IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11720 OF 2025

Manager, The Poona Club Ltd. **...Petitioner**

V/s.

Ganesh Sopan Kamble **...Respondent**

Mr. Prashant P. Kshirsagar with Mr. Aniruddha M. Sanap i/b M/s. Sarvadnya Legal Associates for the Petitioner.

Mr. Nitin Kulkarni (through VC) i/b Mr. Avinash Belge for the Respondent.

CORAM: SANDEEP V. MARNE, J.

RESERVED ON: 18 JUNE 2026

PRONOUNCED ON: 25 JUNE 2026

JUDGMENT:

1) Petitioner-Club has filed the present Petition challenging the order dated 7 January 2025 passed by the Labour Court, Pune in Reference (IDA) No.248 of 2018, by which the preliminary issue of perversity in findings of enquiry officer is decided against it.

2) Petitioner claims to be one of the oldest and a prestigious club in Pune with 139 years of history dating back to 1885. Respondent joined services with Petitioner-Club on 1 April 2010 as a Waiter in Club's Food and Beverages Department. While working so, a chargesheet dated

18 November 2015 was issued to the Respondent alleging that on 14 November 2015, he was not dressed in the complete uniform of a Waiter and picked up an argument with Mr. Anand Sonde – *hamaal* and abused him in extremely loud voice. When members asked the Secretary of the club to intervene, and when the Secretary attempted to intervene, Respondent rudely replied to the Secretary. It was further alleged that on 14 November 2015 at about 10.30 am, Respondent misbehaved with Mr. Milind Gunjal, member by speaking with him in extremely rude, insolent and aggressive manner leading to complaint by Mr. Gunjal. At 11 am on the same day, Chairman of Staffing Committee and member of the club Mr. Rahul Dhole-Patil, accompanied by his family, gave an order to the Respondent in the lounge. When Respondent took unduly long time to serve the order and the delivered food was not what was ordered by the member, and when he returned the same, Respondent informed the kitchen staff that food was returned because of quality issues. It is alleged that Respondent again brought wrong order and informed Mr. Dhole-Patil that the food item was given by the kitchen staff. When Mr. Dhole-Patil accompanied the Respondent to the kitchen, Respondent started shouting in extremely loud voice and abused Mr. Dhole-Patil.

3) A supplementary chargesheet was issued to the Respondent in respect of incident of 26 November 2015 alleging that he deliberately broke six glasses in the kitchen and spoke to colleagues rudely. It was further alleged that on 15 November 2015, when a member's family visited the Club, Respondent dumped the food and plates on the table and spoke to them extremely rudely. It was further alleged that on the same day, the Respondent also behaved arrogantly and rudely with the

family of a member who complained to the Secretary via email. It was further alleged that on 25 November 2015, Respondent spoke extremely arrogantly to another member. It was alleged that on 4 December 2015, a complaint was received from a member about rude behavior and terrible service. It was alleged that on 28 November 2015, Respondent walked in the room of a guest and sat on the bed and started one-sided conversation with the couple. On 5 December 2015, Respondent insisted on entering the room of the same guest and when the lady inside refused to open the door on account of absence of her husband, the Respondent insisted on entering the room to see foreign currency notes. This action of the Respondent scared and traumatized the lady in the room.

4) Enquiry was conducted into the two chargesheets in which the Respondent participated. Petitioner examined witnesses, who were cross-examined by the Respondent. At the end of enquiry, Enquiry Officer gave report and findings dated 10 April 2017. Based on the report of the Enquiry Officer, the Petitioner proceeded to terminate the services of the Respondent by order dated 17 May 2017.

5) At the instance of the Respondent, Reference (IDA) No. 248 of 2018 has been made by the Appropriate Government to the Labour Court, Pune in respect of the demand of the Respondent for reinstatement in service with full backwages. Respondent filed his statement of claim, which was resisted by the Petitioner by filing written statement. Based on the pleadings, the Labour Court framed preliminary issues in relation to fairness and perversity in enquiry. The Labour Court has passed order dated 7 January 2025 on both the preliminary issues.

Preliminary issue No.1 is answered in favour of the Petitioner and against the Respondent holding that enquiry is fair and in accordance with principles of natural justice. However, in respect of preliminary issue No.2, the Labour Court has held the findings of the Enquiry Officer to be perverse. Aggrieved by order dated 7 January 2025, Petitioner Club has filed the present Petition.

6) Mr. Kshirsagar, the learned counsel appearing for the Petitioner submits that the Labour Court has grossly erred in holding that the findings of the Enquiry Officer are perverse. He submits that the Petitioner has examined three witnesses – Mr. Anand Sonde, Col. Passi, and Mr. Rahul Dhole-Patil to prove the charges relating to 14 incidents of misconduct committed by the Respondent. He submits that the finding of guilt in respect of all 14 charges is recorded by the Enquiry Officer by elaborately discussing the evidence of three witnesses. That therefore the Labour Court has erred in holding that there is absolutely no evidence to prove the charges. That the Labour Court has misread the deposition of the witnesses and erroneously treated the same as admissions given in favour of the Respondent. The findings recorded by the Labour Court are in fact perverse. He submits that there are some typographical errors in report of Enquiry Officer, which are unnecessarily highlighted by the Labour Court. That Respondent never relied upon the said typographical errors in his statement of claim or during the course of his arguments before the Labour Court. That Labour Court on its own has taken note of the same for answering the issue of perversity against the Petitioner. He relies on judgment of this Court in ***Jayashree Electron***

Pvt. Ltd. vs. Prashant Ranu Gaware[1] in support of his contention that unless there is total absence of evidence, finding of enquiry officer cannot be treated as perverse. He submits that absence of necessary pleadings in statement of claim is considered as a factor by this Court in ***Jayashree Electron Pvt. Ltd***.(supra) to ignore a contradiction in deposition of a witness. In the present case, since there are no pleadings *qua* typographical errors in report of Enquiry Officer, no importance can be given to the same. He prays for setting aside the impugned order.

7) *Per contra* Mr. Kulkarni, the learned counsel appearing for the Respondent opposes the petition submitting that Labour Court has correctly appreciated the evidence on record by bringing out the perversity in findings of Enquiry Officer. That the management witnesses have given several admissions destroying the charges leveled against the Respondent. That there was very specific admission by witness Mr. Anand Sonde that the incident of abusing did not take place on 14 November 2015. That similarly, witness Col. Passi gave an admission of non-production of evidence about his presence on 25 and 28 November 2015. Similarly, the third witness Mr. Dhole-Patil could not produce any evidence of having given any order of food or about late service of order. That these admissions clearly bear out perversity in findings of the Enquiry Officer. That Labour Court has correctly appreciated the position that except oral depositions of the witnesses, there is absolutely no evidence produced by the Petitioner in support of any of the charges. He submits that Labour Court is empowered to reappreciate the evidence on record in view of provisions of Section 11A of the Industrial Disputes Act,

[1] Writ Petition No. 2373 of 2023 decided on 14 August 2024.

1947. In support, he relies on the judgment of this Court in ***E. Merck (India) Ltd. vs. V.N. Parulekar and Ors***[2].

8) Mr. Kulkarni further submits that gross perversity in the findings of the Enquiry Officer are apparent from the fact that he has rendered findings in respect of the chargesheet dated 6 May 2014 and in respect of the enquiry conducted on 23 May 2014, both of which do not pertain to the case of the Respondent. That he has discussed imaginary charge in the opening part of the report which was never levelled against the Respondent. That this shows favoritism by the enquiry office towards management to such an extent that imaginary findings are recorded in the report. That the Labour Court has rightly arrived at the conclusion that there is gross non-application of mind by the Enquiry Officer. He submits that no loss or prejudice would be caused to the Petitioner since it would have an opportunity of proving the charges before the Labour Court by leading evidence. That since there is total absence of evidence on record to prove the charges, the findings of the Enquiry Officer are correctly branded as perverse by the Labour Court. He prays for dismissal of the Petition.

9) Rival contentions urged on behalf of the parties now fall for my consideration.

10) Petitioner has challenged the order of the Labour Court dated 7 January 2025 on preliminary issues. Here again, preliminary issue No.1 is decided in favour of the Petitioner since it is held that the enquiry is fair, proper and held in accordance with the principles of

[2] 1991 MhLJ 540

natural justice. The second preliminary issue relating to perversity in the findings is answered against the Petitioner by holding that the findings of the Enquiry Officer are perverse. The short issue that therefore arises for consideration in the present Petition is whether any interference is warranted in the findings of the Labour Court on the issue of perversity in the findings of the Enquiry Officer.

11) The Respondent, working as a Waiter in the Food and Beverages Department of the Petitioner-Club, was issued two chargesheets on 18 November 2015 and 9 December 2015. The allegations levelled in the two chargesheets were as under:

> **Chargesheet dated 18 November 2015:**
>
> On 14th November you were working in the shift from 07.00 AM to 3.30 PM. After joining duties you reported for work but were not dressed in the complete uniform of a waiter. At about 7.45 A.M. you picked up an argument with Shri Anand Sonde who is working as a Hamal. You started shouting and arguing with Shri Sonde. You abused him in an extremely loud voice. Due to this the members who were sitting in the lounge were disturbed. As this commotion did not stop the Past President of the Club Shri Dilip Sanghvi who was sitting in the lounge got extremely agitated and asked the Secretary of the Club Col. Rakesh Passi (Retd) to stop the shouting. The Secretary came to the place where you were abusing Shri Sonde. He asked you to stop behaving badly and immediately stop shouting in a loud voice and abusing Shri. Sonde. He observed that you were not in the dress of a waiter. He therefore, asked you to come in the proper dress. You very rudely replied to the Secretary that you would not leave the place and if he wished that you should leave he should give it to you in writing. The Secretary reminded you that this was not proper behaviour and that in the past also you had acted in a similar fashion. The Secretary then left the said place but you continued shouting.
>
> On the same day, at about 10.30 A.M. Shri Milind Gunjal, a respected Member of the Club came to the lounge along with his family. You misbehaved with Shri Gunjal and acted and spoke with him in an extremely rude and insolent, aggressive manner. You were extremely hostile to him. Shri Gunjal was extremely frustrated by your behaviour and lodged a complaint about the same.

On the same day at about 11 A.M. Shri Rahul Dhole - Patil, Chairman of the Staffing Committee and Member of the Club came to the lounge along with his family members and friends. He gave an order to you. However, you took an extremely long time to serve the order. Even when you served the order the same was wrong. Shri Rahul Dhole Patil therefore, asked you to take back the order and once again gave another order. You went into the kitchen and told the kitchen staff that the food items are rejected by the member because they are not good. You lied to the staff Thereafter you again bought a wrong order. When Shri Rahul Dhole Patil enquired about the same you informed him that this order was given by the kitchen staff. Shri Rahul Dhole Patil then came to the kitchen along with you and the persons who were with him. He made enquiries about the same in the kitchen. At that time you started shouting in an extremely loud voice and abused Shri Rahul Dhole - Patil along with his guests.

Chargesheet dated 9 December 2015:
On 26th November 2015 you were working in the shift from 07.00 AM to 3.30 PM. After joining duties at around 07.30 AM, you deliberately broke 06 glasses in the kitchen without any reason. Over and above that you spoke to your colleagues very rudely and insultingly. Your body language and behaviour was totally hostile and abusive.

On 15th November 2015 one of the prestigious member's (G-212) family visited the Club. You behaved extremely arrogantly while taking the order and you dumped the food and plates on the table and you spoke to them extremely rudely. The member put in a written complaint.

On 15th November again you behaved very arrogantly and rudely with a member's family - Membership No - G 441 who complained to the Secretary through a mail.

In addition to this on 25th Nov 2015 you spoke extremely arrogantly to another member (Membership No- S 454). You told a lie that the billing clerk was not there when member asked for the bill. When the member checked he saw that the Clerk was present. The member put in a written complaint about your lies and arrogant behaviour.

On 04th December there was a complaint against you from Member -M 309 that you were rude and gave "terrible service" and for a long time lost the 'membership card' of the member, thereby causing great inconvenience to her.

On 28th November you walked into Room No 17 of a guest and sat on the bed. You were not supposed to be in that room. You gave your mobile number to the guests and started to make one sided conversation with the husband and wife which you are not supposed to do with guests / members.

On 05th December you kept insisting you wished to enter the room of the same guest in Room No 17. The lady told you that she cannot open the door as her

> husband is not there. Yet you kept insisting you wished to enter and see 'foreign currency notes. This action of yours scared and traumatized the lady guest who was alone in the room.
>
> You have been knowingly and purposely behaving in an insubordinate and unbecoming manner and are bent upon creating trouble and nuisance in the Club all the time.

12) Thus, the two chargesheets alleged misconduct on the part of the Respondent on multiple occasions during 14 November 2015 to 5 December 2015. The charges related to misbehavior with club members, abusing member and staff, speaking rudely to the Secretary, etc. The club management examined three witnesses, who were cross-examined by the Respondent. As observed above, the enquiry is held to be fair and proper, and in accordance with the principles of natural justice. Respondent has not questioned the said finding recorded by the Labour Court. It is therefore not necessary to go into the issue of Respondent being afforded adequate opportunity of defending himself in the enquiry. The only issue for consideration is whether evidence on record supports the findings of guilt as recorded by the Enquiry Officer.

13) The Labour Court has recorded a finding that there is absolutely no evidence on record to indicate that Respondent was in the habit of neglecting work or insubordination. The Labour Court has further held that Petitioner did not produce documentary evidence to prove that Respondent committed misconduct. It was further alleged that Petitioner-Club did not suffer any financial loss. It is therefore held that there is no conclusive proof or evidence either before the Enquiry Officer or before the Court to arrive at the conclusion that the Respondent had committed any misconduct alleged in the chargesheet.

The relevant findings recorded by the Labour Court in this regard in para-13 of the impugned order are as under:

> 13. Despite, it is the case of the first party that, second party has committed grave misconduct, If this is so, it was incumbent on the part of the first party to produce the documentary evidence to that effect, but nothing is filed on record to show that, the second party has committed misconducts. Furthermore, absolutely, there is no evidence on record to show that, the second party was in habit of neglect work and insubordination. Rather, there is nothing on record to show that, by the alleged act of the second party, its club has sustained any financial loss. Under such circumstances, it is clear that, there was no conclusive proof or evidence either before the enquiry or to this Court also, to come to the conclusion that, the second party has committed any kind of misconduct as alleged in the charge sheets.

14) The Labour Court has held that the Enquiry Officer did not properly consider the evidence adduced before him and that therefore his findings are perverse. The Labour Court also took into consideration the depositions of the three witnesses - Mr. Anand Maruti Sonde, Col. Passi and Mr. Rahul Dhole-Patil and has held in para-12 of the impugned order as under:

> 12. So far as, findings of enquiry officer is concerned, it is the contention of the second party that, the enquiry officer while concluding enquiry has not properly considered the evidence adduced before him and as such, the findings of enquiry are perverse. Wherein, it is seen by the cross examination of the management witness Shri. Anand Maruti Sonde, conducted by defence representative of the second party that, the questions were asked to the said management witness that, Whether on 14.11.2015 he abused the second party and on the alleged day any disputable incidence took place ? to which, the aforesaid witness answered in the negative. It is also seen that, the question was put the management witness no.2 Colonel Passi that, whether he has filed any evidence to show that he was present on 25.11.2015 and 28.11.2015 in the first party's club to which the witness answered that, there is evidence, but the same is not filed in the enquiry. During the cross examination, question was put to the management witness Shri. Dhole Patil that, on 14.11.2015 he has not filed any evidence to show that, on 14.11.2015 at 11.00 he had given order of meal to the second party and that order was served belatedly to which he answered in the affirmative.

15) Thus, the findings recorded in para-12 of the order would indicate that the Labour Court started discussing the second preliminary issue by holding that there is no proper consideration of evidence by the Enquiry Officer and that therefore his findings are perverse. This approach of the Labour Court cannot be countenanced in law. 'Improper consideration of the evidence' by the Enquiry Officer cannot be a reason for recording a finding of perversity. While testing the findings recorded in a domestic enquiry, the manner in which the evidence is appreciated by the Enquiry Officer cannot be a ground for interference. In any case, the finding of improper consideration of evidence by the Enquiry Officer is totally erroneous. For recording the finding of improper consideration of evidence by the Enquiry Officer, the Labour Court has considered following three factors relating to depositions of the witnesses:

(i) The Labour Court has considered depositions of witness Mr. Anand Sonde and has held that a question was asked to him by the defence representative as to whether he had abused the Respondent on 14 November 2015 and whether the disputed incidence had indeed taken place, to which the witness has answered in the negative. The Labour Court has thus assumed that the witness Mr. Anand Maruti Sonde did not support the charge of Respondent abusing him on 14 November 2015. This assumption on the part of the Labour Court is however perverse to the core. Question Nos.9 and 10 and the answers given to them in the cross-examination of Mr. Sonde are as under:

प्र. ९) दि. १४–११–२०१५ रोजी तुम्ही आ.का.स काही शिवीगाळ केली होती का?
उत्तर: नाही

प्र. १०) सदर दिवशी आ.का.नी तुमच्याशी वाद घालावा अशी घटना तुमच्याकडून घडली होती का?
उत्तर: नाही

Thus, the defence representative of the Respondent asked Mr. Sonde as to whether Mr. Sonde had abused the Respondent to which he had replied in the negative. The Labour Court has erroneously considered the said answer to assume as if the witness denied abusing by Respondent to him. Similarly, in Question no.10, the Defence Representative asked Mr. Sonde as to whether Mr. Sonde had done something leading to Respondent having altercation with him to which the witness replied in the negative. This answer is again misconstrued by the Labour Court to him as if the disputed incident of 14 November 2015 never occurred. Thus, the Labour Court has perversely considered the evidence of Mr. Anand Sonde.

(ii) The Labour Court has held that Col. Passi did not produce evidence about his presence in the Club on 25 November 2015 and 28 November 2015. Question Nos.86 and 87 put to Col. Passi by the Defence Representative were as under:

प्र. ८६) दि. २६-११-१५ रोजी आपण क्लब मध्ये नव्हतात?
उत्तर: तुमचे म्हणणे चूक आहे.

प्र. ८७) दि. १६-११-१५ रोजी आपण क्लब मध्ये असल्याचा कोणताही पुरावा चौकशीत सादर नाही?
उत्तर: पुरावा आहे. पण चौकशीत सादर नाही.

The witness specifically denied a suggestion about his absence in the Club on 26 November 2015. Merely because the witness stated while answering Question No.87 that he had evidence of his presence on 26 November 2015, but was not produced in enquiry, it does not mean that he gave an admission that he was not in the Club on 26 November 2015. Apart from the fact that the Labour Court has grossly misread the deposition of witness Col. Passi, the perversity in the findings of the Labour Court is writ large from the fact that the Labour Court has conveniently ignored the other portion of deposition of the witness and has only selectively concentrated on answers of two questions for recording of perverse findings.

(iii) In respect of witness No.3- Shri. Rahul Dhole-Patil, the Labour Court has held that he did not file any evidence of giving a food order to the Respondent on 14 November 2015 or about belated delivery of food. This again is perverse reading of evidence on record. Petitioner has placed on record the copy of order placed by Mr. Rahul Dhole Patil on 14 November 2015 at page-134 of the paper-book which was marked as Exh.20 in the enquiry. Here again, the evidence of the witness about Respondent's misconduct is brushed aside by the Labour Court by holding that he did not produce evidence of placement of food order and late delivery. There is documentary evidence about placement of food order by the witness. The factum of late delivery of the food order cannot be proved by documentary

evidence and the oral testimony of the witness needs to be taken into consideration. The Labour Court has however completely ignored the testimony of the witness while recording perverse finding about absence of evidence to prove the charges.

16) Thus, all the three factors considered by the Labour Court for recording finding of improper consideration of evidence by the Enquiry Officer are totally erroneous.

17) No doubt, the Enquiry Officer has committed an error in first couple of paragraphs of his report where he has made reference to unrelated chargesheet, date of enquiry and the charge. However, if that erroneous part is ignored, there appears to be application of mind by the Enquiry Officer to the entire evidence on record. The Labour Court has however concluded that the Enquiry Officer was not serious while conducting the enquiry and that he was lethargic and acted in negligent manner and recorded the following finding in para 14 as under:

> 14. Apart, from perusal of findings of the enquiry officer, seen that, therein mentioned that, the second party was issued with charge sheet dated 06.05.2014 and accordingly enquiry was first time conducted on 23.05.2014. However, it is pertinent to note here that, no such charge sheet of dated 06.05.2014 was ever issued to second party or conducted first time enquiry against him on 23.05.2014. Which shows that, an enquiry officer while conducting and concluding enquiry was not serious and he was lethargic and acted in a negligent manner and as per his own whims and whisper and will of the first party.

18) In my view, the Labour Court ought not to have given much importance to the error committed by Enquiry Officer in initial couple of

paragraphs. The report runs in 15 long pages and discusses each witness' evidence. The Labour Court has ignored the 14 and half pages of the report and has concentrated on the error committed in the initial part of report. No doubt, Enquiry Officer should have been diligent in not copying the proceedings relating to some other case. The Enquiry Officer in the present case was apparently a practicing advocate. Due to the error committed by the Enquiry Officer, the Petitioner management cannot be made to suffer, particularly when the said error does not go to the root of the matter. The error does not depict complete non-application of mind. What is held by the Labour Court could have been correct, if the Enquiry Officer was to base his conclusions only on the basis of irrelevant findings in opening part of the report. However, the Enquiry Officer has taken the pains to discuss the entire evidence on record.

19) Also of relevance is the fact that parties themselves did not give much importance to error committed by the Enquiry Officer. In his statement of claim, Respondent did not raise the said issue of error committed by Enquiry Officer. If what is contended by Mr. Kshirsagar is to be believed as correct, right till the matter was argued, parties did not highlight the issue of error in the enquiry report and said error got highlighted only after the impugned order was passed by the Labour Court. Be that as it may. This Court is not proposing to ignore the error in the enquiry report only on account of non-raising of the issue in pleadings or during arguments. The obvious error committed by Enquiry Officer in the initial part of his report needs to be ignored because there is elaborate discussion in the report of the evidence on record. There is

ample evidence on record which has been considered in the report to support the findings therein. This is apparent from what is observed in the following paragraphs.

20) Petitioner management examined witness No.1 Mr. Anand Sonde, whose evidence was discussed by Enquiry Officer. He has given following deposition:

> वेटर गणेश कांबळे याने जोरजोरात ओरडून फरशी पुसणा-या हमाल, साल्या बघतोस काय खाली बघ अशी भाषा वापरली. त्याचा आवाज व आरडाओरडा पाहून मी घाबरून गेल्याने काहीच बोललो नाही हे सर्व किचनमध्ये घडत असताना मी लॉन्जवरती निघून गेलो व लगेच परत किचनमध्ये आलो तरीही गणेश कांबळे माझेवर जोरजोरात ओरडतच होता.
>
> गणेश कांबळे याचा आवाज एवढा मोठा होता की, क्लबमध्ये जे काही सभासद लॉन्जवरती बसले होते ते सुध्दा वैतागले होते. त्याने त्याचा आरडाओरडा चालूच ठेवल्याने क्लबचे माजी अध्यक्ष श्री. दिलीप संघवानी या ठिकाणी सेक्रेटरी श्री. कर्नल राकेश पासी यांनाही बोलावून घेतले हे मी पाहिले.
>
> सेक्रेटरी साहेब सुध्दा किचनमध्ये आले असता त्यांनी गणेश कांबळे याला समजाऊन सांगण्याचा प्रयत्न केला व त्याला शांत होण्यास सांगितले. तसेच त्याला त्याचा गणवेश व्यवस्थित घालण्यास सांगितल्यावर सुध्दा तो शांत झाला नाही. उलट आरडाओरडा चालूच ठेवला. त्याने सेक्रेटरी साहेबांना मोठमोठ्याने आवाजात जागा सोडणार नाही तसेच जागा सोडण्याबाबत लेखी द्यावे असे उत्तर दिले. सेक्रेटरींनी त्याला समजाऊन सांगून सुध्दा तो ऐकत नव्हता. सेक्रेटरी साहेबांनी त्याला त्याच्या आधीच्या चुकीच्या व वाईट वागणूकीबाबत समजावले. परंतु त्याने आरडाओरडा चालूच ठेवला.
>
> त्यानंतर मी माझे काम करण्यासाठी इतरत्र गेलो. सकाळी १०.३० च्या सुमारास मी जेंव्हा लॉन्जमध्ये आलो तेव्हा हाच गणेश कांबळे तेथे एका व्यक्तीबरोबर फार वाईट पध्दतीने वागत होता. तसेच त्याच्यावर आरडाओरडा करत होता. या व्यक्तीसोबत त्याचे कुटुंबसुध्दा होते. त्या व्यक्तीने तेंव्हा सेक्रेटरी साहेबांना सुध्दा फोन केला होता त्यावेळेस त्याने त्याचे नाव मिलींद गुंजाळ असे सांगितले. तो सेक्रेटरी साहेबांशी बोलल्यानंतर त्याने आपल्या क्लबच्या वहीत काहीतरी माहिती लिहून सेक्रेटरी साहेबांना याबाबत फोनवरून सांगितल्याचे मी ऐकले.

Not much is borne out from the cross examination of Mr. Sonde.

21) The Enquiry Officer has thereafter discussed the evidence of Col. Passi, who was one of the main witnesses and who had personally witnessed various acts of misconduct of the Respondent. For the sake of brevity, his deposition is not reproduced. However, report of Enquiry Officer indicates consideration of evidence of Col. Passi including the

cross-examination conducted by Respondent. The Enquiry Officer thereafter considered the evidence of third management witness Mr. Rahul Dhole-Patil.

22) After discussing evidence of the 3 management witnesses, the Enquiry Officer has drawn his own conclusions. The conclusions drawn by Enquiry Officer run into 5 long pages. It therefore cannot be contended that the Enquiry Officer has failed to properly consider the evidence appearing on record.

23) In a domestic enquiry, the test is to prove the charge on preponderance of probability. The charge is not required to be proved beyond reasonable doubt. The finding of perversity can be recorded only in a case where there is total absence of evidence. The law in this regard is settled by various judgments of Apex Court and of this Court. In fact, attention of the Labour Court was drawn to the judgment of this Court in ***Jayashree electron Pvt. Ltd.*** (supra) in which it is held in para 19 to 24 as under:

> 19. The Labour Court failed to appreciate that the test of proving charge in a domestic enquiry is preponderance of probability. Employer is not expected to prove the charge beyond reasonable doubt. The purpose for conducting domestic enquiry is only to ensure maintenance of discipline by employees. Therefore, the charges need not be proved beyond reasonable doubt, which is a test required for proving the criminal charge. So long as there is some evidence on record, the Enquiry Officer is justified in holding the charge to be proved. The findings would suffer from the vice of perversity only in the event it being established that there is total absence of evidence or where the cases involves 'zero evidence'. In every case where there is some evidence to prove the charges, it is not for the Labour Court to go into the issue of sufficiency of the evidence.

20. Mr. Kshirsagar relied upon judgment of the Single Judge of this Court in ***Mahadeo Shripati Khot V/s. Divisional Traffic Superintendent (Default), Competent Authority, Maharashtra State Road Transport Corporation*** [2019 I CLR 304] in which this Court has held in paragraphs 5 and 6 as under:

> 5. When the matter went to the Labour Court on the conductor's complaint, the Court appears to have merely applied its mind to the manner in which the departmental enquiry was conducted in the present case. The court found that the charge was properly explained to the delinquent employee; the departmental enquiry was duly held; the ticket checker as well as the passenger had been examined; and the complainant was given adequate opportunity to cross examine both witnesses. The Court observed that there was no complaint on the part of the employee that any witness had been examined behind his back or his request to cross examine or adjournment had been rejected. The court found that, in the circumstances, there was no procedural defect in the enquiry proceedings and no violation of principles of natural justice. Simply on the basis of this conclusion, the court allowed the whole exercise to pass muster. What the court appears to have missed was to consider whether the misconduct alleged against the Petitioner was proved on the basis of the evidence placed before the Enquiry Officer or the court. Without reflecting on the conclusion drawn by the Enquiry Officer on the basis of the evidence before him, the court simply considered the case of (i) observance of natural justice, (ii) victimization and (iii) termination for a patently false reason. On these questions, it held against the employee. When the matter went before the revisional court, surprisingly, the revisional court practically refused to go into the question of appreciation of evidence. The court noticed that the complainant in the present case had not filed any counter revision challenging the finding of the Labour Court in this behalf. The court simply noted that findings of the Enquiry Officer were based on some evidence and could not be said to be perverse. On this basis, the court held point No.2, concerning the correctness of the findings of the Enquiry Officer, in the negative and then applied its mind only to the quantum of punishment, whether proportionate or disproportionate.
>
> 6. The above narration clearly indicates that there has been a complete failure of justice in the present case. The charge, in the first place, made against the delinquent conductor was on the basis of statement made by a passenger, who was found without ticket. It could well be that he did not pay any money or get a ticket issued and was saving his skin when the ticket checker caught him without ticket. His statement had to be viewed with circumspection. The passenger's own statements originally made before the ticket checker and later on in the enquiry exhibited a clear and fundamental contradiction. The ticket checker's versions also did not match. And no corresponding amount was found

> in excess with the conductor. The charge of misappropriation of Rs.1.25 was held to be proved on the basis of this material and the hapless conductor was deprived of his livelihood by dismissing him from service. It is one thing to say that a clear case of misappropriation by a public servant who holds a position of trust vis a vis public funds should be dealt with by iron hand, but quite another to say that on the basis of flimsy material such as this the harshest penalty of dismissal should be levied on the principle that public servants must be above board. The very D & A Procedure, on which reliance is placed by Mr. Hegde, which provides for punishment of discharge or dismissal, and nothing less, for the misconduct included in Item No.7(c) of Schedule 'A', makes it very clear that whilst awarding such punishment, the competent authority must ensure that the guilt of the employee charged is conclusively proved on the basis of available evidence and specific instructions issued from time to time by the administration are scrupulously followed. As I have noted above, it can hardly be said that the guilt of the employee charged here was even remotely proved before the Enquiry Officer on the basis of available evidence. Conclusive proof was a far cry. And yet, none of the lower courts properly went into the question of proof, either sufficient or conclusive. The Labour Court, as noted above, did not go into that question at all; it merely satisfied itself as to the nature of the enquiry, whether fair and proper and whether exhibited a case of victimization or termination on a patently false reason. It never considered whether on the basis of available evidence, the delinquent employee's guilt was proved at all, much less conclusively. The revisional court, for its part, refused to go into that question presumably on the footing that the employee had not filed any crossrevision challenging the original order of the Labour Court. The complainant employee need not have filed any revision of his own. It was perfectly open to him to justify the order of the Labour Court, namely, award of reinstatement with continuity of service, on the basis of grounds otherwise available to him including any ground which was not considered by the Labour Court. He could certainly question the propriety of the finding of the Enquiry Officer. The revisional court, in the premises, simply contended itself holding, practically on a sole oneliner, that the finding of the Enquiry Officer was supported by some evidence and could not be termed as perverse. In the facts of the case, that was hardly an appropriate measure of judicial review to be employed by the revisional court, which was the final court on facts.

21. Relying on judgment of ***Mahadev Khot*** (supra), Mr. Kshirsagar has submitted that mere presence of some evidence cannot be a ground for holding the charge to be proved. He has further submitted that in every case where the testimony is affected by contradictions, the industrial adjudicator would be justified in ignoring such evidence. He has further submitted that even in a domestic enquiry charge needs to be proved conclusively. He submitted that judgment of this Court in ***Mahadev Khot*** covers the present cases squarely. I

am unable to agree. Apex Court has repeatedly held that presence of some evidence on record in a domestic enquiry is sufficient to prove charge levelled against delinquent employee. In fact, ***Kuldeep Singh v. Commissioner of Police & Ors.*** [(1999) 2 SCC 10] the Apex Court has held that so long as there is some evidence on record, which is acceptable and which can be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and finding would not be interfered with. Relevant findings recorded by the Apex Court in ***Kuleep Singh*** read thus:

> 10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. **But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.**
>
> *(emphasis supplied)*

22. In ***State of Rajasthan Vs. Heem Singh*** [2020 SCC OnLine SC 886] His Lordship Justice Dr. D. Y. Chandrachud (as he then was) has summarized the counters of power of judicial review by courts and tribunals while dealing with findings of guilt recorded in domestic inquiries. The Apex Court has held thus:

> 33 In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. **The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service.** Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. **At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from**

> **perversity.** A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. **To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain.**
>
> *(emphasis and underlining added)*

23. More recently, the Apex Court in ***State of Karnataka v. Umesh*** [(2022) 6 SCC 563], has reiterated the principles that govern the disciplinary enquiry and criminal trial. It is held:

> 16. The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence. The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. **Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry.** The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction.
>
> 22. In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not reappreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether:
>
> (i) the rules of natural justice have been complied with;

> (ii) **the finding of misconduct is based on <u>some evidence</u>**;
> (iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and
> (iv) whether the findings of the disciplinary authority suffer from perversity; and
> (v) the penalty is disproportionate to the proven misconduct.
> *(emphasis and underling supplied)*

> 24. In the present case it cannot be said that there is total absence of evidence on record. There is direct evidence given by person, who has been prevented from entering into the office of the Company and who has been threatened by the delinquent-workmen. Therefore, it cannot be said that the findings recorded by the Enquiry Officer are not supported by any evidence on record.

24) Applying the above discussed principles, it is difficult to arrive at a conclusion in the present case that there is total absence of evidence on record. All the three witnesses, who personally noticed misconduct of the Respondent, have deposed in the enquiry. Therefore, there is substantial evidence available on record to prove the charges. The finding of the Labour Court that it is incumbent for the employer to also prove misconduct through documentary evidence is clearly unsustainable. In a given case where charge relates to misbehaviour and when the act of misbehaviour is personally witnessed by any person, even oral deposition of that witness is sufficient to prove the charge. There is no room for drawl of inference of victimization or false implication since three different witnesses in their capacities as Club-Secretary, Club-member and staff have deposed against the Respondent. It is not necessary that there must be documentary evidence in every case. However, it appears that several documents were in fact produced by the Petitioner Club before the Enquiry Officer. Therefore, the conclusion drawn by Labour Court that there is absolutely no evidence

on record or that there is no conclusive proof about commission of misconduct is clearly unsustainable.

25) The Labour Court has considered alleged non-cause of financial loss to the Petitioner club as one of the factors for determining perversity in finding of the Enquiry Officer. This again is completely erroneous yardstick applied by the Labour Court. In a charge relating to misbehaviour or abusive conduct, cause of financial loss need not be established. The Labour Court has thus completely misdirected itself while deciding the issue of perversity by taking into consideration extraneous and irrelevant factors.

26) In my view therefore, the impugned order passed by the Labour Court is clearly unsustainable and liable to be set aside. There is ample evidence on record to support the findings of the Enquiry Officer. The Petitioner has examined Mr. Sonde and Col. Passi, with whom Respondent misbehaved on 14 November 2015. It has examined Mr. Dhole-Patil, who had complained about misbehaviour and abusive language on 14 November 2015. Col. Passi has given account of various other misconducts committed by the Respondent. He had received reports in respect of acts of the Respondent in his capacity as Secretary of the Club. In domestic enquiry, there is no allergy to even hearsay evidence as held in ***State of Haryana Vs. Rattan Singh***[3]. It therefore cannot be contended that the case involves zero evidence.

[3] (1977) 2 SCC 491

27) Reliance by Mr. Kulkarni on judgment of this Court in ***E. Merck*** (supra) does not cut any ice. The judgment is sought to be cited in support of a proposition that Labour Court has power of reappreciating the evidence after introduction of Section 11A in Industrial Disputes Act, 1947. However, even if this principle is accepted, Labour Court has grossly erred in performing the task of reappreciation of evidence. It has ignored the evidence on record and taken into consideration extraneous material. If there is any perversity, the same is found in the order of the Labour Court and not in the report of the Enquiry Officer.

28) In my view therefore, order of Labour Court on preliminary issue of perversity dated 7 January 2025 is indefensible and liable to be set aside. The Petition accordingly succeeds, and I proceed to pass the following order:

(i) Order dated 7 January 2025 passed by Labour Court on preliminary issue of perversity in the findings of the Enquiry Officer is set aside.

(ii) It is held that findings recorded by Enquiry Officer are well supported by the evidence on record and are not perverse.

(iii) The Labour Court shall accordingly proceed to decide the remaining issues on its own merits.

29) The Writ Petition is **allowed** in above terms. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]