IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12267 OF 2022

1. The Divisional Controller,
Maharashtra State Road
Transport Corporation, Mumbai,
Through its Divisional Controller
Dhule Division, Dhule

2. The Divisional Traffic Officer.
MSRTC, Dhule

...Petitioners
(Org. Respondents)

Versus

Ravindra Adhar Gosavi,
Age : 56 years, Occu: Nil,
R/o. Boradi, Tq. Shirpur,
Dist. Dhule. ...Respondent
(Org. Complainant)

Mr. Manoj Dharmraj Shinde, Advocate for Petitioners
Mr Shrikant S. Patil, Advocate for the State/Respondent

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 13TH DECEMBER, 2022
PRONOUNCED ON : 21st DECEMBER, 2022

JUDGMENT :

A. THE CHALLENGE

1. Petitioners challenge Judgment and order dated 06.08.2022 passed by the Member, Industrial Court, Dhule in Revision (ULP) No.14 of 2019 thereby confirming the Judgment and order dated 01.03.2019 passed by the Judge, Labour Court, Dhule in Complaint (ULP) No. 01/2017. The Labour Court, Dhule has declared the order dated 20.01.2016 imposing penalty of dismissal on Respondent as illegal and has set aside the same with a further direction to

reinstate him in service along with full back wages and continuity of service from 20.01.2016.

B. FACTS

2. The respondent joined the services of petitioner/Transport Corporation on the post of driver in the year 1990. During the course of his service, he came to be promoted to the post of Assistant Traffic Inspector. On 27.10.2014, respondent was arrested by the Anti Corruption Bureau on allegation of demanding and accepting illegal gratification of Rs.10,000/- and Crime No. 3274/2014 came to be registered against him under the provisions of Prevention of Corruption Act, 1988.

3. The respondent was issued memorandum of charge sheet dated 02.08.2014 alleging that one Shri. S.S. Dhivare, Driver was involved in an accident on Navapur Pune route on 26.04.2014 and was held responsible for causing the accident. After holding enquiry, a show cause notice was issued to shri Dhiavare for imposing the penalty of dismissal from service. It was alleged that on 20.09.2014 when Shri. Dhivare presented in service for accidental training in the Divisional Office, Dhule, the respondent demanded illegal gratification of Rs.25,000/- by promising cancellation of dismissal notice. It was further alleged that out of demanded amount of illegal gratification, the respondent directed payment of Rs.10,000/- to be made to a private person Shri Sajay Suryakant Kayasth, a bakery owner at Dhule Bus Station. It was further alleged that as per the directions of the complainant, Shri Dhivare paid amount of Rs.10,000/- to Shri Kayasth on 27.10.2014 when the Aanti Corruption Bureau caught him red handed. The respondent was thereafter taken into custody. Petitioner was therefore charged of misconduct of demanding and accepting the illegal gratification through the private person Shri Kayasth.

4. The domestic enquiry was conducted by petitioner/Corporation, which failed to examine Shri. Dhivre as witness. Instead, only the officer who recorded statements and submitted a report was examined as a witness. The respondent participated in the enquiry. The Enquiry Officer submitted report holding that the charge against petitioner was proved, and therefore, show cause notice with conclusions dated 01.12.2015 was served on the respondent by petitioner as to why he should not be dismissed from service. Accordingly, final show cause notice for dismissal was served on the respondent on 28.12.2015. After receipt of the representation dated 06.01.2016 from the respondent, the disciplinary authority passed the order dated 20.01.2016 imposing the penalty of dismissal from service on the respondent with the further direction that the period of suspension from 03.11.2014 to 30.01.2015 shall be debited from the leave due.

5. Aggrieved by the dismissal order, respondent filed Complaint (ULP) No. 01/2016 before the Labour Court, Dhule by order dated 13.01.2016, Labour Court rejected application for stay of dismissal order. The respondent challenged the order rejecting stay by filing revision before Industrial Court, Dhule which was pleased to reject the revision petition by order dated 22.08.2016.

6. The Labour Court heard the respondent's complaint on two preliminary issues of enquiry being conducted in a fair and proper manner and perversity in finding of Enquiry Officer. The Labour court delivered Award-I on 30.04.2018 holding that the domestic enquiry conducted by petitioners was not fair, legal or proper. It was further held that the findings recorded by the Enquiry Officer are perverse.

7. In view of the Award-I being decided against petitioners, the evidence was led by petitioner before Labour Court by examining Sandeep Shivdas

Dhivare before the Labour Court. The Labour Court thereafter passed Award-II and allowed the complaint setting aside the dismissal order dated 20.01.2016 with further direction to petitioner to reinstate the respondent in service with full back wages and continuity of service from 20.01.2016. Petitioner filed Revision (ULP) No.14/2019 before the Industrial Court challenging the Judgment and order of the Labour Court by interim order dated 07.09.2019. The Industrial Court stayed the Judgment and order dated 01.03.2019 passed by the Labour Court with a direction to petitioner-Corporation to deposit back wages for the period from 20.01.2016 to 06.08.2019 and to continue to deposit the monthly pay and allowances during pendency of the revision application. The respondent filed Writ Petition No. 709/2020 in this Court challenging the interim order of the Industrial Court which came to be disposed of by this Court by order dated 06.08.2021 with a direction to expedite the Revision (ULP) No.14/2019 within six months.

8. The Industrial Court proceeded to dismiss the Revision (ULP) No.14/2019 by the Judgment and order dated 06.08.2022. Petitioner corporation had challenged the Judgments and Orders passed by the Labour Court and Industrial Court in the present petition.

C. SUBMISSIONS

9. Appearing for petitioners, Mr Shinde, the learned counsel would contend that the Labour Court and Industrial Court erred in setting aside the order of dismissal despite the charge of demand and acceptance of illegal gratification being proved against respondent. He would submit that there is sufficient evidence available on record to support the findings of guilt against the respondent. He would further submit that the charge in the domestic enquiry was to be proved on the touchstone of preponderance of probabilities and that test

was satisfied on production of evidence of the complainant. In support of his contention, Mr Shinde has relied upon the following Judgments :-

(i) *Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane reported in (2005) 3 SCC 254*

(ii) *Karnataka State Road Transpsort Corpn. Vs. B.S. Hullikatti reported in (2001) 2 SCC 574*

(iii) *Janatha Bazar (South Kanara Central Co-opertive Wholesale Stores Ltd.).Etc. Vs. Secretary Sahakari Noukarara Sangh, etc. reported in AIR 2000 SC 3129*

(iv) *Regional Manager, U.P.S.R.T.C. Etawah and Ors. Vs. Hoti Lal and Anr. Reported in AIR 2003 SC 1462*

(v) *Managing Director, North-East Karnataka Road Transport Corpn. Vs. K. Murti reported in (2006) 12 SCC 570*

(vi) *Bhagwandas Tiwari and others Vs. Dewas Shajapur Kshetriya Gramin Bank and others reported in (2006) 12 SCC 574*

(vii) *Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd. And Anr. Vs. Vasant Ambadas Deshpande reported in 2014 (7) Bom.C.R. 94*

(viii) *Air India Ltd., Vs. L.R. Solanki & Anr. Reported in 2005 (5) Bom. C.R. 241*

(ix) *Tata Infomedia Limited (Erstwhile Tata Press Limited) Vs. Tata Press Employees Union & Anr. Reported in 2005 (4) Bom. C.R. 559*

(x) *Board of Trustees of the Port of Mumbai Vs. Suryabhan Popat Londhe reported in 2002 (Supp.) Bom. C.R. 101*

10. Per contra, Mr Patil, learned counsel appearing for the respondent-employee would oppose the petition and support the orders passed by the Labour court and the Industrial Court. He would particularly draw my attention to the stark contradiction in the evidence of the complainant Sandeep Shivdas Dhivare wherein he deposed that the bribe amount of Rs.10,000/- was paid directly to the respondent whereas the charge levelled against the respondent alleged payment of bribe amount to the third person Shri Sanjay Suryakant Kayasth. He would submit that the complainant thus, contradicted himself and the allegations of payment of bribe to Shri Kayasth levelled in the charge got

disproved of the deposition of Shri Dhivare. Mr Patil would contend that on account of such contradiction, the Labour Court and the Industrial Court have rightly held the charge to be disproved. He would submit that even the test of preponderance of probability is not satisfied in the present case as apart from contradiction in the evidence of complainant, no other corroborative evidence was produced in the enquiry. Lastly, Mr Patil would contend that the respondent has attained the age of superannuation on 31.05.2021, and that therefore, this Court may not interfere in the impugned orders of the Industrial Court and Labour Court. He would pray for dismissal of the petition.

11 In support of his contentions, Mr Patil has relied upon the following Judgments :-

(i) *Gajanan Shamrao Thakre Vs. Maharashtra State Road Transport Corporation reported in 2000 CJ(Bom) 237*

(ii) *Motor Industries Co. Ltd. Vs. Popat Murlidhar Patil & Anr. Reported in 2008 (5) Bom. C.R. 638*

(iii) *Tata Memorial Hospital Vs. Shashikant Shrikrishna Sompurkar and Anr. reported in 2006 (3) Bom. C.R. 414*

(iv) *Godrej and Boyce Manufacturing Company Limited Vs. Ravindra Shanta Sharma reported in 2018 DGLS(Bom.) 800*

D. REASONS & ANALYSIS

12. As observed hereinabove, the Labour Court delivered Award-I holding that the enquiry was not held in a fair and proper manner and principles of natural justice were violated. It was also held that the findings of the Enquiry Officer are perverse. This led to availing of an opportunity by Petitioner-corporation to prove the charges before the Labour Court by leading evidence. Petitioner-corporation accordingly filed affidavit of evidence of Shri Sandeep Dhivare dated 10.07.2018 before the Labour Court, in which he deposed that the respondent demanded amount of Rs.25,000/- from him for cancellation of the

show cause notice for dismissal. He further deposed that he did not have that much of amount and requested for time to arrange the same. He further deposed that the respondent kept on demanding amount even on phone calls. He further deposed that since he did not desire to pay illegal gratification to the respondent, he filed a complaint before the Anti Corruption Bureau on 20.10.2014. He further deposed that by way of negotiations, he agreed to pay advance amount of Rs.10,000/- to the respondent. He further deposed that the respondent took him at Sadguru Bakery stall at Dhule Bus Station and informed the bakery owner that Shri Dhivare would initially pay first installment of Rs.10,000/- and the balance amount of Rs.15,000/- would be paid within 2-3 hours. The respondent instructed the bakery owner to accept and keep the amount paid by Shri Dhivare. He further deposed that instead of paying the amount of Rs.10,000/- to bakery owner, he paid the amount in cash to the respondent. The rest of the deposition is about the reason for demanding bribe and respondent being apprehended by Anti Corruption Bureau red handed.

13. As against above deposition by Shri Dhivare that the amount of Rs.10,000/- was handed over directly to the respondent, the charge contained an allegation that the amount was handed over to Shri Kayasth, the owner of the bakery. This contradiction in deposition of Shri Dhivare has been the main reason why the Industrial Court has ruled against petitioner Corporation. The respondent's counsel has also strenuously highlighted this contradiction in the deposition of Shri Dhivare.

E. STANDARD OF PROOF NEEDED IN DOMESTIC INQUIRY

14. In the light of the contradiction in evidence of the complainant, a question arises as to what effect such contradiction will have on the finding of guilt of misconduct alleged. Therefore it is necessary to first examine the

standard of proof needed in domestic inquiry.

15. It is trite that the charge in the departmental enquiry is to be proved on the touchstone of preponderance of probability. The charge is not required to be proved on the principle of proof beyond reasonable doubt. It would be appropriate to discuss some of the Judgments of the Apex Court on the issue of proof of misconduct in the domestic enquiry.

16. In **State of Haryana v. Rattan Singh**, (1977) 2 SCC 491, the Apex Court had held that even hearsay evidence is admissible in domestic cnquiry. It is held:

> 4. It is well settled that in a 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 a 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 a 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.

(emphasis supplied)

17. In **Kuldeep Singh v. Commr. of Police**, (1999) 2 SCC 10, it is held that even some evidence on record would be sufficient for saving the fandings recorded in departmental enquires from falling fowl of perversity. It is held:

> 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)*

18. More recently, the Apex Court in **State of Karnataka v. Umesh**, (2022) 6 SCC 563 : (2022) 2 SCC (Cri) 655 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.
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> 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:
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> (i) the rules of natural justice have been complied with;
>
> (ii) the finding of misconduct is based on some evidence;

(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. [State of Karnataka v. N. Gangaraj, (2020) 3 SCC 423 : (2020) 1 SCC (L&S) 547; Union of India v. G. Ganayutham, (1997) 7 SCC 463 : 1997 SCC (L&S) 1806; B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80; R.S. Saini v. State of Punjab, (1999) 8 SCC 90 : 1999 SCC (L&S) 1424 and CISF v. Abrar Ali, (2017) 4 SCC 507 : (2018) 1 SCC (L&S) 310]

(emphasis supplied)

19. In **M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das**, (2020) 1 SCC 1 Constitution Bench has expounded the concept of preponderance of probability:

The standard of proof

720. The court in a civil trial applies a standard of proof governed by a preponderance of probabilities. This standard is also described sometimes as a balance of probability or the preponderance of the evidence. Phipson on Evidence formulates the standard succinctly : **If therefore, the evidence is such that the court can say "we think it more probable than not", the burden is discharged**, but if the probabilities are equal, it is not. [Phipson on Evidence.] In Miller v. Ministerof Pensions [Miller v. Minister of Pensions, (1947) 2 All ER 372] , Lord Denning, J. (as the Master of Rolls then was) defined the doctrine of the balance or preponderance of probabilities in the following terms : (All ER p. 373 H)

"(1) … It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, "of course it is possible, but not in the least probable" the case is proved beyond reasonable doubt, but nothing short of that will suffice."

721. The law recognises that within the standard of preponderance of probabilities, there could be different degrees of probability. This was succinctly summarised by Denning, L.J. in Bater v. Bater [Bater v. Bater, 1951 P 35 (CA)] , where he formulated the principle thus : (p. 37)

"… So also in civil cases, the case must be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter."

20. In **State of Rajasthan Vs. Heem Singh** 2020 SCC OnLine SC 886, the Apex Court has held as under:

> **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.
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> *(emphasis supplied)*

21. Thus in domestic inquiry, strict rules of evidence are not applicable. Even hearsay evidence is admissible. On perusal of evidence, if a person of ordinary prudence reaches a conclusion that the occurrence of an event alleged is probable, such evidence is sufficient to prove misconduct in domestic inquiry.

This is the test of preponderance of probability. On the other hand, in a criminal trial, the charge has to be proved beyond reasonable doubt and any contradiction or lacunae in evidence casting doubt about occurrence of an event would entitle the accused to a benefit of doubt, resulting in an acquittal.

F. Evaluation Of Evidence In Present Case

22. Having stated the exposition of law by the Apex Court on the principles of standard of proof in departmental inquires, the evidence available on record needs to be considered to examine whether the test of preponderance of probability is satisfied. As observed earlier, Petitioner failed to examine the Driver (Complainant) in the Inquiry, which led Inquiry being rejected in Award-I. The Petitioner thereafter availed the opportunity of proving the charge before the Labour Court, by adducing his evidence. For his evidence, the pre-drafted affidavit-of-evidence of Shri Sandeep Dhivare was submitted before the Labour Court on 10.07.2018. In that affidavit of evidence, the contradiction with regard to the exact person to whom the bribe amount was handed over has crept in. The issue is how much importance is to be given to this contradiction? The charge levelled against the respondent is in two parts viz, demand of illegal gratification and acceptance thereof. So far as the first element of charge is concerned, the same is proved as the complainant is consistent in deposing that the respondent demanded illegal gratification of Rs.25,000/- from him and insisted on that demand. It is only in respect of the second element of charge that a contradiction has occurred to some extent. The complainant Dhivare is consistent in his stand that the bribe amount has been paid and the same was meant to be paid for the respondent. In the affidavit of evidence, he has deposed that the amount was paid directly to the respondent. This deposition is contrary to the charge that the bribe amount was handed over to Shri. Kayasth, the owner of the bakery. Had

this been a criminal trial, such contradiction would make the testimony of the complainant unbelievable. However as observed earlier, in a domestic enquiry one has to examine whether the event as alleged has 'probably' taken place after considering the overall evidence on record.

23. Ofcourse while overstretching the test of preponderance of probability, one must not forget the principle enunciated by the Constitution Bench in **Union of India Vs. H. C. Goel**, AIR 1964 Hon'ble Supreme Court 364 that mere suspicion should not be allowed to take place of proof even in domestic inquiries. Coincidently, the Apex Court has dealt with the case involving charge of corruption in *H. C. Goel*. It has held as under:

> Now, in this state of the evidence, how can it be said that respondent even attempted to offer a bribe to Mr. Rajagopalan. Mr. Rajagopalan makes a definite statement that respondent did not offer him a bribe. He merely refers to the fact that respondent took out a paper from his wallet and the said paper appeared to him like a hundred rupee note double folded. Undoubtedly, Mr. Rajagopalan suspected the respondent's conduct, and so, made a report immediately. But the suspicion entertained by Mr. Rajagopalan cannot, in law, be treated as evidence against the respondent even though there is no doubt that Mr. Rajagopalan is a straightforward and an honest officer. **Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules.** We have very carefully considered the evidence led in the present enquiry and borne in mind the plea made by the learned Attorney General, but we are unable to hold that on the record, there is any evidence which can sustain the finding of the appellant that charge No. 3 has been proved against the respondent. It is in this connection and only incidentally that it may be relevant to add that the U.P.S.C. considered the matter twice and came to the firm decision that the main charge against the respondent had not been established.
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> *(Emphasis supplied)*

24. In *H. C. Goel*, there was absence of evidence of demand and acceptance of bribe, but a suspicion existed that the double folded paper was a

currency note and and on such a suspicion, the employee was punished in domestic inquiry. The Apex Court has made above observations in the light of that factual position. In the present case however, there is direct evidence of bribe being demanded by Respondent and paid. There is no dispute that the bribe amount was meant for the Respondent, but there is a contradiction as who actually accepted it. In my view, applying the test of preponderance of probability, even the charge of acceptance of illegal gratification can be held to be proved on the basis of deposition of the complainant Shri Dhivare.

25. As held by the Apex Court in ***Rattan Singh*** (Supra), even hearsay evidence is admissible in departmental inquiries. This is because strict rules of evidence are not applicable in inquires. Applying same yardstick, existence of minor contradiction is deposition would not render the entire evidence of a witness completely unacceptable. The test of preponderance of probability would require determination of an inference as to whether happening of an event based on the evidence is probable. Considering the overall evidence of the Complainant Shri. Dhivare, it does appear probable that the Respondent not only demanded the gratification but also probably accepted the same. Whether he accepted it himself or through Shri, Kayasth is not the relevant factor. In a domestic inquiry, contradiction in evidence of complainant with regard to the exact person who is handed over gratification would not create a doubt so as to give benefit thereof to the Respondent. The same could possibly have been a relevant factor in criminal case, but not in domestic inquiry.

26. Even otherwise, the evidence clearly proves that the respondent demanded illegal gratification. He gave a promise to the complainant to save him from dismissal. That he instructed Shri. Kayasth to accept the amount of illegal gratification. This part of misconduct is proved against Respondent and the same

in itself is grave enough warranting the penalty of dismissal.

27. In addition to the aspect of contradiction in the evidence of Shri Dhivare, the Labour Court has laid much stress on the two issues of lack of corroborative evidence and pendency of the criminal trial. The Labour Court has held in para No. 12 to 14 of its Judgment as under :-

> 12. Apart from this witness, the respondents have not examined any other witness. The version of this witness is not corroborated with any other oral or documentary evidence. Moreover, the witness has not stated as to who were present when he gave the alleged bribe amount of Rs.10,000/- to complainant. The incident narrated by the witness has occurred in day time and in public office. Therefore, it needs corroboration with the evidence of any other person, who was present or witnessed anything at the time of incident. Similarly he has not stated anyuthing about the role of Shri. Kayasth in the said incident. In his cross-examination, he stated that, he does not know who is Sanjay Kahasth. Moreover, the criminal matter is still pending against complainant.
> 13. It is an admitted fact that, criminal trial against complainant under prevention of corruption Act is pending. It is settled principle of law that, the nature and purpose of the criminal Trial and departmental enquiry is totally different. The departmental enquiry is meant to maintain discipline in the employees for doing their work with utmost sincerity and lawfully thereby raising the efficiency of the establishment. The staffer is the employer. Whereas, criminal Trial is initiated for an offence committed in violation of of one's duty under Indian Penal Code and the sufferer is the society at large.
> 14. In the present proceeding, in absence of any corroboration of the incident of bribe which is alleged to have been taken place by the complainant can't be believed and accepted as trustworthy. The criminal complaint is still pending against the complainant and verdict in it is still awaited. The respondents have failed to prove the charges leveled against the complainant in the departmental enquiry and before this Court. Naturally this will amounts to unfair labour practice on the part of respondents within the meaning of Schedule-IV, Item-1 (a) (b) (c) (d) & (f) of MRTU & PULP Act, 1971 and the complainant is entitled for having a declaration that the termination order dated 20.01.2016 is illegal. Hence, answer to issue No. 3 is given in affirmative.

28. I fail to understand why any corroborative evidence is needed for proof of charge in a domestic enquiry. If the complainant to whom demand of illegal gratification is made and who has paid the gratification to the delinquent

employee, adduces evidence supporting said allegations, it is not necessary for the employer to produce any corroborative evidence to prove the charge. As observed earlier strict rules of evidence are inapplicable in domestic inquiries.

29. Pendency of criminal trial highlighted by labour court for setting aside the order of dismissal is absolutely irrelevant for domestic inquiry. It is trite that mere pendency of criminal trial or even the result thereof can have no effect on the findings recorded in departmental enquiry. Therefore, merely because the criminal trial continued to remain pending against the respondent, the said factor ought not to have been taken into consideration by the Labour Court while deciding the issue of proof of charge against the respondent.

30. Respondents was accused of indulging in corruption in the domestic inquiry. Whether he just demanded it or even went ahead and accepted it, will not change the gravity of misconduct. In this regard it would be apposite to refer to the following observations of the Apex Court **State of Gujarat & Another v/s Hon'ble Mr. Justice R.A. Mehta (Retd) & Others** 2013 (1) SCR 1:

> 62. Corruption in a civilised society is a disease like cancer, which if not detected in time, is sure to spread its malignance among the polity of the country, leading to disastrous consequences. Therefore, it is often described as royal thievery. Corruption is opposed to democracy and social order, as being not only anti people, but also due to the fact that it affects the economy of a country and destroys its cultural heritage. It poses a threat to the concept of Constitutional governance and shakes the very foundation of democracy and the rule of law. It threatens the security of the societies undermining the ethical values and justice jeopardizing sustainable development. Corruption de-values human rights, chokes development, and corrodes the moral fabric of society. It causes considerable damage to the national economy, national interest and the image of the country. (Vide: Vineet Narain & Ors. v. Union of India & Anr., AIR 1998 SC 889; State of Madhya Pradesh & Ors. v. Shri Ram Singh, AIR 2000 SC 870; State of Maharashtra thr. CBI, Anti Corruption Branch, Mumbai v. Balakrishna Dattatrya Kumbhar, JT 2012 (10) SC 446; and Dr. Subramanian Swamy v. Dr. Manmohan Singh & Anr., AIR 2012 SC 1185).

31. It must be borne in mind that that respondent was facing extremely serious charge of demand and acceptance of illegal gratification. Therefore, some minor contradiction in the evidence of the complainant cannot be a reason to let the respondents scot-free in respect of such serious allegations. It has been repeatedly held by the Supreme Court that even if some evidences is available on record, it is sufficient to hold the delinquent employee guilty of the charge. I am therefore of the view that evidence of the complainant Shri Dhivare was sufficient to prove the first element of charge of demand of illegal gratification. The second element of acceptance of illegal gratification is proved on touchstone of preponderance of probability. Thus this is not a case of total absence of evidence. The finding of guilt therefore cannot be branded as perverse. In this regard it would be apposite to refer to the judgment of this court in case of ***Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd. And Anr.*** (supra), in which this Court has held as under :-

> 23. There is one more angle to this case which needs to be dealt with, notwithstanding my conclusions arrived at in the foregoing paragraphs. The Labour Court appears to have lost sight of the fact that **strict proof of evidence is not required in departmental or domestic enquiries for proving the allegations levelled upon the workman. The charges can be proved by leading evidence in the enquiry and by preponderance on the principles of probabilities. Strict proof pitted against preponderance of probabilities, the Labour Court seems to have followed the former instead of the latter.** In the case of Deputy Inspector General of Police Vs. Samuthiram reported at 2013(1) CLR 16: [2013 ALL SCR 148], the Apex Court has once again concluded that by the preponderance on the principles of probabilities, one can come to a conclusion that the charges are proved against an employee.
>
> *(emphasis supplied)*

32. In the light of the complainant deposing before the Labour court that Respondent demanded illegal gratification and accepted the same (either directly from complainant or through Shri. Kayasth) and his testimony remaining

unshattered in the cross examination, the Labour Court and Industrial Court erred permitting technicalities to take precedence over the purpose for which the domestic inquiry is conducted. They ought to have appreciated that the complainant mustered courage to lodge complaint with Anti-Corruption Bureau and stood with his testimony right till Labour Court. The action taken by Petitioner Corporation, which dismissed Respondent with a view to wipe out corruption from system, is directed by Labour & Industrial courts not only to reinstate him but is further saddled with financial burden of paying him backwages. The reasonings of Labour Court that corroborative evidence is not led and criminal case remained pending are seriously flawed.

33. What remains now is to deal with the judgments cited by Mr. Patil:

(i) ***Gajanan Shamrao Thakre*** (supra) involved the issue of consideration of *exparte* statement recorded behind the back and has therefore no relevance to the present case.

(ii) In case of ***Motor Industries Co. Ltd.*** (supra), issued was with regard to the jurisdiction of the revisional court in interfering with the order of the Labour court and the said Judgment is of no assistance to the respondent.

(iii). In case of ***Tata Memorial Hospital*** (supra), the charge was about refusing to work as per the orders and complete the work allotted and penalty of dismissal from service was imposed. There was no evidence to support the charge, and therefore, penalty has been set aside. In the present case, there is sufficient evidence to prove both the elements of charge against petitioner.

(iv) In case of ***Godrej and Boyce Manufacturing Company Limited*** (supra), has been rendered in the facts of that case and has no

application to the present case.

G. CONCLUSIONS

34. The Labour Court and the Industrial Court, in my view, have seriously flawed in setting aside the order of dismissal from service despite availability of sufficient evidence in support of first element of charge of demand of illegal gratification and some evidence to prove the second element of acceptance of illegal gratification. The orders passed by the Industrial Court and Labour Court are thus unsustainable.

H. ORDER

35. The writ petition is allowed. Judgment and order dated 06.08.2022 passed by the Member, Industrial Court, Dhule in Revision (ULP) No.14 of 2019 as well as the Judgment and order dated 01.03.2019 passed by the Judge, Labour Court, Dhule in Complaint (ULP) No. 01/2017 are set aside. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

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