IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5003 OF 2021

Uttan Machimar and Vahatuk Sahakari Society Ltd. and Anr. **...Petitioners**

V/s.

Nitin Jaywant Mhatre **...Respondent**

Mr. Prashant Mohite *with Mr. Kishor G. Pashte for the Petitioner.*
Mr. Rajendra Jain *with Mr. Pranil Lahigade i/b Mr. Prashant Goyal for Respondent.*

CORAM: SANDEEP V. MARNE, J.

RESERVED ON: 11 JUNE 2026.
PRONOUNCED ON: 17 JUNE 2026

JUDGMENT:

1) The issue involved in the Petition is whether an act of the employee in making vulgar and disparaging utterances towards women of the community for whose benefit he is employed would constitute a grave misconduct entailing punishment of dismissal from service. Also involved is the issue as to whether finding of guilt recorded by the Labour Court after assessing the evidence before it can be set aside in revision by the Industrial Court by laying emphasis on a discrepancy in the depositions and by considering the relationship of a witness with the office bearer of the management.

2) The issues arise in the light of challenge raised by the Petitioner-employer to the judgment and order dated 7 January 2021 passed by the Member, Industrial Court, Thane, partly allowing Revision Application (ULP) No. 75 of 2015 and setting aside the judgment and order dated 3 August 2015 passed by Labour Court, Thane in Complaint (ULP) No. 25 of 2007. The Labour Court had dismissed Complaint (ULP) No. 25 of 2007, in which the Respondent had challenged the order of his termination. Reversing the decision of Labour Court, the Industrial Court has partly allowed Complaint (ULP) No. 25 of 2007 by declaring the order of termination dated 11 January 2007 as illegal. However, instead of directing reinstatement or backwages, the Industrial Court has awarded compensation of Rs. 5 lakhs to the Respondent. Petitioner-employer is aggrieved by award of compensation of Rs. 5 lakhs by the Industrial Court to the Respondent and has accordingly filed the present Petition.

3) Petitioner is a cooperative society engaged in the activity *inter alia* of providing transportation of fish and other services for the benefit of fishermen. Respondent was engaged as Driver by the Petitioner-society since January 2001. According to the Respondent, he took part in organizing a union in the Petitioner-society and became office bearer of the union. On 1 April 2003, memorandum of settlement was executed with the Union by the Petitioner, under which it recommended the name of Respondent for appointment as Staff Director on managing committee of the Petitioner-society. According to the Respondent, Petitioner-society was not willing to accept him on the managing committee of the society and accordingly, he was embroiled in

disciplinary inquiries. Memo dated 13 September 2006 was issued to the Respondent alleging absence from duties on 13 September 2006 and advising him not to report for duties. Another memo dated 16 October 2006 was issued in respect of incident of 14 October 2006 once again directing him not to report for duties. It appears that on 16 October 2006, Vice Chairman of Petitioner-society Mr. Malcam Kasughar made a complaint against the Petitioner for use of unparliamentary language. Respondent was kept under suspension by letter dated 29 November 2006.

4) A chargesheet dated 29 November 2006 was issued to the Respondent in respect of acts of refusal to perform duty on 13 September 2006 and 14 October 2006 as well as for misbehavior with Vice Chairman on 16 October 2006. It is the case of the Petitioner-society that on account of threats issued by Respondent to the Enquiry Officer, enquiry could not be conducted. A police complaint was lodged against the Respondent on 27 December 2006 regarding the act of threatening the Enquiry Officer. Petitioner-society thereafter proceeded to terminate the services of the Respondent on 11 January 2007.

5) Respondent approached Labour Court, Thane by filing Complaint (ULP) No. 25 of 2007 challenging termination order dated 11 January 2007. The complaint was resisted by the Petitioner by filing written statement. Since enquiry could not be conducted, Petitioner-society led evidence to prove misconduct of the Respondent before the Labour Court by examining Mr. Malcam Bhandari-Chairman, Mr. Anthoni Juran Dinis, Mr. Bernardt David Hendricks, Mr. Malcam Edward Kasughar,

Mr. Bernet Francis Bhandari and Ms. Ranjana Francis Bhandari. Respondent examined himself before the Labour Court. After considering the evidence on record, the Labour Court proceeded to dismiss the Complaint of the Respondent by judgment and order dated 3 August 2015. Respondent filed Revision Application (ULP) No. 75 of 2015 before the Industrial Court, Thane challenging the decision of the Labour Court under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU and PULP Act**). By judgment and order dated 7 January 2021, the Industrial Court has set aside the order of the Labour Court and has declared the order of termination of Respondent dated 11 January 2007 as illegal. However, instead of ordering reinstatement or granting backwages, the Industrial Court has awarded lump sum compensation of Rs. 5 lakhs to the Respondent. Petitioner-society is aggrieved by the decision of the Industrial Court and has accordingly filed the present Petition.

6) Mr. Mohite, the learned counsel appearing for the Petitioner has submitted that the Industrial Court has erred in reversing the well-considered decision of the Labour Court. That the Respondent has committed serious misconduct of using unparliamentary and derogatory language in front of Vice Chairman of society towards ladies of fishermen community. That he also refused to perform duties on several occasions. That he threatened the Enquiry Officer and prevented him from conducting enquiry. That the Respondent had become an incalcitrant employee who was repeatedly engaging in misbehavior and misconduct. That the language used by the Respondent during the

course of incident of 14 October 2006 is shocking. That despite production of direct evidence of several witnesses, the Industrial Court has erroneously held that the Respondent did not commit any misconduct. That the finding of the Industrial Court that the punishment is disproportionate is clearly erroneous. That awarding compensation to the Respondent despite committing such grave misconduct would tantamount to rewarding him. That the Industrial Court has exceeded its jurisdiction by acting like an Appellate Court by reappreciating the evidence. That revisional jurisdiction under Section 44 of the MRTU and PULP Act is exercised by Industrial Court with material irregularity. He would accordingly pray for setting aside the judgment and order passed by the Industrial Court.

7) *Per contra*, Mr. Jain, the learned counsel appearing for Respondent submits that the Industrial Court has correctly appreciated the fact that Petitioner-society was unable to prove the charges levelled against the Respondent. That the Respondent is deliberately embroiled in false allegations since he was associated with the union activities. That he was removed from service with a view to prevent him from being appointed as Staff Director on the managing committee of the Petitioner-society. That all the three incidents in the chargesheet relate to a very short period of time, clearly indicating a deliberate design by Petitioner-society to somehow throw the Respondent out of service. He submits that witnesses produced by Petitioner-society sang different songs during the course of their deposition. That there are serious discrepancies in their depositions. Industrial Court has correctly held

that there is absence of any corroborative material. He submits that in exercise of limited jurisdiction under Article 227 of the Constitution of India, this Court cannot enter into the realm of reappreciation of evidence, especially while the decision of the Industrial Court is well-supported by the evidence on record. That Industrial Court has not awarded reinstatement or backwages to the Respondent who is victimized but has granted a meagre amount of compensation of Rs. 5 lakhs. He would therefore submit that no interference is warranted in the judgment of the Industrial Court. He accordingly prays for dismissal of the Petition.

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

9) While working as a Driver with the Petitioner-society, Respondent was deputed to drive the vehicles/tempo owned by the Petitioner-society for transportation of fish by members of the society. In chargesheet dated 29 November 2006, three allegations were levelled against the Respondent.

10) In the first charge, it was alleged that on 8 October 2006, fish was being transported by two tempos, one of which was driven by the Respondent. Since the Chairman Mr. Malcam Bhandari felt unwell and fainted during the journey, the driver of the other tempo Chandrakant Thakur drove his tempo to the market to ensure the quality of the fish. He took Mr. Bhandari to the hospital, instructing the Respondent to unload the fish from Mr. Thakur's tempo. However, after

Mr. Thakur returned to the market, he found that Respondent had disappeared from the scene by handing over the keys of Mr. Thakur's tempo to a third person and failed to unload the fish. It was therefore alleged that the Respondent endangered the safety of fish and put the same at the risk of being wasted.

11) In the second charge, it was alleged that one of the members Mr. Anthoni Dinis, who owns a fishing boat, had brought fish on the Jetty on 13 September 2006 and had requested transportation of fish to the office of society. Upon being instructed by the Manager Mr. Bernardt Hendricks, Respondent failed to take tempo to the port for transportation of fish and the fish remained in the boat. It was alleged that the member Mr. Anthoni Dinis suffered loss of Rs. 51,622/- and society suffered loss of commission of Rs. 1600/- on account of degradation of quality of fish due to delay in transportation.

12) Lastly in charge No. 3, it was alleged that on 14 October 2006, Vice Chairman of the society Mr. Malcam Kasughar and other members were present in the society office at 11.30 pm for procurement of ice. At that time, Mr. Malcam Kasughar instructed the Driver Iqbal Shaikh to transport ice meant for three boats and Mr. Shaikh expressed that he would carry the ice after taking some rest. At that time, Respondent suddenly intervened and used unparliamentary language. When Mr. Kasughar inquired with the Respondent as to how he was present in the society office if he was not an employee of the society, Respondent again used extremely derogatory language about the women

and daughters of the Koli community in presence of the other members, including ladies.

13) This is how the three charges were levelled against the Respondent by chargesheet dated 29 November 2006.

14) It is the case of the Petitioner-society that Respondent prevented the enquiry from being conducted by threatening the Enquiry Officer on 27 December 2006. A police complaint was lodged against the Respondent on 27 December 2006. The society therefore issued termination letter dated 11 January 2007 without holding enquiry.

15) Since enquiry was not held, the Petitioner-society led evidence before the Labour Court in Complaint (ULP) No. 25 of 2007 by examining several witnesses. The Labour Court appreciated the evidence of the witnesses and held charge No.1 relating to incidence of 8 October 2006 to be disproved. Part of charge No. 2 relating to disobedience was held to be proved but cause of loss to the member was not held to be proved. Charge No. 3 was held to be proved by the Labour Court. The Labour Court held that though the conduct of the Respondent in respect of charge Nos. 1 and 2 may not be serious, the misconduct committed by him on 14 October 2006 of using indecent language against Vice Chairman in presence of several men and women members was sufficient to dismiss him. Accordingly, the Complaint of Respondent was dismissed by the Labour Court by order dated 03 August 2015. The Industrial Court has, however, reversed the finding of the Labour Court.

16) As observed above, the charge relating to incident dated 8 October 2006 was disproved by the Labour Court itself. So far as charge No. 2 is concerned, the Labour Court had held that cause of loss was not proved by evidence but the allegation of disobedience of order was proved. So far as the third charge relating to the incident of 14 October 2006 is concerned, the same was the main allegation against the Respondent. In relation to the said incident, the The Labour Court in its judgment and order dated 3 August 2015 made the following observations:

> "As per the chargesheet Exh.U-25, the main allegation against the complainant is in respect of incident dtd. 14.10.2006. To prove the charge the respondents have examined Malkam Kasughar at Exh.C-6 and Burnat Bhandari at Exh.C-7A and Ranjana Bhandari at Exh.C-9A. Malkam Kasughar has deposed that he was present on 14.10.2006 in the office of the society at 11.30 p.m. He instructed Iqqbal Shaikh to bring ice for the fishing boat to which Iqbal Shaikh replied that he will go there after taking rest. At that time complainant immediately came to him and in loud voice told to him 'मी सोसायटीचा नोकर नाही, मी सोसायटीच्या पगारावरही नाही, मी सोसायटीच्या पगाराला लंडावर मारतो'. Then he enquired to the complainant that whether he is not servant of the society and if not how he was there in the society premises. To which he replied that 'मी गाडी चालवायला आलो नाही तर कोळ्यांच्या बायांना व मुलींना झवायला आलो आहे'. The peoples were present there got annoyed..."

17) Thus, it was alleged that on 14 October 2006, Respondent used abusive language towards the Vice Chairman Mr. Malcam Kasughar and also made vulgar and disparaging utterances towards wives and daughters of *Kolis* (fishermen). The charge was held to be established by the Labour Court after assessing the evidence on record. However, the Industrial Court has reversed the finding of the Labour Court by recording following findings:

> 18. According to the Ld. Labour Court, the main allegation against the revision applicant is with respect of incident dated 14.10.2006. This allegation is with respect to a misconduct of using abusive and indecent language by the revision

applicant before Vice Chairman of the society Mr. Malcam Kasughar. It is alleged that Mr. Kasughar directed another driver Mr. Iqbal Sheikh to bring all the ice from three boats in one trip, that time, the revision applicant interfered and used abusive and filthy language. It is further alleged therein that at that time many ladies and gents were present. The Ld. Labour Court has considered evidence before it from witness Malcalm Bhandari and Smt. Ranjana Bhandari as well as the revision applicant and held that the said charge has been proved by the respondents. For the purpose to see as to whether the said findings of the Ld. Labour Court do not suffer from any apparent error, I have perused the evidence on record before the Ld. Labour Court because without scrutinizing the evidence legality of judgement of the Ld. Labour Court cannot be assessed.

19. I am aware of the fact that this Court cannot re-assess or re-examine the evidence led before the Ld. Labour Court, but it can be definitely seen as to whether any material witness has left by the Labour Court which amounts to error. In this context, witness of the respondent Mr. Malcolm Kasughar stated in the cross examination that on 14.10.2006 he was present in the office of the society from 7.00 to 1.00 a.m in the night. He has further stated that on that day, no members of the committee were present with him at 11:30 pm. He admits that he himself or the society has not lodged any police complaint about the incidence took place on 14.10.2006. Another witness Mr. Burnat Bhandari who has been examined at **Exh.C-7A** has stated that on 14.10.2006 at about 11.30 in the night, Chairman Mr. Malcam Bhandari and Deputy Chairman Mr. Malcam Kasughar were present in the office of the society and no police complaint was made. Third witness Smt. Ranjana Bhandari has admitted that she is sister of Ex-Chairman Mr. Malcam Bhandari, but she denied that her brother was present at the time of so called incidences taken place on 14.10.2006. If all this evidence is considered, it will clear that there is no corroboration of witnesses with each other.

20. Now coming to the most important aspect with respect to the allegation dated 14.10.2006 that the society has issued a memo after two days i.e. on 16.10.2006, in which it is only mentioned that due to the misconduct committed by the revision applicant with Vice Chairman Mr. Malcam Kasughar, he is restrained from joining duty since 16.10.2006 on the instructions of the Chairman. It is also material to note that in the said memo, nothing has been mentioned about using offensive or filthy language by the revision applicant in the presence of Chairman or the ladies. It is also required to be noted that in the said memo, earlier it is mentioned as "संस्थेचे चेयरमन श्री माल्कम भंडारी यांचे बरोबर केलेल्या गैरवर्तणुकीमुळे". However, the words "vice" has been added before the word Chairman and the word Malcalm Bhandari has been struck down and the word Kasughar has been inserted. Therefore, it is surprising that such serious misconduct using language has taken place, but the same has not been mentioned in the memo which was issued after two days after so called incidence. Secondly, the witness admitted that there is no police complaint made in respect of the said incidence, nor any other independent lady has

complained against the revision applicant or came forward to give evidence. The lady who has been examined is admittedly sister of director Mr. Malcolm Bhandari. This memo dated 16.10.2006 has not at all been considered by the Ld. Labour Court which according to me a clear error apparent on the face of the record and therefore the Ld. Labour Court committed error in holding that charge with respect to incident dated 14.10.2006 has been proved against the revision applicant. The Ld. Labour Court has only held that the complainant has admitted his presence and presence of women at that time and therefore the charge has been proved. However, the Learned Labour Court failed to appreciate chronology of events i.e. issues of a letter by Maharashtra Rajaya Rashtriya Kamghar Sangh to appoint the revision applicant on Director body of the society as workers' director as he is taking care interest of the workers on 01.09.2006. Thereafter, only the memo dated 13.09.2006 was issued restraining the revision applicant from joining duties as he did not remain present in the office. Second memo is dated 16.10.2006 regarding so called misconduct with Malcam Kasughar. It is pertinent to note that prior to September 2006, the record of the revision applicant appears to be clean and only after insurance of letter by the union for appointing him as workers' director, allegations against him where started.

21. The Ld. Labour Court in the judgement has stated that a vague statement about taking part in the union activities has been made by the revision applicant without there being any cogent evidence. At the same time, the Ld. Labour Court appears to have ignored the letter dated 01.06.2009 issued by the union for joining him on director body as earlier director. The said letter is self speaking, in which the union has stated that the revision applicant is taking care of workers' right and interest. This itself shows that the revision applicant was active member of the union. Thereafter by issuing memo, the society tried to keep him away from the duty and when he challenged the same action by filing complaint in the Industrial Court, the society started enquiry against him. Other charges does not appear to be serious, but the only serious charge is about the incident dated 14.10.2006. However, for the first charge it is alleged in the chargesheet that the revision applicant committed misconduct of using indecent and abusive language before gents and ladies and lastly by making farce of enquiry he appears to have been terminated on the ground of loss of confidence. With respect to incident dated 14.10.2006, there was no memo issued through the revision applicant and no explanation was called from him by mentioning that he had used indecent language and hence, I hold that the evidence of the respondent ought to have been careful examined by the Ld. Labour Court. After taking into consideration material peace of evidence and chronology of events, I find that the Ld. Labour Court has committed error which is apparent on the fact of the record. Hence, I hold that the respondent society has failed to prove the misconduct alleged against the revision applicant with respect to so called incident dated 14.10.2006.

18) The Industrial Court has considered the evidence of Mr. Malcam Kasughar, Mr. Bernet Bhandari and Smt. Ranjana Bhandari for arriving at a conclusion that there is no corroboration of witnesses with each other. However, evidence of Mr. Malcam Kasughar clearly indicates use of indecent and unparliamentary language by the Respondent. The Industrial Court has misread the admission given by Mr. Malcam Kasughar that "दि. 14/10/2006 रोजी रात्री 11.30 वाजता माझ्यासोबत कार्यकारिणीतील कोणीच सदस्य हजर नव्हता...". This statement is read by the Industrial Court to mean deposition by Mr. Malcam Kasughar that no managing committee member was present when the incident occurred. This does not mean that the persons named in his examination in chief were not present when the incident occurred. May be that the witness Mr. Bernet Francis Bhandari deposed that society Chairman Mr. Malcam Bhandari was also present when incident occurred, which appears to be inconsistent with deposition of Mr. Malcam Kasughar. However, this discrepancy is not sufficient to completely disregard the depositions of both the witnesses. More importantly, the occurrence of incident is also deposed by one more witness, Smt. Ranjana Francis Bhandari. The Industrial Court however disregarded her evidence merely because she is sister of Ex-Chairman of the society.

19) It must be borne in mind that this is a domestic enquiry and the test to prove the charges in a domestic enquiry is preponderance of probability. Charges need not be proved beyond reasonable doubt. Small discrepancies in depositions of witnesses cannot be a ground for disbelieving in deposition of witnesses. Such discrepancies do not make

out a case of perversity. It is not necessary in a domestic enquiry that there must be corroboration in evidence led by all the witness. The Industrial Court has committed a grave error in giving important to one small inconsistency between depositions of the two witnesses (about presence of managing committee member) What ought to have been appreciated by the Industrial Court is the fact that both the witnesses Mr. Malcom Kasughar and Mr. Bernet Francis Bhandari have deposed about use of abusive and derogatory language by the Respondent and that there is no inconsistency in the same. In such circumstances, the discrepancy about presence of Society's Chairman ought to have been ignored by the Industrial Court.

20) The industrial Court has also erred in completely disregarding the deposition of Smt. Ranjana Bhandari merely because she happens to be the sister of ex-chairman. There is no dispute that Smt. Ranjana Bhandari herself is engaged in fishing activities and was in the Society's Office for collection of ice on 14 October 2006. Thus the case does not involve setting up a related witness, who had no occasion to be present at the time of the incident. Therefore mere relationship of the witness with the ex-office bearer of the Society cannot be a reason for completely discarding her evidence. What needs to be emphasized is the capacity of the witness as a fisherwoman and not her relationship as sister of the ex-office bearer. She was present at the spot in her capacity as a fisherwoman and not in capacity as sister of ex-chairman.

21) Yet another factor considered by the Industrial Court for disbelieving the incident of 14 October 2006 is the manner in which

Memo dated 16 October 2006 was couched. The Industrial Court has held that the Memo did not include the allegation of using filthy language by the Respondent. The Memo dated 16 October 2006 was issued to the Respondent essentially to ensure that the Respondent did not attend duties. It was not for conducting disciplinary inquiry against him. Therefore, it was not necessary for the Society to give all the details of the Respondent's misconduct in the said Memo. Therefore, mere absence of allegation of use of indecent or unparliamentary language in the Memo dated 16 October 2006 cannot be a ground for concluding that the incident may not have occurred. Referring to the conduct of misbehavior of the Respondent with Mr. Malcam Kasughar in the Memo dated 16 October 2006 was sufficient and it was not necessary to reproduce the entire details of misconduct.

22) The third factor considered by the Industrial Court for disciplinary incident of 14 October 2006 is non-lodging of police complaint in respect of that incident. The Industrial Court has however failed to appreciate that lodging of police compliant is not a *sine qua non* for holding of disciplinary inquiry. The employer in a given case may think it appropriate not to lodge criminal prosecution and give importance to enforcing discipline amongst the staff members by conducting domestic inquiry. In my view therefore, non-lodging of police complaint is an altogether irrelevant factor for deciding the issue of commission of service-related misconduct by the Respondent.

23) Thus, the parameters applied by the Industrial Court while deciding the Revision of the Respondent are entirely incorrect leading to erroneous conclusion.

24) In a domestic inquiry, the findings can be treated as perverse only if there is total absence of evidence. The present case does not involve perversity in the light of availability of some evidence on record for proving the charge relating to incident of 14 October 2006. It is well-settled position that courts and tribunals cannot go into the issue of adequacy of evidence for a domestic enquiry. It is only in a case where there is absolutely no evidence that courts or tribunal are justified in interfering in the finding of the guilt. Reference in this regard can be made to the judgment of the Apex Court in ***State of Haryana and Anr. Vs Rattan Singh***[1] in which it is held as under:

> 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

[1] (1977) 2 SCC 491

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 added)

25) Again, in ***Kuldeep Singh vs. Commissioner of Police and Ors.***[2], the Apex Court has held as under:

6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority.

7. In Nand Kishore Prasad v. State of Bihar [(1978) 3 SCC 366] it was held that the disciplinary proceedings before a domestic tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the enquiry officer would be perverse.

[2] (1992) 2 SCC 10

> 8. The findings recorded in a domestic enquiry can be characterised as perverse if it is shown that such findings are not supported by any evidence on record or are not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. This principle was laid down by this Court in State of A.P. v. Rama Rao [(1964) 2 LLJ 150] in which the question was whether the High Court under Article 226 could interfere with the findings recorded at the departmental enquiry. This decision was followed in Central Bank of India Ltd. v. Prakash Chand Jain [(1969) 2 LLJ 377] and Bharat Iron Works v. Bhagubhai Balubhai Patel [(1976) 1 SCC 518] . In Rajinder Kumar Kindra v. Delhi Admn. [(1984) 4 SCC 635] it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are its mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.
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> 9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.
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> 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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> *(emphasis added)*

26) In my view therefore, the Industrial Court has exercised revisional jurisdiction under Section 44 of the MRTU and PULP Act with material irregularity. It has virtually reappreciated the evidence and has gone into the issue of quality and quantity of evidence, which was beyond its jurisdiction. Findings are recorded by the Industrial Court that punishment imposed on the Respondent is shockingly disproportionate and that the Respondent is victimized. I am unable to agree with those

findings. Looking at the utterances made by the Respondent on 14 October 2006 towards women of *Koli* community, it cannot be concluded that the misconduct is not serious.

27) So far as finding of the Industrial Court about victimization is concerned, in every case, presumption of victimization cannot be drawn merely because action is taken against an office-bearer of the Union. Courts and Tribunals need to first assess the conduct of the delinquent employee independent of his/her status as office-bearer and find out whether the conduct amounts to misconduct. If the conduct of even an office-bearer of the union constitutes misconduct, no special protection can be extended to such office-bearer and inference of victimization cannot be readily drawn.

28) This Court is aware of the position that the Industrial Court has not awarded the relief of reinstatement or backwages to the Respondent. It has, however, awarded lumpsum amount of Rs. 5 lakhs. Ordinarily, this Court would not have interfered in award of compensation in exercise of extraordinary jurisdiction under Article 227 of the Constitution of India. However, the misconduct committed by the Respondent is grave. Petitioner-society is justified in terminating his service with a view to ensure discipline in its organization. An employee who had become incalcitrant and who has indulged in misbehaving with the Vice Chairman by use of unparliamentary and indecent language cannot be rewarded with compensation. It has come on record that, the Respondent has used derogatory language towards *Koli* women in the

incident of 14 October 2006. There was no provocation for Petitioner to utter the words which he has uttered towards the Vice Chairman and women. On 14 October 2006, Mr. Malcam Kasughar had instructed the other Driver Iqbal Shaikh and there was no occasion to intervene in such conversation by the Respondent. Thus, the utterances made by Respondent were not a reaction to any action taken against him. This indicates the mindset of the Respondent who has indulged in the act of hurling abuses and making utterances in unparliamentary language which are derogatory to women in presence of other women. Such tendency on behalf of employees needs to be dealt with iron hands so as to maintain discipline in the organization. Respondent had apparently become an element of terror and even prevented the enquiry officer from conducting enquiry by threatening him. While the Industrial Court laid emphasize on non-filing of police complaint with regard to incident of 14 October 2006, it conveniently ignored the complaint lodged in respect of threats given to the Enquiry Officer on 27 December 2006.

29) Respondent made derogatory utterances against women belonging to mainly *Koli* community. Many fisherwomen were present when the utterances were made. Thus, derogatory statements were not confined only in relation to Respondent's employment and the same were made towards someone for whose benefit the Respondent was employed. He was employed to drive *inter alia* the fisherwomen on daily basis. The utterances made by him on 14 October 2006 indicated his mindset towards the persons for whose benefit he was employed with the organization. Such a person cannot be rewarded with compensation. The

Industrial Court has not appreciated this position and has erroneously proceeded to set aside the order of the Labour Court by rewarding the Respondent for his unpardonable conduct.

30) In my view therefore, the order of the Industrial Court is indefensible and liable to be set aside. The Petition accordingly succeeds, and I proceed to pass the following order:

(i) Judgment and order dated 7 January 2021 passed by Member, Industrial Court, Thane in Revision Application (ULP) No. 75 of 2015 is set aside.

(ii) Judgment and order of Labour Court dated 3 August 2015 dismissing Complaint (ULP) No. 25 of 2007 is upheld.

31) Writ Petition is allowed in above terms. Rule is made absolute. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]