:eta Sawant

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5672 OF 2011

WITH

INTERIM APPLICATION NO. 9837 OF 2022

Thane Municipal Corporation ***...Petitioner***

: Versus :

Prabhakar Chango Shinde ***...Respondent***

Mr. Mandar Limaye *with Mr. Vedant Bende, for the Petitioner.*

Mr. R.R. Nair *for the Respondent.*

CORAM: SANDEEP V. MARNE, J.

Reserved On: 22 OCTOBER 2026.

Pronounced On: 2 NOVEMBER 2026.

Judgment:

1) The Petition raises an issue as to whether a delinquent employee of Municipal Corporation, who had admitted the allegation of misappropriation of municipal funds, can be permitted to be let off the hook by restraining the disciplinary authority from imposing any punishment on him? Respondent in the present case has admitted

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misappropriation of huge amount of Rs. 2,77,116/- in a short duration of 3 months in the year 2004 by not depositing in municipal accounts the amounts collected by him towards water supply from consumers. He admitted the allegation, refunded the misappropriated amount and prayed for pardon. The Municipal Corporation took a lenient view and proposed imposition of punishment of only reversion to the lower post on the Respondent. The Respondent thereafter turned around and approached the Industrial Tribunal challenging the show cause notice and secured a stay order on proposed punishment. The Industrial Tribunal has set aside the show cause notice on the ground that admission of allegations in the reply to the chargesheet was not sufficient and there ought to have been formal recording of plea of admission. During pendency of the Petition, Respondent has retired from service on 31 July 2021 after working on the promotional post. Therefore, whether Respondent can be permitted to go scot-free merely because he has retired from service is also an issue for consideration in the present petition.

2) Thane Municipal Corporation has filed the present Petition challenging the judgment and order dated 18 April 2011 passed by the learned Member, Industrial Court, Thane allowing Complaint (ULP) No. 44 of 2009 filed by the Respondent. By the impugned order, the Industrial Court has held that Petitioner has committed unfair labour practice under Item-9 of Schedule-IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. (**MRTU & PULP Act)**. The Industrial Tribunal has accordingly quashed and set aside final notice dated 4 February 2009 issued by the Petitioner

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proposing to impose punishment of reversion to the lower post on the Respondent.

3) Petitioner is a Municipal Corporation established under the provisions of the Maharashtra Municipal Corporations Act, 1949 for the City of Thane. Respondent was appointed in the municipal service as Clerk on 14 March 1983. He was promoted to the post of A-Grade Clerk on 22 July 1993. Respondent was employed at the relevant time on the post of 'A' Grade Clerk in the Water Supply Department, Manpada. He was placed under suspension by order dated 29 March 2005. A disciplinary inquiry was initiated against him by chargesheet dated 15 July 2006 alleging six charges. In the first charge, it was alleged that during 1 April 2004 to 15 July 2004, Respondent recovered amounts towards water bills, but in the amount deposited with the Municipal Corporation, there was difference of amount of Rs.1,46,533/-. In the second charge, it was alleged that Petitioner deposited amount of Rs.40,000/- out of Rs.1,46,533/- only after discovery of his misconduct and promised to refund the balance amount. Accordingly, he paid Rs.40,000/- on 21 February 2005, Rs.50,566/- on 7 April 2005 and Rs.55,967/- on 16 April 2005. It was alleged that he admitted misconduct of not depositing amount of Rs.1,46,533/- in a timely manner. In the third charge, it was alleged that while working in the Water Supply Department from 1 April 2004 to 18 July 2004, Respondent did not record entries relating to receipt of payments and it was found that in every receipt book, he has made only 2/4 receipts by keeping the other receipts blank. In the fifth charge, it was alleged that Respondent committed misconduct of amount of Rs.1,46,533/-. In the sixth charge, it

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was alleged that in the audit report of Chief Auditor, it was later discovered that he had actually misappropriated the amount of Rs.2,77,116/-.

4) Respondent replied to the chargesheet on 17 July 2006 and raised the defense that he had loans on account of which certain mistakes were committed by him. He submitted that the entire amount of Rs.2,77,116/- has been paid by him to the Municipal Corporation. He requested for a pardon. The Municipal Corporation revoked the suspension on 4 July 2007. After considering the reply of the Petitioner, it was concluded that he admitted all the charges and accordingly, the Municipal Corporation proposed imposition of penalty of reversion from A-Grade Clerk to the post of Clerk and issued a show cause notice dated 4 February 2009 to the Respondent.

5) Respondent approached the Industrial Tribunal, Thane by filing Complaint (ULP) No. 44 of 2009 challenging the show cause notice dated 4 February 2009. The Complaint was resisted by the Petitioner by filing a Written Statement. The Industrial Court framed issues based on pleadings. The parties filed *purshis* not intending to lead oral evidence. By judgment and order dated 18 April 2011, the Industrial Court has allowed the Complaint filed by the Respondent and held that the Petitioner has committed unfair labour practice under Item-9 of Schedule-IV of the MRTU and PULP Act, 1971. The Tribunal has set aside the final notice of reversion dated 4 February 2009. Aggrieved by Industrial Court's judgment and order dated 18 April 2011, Petitioner-

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Municipal Corporation has filed the present Petition. By order dated 26 March 2012, the Petition was admitted and interim relief was refused.

6) During pendency of the Petition, Respondent has retired from service on attaining the age of superannuation w.e.f. 31 July 2021. Petitioner has filed Interim Application No. 9837 of 2022 for early hearing of the Petition. The learned counsel for Respondent has complained that Respondent's gratuity is withheld. He submitted that the Petitioner is in extreme financial difficulty since his wife is suffering from ailments. Accordingly, with the consent of the learned counsel appearing for the parties, the Petition is taken up for final hearing.

7) Mr. Limaye, the learned counsel appearing for the Petitioner-Municipal Corporation has submitted that the Industrial Tribunal has grossly erred in entertaining the complaint against a mere show cause notice proposing to impose penalty on the Respondent. That the impugned order is without jurisdiction as it sought to interdict the disciplinary proceedings by challenging a mere to a show cause notice. He submits that Respondent is found to be guilty of serious misconduct of temporary misappropriation of amounts collected by him towards water supply bills. That Respondent deposited misappropriated amount after being caught. That he admitted all the charges and therefore no inquiry was necessary. He submits that despite committing grave misconduct of misappropriation, penalty of only reversion was proposed. He therefore submits that the impugned order of the Industrial Tribunal deserves to be set aside and the Municipal Corporation be permitted to impose the proposed penalty on the Respondent.

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8) *Per-contra*, Mr. Nair, the learned counsel appearing for the Respondent opposes the Petition submitting that the Industrial Court has properly appreciated the entire material on record for arriving at the conclusion that there is no admission of charges in the present case. That Respondent merely explained his conduct by way of reply dated 17 July 2006, which does not contain any statement to the effect that he admitted the charges. That the Petitioner-Municipal Corporation unconditionally withdrew the suspension order on 4 July 2007. That after one year and 7 months, Petitioner turned around and issued show cause notice for punishment.

9) Mr. Nair submits that the impugned show cause notice is in violation of the provisions of Rule 8(5)(a) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (**MCS Rules**). That mere use of the phrase '*inadvertent mistake*' in the reply dated 17 July 2006 cannot be treated as admission of misconduct. That Rule 8(5)(a) requires examination of evidence and recording of distinct findings on each individual charge. That preliminary say submitted by the Respondent cannot be misconstrued as a formal defense. That there is flagrant violation of principles of natural justice as no inquiry is conducted. That therefore commission of unfair labour practice under Item-9 of Schedule-IV is clearly established. That since there is systematic failure to implement the conditions of service/contract, unfair labour practice under Item-9 is clearly established. Mr. Nair has repeatedly emphasized the financial difficulties of the Respondent and the ailments suffered by the Respondent and his wife.

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10) Lastly, Mr. Nair submits that the petition is actually rendered infructuous on account of Respondent's retirement from service. Now it is not open to impose the proposed punishment on the Respondent. That the entire suspension period is erroneously excluded for pensionary purposes though the same is required to be treated as period spent on duty. That Respondent's gratuity is also illegally withheld. That Respondent is a handicapped senior citizen undergoing extreme financial restraints. That his wife is suffering from blood cancer and health complications requiring expenses of Rs.1.13 crores forcing him to sell his residential house. That Respondent himself suffers from heart disease. Mr. Nair accordingly prays for release of all benefits of the Respondent by dismissing the Petition.

11) Rival contentions urged on behalf of the parties now falls for my consideration.

12) While working as A-Grade Clerk with the Water Supply Department of Thane Municipal Corporation, Respondent was subjected to disciplinary inquiry on allegations of misappropriation of municipal funds. Before the issuance of the charge-sheet, the Municipal Commissioner placed the Respondent under suspension by order dated 29 March 2005 upon discovering that the Respondent had failed to deposit an amount of Rs. 1,46,533/- collected from consumers towards water bills into the account of the Municipal Corporation during the period from 1 April 2004 to 15 July 2004. Thereafter, on 21 February 2005, the Respondent deposited an amount of Rs. 40,000/- and sought further time to deposit the remaining amount. Thus, it became clear that

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Respondent had no dispute about non-deposit of amount of Rs.1,46,533/- and he was willing to deposit the same with the Municipal Corporation. Once Respondent's misconduct came into light, he was placed under suspension on 29 March 2005. By the time, chargesheet was issued to him on 15 July 2006, he made further deposits of Rs.50,566/- on 7 April 2005 and Rs.55,967/- on 16 April 2005. After deposit of the entire amount of Rs.1,46,533/-, Respondent submitted his representation and admitted the allegation of failure to deposit the collected amounts from the consumers in the municipal accounts. In the meantime, it appears that the Auditor examined the reports and submitted audit report dated 13 September 2005 stating that the total amount misappropriated by Respondent was actually Rs.2,77,116/-. It appears that the Respondent thereafter remitted further amounts of Rs.95,000/- on 6 December 2005 and Rs.35,583/- on 8 December 2005.

13) The Municipal Corporation thereafter issued memorandum of chargesheet under Rule 8 of the MCS Rules on 15 July 2006 to the Respondent alleging six charges as enumerated above. The charges were essentially in respect of the initially discovered misappropriated amount of Rs.1,46,533/- and final misappropriated amount of Rs.2,77,116/-. Also, the allegations were levelled about the manner in which Respondent kept the receipt books blank. After receipt of the chargesheet dated 15 July 2006, Respondent submitted reply dated 17 July 2006. In his reply, Respondent admitted that he committed mistakes as alleged in the chargesheet and attempting to justify the same by citing his family problems. The relevant portion of Respondent's reply dated 17 July 2006 reads thus:

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> महोदय, आपण दिलेल्या **ज्ञापन मध्ये उल्लेख केलेल्या माझ्या चुका** हया सर्व माझ्या कौटुंबिक परिस्थितीमुळे. माझ्याकडुन झालेल्या आहेत हया सर्व चुका मी जाणिवपुर्वक केलेल्या नाहीत त्या माझ्याकडुन अनभिज्ञपणे घडलेल्या आहेत हा एक प्रकारे माझ्या आयुष्याचा अपघात आहे असे मला वाटत आहे.
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> *(emphasis and underlining added)*

14) Thus, the Respondent emphatically admitted that he committed the 'mistakes indicated in the chargesheet'. He also prayed for pardon and gave undertaking not to commit the mistake again. The relevant portion of the reply containing request for pardon, as well as undertaking reads thus:

> महोदय, ह्या सर्व बांबीची मी आपप्पाकडुन **संपूर्णतः माफी** मागत आहे व आपण मला **माफ कराल**. मी आपणास अशी **हमी** देतो की माझ्या हातुन अशा कोणत्याही चुका अथवा गैर वर्तणुकीचे काम भविष्यात घडणार नाही असे मी आपणांस विनंतीपूर्वक लिहुन देत आहे.
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> महोदय, मी गेली २२ वर्षे ठाणे पालिकेत केलेल्या सेवेचा विचार करुन आपण मला या संपूर्ण बाबीत मला व माझ्या. कुटूंबाला **माफी** दयाल अशी मी आपणांस विनंती करीत आहे मी माझे कार्यालयीन काम अत्यंत कर्तव्यादक्ष व तत्परतेने करेन अशी **लेखी हमी** देत आहे मी केलेल्या खुलाशाचा आपण सहानुभूतिपुर्वक विचार करुन मला परत कामावर पुर्नस्थापित कराल अशी मी व माझे कुटूंबाचे वतीने आपणांस नम्र विनंती करीत आहे.
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> *(emphasis and underlining added)*

15) The Industrial Court has considered the reply submitted by the Respondent to the chargesheet and took up for consideration as to whether the statements made in the reply could be treated as confession of guilt. The Industrial Court has arrived at the conclusion that it was impermissible to issue final notice for punishment merely on the basis of

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reply dated 17 July 2006. It is held that guilt-plea of the Respondent was required to be recorded in the inquiry which is not done in the present case.

16) In my view, the Industrial Court has grossly erred in holding that reply given by the Respondent on 17 July 2006 is not admission of charges and that it was necessary to conduct inquiry for imposition of even a minor penalty. Inquiry becomes necessary only to establish charge when the delinquent employee disputes the same. The very purpose of seeking reply of the delinquent employee to the chargesheet is to examine whether it is necessary to conduct the inquiry. In a case where the charge is admitted, there is no necessity of holding any inquiry.

17) The inquiry in a chargesheet is conducted by examination of witnesses and by production of evidence with a view to afford an opportunity to the delinquent employee to deal with the evidence on the basis of which the charges are sought to be established. However, when delinquent employee admits the charge in reply to the chargesheet, there is no necessity of holding any inquiry.

18) The Industrial Court has grossly erred in holding that the 'plea' needs to be recorded in the inquiry to be initiated post issuance of chargesheet. The Industrial Court appears to have dealt with the case as if it is a criminal prosecution. Unlike criminal prosecution, where plea of the accused is required to be recorded by the Court in the trial, in disciplinary proceedings, it is not mandatory to hold inquiry when the charge is admitted. In disciplinarity proceedings, there are *two stages*

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where plea of the delinquent employee is sought. The *first stage* is at the time of service of chargesheet. If upon receipt of the chargesheet the delinquent employee admits the charge, holding of inquiry gets dispensed with. As observed above, the very purpose of service of chargesheet and seeking a reply thereon is to verify whether it is necessary to hold the inquiry. It is impermissible to directly appoint an inquiry officer with service of chargesheet under the MCS Rules. The stage of seeking reply from the delinquent employee is important and vital. In a given case, the disciplinary authority may get convinced with the reply/explanation offered by the employee and may decide, to drop the proceedings. Conversely, the employee may admit the charge rendering holding of inquiry unnecessary. The *second stage* is where the inquiry officer is appointed and the inquiry formally commences, at which stage the inquiry officer records the plea of the employee. At this stage also the employee can admit the charge rendering holding of further inquiry unnecessary and the inquiry officer can abandon the inquiry and submit a report to the disciplinary authority that the charge is admitted. It is not mandatory that in every case, the proceedings must be taken to the second stage. Where the charge is admitted at the first stage, the disciplinary authority can straightaway proceed to punish the employee.

19) It must also be borne in mind that admission of charge before the disciplinary authority may in fact assume higher weightage than admission before the inquiry officer, as the disciplinary authority has the power to punish the employee as opposed to the inquiry officer who can merely make his recommendations, which are not binding on

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the disciplinary authority. Therefore admission of charges before the disciplinary authority cannot be discarded by holding that the plea of admission of charges must be formally recorded by the inquiry officer.

20) In the present case, the Respondent has emphatically admitted the allegations levelled against him in the chargesheet. In ***ADM (City) v. Prabhakar Chaturvedi***[1], the Apex Court has dealt with somewhat similar case of temporary misappropriation by the employee. It is held by the Apex Court as under:

> 2. By consent of learned advocates of parties the appeal was finally heard and is being disposed of by this judgment. Respondent 1 was an employee of the appellant. **He was alleged to have misappropriated an amount of Rs 21,094.80. The said misconduct was detected on 8-12-1984. The amount was collected by him partly in March 1984 and partly in August 1984. The said amount was payable to Class III and Class IV employees of the appellant on account of bonus and other allowances after deduction for provident fund. This amount was required to be deposited in the Post Office Account of employees individually by Respondent 1 along with his associate and for that purpose he had taken this amount from the office of appellant. Instead of depositing the said amount it was kept by Respondent 1 and on detection the amount was tendered only on 14-12-1984. Thus there was temporary misappropriation of this amount for a period of eight months and less. Respondent 1 and his associate have admitted this fact in writing and deposited the amount on 15-12-1984.** After a departmental enquiry Respondent 1 was dismissed from service on 29-11-1985. Respondent 1's statutory appeal before the appellate authority failed. He thereafter filed writ petition in the High Court of Judicature at Allahabad. His writ petition came to be allowed by the learned Single Judge on the ground that the authorities had not given adequate opportunity to Respondent 1 to defend as he was not permitted to examine witnesses nor was he supplied documents asked for by him. Accordingly the dismissal order was quashed and set aside. Appellant was directed to reinstate Respondent 1 with full back wages. It is this order of the High Court which is brought in challenge by the appellant.
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> xxx

[1] (1996)2 SCC 12

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4. Having considered the rival contentions and also having gone through the written submissions filed on behalf of Respondent 1 we find that the order of the High Court cannot be sustained. So far as non-supply of Enquiry Officer's report is concerned it has to be kept in view that no such contention was raised in the writ petition before the High Court. The High Court has noted this aspect. Nothing could be pointed out to us by learned counsel for the respondents to controvert this observation of the High Court. Whether the pleadings in the writ petition should be treated as pleadings in a suit or not is not relevant for deciding this question. Reliance placed in the written submission on R. v. Barnsley Metropolitan Borough Council [(1976) 3 All ER 452 : (1976) 1 WLR 1052] also is of no avail to Respondent 1. The said decision cannot support the contention canvassed on behalf of Respondent 1 that even if there is no grievance made in the writ petition the High Court is bound to consider the said grievance. So far as the grievance about the non-examination of witnesses and non-supply of documents is concerned, in our view, the High Court has erred in ignoring the salient features of the case, namely, that **Respondent 1 himself by his statement dated 14-12-1984 admitted to have received an amount of Rs 21,000 and odd and which could not be deposited by him along with his associate on account of their carelessness and fault.** It is difficult to appreciate how the said statement could be said to have been brought about by any coercion as tried to be submitted on behalf of Respondent 1. But even apart from that the order sheet of the Enquiry Officer clearly shows that Respondent 1 Prabhakar as well as Sajan Kumar had submitted that they have not to give any documentary or oral evidence and that is how their evidence was closed. Under these circumstances the subsequent request by Respondent 1 to examine four more witnesses was rightly considered by the Enquiry Officer to be an afterthought and accordingly such request was rightly rejected. In fact on account of the clear admission contained in writing given by Respondent 1 on 14-12-1984 the charge against him stood proved on admission and the only question that remained to be considered was about the nature of punishment to be imposed on him. When Respondent 1 was guilty of misappropriation of such a large amount of Rs 21,000 and odd for couple of months it could not be said that the punishment of dismissal as imposed on him was in any way uncalled for or was grossly disproportionate to the nature of the misconduct proved against Respondent 1. For all these reasons the order of the High Court cannot be sustained and is, therefore, quashed and set aside. The writ petition filed in the High Court will stand dismissed. However, in the facts and circumstances of the case there will be no order as to costs.

(emphasis and underlining added)

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21) The Division Bench of this Court in ***Employees State Insurance Corporation, New Delhi and another Versus. A.V. Tungare and others***[2] has discussed the law on the subject of admission made during the course of domestic inquiry and has held as under:

> **17**. Having considered the rival submissions of the parties we may note that the undisputed facts are that a charge-sheet dated 23-5-1990 containing 11 charges was issued to the 1st respondent. An Inquiry Officer was duly appointed to conduct a departmental enquiry. All the documents in support of the charges were duly furnished to the 1st respondent. An opportunity was given to the 1st respondent to represent his case before the Inquiry Officer. The 1st respondent also appointed Shri J.D. Barahate as his defence Assistant. In the inquiry proceedings held on 3-3-1992 the 1st respondent submitted an unconditional acceptance of all the charges and pleaded for a lenient view to be taken in the matter against him. Furthermore, the 1st respondent also submitted a letter dated 3-2-1992 stating that he has voluntarily and unconditionally pleaded guilty to all the charges levelled against him and reiterated that he be pardoned for the same. The 1st respondent further submitted a letter to the Director General dated 29-5-1992 in which the 1st respondent thanked the Director General for relieving him of the botheration of the departmental inquiry and stated that he has no comments to offer in respect of the inquiry report and made a request to take a lenient view in view of the reasons as stated by him in the said letter. These circumstances clearly go to show that admissions of the charges were voluntary and not due to any undue influence on the part of the defence Assistant and the Inquiry Officer. However, contrary to the said position in the Memorandum of Appeal filed against the order of dismissal the 1st respondent for the first time took a stand that he had admitted to the charges as he was told to do so by his defence Assistant and the Inquiry Officer. It is noteworthy that the 1st respondent at no point of time either in the enquiry proceedings or before filing of the appeal made any grievance about the alleged collusive conduct of the defence assistant and the inquiry officer to induce him to admit the charges. No grievance of any duress, force or presence was ever made. In fact, the 1st respondent's letters dated 3-2-1992 and 29-5-1992 completely nullify such a plea as taken by the 1st respondent before the Appellate Authority. We do not think it was permissible in law for the 1st respondent to adopt such a contrary position to retract from the admissions as made before the Inquiry Officer and the same was a clear afterthought. Admissions made before the Inquiry Officer would not lose their efficacy and relevance for the purpose of the wheels of the

[2] 2014 (5) Mh.L.J. 219

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inquiry set into motion unless there are acceptable reasons that the same are not voluntary or are under force or duress.

In this context, to appreciate the consequence of admission of a fact the general position in law can be seen by referring to the provisions of section 58 of the Evidence Act. Section 58 deals with the facts which are admitted and hence not required to be proved. It provides that no fact need to be proved in any proceedings which the parties thereto or their agents agree to admit at the hearing or which before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings. The proviso to this section states that the Court may in its discretion, require the facts to be admitted to be proved otherwise than by such admissions.

The 1st respondent in writing had admitted to the charges and hence as a legal requirement such admission becomes relevant. The charges which are admitted by the 1st respondent were not required to be proved and the inquiry can be said to be rightly closed. Pertinently the 1st respondent agreed to close the enquiry.

18. It is necessary to advert to the following judgments of the Supreme Court:

The Judgment of the Supreme Court in the case of *Additional District Magistrate (city) Agra* v. *Prabhakar Chaturdevi* (supra) dealt with a case arising out of misappropriation of money by an employee who had admitted the fact in writing. After a disciplinary inquiry, the employee was dismissed from service. His statutory appeal also failed. In a Writ petition filed by the employee before the High Court of Judicature at Allahabad, the same was allowed by the learned Single Judge on the ground that the authorities had not given adequate opportunity to the employee to defend as he was not permitted to examine witnesses nor he was supplied the documents, the dismissal order was quashed and set aside and the employee was directed to be reinstated with full back wages. In a challenge to the said order of the Allahabad High Court before the Supreme Court, the Supreme Court observed as under:

> "4 .....in our view, the High Court has erred in ignoring the salient features of the case namely that Respondent himself by his statement dated 14-12-1984 admitted to have received an amount of Rs. 21,000/- and odd and which could not be deposited by him along with his associate on account of their carelessness and fault. It is difficult to appreciate how the said statement could be said to have been brought about by any coercion as tried to be submitted on behalf of the respondent. But even apart from that the order sheet of the Enquiry Officer clearly shows that Respondent Prabhakar as well as Sajan Kumar had submitted that they have not to give any documentary or oral evidence and that is how their evidence was closed. Under these circumstances the subsequent request

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> by Respondent to examine four more witnesses was rightly considered by the Enquiry Officer to be an afterthought and accordingly such request was rightly rejected. In fact, on account of the clear admission contained in writing given by Respondent on 14-12-1984 the charge against him stood proved on admission and the only question that remained to be considered was about the nature of punishment to be imposed on him."
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> (emphasis supplied)

19. In the case of *Channabasappa Basappa Happali* v. *State of Mysore*, (1971) 1 SCC 1 the Supreme Court has held as under:

> 4. "The pleas of the petitioner are quite clear. In fact he admitted all the relevant facts on which the decision could be given against him and therefore it cannot be stated that the enquiry was in breach of any principle of natural justice. At an enquiry facts have to be proved and the person proceeded against must have an opportunity to cross-examine witnesses and to give his own version or explanation about the evidence on which he is charged and to lead his defence. In this case, the facts were two-fold that he had stayed beyond the sanctioned leave and that he had proceeded on a fast as a demonstration against the action of the authorities and also for what he called the upliftment of the country etc. These facts were undoubtedly admitted by him. His explanation was also there and it had to be taken into account. That explanation is obviously futile, because persons in the police force must be clear about extension of leave before they absent themselves from duty. Indeed this is true of everyone of the services, unless of course there are circumstances in which a person is unable to rejoin service, as for example when he is desperately ill or is otherwise reasonably prevented from attending to his duties. This is not the case here. The petitioner took upon himself the decision as to whether leave could be extended or not and acted upon it. He did go on a fast. His later explanation was that he went on a fast for quite a different reason. The enquiry officer had to go by the reasons given by him. On the whole therefore the admission was one of guilty insofar as the facts on which the enquiry was held and the learned Single Judge in the High Court was, in our opinion right in so holding."
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> (emphasis supplied)

20. In the case of *Delhi Transport Corporation* v. *Shyam Lal* (supra) their Lordships of the Supreme Court have observed as under:

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"7. We find that the Tribunal's conclusions are prima facie not correct. The statement made by the passenger who had paid excess money to the checking officer is not in the nature of hearsay evidence. Additionally, the effect of the admission regarding guilt as contained in the letters dated 13-1-1989 and 24-2-1989 have not been considered in the proper perspective. It is a fairly settled position in law that admission is the best piece of evidence against the person making the admission. It is however, open to the person making the admission to show why the admission is not to be acted upon."

(emphasis supplied)

21. The judgment of the Supreme Court in *Chairman and Managing Director* v. *Goparaju Sri Prabhakar Haribabu* (supra) dealt with an issue arising out of disciplinary proceedings. A charge-sheet was issued to the delinquent employee, for absence without leave for a period of 53 days, the employee had admitted the charges and promised to be regular. In the disciplinary proceedings the employee had accepted his guilt whereupon the inquiry proceedings were closed recording the admission of the charges as made by the employee. The disciplinary authority upon consideration of the inquiry report held the employee guilty of all the charges and ordered removal from service. In this context, the Supreme Court observed as under:

"16. He in his explanation in answer to the charge-sheet pleaded guilty admitting the charges. In terms of section 58 of the Evidence Act, charges having been admitted were not required to be proved. It was on that premise that the enquiry proceedings was closed. Before the enquiry officer, he did not submit the explanation of his mother being ill. He despite opportunities granted to report to duty, did not do it. He failed to explain even his prior conduct."

18. It was observed that judicial admissions can be made the foundation of the rights of the parties.

19. A subsequent explanation before another authority, which had not been pleaded in the departmental proceedings, cannot by itself be a ground to hold that the principles of natural justice had not been complied with in the disciplinary proceedings,

(emphasis supplied)

22. In a recent judgment of the Supreme Court in the case of *Manoj H. Mishra* v. *Union of India* (supra) Their Lordships of the Supreme Court in para 35 have observed as under:

"35. In our opinion, the learned Single Judge and the Division Bench have not committed any error in rejecting the submissions made by the learned counsel for the appellant. We are not inclined to examine the issue that the actions of the appellant would not constitute a misconduct under the Rules. In view of the admissions made by the

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appellant, no evidence was adduced before the enquiry officer by either of the parties. Once the enquiry officer had declined to accept the conditional admissions made by the appellant, it was open to him to deny the charges. But he chose to make an unequivocal admission instead of reiterating his earlier denial as recorded in preliminary hearing held on 26-12-1994. The appellant cannot now be permitted to resile from the admission made before the enquiry officer. The plea to reopen the enquiry has been rejected by the appellate as well as the revisional authority."

(emphasis supplied)

23. Learned counsel on behalf of the petitioner is also justified in relying on the judgment of the learned Single Judge of this Court Mr. Justice R.M. Lodha, (as His Lordship then was) in case of *Canara Bank* v. *H.T. Koli.* (supra). Dealing with a case arising out of admission of the guilt in paras 6, 7 and 8 the following observations were made:

"6. Once the defence of the employee that his statement made on May 20, 1982 and May 21, 1982 was recorded under duress or force or pressure is not accepted, the admission of the employee in unequivocal term proves his misconduct. I have already observed above that the facts and circumstances of the case do not justify the conclusion that the statement made by the employee on May 20, 1982 and May 21, 1982 was not voluntary or was recorded under pressure or force and therefore, the only conclusion that can be drawn on the basis of the employee's admission is that the charge against him is proved.

7. Thus, the finding recorded by the Industrial Tribunal that the charge against the employee is not proved cannot be sustained.

8. Looking to the serious and grave nature of misconduct of fraud and forgery committed by the employee defrauding the employer-bank and causing substantial monetary loss, it cannot be said that the punishment of dismissal inflicted by the employer-bank was unjustified or shockingly disproportionate to the charge which has been held proved."

24. Learned counsel for the petitioner is also justified in relying upon a similar view taken by the learned Single Judge of this Court by Dr. Justice D.Y. Chandrachud (as His Lordship then was) in the case *Kolhapur Zilla Sahakari Dudha Utpadak Sangh* v. *Shivaji Shankar Pharakate* (supra) wherein the delinquent employee had admitted the charges where the Industrial Court despite admission of the charges had ordered reinstatement, it was observed in paras 9 and 10 as under:

"9. The record of the enquiry discloses that the workmen were permitted to be defended by an Advocate. After the enquiry had commenced upon the issuance of a charge-sheet, the evidence of the managements' witness, the Managing Director of the petitioner, was recorded on 11th June, 1990. On 27th February, 1991 proceedings took

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place in the course of the enquiry. The Enquiry Officer noted that the workmen had submitted a representation accepting the allegation of misconduct contained in the charge-sheet dated 8th August, 1989. The Enquiry Officer posed several questions to the workmen to verify as to whether the representations were addressed by the workmen; whether they were voluntary or otherwise and whether the allegations of misconduct were accepted to the workmen. To this the answer was in the affirmative. In the letter addressed by the First respondent to the Enquiry Officer, the incident which took place on 1st April, 1989 was not denied. There was an acceptance of the fact that the workmen were apprehended when they had filled a privately owned tanker on the night of the date of the incident but it was stated that this was all done at the behest of a superior. The workmen prayed that they may be reinstated in service."

10. Now there can be no dispute about the fundamental principle of law that an admission of misconduct, in order to be acceptable as a ground for holding that the charge is proved, must not be qualified or conditional. The record of the enquiry dated 27th February, 1991 would in fact reveal that the incident which took place on 1st April, 1989 was not disputed. The presence of the workmen at 1.30 a.m. on 1st April, 1989, the presence of a private tanker which was brought into the premises of the chilling plant and the role of the workmen in actually assisting and facilitating the filling up of 10, 000 litres of milk in the tanker is not in dispute. It must be noted that it was not the defence of the workmen that the incident did not take place or that they were falsely implicated. The defence of the workmen at all material times was that they had acted thus in compliance with the direction of the superior. In these circumstances, the Enquiry Officer made due enquiries with the workmen on whether the statement was voluntarily furnished and it was only upon his satisfaction that this was so that the enquiry was closed. The Labour Court noted that in the enquiry proceedings both the complainant workmen as well as their Advocate put down their signatures. Once this was the case, the Labour Court was justified in coming to the conclusion that the charge of misconduct stood proved."

(emphasis supplied)

25. Having considered the aforesaid settled position in law that once an employee has admitted to the charges and that there is no cogent material to show that the admission of the charges was recorded under duress or force or pressure and that the admission was unconditional and in unequivocal terms, no fault can be found in the Inquiry Officer closing the inquiry proceedings. In the present case the disciplinary authority on the basis of the inquiry report which recorded the admission of the 1st respondent held that the charges have been proved. In our view, there was nothing unlawful on the part of the disciplinary authority proceeding on such admission made by the 1st

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respondent to pass the order of dismissal considering the seriousness of the charges.

22) Thus, in ***ESIC Versus. A.V. Tungare,*** the Division Bench of this Court after surveying various judgments of the Apex Court and of this Court on the subject has held once there is admission of charges, it is not necessary to hold enquiry to establish the same. The judgment of Division Bench in ***ESIC Versus. A.V. Tungare***, has been followed by this Court in ***Shri. Vishwanath Bhivaji Kudale Versus. The Chariman, Maharashtra State Electricity Board& Ors.***[3] .

23) In my view, therefore the Industrial Court has grossly erred in setting aside the show cause notice dated 4 February 2009. The Respondent has clearly admitted all the allegations in the chargesheet. He admitted temporary misappropriation in his responses dated 4 February 2005 and 16 April 2005 which pre-dated chargesheet dated 15 July 2006. After being caught, he deposited initial discovered amount of Rs.1,46,533/- between February and April 2005. Later, it was discovered that the amount of misappropriation was actually Rs.2,77,116/-. After being caught about the additional misappropriated amount, the Respondent deposited the balance misappropriated amount on 6 December 2005 and 8 December 2005. Thus, what is stated by the Respondent on 17 July 2006 is not a statement made in a spur of the moment or confession given under duress or coercion. He was consistently admitting his mistakes right since 4 February 2005. He admitted his mistakes both expressly in writing and through his conduct by depositing the misappropriated amounts. Most importantly, he

[3] WP-2711 of 2006 decided on 17 January 2025.

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admitted the allegations even after knowing that he was being subjected to disciplinary proceedings for being punished. He did so not out of charity but with the objective of ensuring his retention in service. He succeeded in his objective and ensured that lenient punishment of only reversion was proposed. He, however, took a *volte face* and after the indulgent act shown by the Municipal Corporation, approached the Industrial Court. The case therefore, involves an admission of misconduct, which did not warrant the holding of a formal enquiry to establish the temporary misappropriation by leading evidence.

24) In fact, Petitioner-Municipal Corporation appears to be extremely lenient in dealing with the Respondent. Despite the charge of misappropriation being proved, the Municipal Corporation proposed imposition of penalty of reversion only on the Respondent. Misappropriation is a serious misconduct warranting punishment of removal/dismissal from service. Ordinarily, Municipal Corporation ought to have been strict in enforcing discipline amongst its employees. It ought to have removed/dismissed the Respondent from service after it was established that he committed misconduct of misappropriation. However, by admitting the charges, repaying the misappropriated amount, and repeatedly tendering apologies, the Respondent ensured his retention in service, as only a show-cause notice proposing the minor penalty of reversion was issued against him. However, after receiving show cause notice dated 4 February 2009, he turned around and challenged the same before the Industrial Court by filing Complaint (ULP) No. 44 of 2009. The Industrial Court grossly erred in entertaining the complaint against a mere show cause notice. A disciplinary Authority

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is empowered in law to punish the delinquent employee and it is not open for an industrial adjudicator to interdict the enquiry by entertaining a challenge to a mere show cause notice.

25) This Court has repeatedly deprecated the exercise of jurisdiction by the industrial adjudicators against mere show cause notices issued before imposing punishment orders. Mere conferring of jurisdiction to prevent unfair labour practice does not mean that the Industrial Court should routinely interfere in pending disciplinary proceedings. The adjudication of allegation of unfair labour practice in a disciplinary proceeding must ordinarily happen after imposition of penalty and after the departmental remedies are exhausted. The High Courts, conferred with plenary adjudication under Article 226 of Constitution of India, exercise restraint and caution in not interdicting the pending disciplinary proceedings. Even the Administrative Tribunals cannot ordinarily entertain challenges to pending disciplinary proceedings. The industrial adjudicators also need to exercise restraint and permit the disciplinary proceedings to be taken to their logical end. If a complaint of unfair labour practice is entertained and decided at the stage of issuance of show cause notice for punishment, the adjudication about the conduct of the delinquent employee takes place at the hands of the Industrial Court even before the disciplinary authority has an opportunity to take a decision in the proceedings. This is not the warrant for exercise of jurisdiction by the industrial adjudicators. Under the guise of exercising preventive jurisdiction, they cannot usurp the power of the disciplinary authority and proceed to decide whether the employee is guilty of charge or not and whether imposition of any punishment is

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warranted or not even before the disciplinary authority gets an opportunity to take a decision in the proceedings.

26) This Court is conscious of the fact that one of the objectives behind enacting the MRTU & PULP Act is to confer preventive jurisdiction on Labour and Industrial Courts. Section 30 of the Act confers 'cease and desist' jurisdiction. Under Section 30 of the Act, both the Industrial and Labour Courts are empowered to declare when an unfair labour practice is occurring and issue mandatory cease-and-desist orders to halt the violation. In case of private employments where the likelihood of victimization is higher such preventive jurisdiction can be exercised by halting the unfair labour practice which is in the process of occurrence. However, this jurisdiction cannot be overstretched to mean that the Labour or Industrial Courts can prevent the disciplinary authorities of Government or semi-government servants from exercising their inherent powers of enforcing discipline and punishing the errant employee. Industrial adjudicators ordinarily should not jump in and usurp the authority of the employer and pre-decide the fate of disciplinary proceedings.

27) If industrial adjudicators routinely entertain complaints against mere show cause notices proposing punishments, the State Instrumentalities would never be able to punish the delinquent employees even after the charge is held to be proved. There appears to be a consistent practice adopted by industrial adjudicators in entertaining complaints against mere show cause notices and granting stay on further action in pursuance of such notices. This results in a

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situation where employee continues in service and retires on superannuation due to long pendency of proceedings. Exercise of jurisdiction by industrial adjudicators against mere show cause notices tramples upon the power of the disciplinary authority to enforce discipline in its organisation. It is not that after imposition of penalty, the delinquent employee is without any remedy. He can challenge the punishment order and if he succeeds, he can be reinstated with or without backwages. In a case where charge is proved and employer wants to punish the delinquent employee, the Industrial Tribunal must stay its hands by not entertaining such complaints at interlocutory stage against mere show cause notices for imposition of punishment.

28) In ***Dagadu Vasant Mudgal Vs. MSRTC***[4], this Court has held thus:

> 8 As observed above, the unique situation is created in the present case on account of entertainment of the Complaint by the Labour Court relating to the prayer for injuncting Respondent-employer from dismissing Petitioner- employee. In my view, once the enquiry is held, charge is proved and show- cause notice is issued, the Respondent-employer must be permitted to take the disciplinary proceedings to its logical end by passing appropriate final order. By show cause notice dated 23 April 2011, Petitioner-employee was merely directed to make a representation against the proposed punishment. There is no reason for inferring that Respondent-employer would impose only the punishment suggested in the show cause notice. If the Petitioner-employee was to file Reply to the
> show-cause notice, final decision would have been taken by the Disciplinary Authority and in the event of such final decision is adverse to Petitioner-employee, cause of action would have arisen for him to challenge the said punishment order by filing the substantive Complaint before the Labour Court. However, the action of the Petitioner-employee in rushing to the Labour Court at the interlocutory stage of the disciplinary proceedings and entertainment of such half-

[4] Writ Petition No. 12210 of 2024 decided on 3 September 2024

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baked Complaint by the Labour Court has given rise to unique problem in the present case.

9 The unique problem which prevails today in the case is that though the disciplinary proceedings are yet to be complete, the Labour Court and the Industrial Court have not only upheld the enquiry, findings of Enquiry Officer but also the proposed punishment. Thus even before completion of the enquiry and passing of any final order, the Labour Court's jurisdiction was invoked for seeking a certificate of fairness in the enquiry and absence of perversity in the findings of the Enquiry Officer. Ordinarily the said preliminary issues can be gone into only in a substantive Complaint challenging the final order of punishment. To put a premium on the irregularities, the Labour Court has decided the issue of proportionality in absence of any punishment being imposed on the Petitioner-employee. Deciding the issue of proportionality in respect of non-existent penalty is grossly inappropriate. After receiving representation from Petitioner-employee to the show-cause notice, it is for the Disciplinary Authority to take appropriate decision in the case. It is when final penalty order is issued, the issue of proportionality of such penalty can be gone into.

10 This Court is of the view that the Respondent-employer has inherent right of punishing the Petitioner-employee against whom charge in the disciplinary enquiry is held to be proved. An industrial adjudicator cannot intervene the proceedings and prevent the Respondent-employer from taking the disciplinary proceedings to their logical end. In my view therefore, Respondent-employer must be permitted to pass a final order in pursuance of show-cause notice dated 23 April 2011. However, on account of adjudication of issues relating to fairness of enquiry and perversity in the findings of the Enquiry Officer, it becomes questionable as to whether Petitioner-employee can be permitted to raise the very same issue once again in the event any adverse penalty is imposed on him in pursuance of the show cause notice. Such a course of action would obviously tantamount adjudication of same issue twice. This is the reason why the Labour Court ought to have avoided entertainment of the Complaint during pendency of disciplinary proceedings and ought to have allowed the Respondent-employer to pass a final order in pursuance of the show cause notice.

29) The outcome of Industrial Tribunal’s erroneous exercise of jurisdiction in the present case has rewarded the Respondent, who is found to be guilty of serious charge of misappropriation of municipal funds. He went on a rampage and misappropriated huge amount of

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Rs.2,77,116/- back in the year 2004. His misappropriation is during the short period from 1 April 2004 to 15 July 2004. In about 3 months, he misappropriated massive amount of Rs.2,77,116/-. It is only after he was caught, he sheepishly refunded the misappropriated amount out of fear of losing his job. He admitted his misconduct and prayed for pardon. The Municipal Corporation actually pardoned him by proposing to impose a lenient punishment of only reversion when infact he deserved a strict punishment of removal/dismissal from service. An employee committing misconduct of misappropriation of municipal funds cannot be retained in service. Imposition of punishment of mere reversion is like rewarding an employee who misappropriates public funds for his own gain.

30) In the present case, the Respondent sought to persuade the Municipal Corporation to let him off the hook by refunding the misappropriated amounts, by admitting the charges, and by seeking pardon, thereby securing the imposition of the relatively minor punishment of reversion. After ensuring that the Municipal Corporation would not remove him from service, he turned around and challenged even show cause notice for reversion and ensured that he continued to hold the post of A-Grade Clerk till his retirement on 31 July 2021. This is what happened on account of erroneous exercise of jurisdiction by the Industrial Tribunal. On account of entertainment of baseless complaint filed by the Respondent at an interlocutory stage of disciplinary enquiry, the Tribunal aided the delinquent Respondent to retire on the post of A-Grade Clerk by enjoying the said post for the next 11 long years.

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31) Be that as it may, mere retirement of Respondent from service on 31 July 2021 cannot be a reason for retaining erroneous order passed by the Industrial Tribunal. Respondent has committed serious misconduct of misappropriation of public money. He needs to be visited atleast with the punishment, which was proposed by the Municipal Commissioner in the show cause notice dated 4 February 2009. Imposition of punishment of reversion would still entitle the Respondent to pension and other retirement benefits for the Respondent. In my view therefore the penalty proposed vide show cause notice dated 4 February 2009 must be imposed on the Respondent in the facts and circumstances of the present case where he has admitted misconduct of misappropriation of amount of Rs.2,77,116/-.

32) On account of grant of stay by the Industrial Tribunal during pendency of the complaint, Respondent continued working on the post of A-Grade Clerk till his retirement on 31 July 2021. He has already drawn salary and allowances of the post of A-Grade Clerk till his retirement. Imposition of punishment of reversion on him at this stage would entail reduction of his salary during the period of his reversion and also recovery of excess wages. However, since the Respondent has already shouldered duties and responsibilities of the post of A-Grade Clerk (*albeit erroneously*), this Court is not directing recovery of amount of excess wages drawn by the Respondent. However, his pay needs to be notionally re-fixed, after considering the punishment imposed on him, so that he does not draw higher amount of pension and other retirement benefits.

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33) The show cause notice dated 4 February 2009 also did not specify the period during which punishment of reversion was to operate. Under Rule 5(1)(V) of the Maharashtra Civil Services (Discipline and Appeal) Rules, the disciplinary authority needs to specify the period during which the delinquent employee is to be brought down from lower pay scale/pay grade with further directions as to whether the punishment would have cumulative effect or not. In the facts and circumstances of the present case, it would be appropriate to give cumulative effect to the punishment of reversion. Ordinarily, it is the disciplinary authority alone who can decide the exact punishment to be imposed. However, in the present case, the Respondent has already retired from service on 31 July 2021. It would therefore be apt to give a full stop to the entire episode by this Court specifying the period during which the punishment of reversion would operate. In the facts and circumstances of the present case and considering the nature of charges established against the Respondent, it would be appropriate to direct imposition of punishment of reversion to the post of Clerk on the Respondent for a period of 3 years, with cumulative effect. During this period of 3 years, Respondent would not draw increments, and the punishment would have the effect of postponement of his increments. However, at the end of period of 3 years, he would regain his promotion to the post of A-Grade Clerk.

34) I am not impressed by the repeated appeals made by the learned counsel for Respondent to dispose of the petition as infructuous on account of retirement of Respondent and on account of the alleged financial difficulties faced by him. It appears that Respondent is habitual

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in raising defenses of financial difficulties. Even while admitting the allegations vide reply dated 17 July 2006, he put forth the pretext of disability of his son. Now he has raised pretext of his own ailments as well as the ailment of his wife. Financial difficulties by an employee cannot be a ground for pardoning serious misconduct of misappropriation. Respondent has already enjoyed benefits of services on account of erroneous stay granted by the Industrial Tribunal. As observed above, Respondent deserves imposition of punishment of removal /dismissal. However, even lenient punishment of reversion was not permitted to be imposed by him by securing stay from the Industrial Tribunal. Imposition of punishment of reversion at this stage does not render the Respondent pensionless. There may be slight reduction in the amount of his pension which in my view is clearly justified considering serious misconduct committed by him. The present case would stand as an example for those who indulge in misconduct and attempt to get away with the same by misusing legal process. In my view therefore though the Respondent has retired from service, imposition of punishment on him is still warranted to enforce discipline in the workforce of the Municipal Corporation.

35) In view of the above discussion, I proceed to pass the following order:

i. Judgment and Order dated 18 April 2011 passed by the Industrial Court in Complaint (ULP) No. 44 of 2009 is set aside.

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ii. Petitioner-Municipal Corporation shall impose punishment of reversion from the post of A-Grade Clerk to the post of Clerk on the Respondent for a period of 3 years with cumulative effect. The punishment shall be imposed from the date of show cause notice i.e. w.e.f. 4 February 2009.

iii. The pay of the Respondent shall be notionally refixed by considering the punishment imposed on him only for the purpose of determining his pension and other pensionary benefits.

iv. Petitioner-Municipal Corporation shall not recover any amount from Respondent towards salary and pension already paid to him. However, from January 2027 onwards, the Respondent shall receive reduced amount of pension by taking into consideration the notional pay-fixation done as a result of punishment of reversion.

v. Petitioner-Municipal Corporation shall release the with-held gratuity of Respondent after recalculating the same within 6 weeks.

36) With the above directions, the Writ Petition is **allowed**. Rule is made absolute. There shall be no order as to cost. With disposal of the Writ Petition nothing would survive in the Interim Application, and the same is disposed of.

NEETA SHAILESH SAWANT

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[SANDEEP V. MARNE , J.]

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