

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13126 OF 2022

Dipak Krushna Watekar

...Petitioner

V/s.

MSRTC, Ratnagiri

...Respondent

Mr. Milan S. Topkar i/by. Mr. Saurabh Mandlik, Advocate for the Petitioner.

Mr. Amit A. Gharte, Advocate for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Dated : 11 October 2023.

P.C. :

1. **Rule.** Rule made returnable forthwith. With the consent of the parties, taken up for final disposal.
2. The challenge in the present petition is to the Order dated 30 September 2022 passed by the Member, Industrial Court, Kolhapur rejecting Revision Application (ULP) No.80/2017 filed by the Petitioner. In his Revision Application, the Petitioner had challenged order dated 29 June 2017 passed by the Labour Court rejecting his application at Exhibit U-2 for grant of interim relief in respect of final show cause notice dated 17 October 2016 issued in

pursuance of the disciplinary proceedings initiated against the Petitioner.

3. The facts of the case are that the Petitioner is working with the Respondent-Transport Corporation on the post of Driver. Disciplinary proceedings have been initiated against him on the charge *inter-alia* of driving the bus under the influence of alcohol. The domestic enquiry has been conducted against him, in which the charge is held to be proved and he has been issued show cause notice dated 17 October 2016 proposing to impose the penalty of dismissal from service. That notice has become subject matter of challenge in Complaint (ULP) No. 64/2016 filed by the Petitioner before the Labour Court, Ratnagiri. In that complaint, Petitioner filed application at Exhibit-U-2 for interim injunction against the show cause notice. The Labour Court granted ad-interim protection in favour of the Petitioner. However subsequently by order dated 29 June 2017, his application at Exhibit-U-2 came to be rejected. The ad-interim relief was however continued till 13 July 2017. Petitioner approached the Industrial Court at Kolhapur by filing Revision Application (ULP) No.80/2017 challenging Labour Court's decision dated 29 June 2017. The Industrial Court continued the ad-interim protection running in favour of the Petitioner during pendency of the Revision Application. However, by its judgment and order dated 30 September 2022, the Industrial Court has

proceeded to reject the Revision Application. The ad-interim protection however was continued upto 30 October 2022.

4. The Petitioner has filed the present petition challenging the orders of the Labour Court as well as the Industrial Court. By order dated 14 November 2022, this Court has continued the interim protection in favour of the Petitioner, which continues to operate till date.

5. Mr. Topkar, the learned counsel appearing for the Petitioner would submit that the reason for the Labour Court and the Industrial Court to reject the application for interim relief was *prima-facie* findings about the valid nature of the enquiry. However, after the dismissal of the revision petition by the Industrial Court, the Labour Court has rendered decision on preliminary issue of validity of enquiry on 5 July 2023 and has held that the enquiry conducted against the Petitioner is not valid and proper. The Respondent-Corporation has been granted opportunity to lead evidence before the Labour Court. He would submit that now that the enquiry itself is held to be invalid, the interim protection which is running in favour of the Petitioner needs to be made absolute till the decision of the Complaint (ULP) No. 64 of 2016. He would submit that in pursuance of order dated 5 July 2023, the Respondent-Corporation has already filed its Affidavit of evidence and that the entire proceedings can be concluded in a short

period of time. Therefore, he would submit that the interim protection needs to be continued till the decision of the complaint.

6. Mr. Topkar would further submit that the entire findings recorded in the enquiry are now found to be invalid by the Trial Court and therefore now it is for the Respondent-Corporation to produce evidence before the Labour Court in support of the charges. The show cause notice emanated out of the findings of the enquiry report, now no longer stands valid. Till the Respondent-Corporation produces evidence before the Labour Court, Petitioner cannot be kept away from service.

7. *Per-contra*, Mr. Gharte the learned counsel appearing for the Respondent-Corporation would oppose the petition and support the orders passed by the Labour Court and Industrial Court. He would invite my attention to the findings recorded by the Industrial Court about quantity of alcohol found in the blood of the Petitioner in the breath analysis report on the day of the accident. He would question the maintainability of Complaint (ULP) No. 64/2016. That the Respondent-Corporation must be permitted to take the disciplinary proceedings to its logical end by passing the final order of punishment.

8. I have considered the submissions canvassed by the learned counsel for the parties. The Petitioner has approached the Labour Court by filing complaint under Section 28 of the

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**) challenging the show cause notice dated 17 October 2016. The show cause notice has been issued after conducting the disciplinary enquiry into the chargesheet issued to the Petitioner on 26 July 2016. In the chargesheet, the Petitioner is accused of committing misconduct on 25 June 2016 of being responsible for an accident. It is alleged in the chargesheet that upon conducting Petitioner's breath analysis test, he was found to have consumed alcohol. Accordingly, an offence was registered against the Petitioner under the provisions of Section 175 of the Motor Vehicles Act. The charge in the enquiry has been proved against the Petitioner and accordingly show cause notice dated 17 October 2016 is issued proposing to issue penalty of dismissal from service.

9. At this stage, the Petitioner approached the Labour Court and has stalled the proposed penalty of dismissal on account of grant of order of ad-interim relief by the Labour Court. That ad-interim relief has been continued in favour of the Respondent for the last seven long years. Consequently, the employer is unable to take the disciplinary proceedings to its logical end by imposing the punishment.

10. True it is that under the provisions of the MRTU & PULP Act, it is permissible for an employee to file a

complaint for preventing commission of unfair labour practice. However, in the present case, the Petitioner is accused of committing serious charge of accident to a State Transport Bus under the influence of alcohol. The findings recorded by the Industrial Court would indicate that as against the permissible limit of 30 mg/100 ml. under the provisions of Section 185 of the Motor Vehicles Act, the content of alcohol found in the blood of the Petitioner on the day of the accident was 348 mg/100 ml. This appears to be the level of consumption of alcohol on the part of the Petitioner, which has apparently resulted in cause of accident. Considering the nature of charge that Petitioner is facing, grant of interim relief by preventing the employer from imposing the proposed penalty is not warranted.

11. Coming to the aspect of order passed by the Labour Court on 5 July 2023 holding of enquiry to be invalid, the correctness of that order is not under challenge before me as of today. The Respondent-Corporation may either challenge the order dated 5 July 2023 or may act on it by producing evidence before the Labour Court in support of the charges. If it opts for leading evidence, Respondent-Corporation must be granted full opportunity to lead evidence. It is not known as to how long this process would take. The Petitioner has already enjoyed interim protection

and has prevented the employer from passing the order of dismissal since the year 2016. In the event the Petitioner finally succeeds in the proceedings and the penalty imposed on him is held to be invalid, the Labour Court is empowered to direct reinstatement with full backwages. In these circumstances, considering the serious charge that the Petitioner faces, grant of any interim relief against the show cause notice proposing penalty against him, is clearly unwarranted. I therefore do not find any merit in the present petition. It is dismissed without any orders as to costs.

12. After the order is pronounced, the learned counsel appearing for the Petitioner would request grant of opportunity to Petitioner to file reply to the show cause notice. Petitioner may file reply to the show cause notice within a period of four weeks from today.

13. Rule is discharged.

**NEETA
SHAILESH
SAWANT**

SANDEEP V. MARNE, J.

Digitally signed by
NEETA SHAILESH
SAWANT

Date: 2023.10.17
15:52:40 +0530