. No employer would permit bus driver to discharge the duty of public transportation. There is room to infer that the petitioner is habitual. Conduct of the petitioner dis-entitles him to claim any discretion. The Court should not have granted any interim protection and let the complaint be proceeded on its merits. The petitioner is not remediless even if orders in future are passed against him. I hold that the petitioner does not deserve any sympathy or discretion. No case is made out to direct the labour Court to decide the complaint of the petitioner which is filed recently, by giving precedent.

18. Both the courts below have arrived at reasonable and proper conclusion regarding prima-facie case, balance of convenience and irreparable loss. I approve the findings recorded by them.

19. The judgments cited by the petitioner in respect of

Munna Lal Vs. Union of India reported in (2010) 1 SCC 399, **Bacchubhai Hassanali Karyani Vs. State of Maharashtra** reported in 1971 (3) SCC 930, **Dashrath Singh Vs. State of U.P** reported in MANU/UP/1402/2022 **Sangram Yadav Vs. State of U.P** reported in MANU/UP/0766/2022, **Narendra datta rai vs. Union of India** reported in MANU/WB/0524/2018 disclose that final punishment was imposed on the delinquent and then matters reached appropriate forum. The judgment of **Mahindra and Mahindra Ltd vs Dwarkanath Babaji Dalvi and Anr.** Reported in 2006 I CLR 902 (Bom. H.C) lays down the scope of the Court in the matters of interim relief. The proposition in its paragraph No. 23, 27 and 33 are not disputed.

20. The judgments in the matter of **Hindustan Lever Ltd. Vs. Ashok Vishnu Kate** reported in 1995 II CLR 823 rendered by the Supreme Court is regarding maintainability of complaint against show-cause notice which is not fact in issue in the present matter. Paragraph No.24 and 26 which are referred by the petitioner may not take the case any further. The judgment of Allhabad High Court in the matter of **Jai Mangal Ram Vs. State of U.P and others** reported in MANU/UP/3992/2023 is also rendered after imposition

of final punishment. The reference to paragraph No. 14 can be best made after imposition of penalty.

21. The judgment cited by the respondent are mainly depicting the scope of enquiry while dealing with the matters arising out of the disciplinary action. I have gone through the relevant paragraphs of those judgments. I am of the considered view that those may not be useful to decide the controversy involved in this matter at this juncture.

22. For the reasons stated above, I do not find any merit in the petition.

ORDER

- i. The Writ Petition is dismissed.
- ii. Needless to mention that the interim orders shall cease to operate.
- iii. The Rule is discharged.

[SHAILESH P. BRAHME, J.]

Najeeb.