



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5509 OF 2024

Grant Medical Foundation (Ruby Hall
Clinic), Pune

...Petitioner

V/s.

Bhausahab Bhivaji Dake

...Respondent

Mr. S.R. Nargolkar with *Mr. Chetan A. Alai, Mr. Varun R. Joshi, Mr. S.S. Nargolkar and Mr. Rishabh Chaurasia for the Petitioner.*

Mr. Prashant Kshirsagar with *Mr. Aniruddha Sanap i/b. Mr. Sarvadnya Legal Associates for the Respondent.*

CORAM: SANDEEP V. MARNE, J.

DATED: 2 SEPTEMBER 2026.

P.C.:

1) **Rule.** Rule is made returnable forthwith. Since pleadings in the Petition are complete, the same is taken up for final hearing with the consent of the learned counsel appearing for parties.

2) By this Petition, the Petitioner-employer has challenged order dated 1 April 2022 passed by the learned Member, Industrial Court, Pune, by which the order of the Labour Court on preliminary issues dated 18

December 2019 is partly set aside and it is held that findings of the Enquiry Officer are not based on evidence.

3) I have heard Mr. Nargolkar, the learned counsel appearing for the Petitioner and Mr. Kshirsagar, the learned counsel appearing for the Respondent and have considered the submissions canvassed by them. I have gone through the findings recorded by the Industrial Court and perused the records of the case filed alongwith the Petition.

4) Perusal of the charge-sheet dated 25 December 2011 indicates that following charge was levelled against the Respondent:-

असे असूनही दि .२३/१२/२०११ रोजी तुम्ही सकाळी ०९:३० ते ०५:३० या पाळीत कामात होता. रात्री अंदाजे ०८:३० वा . रुग्णालयातील म्हसोबा मंदिर जवळील गेट मधून रिक्शा न. एम एच १२-५२४७ मधून श्री अरुण कराड यांच्या बरोबर दोघेही मद्यपानाच्या नशेत आत आलात तेव्हा टोल बूथ वरील श्री उत्तम राऊत यांनी रिक्शा थांबवण्यासाठी हाताने खुणावले. त्यांचे न ऐकता तशीच रिक्शा २-३ वेळा बूम बारियर वर जाणूनबुजून धडकावली. त्यामुळे बूम बॅरियर वर गेले व श्री कराड यांनी रिक्शा आत आणली. श्री राऊत बूथ मधून बाहेर आले व त्यांनी बूम बॅरियर खाली केले. त्यावेळी श्री कराड यांनी पुढे जाऊन रिक्शा थांबवून पुन्हा बूथ कडे आले व हाताने जोरात बूम बॅरियर ओढून ते तोडले. त्यानंतर श्री कराड यांनी श्री राऊत यांना बोलावले व धमकावले. त्यांची गच्चुडी धरून जोरात हात पिरगाळला. तसेच गुडघ्याने पाठीत लाथ मारली व तेथे उभी असलेल्या रिक्शावर त्यांना ढकलून दिले. हे सर्व घडत असताना तुम्ही श्री कराड यांच्या बरोबर उपस्थित होता. बूम बॅरियर मोडल्याने आपल्या रुग्णालयातील पार्किंग व्यवस्था विस्कळीत झाली. हे सर्व घडत असताना सिव्क्युरिटी विभागातील श्री राजू भट्ट हे हि मेन गेट वर उपस्थित होते. अशी वागणूक तुमच्या कडून अपेक्षित नाही.

5) Thus, almost all allegations in the charge-sheet are against Mr. Karad. The only allegation against the Respondent is about his presence alongwith Mr. Karad, which is clear from statement in the charge 'हे सर्व घडत असताना तुम्ही श्री कराड यांच्या बरोबर उपस्थित होता'. It is also alleged in the charge-sheet that the Respondent entered the hospital in the Riksha driven by Mr. Karad in a drunken state. Thus, the only charge levelled against the Respondent in the charge-sheet is entry in the hospital

premises in a drunken state and being in company of Mr. Karad when he indulged into misbehaviour. Admittedly, the alleged incident has occurred after duty hours of the Respondent.

6) After going through the evidence on record, it is seen that the Petitioner-Management examined two witnesses viz. Mr. Arun Karad and Mr. Sonawane (Security Officer). Mr. Karad was a direct eye witness since he himself had indulged into misconduct. Mr. Sonawane led evidence on the report made to him by the Security Guard- Mr. Raut. In a Departmental Enquiry there is no allergy to hearsay evidence. Strict rules of evidence do not apply in departmental inquiries. So long as there is some evidence on record, the charges can be held to be proved. The test is not proof beyond doubt but only preponderance of probabilities. In *Divisional Controller, Maharashtra State Road Transport Corpn. V/s. Ravindra Adhar Gosavi*¹ this Court has held in paragraphs 15 to 21 as under:-

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

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

4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. **There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is**

1 2023 II CLR 241

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

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

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

18. More recently, the Apex Court in **State of Karnataka v. Umesh**, (2022) 6 SCC 563 : (2022) 2 SCC (Cri) 655 has reiterated the principles that govern the disciplinary enquiry and criminal trial. It is held:

16. The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence. **The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry.** The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction.

22. In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not reappreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether:

- (i) the rules of natural justice have been complied with;
- (ii) the finding of misconduct is based on some evidence;
- (iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and
- (iv) whether the findings of the disciplinary authority suffer from perversity; and
- (v) the penalty is disproportionate to the proven misconduct. [State of Karnataka v. N. Gangaraj, (2020) 3 SCC 423 : (2020) 1 SCC (L&S) 547; Union of India v. G. Ganayutham, (1997) 7 SCC 463 : 1997 SCC (L&S) 1806; B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80; R.S. Saini v. State of Punjab, (1999) 8 SCC 90 : 1999 SCC (L&S) 1424 and CISF v. Abrar Ali, (2017) 4 SCC 507 : (2018) 1 SCC (L&S) 310]

(emphasis supplied)

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

The standard of proof

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

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

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

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

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

33 In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review.

This is for a valid reason. **The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority.** The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Ser vice jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. **To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate.** To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain.

(emphasis supplied)

21. Thus in domestic inquiry, strict rules of evidence are not applicable. Even hearsay evidence is admissible. **On perusal of evidence, if a person of ordinary prudence reaches a conclusion that**

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

(Emphasis supplied)

7) In *President Secretary Uttar Bhartiya Education Society and Anr. Vs. Naresh Tejas Thakur and Anr.*² this Court has reiterated the principles and has held in paragraph 34 as under:-

34. Thus in domestic inquiry, strict rules of evidence are not applicable. Even hearsay evidence is admissible. **On perusal of evidence, if a person of ordinary prudence reaches a conclusion that the occurrence of an event alleged is probable, such evidence is sufficient to prove misconduct in domestic inquiry. This is the test of preponderance of probability.** On the other hand, in a criminal trial, the charge has to be proved beyond reasonable doubt and any contradiction or lacunae in evidence casting doubt about occurrence of an event would entitle the accused to a benefit of doubt, resulting in an acquittal. In my view, applying the above test, it cannot be held that the finding of guilt recorded against the Respondent No.1 suffers from vice of perversity. There is sufficient evidence on record to hold the Respondent No.1 guilty of charges levelled against him.

(Emphasis supplied)

8) It cannot be contended in the facts of the present case that there is total absence of evidence. Merely because Mr. Karad is a co-accused, the same cannot be a reason for completely discarding his evidence. Similarly, Mr. Sonawane has led evidence of what is reported to him by Mr. Raut. There is no reason to discard his evidence altogether. Few discrepancies in the statements cannot be a reason to discard the evidence. Ultimately, the person accompanying the Respondent has led evidence of the incident. The witness, who made a report of the incident is also examined. It therefore cannot be held that there is total absence

2 Writ Petition No.4232 of 2022 decided on 5 December 2023.

of evidence. The quantity of alcohol consumed is irrelevant so long as Mr. Karad has deposed that the duo had consumed alcohol before returning to the hospital. In my view, therefore, there is some evidence to prove twin allegations of entering the hospital premises in a drunken state and being in company of Mr. Karad at the time of the incident. In my view therefore, the Industrial Court has grossly erred in holding that there is perversity in the findings of the Enquiry Officer.

9) As observed above, the main allegation in the charge-sheet was against Mr. Karad. Allegations *qua* the Respondent are levelled only to twin aspects viz. entry into the hospital in a drunken state and being in company with Mr. Karad. The Respondent was admittedly not on duty when he consumed alcohol with Mr. Karad. Whether these acts on the part of the Respondent amounts to misconduct or not is something which the Labour Court would decide while answering remaining issues. If Labour Court arrives at a conclusion that the acts proved against the Respondent do not constitute misconduct, appropriate relief can be granted in favour of the Respondent. If on the other hand, the Labour Court arrives at a conclusion that acts committed by the Respondent amount to some misconduct, what is the gravity of such misconduct and whether punishment of termination is warranted for such misconduct would also be decided by the Labour Court. The Labour Court will obviously keep in mind the fact that Mr. Karad, against whom the main allegations were levelled, is retained in service by accepting his apology. It is too early at this stage to record any finding in that regard. However, it is not necessary for the Petitioner-Management to lead fresh evidence before the Labour Court since findings of the Enquiry Officer cannot be

termed as perverse. Evidence on record proves that the Respondent had consumed alcohol with Mr. Karad and was in his company when the duo had entered the hospital premises.

10) The Petition accordingly succeeds. Judgment and order dated 1 April 2022 passed by the Industrial Court is set aside. The Labour Court shall proceed to decide the remaining issues in an expeditious manner by strictly limiting its consideration to the acts alleged by the Petitioner against the Respondent in the charge-sheet dated 24 December 2011. The Complaint shall be decided by the Labour Court in an expeditious manner, preferably within a period of six months. All rights and contentions of the parties on merits are expressly kept open.

11) With the above directions the Writ Petition is allowed and **disposed of**. Rule is made absolute. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]