



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.10929 OF 2024

Abhyudaya Co-operative Bank Ltd.

...Petitioner

V/s.

Smita Virendra Patil

...Respondent

Ms. Rita K. Joshi (through VC) with Mr. Ashok D. Shetty & Ms. Bushra Moughal for the Petitioner.

Mr. Ravindra B. Nair for the Respondent.

CORAM: SANDEEP V. MARNE, J.

Judgment reserved on: 10 JUNE 2026.

Judgment pronounced on: 18 JUNE 2026.

**JUDGMENT:**

1) **Rule.** *Rule* is made returnable forthwith. With the consent of the learned counsel appearing for the parties, the Petition is taken up for final disposal.

2) The Petitioner-Bank has filed the present Petition challenging order on preliminary issues dated 1 September 2023 passed by the learned Judge, First Labour Court, Thane, in Complaint (ULP) No.58 of 2014. The Labour Court has held that the enquiry conducted against the Respondent is legal, fair and proper but the findings of the Enquiry Officer are perverse and not based on the material and evidence

produced before him. The Labour Court's Order dated 1 September 2023 was subjected to revision under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**). By judgment and order dated 11 June 2024, the Industrial Court has proceeded to dismiss the Revision Application. The Petitioner-Bank is accordingly aggrieved by the decisions of the Labour and Industrial Courts on the issue of perversity in the findings of the Enquiry Officer and has accordingly filed the present Petition.

3) Petitioner is a Multi-State Cooperative Bank engaged in the business of banking. The Respondent was initially appointed as a Clerk in the Citizens Cooperative Bank, Pune. By order dated 30 May 2006, Citizens Cooperative Bank Ltd., Pune, amalgamated with the Petitioner-Bank and accordingly services of the Respondent were absorbed with the Petitioner-Bank w.e.f. 3 July 2006. The Respondent was initially posted in Pune Branch of the Petitioner-Bank. By transfer order dated 8 June 2011, she was posted to work in the Accounts Department of the Bank at Mumbai. By order dated 16 May 2012, the Respondent was transferred from Accounts Department to Vashi Branch. She was relieved by the Accounts Department on 17 May 2012 and was instructed to report to the Vashi Branch on 18 May 2012. It is alleged that on 17 May 2012 the Petitioner brought two policemen and confronted the Manager-Mr. H.D. Bhat regarding her transfer to Vashi Branch. She was issued show cause notice dated 18 May 2012. The Respondent, in the meantime reported to the Vashi Branch on 18 May 2012. The Respondent failed to reply to the show cause notice and was suspended vide letter dated 22 May 2012.

4) Disciplinary proceedings were initiated against the Respondent by issuance of charge-sheet dated 16 April 2013. In the charge-sheet, it was alleged that the Respondent brought policemen for confrontation with Manager -Mr. H.D. Bhat working in HRM Department complaining that her transfer was for harassing her. It was alleged that the Respondent misbehaved with Mr. Bhat and attempted to intimidate him. It was also alleged that the Respondent made several complaints to Banking Ombudsman, Reserve Bank of India with copies thereof to Maharashtra State Human Rights Commission, Chief Minister, Deputy Chief Minister, etc. A corrigendum dated 17 December 2013 was issued replacing one of the paragraphs of the original charge on account of typographical errors therein. The enquiry proceedings commenced on 22 July 2013 and continued upto 9 April 2014. The Respondent filed Complaint (ULP) No.58 of 2014 in the Labour Court at Thane and sought restraint order against the Petitioner-Bank from continuing with the domestic enquiry. The application for interim relief was rejected by order dated 10 July 2014 and the departmental enquiry was concluded. In the meantime, Enquiry Officer submitted his report dated 6 December 2014 holding that charges levelled against the Respondent were proved. The Petitioner issued final show cause notice dated 12 January 2015 furnishing copy of the Enquiry Officer's report. The Respondent failed to respond to the show cause notice and findings of the Enquiry Officer. The Petitioner-Bank thereafter passed order dated 28 January 2015 imposing the punishment of dismissal from service on the Respondent.

5) The Respondent filed Application dated 17 June 2017 for amendment of her Complaint (ULP) No.58 of 2014 for challenging

dismissal order dated 28 January 2015. The amendment application was allowed by order dated 11 June 2018.

6) The Labour Court framed preliminary issues relating to fairness in enquiry and perversity in the findings of the Enquiry Officer. By order dated 1 September 2023, the Labour Court answered the issue of fairness in the enquiry in favour of the Petitioner holding that the enquiry conducted against the Respondent is legal, fair and proper. However, second issue relating to perversity has been decided against the Petitioner-Bank by holding that the findings of the Enquiry Officer are perverse and are not based on the material and evidence before him. The Petitioner unsuccessfully challenged the order of Labour Court on 1 September 2023 *qua* preliminary issue of perversity by filing Revision Application (ULP) No.42 of 2023 before the Industrial Court and by judgment and order dated 11 June 2024, the Revision preferred by the Petitioner has been dismissed. Accordingly, the Petitioner has filed the present Petition.

7) Ms. Rita Joshi, the learned counsel appearing for the Petitioner-Bank submits that the Labour Court has grossly erred in answering preliminary issue of perversity in the findings of the Enquiry Officer in favour of the Respondent. She submits that the charge of bringing policemen in the Bank is virtually admitted by the Respondent by asking questions to Bank's witness (Mr. H.D. Bhat, Manager) in the cross-examination. That the Labour Court has misread the charge levelled against the Respondent. The charge was not refusal to obey transfer order but the same was with regard to the act of bringing policemen in the office of the Bank complaining about Respondent's transfer. That the

act of approaching the police and bringing them to Bank's office amounts to grave misconduct and it is not important as to what action policemen took after visiting the Bank's branch. That the allegation of addressing various complaints is admitted by the Respondent. That dispatching complaints to unrelated authority such as Human Rights Commission, Chief Minister, Deputy Chief Minister, etc. clearly amounts to tarnishing image of the Bank. She relies on judgment of this Court in *Hitachi V/s. Niraj Kadu*<sup>1</sup> in support of her contention that posting defamatory posts on Facebook account is held to be grave misconduct by this Court. That the Labour Court has erroneously held that mere making complaints to various authorities does not amount to misconduct. Ms. Joshi submits that the Industrial Court has failed to appreciate the above position and has erroneously dismissed the Revision Application. That the charges are duly proved by production of evidence before the Enquiry Officer. That therefore, findings of the Enquiry Officer cannot be termed as perverse by any stretch of imagination. She accordingly prays for setting aside the orders passed by the Labour and the Industrial Courts.

8) Mr. Nair, the learned counsel appearing for the Respondent opposes the Petition and submits that the Labour and Industrial Courts have recorded concurrent findings against the Petitioner-Bank with regard to issue of perversity in findings of the Enquiry Officer. He submits that both the Courts have correctly appreciated the position that the Respondent has duly obeyed the transfer order. That the Respondent approached police only with a view to address safety concerns since she was expected to travel from Pune to report to duties at Vashi office of the Bank at 7.45 a.m. That Police did not conduct any enquiries and returned

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<sup>1</sup> Writ Petition No.13192 of 2023 decided on 12 December 2023.

after being apprised of the fact that a routine order of transfer was issued. That the Respondent is unnecessarily subjected to domestic enquiry even after obeying the transfer order. That no altercation occurred nor any act of threatening has been proved. That thus, there is absolutely no evidence to prove the allegation relating to misbehaviour or intimidation. That the findings relating to first charge are rightly held to be perverse by the Labour and the Industrial Courts.

9) Mr. Nair further submits that mere filing of complaints to authorities do not constitute misconduct in any manner. That some of the complaints were with regard to surety provided to the colleagues and have been erroneously mixed up by the Petitioner-Bank. That the Respondent is otherwise airing grievances with regard to her transfer and mere airing of grievance cannot be constituted as a misconduct. That concurrent findings recorded in this regard do not warrant interference by this Court in exercise of writ jurisdiction under Article 227 of the Constitution of India. He further submits that the impugned orders otherwise do not cause any grave prejudice to the Petitioner, who would have ample opportunity of leading evidence to prove misconduct before the Labour Court. That the Petitioner has unnecessarily filed the present Petition challenging the orders of the Labour and Industrial Courts. He prays for dismissal of the Petition.

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

11) The Labour Court has framed two preliminary issues relating to fairness in the enquiry and perversity in the findings of the Enquiry

Officer and has decided the same by order dated 1 September 2023. The enquiry is held to be fair and proper and the Respondent has not questioned the said findings. However, despite holding that the enquiry is fair and proper and that full opportunity of defence is provided to the Respondent, the Labour Court has decided the second preliminary issue relating to perversity against the Petitioner-Bank. The Labour Court has held that findings of the Enquiry Officer are perverse as they are not based on material and evidence produced before it. It is this finding of the Labour Court, which is confirmed by the Industrial Court, which is the subject matter of challenge in the present Petition filed by the Petitioner-Bank.

12) The Respondent faced two charges in the domestic enquiry. The allegations in the charge-sheet are as under:

Your were posted as a 'Clerk' at Accounts Dept. vide Transfer Order dated 08/06/2011. Subsequently, you were transferred to Vashi branch vide Transfer Order dated 16/05/2012. You were relieved by the Asstt. Gen. Manager (Accounts Dept.) vide his letter dated 17/05/2012 and asked to report to the Asstt. Gen. Manager, Vashi Branch on 18/05/2012.

However, after being relieved from the Accounts Dept. instead of reporting for duty at Vashi Branch you came to the Bank alongwith two Policemen and approached Mr.H.D. Bhat, (Manager) then working at HRM Dept. You have wrongly informed the police that Mr.Bhat has transferred you from Accounts Dept. to Vashi Branch to harass you. You then misbehaved with Mr.Bhat and tried to intimidate him. However, Mr.Bhat informed the Policemen that your transfer was of a routine nature as per the administrative needs and there was no intention whatsoever to harass you. On hearing Mr. Bhat they left the bank.

You are aware that as per the terms of your service the bank can transfer you to any of its branches / Dept. Therefore, misbehaving with Mr.Bhat (Manager) as aforesaid is an act of misconduct on your part.

We have also learnt that you have made false, vexatious and frivolous complaints to the Banking Ombudsman vide letter

Ref.No.BO(M&G)/Comp-10815/AAA/11-12 dated 30/04/2012, the Reserve Bank of India vide letter dated 28/05/2012 and copies submitted to various authorities such as Maharashtra State Human Rights Commission, Chief Minister of Maharashtra, Dy.Chief Minister of Maharashtra etc., the Reserve Bank of India vide letter Ref.No.205/12.8.006/12-13 dated 09/07/2012 and Dept. of Agriculture Govt. of India vide letter dated October 2012, copies of which are enclosed herewith. It is evident that you have made these false complaints before various authorities only to tarnish the fair name and reputation of the bank in the eyes of the public.

Your aforesaid acts are of a serious nature having grave ramifications to the interests of the bank. Your aforesaid acts amounts to misconduct as per the Standing Orders applicable to you and you are hereby charged with the same:

- 1) Willful insubordination or disobedience of any lawful and reasonable order of a superior.
- 2) Doing any act or engaging in any business prejudicial to the interest of the Bank.
- 3) Commission of any act subversive of discipline or good behaviour on the premises of the Bank.
- 4) Failing to show property courtesy or attention towards Officers, employees and customers of the Bank.

13) The first charge related to the conduct of the Respondent in bringing two policemen and approaching Mr. H.D. Bhat (Manager working at HRM Department) and wrongly informing the police that Mr. Bhat had transferred her from Accounts Department to Vashi Branch to harass her. Charge-sheet also alleged misbehaviour with Mr. Bhat and an attempt to intimidate him. To prove the charge, Petitioner-Bank led evidence of Mr. Bhat. In his examination-in-chief, he narrated the incident of 17 May 2012 as under:

Q.5 Can you recall and elaborate the incidence reported in Para 2 in EXHIBIT No.16?

Ans. In May 2012, when Mrs. Patil was transferred to Vashi branch from Accounts Department in the evening after close of working hours when I was in HRM Department Mrs. Patil had come along with 2 policemen. She had informed the policemen that I have transferred her to Vashi Branch. The policemen who had accompanied her interrogated me and asked on what ground she was transferred to Vashi branch. I informed

the policemen that our being a Bank transfer of staff is routine and as per the applicable Service Rules. On hearing my reply the policemen being satisfied went away.

14) Thus, Mr. Bhat specifically led oral evidence deposing that after close of working hours on 17 May 2012, the Respondent approached him with two policemen. He deposed that the policemen interrogated him and questioned the reason for Respondent's transfer to Vashi Branch. The Respondent does not dispute her act of bringing two policemen to HRM Office of the Bank and in fact asked following questions to witness-Mr. H.D. Bhat in the cross-examination:

Q.1 Is it true that when the police accompanied me in the Bank, is there any dialogue between me and yourself?

Ans. The CSE was talking with the Police and then police enquired with me

15) Thus, the factum of the Respondent bringing policemen to the Bank's office is not disputed by the Respondent. Deposition of Mr. Bhat proves that the policemen were brought by the Respondent to the Bank's office to question the reason for Respondent's transfer to Vashi Branch. Mr. Bhat's evidence also indicates that he was interrogated by the policemen with regard to Respondent's transfer. However, in the cross-examination, Mr. Bhat did not depose that there was any dialogue between him and the Respondent. Therefore, the part of allegation "*you then misbehaved with Mr. Bhat*" is not proved. However, the allegation of attempt to intimidate Mr. Bhat can be held to be proved since policemen interrogated Mr. Bhat with reference to transfer of the Respondent to Vashi Branch. When a bank official is interrogated by the police, the officer is bound to feel intimidated.

16) The very act of the Respondent approaching police and complaining about her transfer to Vashi Branch constitutes misconduct. If the Respondent was aggrieved by her transfer to Vashi Branch, she ought to have adopted the known channels or remedies by making representations to Bank officials. She should not have approached police complaining about her transfer. In the present case, the Respondent did not stop at approaching police, but she brought two policemen to the Branch alleging that she was being harassed. The policemen were brought for interrogating the bank officer about the exact reason for her transfer. Such a conduct on the part of the Respondent undoubtedly constitutes misconduct. The Labour Court has however, completely misread charge No.1 to mean as if the charge was with regard to failure to obey the transfer order. The Labour Court has held in paragraph 33 of its judgment as under:

33. Here, the Transfer Order dated 16/5/2012 is on record filed below exhibit 12 of enquiry proceeding by which the complainant was transferred from account department to Vashi and she was relieved by relieving order dated 17/05/2012 file below exhibit 13 of enquiry proceeding. Here, from her email filed at exhibit 29 of enquiry proceeding and her reply to chargesheet filed at exhibit 37 of the enquiry proceeding, it clearly reveals that as per the relieving order dated 17/05/2012, she had reported to Vashi branch on 18/05/2012 at 7.45 AM and joined the branch and thus, she had duly obeyed the order of her superior. This fact of reporting to Vashi branch has nowhere denied by the respondent bank. Even the witness of respondent bank has nowhere stated in his evidence that she had not reported at Vashi at 7.45 AM. Despite this fact, the enquiry officer has drawn a wrong conclusion stating that on 18/5/2012, it is seen that instead of joining at Vashi branch, the complainant came to the bank along with two police men. Here, by reporting duty at Vashi on 7.45 AM on 18/05/2012, it is seen that the complainant had duly obeyed the order of her superior. No evidence is on record to show that she disobeyed the order of superintendent and on that day, she misbehaved with Mr Bhat and tried to intermedicate him.

17) Merely because Respondent reported to duty at Vashi Branch on 18 May 2012 at 7.45 a.m. it did not mean that she did not commit the misconduct of bringing policemen to branch's office and subjecting Mr. Bhat to interrogation. The charge-sheet never levelled the allegation of refusal to obey transfer order. Therefore, findings recorded by the Labour Court in paragraph 33 of the judgment are actually perverse. So far as the charge relating to bringing policemen and interrogating Mr. Bhat is concerned, the Labour Court has held in paragraph 34 of the impugned order as under:

34. The cross-examination of the witness clearly shows that the police had just enquired him about the transfer order and upon that Mr. Bhat informed said police that her transfer is a routine transfer as per the administration need and there was no intention whatsoever to harass her. On hearing that, the policeman left the bank. This shows that apart from enquiry, there was no any violence or any hot discussion or use of any abusive language by the police to Mr. Bhat. Moreover, no talking was took place between Mr. Bhat and the complainant on the point of her transfer at that time. She kept silence. This behaviour of complainant does not amount to any kind of misconduct at all as alleged against her.

18) Thus, absence of 'violence' or 'hot discussion' or use of 'abusive language' by police with Mr. Bhat is taken into consideration by the Labour Court for concluding that the act of the Respondent did not amount to misconduct. These findings are again perverse to the core. The Bank never alleged misconduct of violence, hot discussion or abusive language. The allegation against the Respondent was plain and simple. The act of the Respondent in bringing policemen to Bank's office to question her transfer is viewed as misconduct by the Bank and therefore the simple issue before the Labour Court was whether approaching police with grievance of transfer and bringing policemen to Bank's office and subjecting officer to interrogation amounted to misconduct or not.

Instead of concentrating on this aspect, the Labour Court completely misdirected itself and has erroneously given clean cheat to the Respondent only on account of absence of violence and abusive language.

19) The Industrial Court has exercised its revisional jurisdiction with material irregularity. It has completely ignored the element of perversity in the findings of the Labour Court *qua* the first charge. No discussion is made by the Industrial Court as to whether the act of the Respondent in approaching police and bringing policemen to Bank's office and subjecting the Bank's officer to police questioning amounted to misconduct or not. The Industrial Court has recorded general findings and has expressed inability to interfere by citing limited jurisdiction under Section 44 of the MRTU and PULP Act. Therefore, the orders passed by the Labour and Industrial Courts *qua* first charge are clearly illegal and perverse and are liable to be set aside.

20) So far as second allegation of making the complaints to various authorities are concerned, the Labour Court has recorded following findings:

35. So far as, the second allegation i.e. by making false, and bogus complaints to various authorities, namely banking ombudsman, RBI, Maharashtra State Human Rights Commissions Chief Minister of Maharashtra Deputy Chief Minister of Maharashtra and Department of Agriculture Government of India, the complainant had tarnished the fare name and reputation of the bank in the eyes of public, the management has relied upon the documentary evidence produced on record.

36. I have gone through all these complaints made by the complainant and observed that these complaints have never been challenged by the complainant. Neither she cross examined the witness of management on this point nor adduced any cogent evidence to disprove these complaints. It is not disputed by her that she had made these

complaints to various authorities against the respondent bank. This means it is an admitted position that the she had made these complaints to various authorities against the respondent banks. However, it is categorically observed that no evidence is available on record to show that by these complaints, the reputation of respondent bank has been damaged. In respect of this, the enquiry officer has not given his findings and whatever findings given by him are without reasons.. There is no nexus between the charges levelled against the complainant and the evidence available on the record. No misconduct was attracted in findings of enquiry officer. Which kind of misconduct that had been committed by the complainant has nowhere came in his findings. Mere making complaints to various authorities does not amount to misconduct. It is further observed that the reply to charge sheet given by the complainant below exhibit 37 goes unchallenged. No cross-examination was taken by the respondent bank thereon.

21) Thus, absence of evidence to prove tarnishing of reputation of Petitioner-Bank is the reason why the Labour Court has held mere making of complaints to various authorities does not amount to misconduct. Ms. Joshi has taken me through one of the complaints dated 22 May 2012 addressed by the Respondent to Reserve Bank of India raising various grievances relating to her own transfer as well as about functioning of the Bank post merger with Citizens Cooperative Bank Ltd. The Respondent essentially sought to raise various grievances in respect of the reimbursements, non-grant of housing loan, rectification entries, deductions made towards union fees, use of unfair words by seniors towards her, non-furnishing of documents relating to guarantee, receipt of salary less than a driver, etc. It appears that after addressing complaints to various authorities, these authorities called for explanation from the Petitioner-Bank. Bank's Ombudsman, Ministry of Agriculture, Government of India, etc. sought responses from the Petitioner-Bank.

22) Airing service-related grievances within the organisation is a right of an employee. However, what is done in the present case by the Respondent is crossing the line by levelling allegations with regard to functioning of the Bank with various authorities, some of which are unrelated to banking operations. Whether this would constitute serious misconduct or not is something, which can be decided while making final Award. However, it is too farfetched at this juncture to hold that by addressing those representations and complaints, the Respondent did not commit any misconduct. If complaints and representations were restricted to Respondent's own service-related grievances and if those were addressed to higher authorities in the Bank, the act would not have constituted misconduct. However, the Respondent has travelled beyond the scope of her individual service-related grievances and has also filed complaints to outside authorities. In somewhat similar circumstances in *Hitachi V/s. Niraj Kadu* (supra) this Court has considered the issue as to whether acts of an employee posting Facebook posts, which were defamatory in nature amounted to misconduct or not. The Labour Court had held that the acts committed by the employee had no remote connection with the working of the Company. This Court disagreed with the findings of the Labour Court and held in paragraphs 13, 14 and 15 of the judgment as under:

13. It is clearly seen that posting of such posts on the Facebook account and the comments received thereto are clearly an act of inciting hatred and passion against the management. At the outset, it needs to be stated that the Respondent – workman initially refused to accept that he had in fact posted the two Facebook posts. However, in the evidence that was produced before the Labour Court, Respondent – workman failed to produce evidence to the effect that they were not posted by him. The Respondent – workman failed to produce any evidence to the effect that his Facebook account was hacked and that he was not the author of the two Facebook posts. In that background, it was an

admitted position that the aforesaid two Facebook posts were indeed posted by the Respondent – workman and he therefore could not escape the liability of having posted these two Facebook posts.

14. Next, it is seen that on the basis of the two Facebook posts posted by Respondent – workman, hatred and passion was clearly incited clearly amongst those who have given the likes and comments and one such comment incited the passion to such an extent that it stated that, “atleast 2-3 persons from the management should be assaulted with swords”. Though it has been argued vehemently by Mr. Kulkarni that despite the two Facebook posts and the provocative comments received, no untoward incident had occurred and no violent incident took place resulting in a riotous or disorderly behaviour and therefore benefit of doubt has to be given to the Respondent – workman, however evidence on record clearly shows that at the time when the said Facebook posts were posted the entire situation in the Petitioner - Company was extremely tense as settlement for wage negotiations were under progress between the Company and the recognized Union. Evidence clearly points out to the fact that the entire atmosphere in the Petitioner - Company was sensitive and agitations were being held against the Company in different forms because the wage negotiations / settlement could not be concluded. That there was complete restlessness amongst the workmen. In such a scenario and background, the aforesaid two Facebook posts were posted and therefore considering their natural meaning and the effect of such posts it can be clearly deduced that it could have led to any disorderly act. As noted earlier, both the Facebook posts were in Marathi language and clearly invoked hatred and passion to commit an overt act.

15. In the present case it is seen that, the act committed by Respondent – workman cannot be dismissed lightly especially in view of the fact that during the then time the atmosphere in the Petitioner -Company was extremely sensitive. In fact record indicates that for as many as 20 to 22 months the issue relating to wage revision and settlement with the recognized Union was pending and under negotiation. Substantial material has been appended to the Petition beginning from page No.117 onwards to show and prove this fact. Fast until death was planned by the President of the recognized Union from 02.04.2017 and the pamphlet published in that respect is at page No.117 of the Petition. On page No.119 of the Petition is a post presumably on Facebook itself, calling upon the employees of the Petitioner - Company to carry out a two-wheeler rally from the Company’s gate to Mahalunge. Photographs with respect to the said rally are also placed on record. Photographs of the morcha carried out by the workmen of the Petitioner - Company are at page No.122 of Petition. Newspaper items, articles and publications with respect to the agitations carried out by the Union are highlighted in the Petition from page Nos.132 onwards.

23) In *M.H. Devendrappa v. Karnataka State Small Industries Development Corpn.*<sup>2</sup> the Hon'ble Apex Court has held that any action of the employee which is detrimental to the interests or prestige of the employer undermines the discipline within the organisation and affects efficient functioning thereof. The Court has held thus:

14. In all these cases, this Court has been at pains to point out that Service Rules can be framed to maintain efficiency and discipline within the ranks of government servants. In the case of *O.K. Ghosh*, this Court considered such rules as being saved by the "public order" clause under Article 19(4). In the present case, the restraint is against doing anything which is detrimental to the interests or prestige of the employer. The detrimental action may consist of writing a letter or making a speech. It may consist of holding a violent demonstration or it may consist of joining a political organisation contrary to the Service Rules. Any action which is detrimental to the interests or prestige of the employer clearly undermines discipline within the organisation and also the efficient functioning of that organisation. Such a rule could be construed as falling under "public order" clause as envisaged by *O.K. Ghosh*].

24) In the present case, it is difficult to conclude that the act of the Respondent in addressing complaints to various authorities relating to functioning of the Bank cannot amount to misconduct particularly in the light of the fact that the Bank was required to respond to various authorities. The degree of misconduct and nature of punishment warranted for the same is an altogether different issue, which can be considered and decided at the time of final disposal of the complaint. In every case it is not necessary to prove cause of defamation or tarnishing of image of the employer. When allegations are levelled by an employee about functioning of the employer with regulatory and other authorities and when employer is required to give explanation and defend himself in

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<sup>2</sup> (1998) 3 SCC 732

respect of those allegations, it cannot be held that the act of employee would never amount to misconduct. The nature of allegations and the authorities before whom the same are levelled may determine the gravity of misconduct. As of now, this Court is not going into the issue of seriousness of misconduct. Suffice it to observe that the allegations levelled in the second charge amount to some misconduct on the part of the Respondent.

25) It cannot be contended that findings recorded by the Enquiry Officer relating to second charge are based on absolutely no evidence. The Enquiry Officer has considered evidence before it and has discussed the evidence available before him in the following manner:

4. So far as to tarnish the fair name and reputation of the Bank in the eyes of public, the Management has relied up on the documentary evidence. Management issued Corrigendum to the charge Sheet, which is at Exh 17 along with copies a complaint before various Authorities. On the perusal of this Exh 17 is appears that these documents has not been challenged by the CSE, neither cross examined the MW No 1 on this point adduce any cogent and reliable evidence and to disprove the documents. The said witness further deposed that office of Banking Ombudsman has written letter on 30/04/2012 (Exh 17) regarding complain made by CSE against Abhyudaya Bank. The said Authority enclosed copies of the letters of CSE regarding complaints against said Bank. The said witness further deposed that in the month of October 2012 they have received letter from Ministry of Agriculture, Government of India regarding complaint filed by CSE. The CSE made complaints against the Bank to following various authorities

- 1) Maharashtra State Human Rights commission.
- 2) Chief Minister of Maharashtra.
- 3) Deputy Chief Minister of Maharashtra.
- 4) Co-operative Minister, Maharashtra State.
- 5) Police Commissioner, Pune.
- 6) Labour commissioner, Maharashtra State.
- 7) RBI Governor- Urban Bank Department.
- 8) Co-operative commissioner, Maharashtra State.
- 9) Home Minister, Maharashtra State.
- 10) Police Commissioner, Navi Mumbai.
- 11) Jan Lokpal, Maharashtra State.

12) Police Commissioner, Mumbai.

In order to prove this fact Management has relied upon the documentary evidence (Exh 17 colly). This evidence is not challenged by the CSE by adducing cogent and reliable evidence. So also there is no cross examination on this point Hence I am of the opinion that Management duly established beyond reasonable doubt that CSE has made complaints against Bank to the various Authority instead of Competent Authority and tarnish the fair name and reputation of the bank in the eyes of public. On careful considering evidence of MWNol, it duly proved that CSE has made false, vexatious and frivolous complaint CSE has cross examined the said witness but nothing is coming on the record to disbelieve the said witnesses. On going through the entire cross examination of the witness nothing is coming on the record to disbelieve the said witness. This evidence is not shaken and remained unchallenged. Hence I am of the opinion that Management has duly proved all the charges mentioned in the charge sheet beyond all reasonable doubt. Therefore I recorded my finding in the affirmative.

26) In domestic enquiry the test for proof of charge is preponderance of probability. It is not necessary to prove charges beyond reasonable doubt. It is not for the Labour or Industrial Courts to comment on quality or quantity of evidence. So long as there is some evidence on record to support findings of the Enquiry Officer, Labour and Industrial Courts, cannot go into aspect of adequacy of evidence. In **Kuldeep Singh V/s. The Commissioner of Police and Ors.**<sup>3</sup> the Hon'ble Apex Court held in paragraph 10 as under:

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.

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3 1999 2 SCC 10

27) In *State of Haryana and Another V/s. Rattan Singh*<sup>4</sup> the Apex Court has held in paragraph 4 of the judgment as under:

4. It is well settled that in domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

28) Thus, in a domestic enquiry the strict and sophisticated rules of Indian Evidence Act do not apply. Any material which is logically probative for a prudent man can be taken into consideration by the Enquiry Officer. So long as there is some evidence on record, however compendious it may be, the same can be relied upon for recording

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4 1977 2 SCC 491

finding of guilt. It is only in a case involving total absence of evidence that a finding can be treated as perverse.

29) In the present case, it is difficult to hold that there is absolutely no evidence to prove the allegations in the two charges levelled against the Respondent. The Labour and Industrial Courts have failed to appreciate well settled principles relating to test of preponderance of probability for proving charges in the domestic enquiry.

30) Considering the overall conspectus of the case I am of the view that the Labour and the Industrial Courts have grossly erred in holding that the findings recorded by the Enquiry Officer are perverse. The impugned orders of the Labour Court and the Industrial Court *qua* preliminary issue relating to perversity therefore are unsustainable and liable to be set aside.

31) However, though the impugned orders of Labour and Industrial Courts *qua* the preliminary issue of perversity are being set aside, this does not mean that the order of punishment will have to be necessarily upheld. By setting aside the impugned orders, all that is being prevented is need for the Bank to lead evidence to prove the charges before the Labour Court. The charges are correctly held to be proved in the enquiry. The Labour Court would now proceed to determine whether punishment of dismissal imposed on the Respondent is legal and is proportionate to the gravity of misconduct committed by her. I have already held that the allegation in the first charge relating to misbehaviour with Mr. Bhat is not proved against the Respondent. The Labour Court shall accordingly go into the issue of proportionality and decide the issue of correctness of

punishment of dismissal uninfluenced by any of the findings recorded by this Court in the present judgment.

32) Petition accordingly succeeds and I proceed to pass the following order:

(i) Order passed by the Labour Court on 1 September 2023 as upheld by the Industrial Court by its order dated 11 June 2024 are set aside.

(ii) It is held that findings recorded by the Enquiry Officer (*except relating to charge of misbehaviour with Mr. Bhat*) are not perverse and are well supported by evidence on record.

(iii) The Labour Court shall accordingly proceed to decide the remaining issues uninfluenced by any of the findings recorded by this Court in the present judgment.

(iv) Considering the fact that the Complaint is pending since the year 2014, and that the Respondent is dismissed from service on 28 January 2015, the Labour Court shall proceed to decide the remaining issues in an expeditious manner, preferably within a period of six months.

33) With the above directions, the Writ Petition is **allowed**. Rule is made absolute. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.].