

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1565 OF 1999

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| 1. | The Zonal Manager,
Maharashtra Rajya Sahakari Kapus
Utpadak Panan Mahasangh Maryadit,
Vibhagiya Karyalaya,
Jalgaon. | } | .. Petitioners
(Original Applicants) |
| 2. | Sah Sanchalak (Prashasan)
Maharashtra Rajya Sahakari Kapus
Utpadak Panan Mahasangh Maryadit,
Madhyawarti Prashasakiya Karyalaya,
Nagpur, Dist. Nagpur | | |

Versus

Shri Gulabrao Laxmanrao Kotwal 20/2, Sane Guruji Colony, Jilha Peth, Jalgaon	}	.. Respondent (Ori. Complainant)
...		

**WITH
CIVIL APPLICATION NO. 11752 OF 2011
IN
WRIT PETITION NO. 1565 OF 1999**

...
Mr. S.T. Shelke, Advocate for the petitioners.
Smt. Chaya E. Gaikwad, Advocate for the Respondent.
...

**CORAM : SHARMILA U. DESHMUKH, J.
RESERVED ON : 17.02.2023.
PRONOUNCED ON : 06.04.2023.**

JUDGMENT (Through Video Conferencing):

1. Vide order dated 19.04.1999 this Court had issued Rule. Taken up for final disposal.

2. This petition challenges the order of the Labour Court dated 25.10.1996 on the additional issue framed as regards the status of Respondent as workman, the order dated 08.08.1997 passed by the Industrial Court in Revision Application (ULP) No.6 of 1997 against the finding on additional issue, the final judgment and order dated 07.10.1998 passed in Complaint ULP No.214 of 1993, and order dated 18.12.1998 passed in Revision Application (ULP) No.516 of 1998. By the impugned judgment and order, the Labour Court allowed the complaint, which was upheld by the Industrial Court in revision.

3. The facts of the case are as under:

. Maharashtra Cotton Growers Marketing Federation Ltd, (for short "the Federation") is a Co-operative Society appointed by the Government of Maharashtra as the Chief Agent under Section 42 of the Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act, 1971 for

implementation of the cotton monopoly procurement scheme. The Respondent was an employee of the Federation and at the relevant time, was serving as Centre In-charge in Sahakari Ginning Factory at Bodwad. It is claimed that there were complaints regarding the performance and discharge of the duties of the respondent at the Bodwad collection centre and preliminary inquiry was held. After considering the report of the preliminary inquiry, a decision was taken to initiate departmental inquiry against the respondent. The charge-sheet containing the substance of charges along with the list of the documents and witnesses was served upon the respondent alleging misconducts constituting violation of the service rules. The charges imputed were that the respondent had purchased cotton of other villages which were not associated with the Bodwad collection centre, scoring / obliteration on the folder forms of the cotton cultivators, grading of inferior quality cotton with higher grade resulting in payment of higher rate thereby causing loss of Rs.35,32,671.63 to the Federation and absenteeism without prior permission.

. An Inquiry Officer came to be appointed and as per the convenience of the parties the inquiry was conducted at Nagpur, Nashik and Bodwad. Although the respondent was permitted to be represented through the employees of the federation or office bearers of the Union, the respondent chose to defend the charges himself.

. During the departmental inquiry, the Federation examined ten witnesses. The Respondent did not examine any witness in his defence. Inquiry Report was submitted on 28.06.1992, which concluded that all the charges were proved against the delinquent employee. Based on the Inquiry Report, show cause notice was issued to the respondent seeking his reply against the inquiry report and the proposed punishment, to which explanation was submitted by the respondent on 10.10.1992. After considering the material on record, by order dated 16/17.06.1993, the Respondent's services came to be terminated.

. Complaint (ULP) No. 214 of 1993 came to be instituted by the respondent under Item I (a), (b), (c), (d), (e), (f) and (g) of

Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act, 1971 (for short "MRTU and PULP Act) seeking to set aside the order of dismissal and for reinstatement. In the reply filed by the petitioner, an objection was taken to the jurisdiction of the Labour Court as the salary of the respondent exceeded Rs.3,000/- per month and as such it was contended that the Respondent was not a workman within the meaning of Section 2 (s) of the Industrial Disputes Act, 1947 (for short "the Act of 1947"). The relief sought was also opposed on the ground that proper inquiry had been conducted and charges were proved.

. In view of the objection taken, additional issue came to be framed by the Labour Court, which was answered against the petitioner by order dated 25.10.1996 and it was held that the respondent was an employee within the meaning of Section 3 (5) of the MRTP and PULP Act and a workman within the meaning of Section 2 (s) of the Act of 1947. The finding on the additional issue was challenged by the petitioner in Revision Application (ULP) No.6 of 1997 which came to be

dismissed by order dated 08.08.1997.

. In view of the finding of the Labour Court on the additional issue, the hearing of the complaint proceeded and by the judgment and order dated 07.10.1998, the Labour Court allowed the complaint and it was declared that the petitioner - employer was indulging in unfair labour practice by dismissing the Respondent-complainant from service with effect from 21.06.1993 and direction was issued to take affirmative action by reinstating the respondent with continuity of service within a month from the date of receipt of order, however relief of back-wages was not granted. Revision application filed under Section 44 of the MRTP and PULP Act came to be rejected by order dated 18.12.1998. Before this Court, the challenge is to the order dated 25.10.1996 on the additional issue, the order of the Industrial Court in revision against the order on the additional issue, the final judgment and order dated 07.10.1998 and the order dated 18.12.1998 passed by the Industrial Court.

4. Heard Mr. S.T. Shelke, learned counsel for Petitioner

and Mrs. Chaya E. Gaikwad, learned counsel for Respondent. The record and proceedings of the revision applications were called for by this Court, however the records do not contain the notes of evidence and hence this Court has examined the issue on the basis of material available on record.

5. Mr. Shelke, learned counsel for the petitioner submits that the respondent was working as Senior Grader and was in charge of the collection centre drawing a salary in excess of Rs.3,000/- and as such was not a workman. He would further submit that the Federation has its own service rules and that the model standing orders not being applicable, the reliance of the Labour Court on the decision of 1995 I CLR 837 is misplaced. He has taken this Court through the charge-sheet, the findings of the Inquiry Officer and in particular the admissions of the respondent admitting the charges. He would further submit that the charges were already proved in the inquiry and the Labour Court after holding that the respondent has clearly admitted and pleaded guilty to his misconduct vide statement dated 23.04.1991 has thereafter held that charge of negligence is proved and as such has

granted reinstatement.

6. In support of his submissions, he relies upon the following decisions:

- (i) ***Chairman & Managing Director, V.S.P. & Ors vs. Goparaju Sri Prabhakara Hari Babu, [2008 II CLR 338];***
- (ii) ***State of U.P. and others vs. Nand Kishore Shukla and another, [AIR 1996 SC 1561].***

7. *Per contra*, Mrs. Gaikwad, learned counsel for the respondent submitted that the preliminary issue was framed and decided against the respondent, which was not disturbed in revision and as such the findings cannot now be challenged along with the final judgment. She would further submit that it is required to be noted that even if inferior cotton was graded as higher quality cotton, the payment was given to the farmers and not to the respondent. She would further submit that the findings that the cotton purchased was of lower grade was based on samples which were collected when the respondent was on leave and panchanama was also conducted in his absence. She relies upon the decision in the case of ***Shankar M. Gowekar vs Divisional Transport Officers, Maharashtra State Road Transport***

Corporation, Raigad reported in 2022(5) Mh.L.J. 351.

8. In rejoinder, Mr. Shelke submits that the findings of the Inquiry Officer as regards the purchase of cotton of inferior quality has been proved through the evidence of one Shri. Mohammed Mustaff Mohammed Hayat and Shri. Ram Korpé of Vigilance and Inspection Department. He would further submit that the challenge to the order of preliminary issue was deferred as the Labour Court held that the enquiry conducted was fair, legal and in accordance with the principles of natural justice.

9. Considered the rival submissions.

10. Firstly, I would prefer to deal with the challenge to the finding on the preliminary issue as to the status of the Respondent. The Petitioners seeks to challenge this finding alongwith the final judgment. The preliminary issue had been answered by the Labour Court against the Petitioners by order dated 25.10.1996, which came to be challenged by way of Revision Application ULP No.6 of 1997. The Revisional Court has upheld the findings by order dated

08.08.1997. The Petitioner did not carry the challenge further to this Court and the explanation which is now being tendered is of deferment of the challenge as the enquiry was held to be fair and legal. It is settled by various judicial pronouncements that the Industrial Tribunals are setup for expeditious resolution of special disputes and the jurisdiction could not be stifled by all kinds of preliminary objections and as such it is desirable that there is no interference with the exercise of jurisdiction by the Tribunal at any interlocutory stage and on a preliminary issue, and, the challenge to the preliminary issue can be raised alongwith the final judgment. This exposition of law would have been squarely applicable to the present case, if the Petitioner had not challenged the finding in Revision. Once having chosen to challenge the finding on preliminary issue and having suffered an order in Revision, it was necessary for the Petitioner to take the challenge further, if aggrieved, lest it attains finality. This is precisely what has occurred in the present case. Having chosen to challenge the finding and not carrying it further has resulted in the issue attaining finality. In such fact situation, it was not permissible for the Petitioner to abandon the challenge mid-way and thereafter to now challenge the same

alongwith the final judgment. In my view, the Petitioners have foreclosed their right by abandoning the challenge mid-way. The note of caution struck by the judicial pronouncements will be applicable in a case where there is no challenge to the finding on preliminary issue, whether by way of a revision or by way of writ petition before this Court and thereafter the finding is challenged alongwith the final judgment. As such I am not inclined to examine the concurrent findings of the Labour Court and Industrial Court on the preliminary issue alongwith the final judgment and order.

11. Now, I turn to the final judgment and order dated 07.10.1998 passed by the Labour Court declaring that the Petitioner has indulged in unfair labour practice under the Item No. (1)(g) of the Schedule IV of the MRTU and PULP Act in dismissing the Respondent from service and directing by way of affirmative action to reinstate the Respondent in service with continuity, however, without any back wages. Before adverting further, it will be necessary to peruse Item No.1(g) of Schedule IV of MRTU and PULP Act, which reads as under:

"SCHEDULE IV:

1. *To discharge or dismiss employees -*

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)

(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment."

12. A reading of the aforesaid provision shows that it deals with an unfair labour practice said to have been committed by an employer who discharges or dismisses an employee for misconduct of a minor or technical character and while doing so, no regard is kept to the nature of the misconduct alleged and proved against the delinquent, or, without having regard to the past service record of the employee, so that under these circumstances the ultimate punishment imposed on the delinquent would be found by the Court to be a shockingly disproportionate punishment.

13. The Labour Court has not accepted the case of unfair labour practice set out in the other items of Schedule IV, but has held that the misconduct is of a minor or technical character and

the punishment imposed is disproportionate to the misconduct. The inquiry was held to be fair and proper, which was not challenged by the Respondent. As such the issues to be considered is the nature of the charges alleged and proved and perversity in the findings of the Inquiry Officer. The summary of the findings of the Labour Court is that the misconducts have been admitted by the Respondent; that the findings of Enquiry Officer on charge of absenteeism are perverse; that the charge of negligence has been proved against the Respondent and as such the punishment of dismissal from services is disproportionate to the misconduct.

14. On 22/23.08.1991, charge sheet was served upon the Respondent imputing the following charges:

- (i) Purchase of cotton of the other villages which are not attached to his collection centre i.e. Bodwad.
- (ii) Carrying out interpolation in various cases in Form No.1 and thereby changing the grade, heap numbers and rates etc.;
- (iii) Purchase of cotton of inferior quality and grading the same at a higher grade and as such, causing financial loss of Rs.35,32,661.63 to the federation.

- (iv) Remaining absent without prior permission and leaving headquarters without permission.

15. Based on the substance of charges, the Respondent was charged with misconduct under the applicable Service Rules which reads thus:

"Rule 12 : Every employee should refrain from resorting to any unfair or corrupt practices.

Rule 30 : Every employee shall be responsible for all his acts or commission or omission, deeds and things connected with affairs of the Federation and shall be liable and accountable for such acts, deeds or things which may cause harm or damage to or prove prejudicial to the interests of the Federation.

Rule 31 : *Any employee who is found to have indulged or has been indulging the activities of criminal nature such as theft, fraud, misappropriation or dishonesty in connection with the Federation's business or property or is found to have been using his official position in the Federation for personal or private gain shall be deemed to have infringed the discipline of the Federation and shall be liable for disciplinary action for such act or misconduct."*

Rule 31(g): Wilful insubordination or disobedience of any legal or reasonable order.

Rule 33(1): Any act or business transaction done in

contravention of the rules or regulations of the Federation.

Rule 33 (d): Wilful damage to the work, business, property or documents of the Federation.

Rule 33 (f): Absenteeism from work for 7 days or more without intimation or proper sanction or permission or notice in writing or without sufficient reasons."

16. Perusal of the chargesheet evidences detailed statement of facts setting out the alleged acts of misconduct resulting in violation of the service rules. As stated above, ten witnesses were examined by the Federation during the inquiry and the Respondent did not examine any witness in defence. The inquiry report dated 20.06.1992 records that on 11.01.1992, the Respondent had admitted before the Enquiry Officer that he had purchased the cotton from the agriculturists of the villages, which were not attached to his centre and has made scoring on the folders of the agriculturists. In view thereof, the petitioner-management had withdrawn the witnesses in that respect.

17. Let us examine in brief the deposition of the witnesses examined by the Petitioner. Shri. Mohd. Mustaaf Mohd. Hayat, Sales

Officer of Inspection and Vigilance Department, deposed that on 23.03.1991, he took the Sales Officer of Bodwad centre and went to the factory for inspection. At that time the ginning of heap no.23 was in progress. After observing that the cotton was of inferior quality, samples of Heap Nos.22, 13, and 12 were taken and also the samples of cotton seeds from Heap No. 23 were taken and panchanama was made in this respect. The witness also deposed that he took samples of Heap Nos.14, 5, 4, 11, 8 and 20, and the samples were sent to the chemical laboratory for analysis. During the site inspection, he also observed that there was scoring in the folders regarding the grade, heap number and rate. He deposed that such folders were 39 in numbers and produced the folders at Exh.2/12. He has further deposed that he observed that the Respondent had produced the cotton from agriculturists which were not attached to his centre and as such, the folders were seized , which were produced at Exh.2/11. Pertinently, there was no cross-examination of this witness by the Respondent.

18. The next witness was one Ramjilal Bodhalal Sharma, employee of Sale Purchase Society, Bodwad centre, who was the

employed as “ginning supervisor” in the society and in whose presence, the samples were taken and signature obtained on the panchanama, which is exhibited as Exh.2/24. This witness was also not cross-examined by the Respondent.

19. The third witness was one Shri D.S. Tali, who was the Secretary of Market Committee, Bodwad Centre. He was examined to produce the circulars which were marked as Exh.2/3, which provided the list of villages attached to the different centres. He has deposed that as per the Rules, the cotton from the villages which were not attached to the centre should not be accepted. This witness was not cross-examined by the respondent.

20. The fourth witness was one Shri Y.L. Patil, the season employee of the Sub-Zone Bodwad Centre, who signed the panchanama as witness, which is marked as Exh.2/24, who deposed that higher grade was given to the inferior cotton. This witness was not cross-examined by the Respondent.

21. The fifth witness was one Shri R.M. Deshmukh, the

season clerk of Bodwad Centre, who deposed that he was present when the samples were taken and the panchanama was made in his presence. He has deposed that he has shown the heap which showed that the grading was not proper. During the cross-examination, he has deposed that about 7000 to 8000 quintals cotton were available when there was rain and heaps were stacked for drying the cotton. At that time, persons of Vigilance Department had come to the Centre.

22. The sixth witness examined was one Shri D.S. Patil, Ex-Chairman, Agricultural Produce Marketing Society, who deposed that he was at Bodwad Centre since 45 years. He has been examined to identify his complaint as regards the conduct of the business at Bodwad Centre. The complaint is marked as Exh.2/1. He has deposed that higher grade is given to the cotton of the traders. During the cross-examination of witness, he deposed that the telegrams and letters were given to the grader during the season.

23. The seventh witness was one Shri P.A. Hande, the Sales Officer, who has deposed that during the season 1990-1991, the

Respondent was the centre incharge in Co-Operative Ginning Factory, Bodwad Centre. He has further deposed that he inspected the samples of cotton and lint, when the same were sent to the sales office. He has further deposed that there is defective grading of 1350 bales of 2200 bales, and that higher grade was given to the inferior graded cotton and lint. He has further deposed that grading was not made properly. This witness was not cross-examined by the Respondent.

24. The eighth witness was one Shri A.K. Bhende, Sub-Zonal Manager, Bodwad Centre, who deposed that one Shri D.S. Patil had given a complaint vide letter dated 11.02.1991 which is marked as Exh.2/1 and pursuant to it, had given caution letter dated 30.03.1991, which is marked as Exh.2/18 to the Respondent. He had further tendered the report of the grading committee as Exh.2/33, in which it is mentioned that the Respondent has upgraded inferior graded cotton and thereby caused loss. He has further deposed that in his presence, the samples of cotton were taken by Vigilance Department and was sent for inspection to the chemical laboratory. He has identified his signature on the

panchanama which is at Exh.2/24. He has further deposed that as the Respondent was not performing his duties properly as a centre incharge, the letters were issued to the respondent which are marked as Exhs.2/14, 2/15, 2/16 and 2/18. He has further deposed that the Respondent has not collected late lifting charges, causing losses to the federation. He has further deposed that there is mis-heaping by the Respondent.

25. During the cross-examination, Shri Bhende deposed that the circulars were given to the Respondent and that as per the instructions of the Centre Incharge, the Sub-Zonal Manager can instruct the centre Incharge to give the delivery at any time. He has deposed that he had informed the head office about absenteeism of the Respondent which is wrong , but he had informed to Zonal office.

26. The ninth witness was one Shri R.D. More, Sub-Zonal Manager, who has deposed that at the relevant time, he was Sub-Zonal Manager at Jalgaon Zone. He has further deposed that the Respondent had accepted the cotton from the agriculturists, which

were not attached to Bodwad Centre. He has further produced the letters as issued to the Respondent regarding his absenteeism, which is marked as Exh.2/32 and Exh.2/18.

27. The last witness examined by the petitioner-federation is Shri Ram Korpe, Joint Director (Vigilance and Inspection), who has deposed that a complaint was received through Shri D.S. Patil, Ex-Chairman of Agricultural Marketing Society, Bodwad Centre, regarding upgradation and corruption at the collection centre at Bodwad. He has further deposed that in order to verify the complaint and to submit a report Shri Mohd. Mustaf and Shri. Mende, were deputed for inspection of Bodwad Centre. He has further deposed that inspection was caused and samples were taken, which shows that there was inferior quality cotton during the inspection and examination report was submitted on 03.04.1991. He has further deposed that, thereafter, he along with Shri. Kale, Executive Director (Purchase and Procurement), Shri Mhende and Shri Mustaaf visited the centre and inspected the cotton and cotton seed, which showed inferior quality cotton seed and lint. He has further deposed that it was observed that higher

grade was given to the inferior grade to the cotton. It was also observed that the Respondent had submitted an application and proceeded on leave without getting the leave sanctioned and without handing over the charge to the concerned officer. He has produced the test report of the samples which is at Exh.2/33. He has further deposed as regards the details of report of chemical laboratory, which showed upgradation of cotton. He has further deposed as regards the scoring the folders and the report is produced at Exh.2/36. He has further deposed that during the course of inspection, he has taken the statement of Shri Kotwal which is marked as Exh.2/37. He has further deposed that the Respondent has caused a loss to the federation. There was no cross-examination of this witness by the Respondent.

28. The inquiry report records that the Respondent stated that he did not wish to examine any defence witness. Defence statement was submitted by the Respondent, to which reply was filed by the Petitioners. Based on the documentary as well as oral evidence, which was adduced during the enquiry, the Enquiry Officer has held that all the charges as regards the violation of

Rules 12, 30, 31, 31(g), 33 (1), 33 (d) and 33 (f) stood proved.

29. The Disciplinary Authority by order dated 16/17.06.1993 accepted the finding of the Inquiry Officer, and terminated the services of the respondent, which gave rise to the complaint ULP No.214 of 1993.

30. The Labour Court while deciding the complaint framed the following issues and answered those issues as follows:

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| "1. Does the complainant prove that the enquiry held is not legal, fair and proper ? | ..Not Proved. |
| 2. Does the complainant prove that the findings of the E.O. are perverse ? | ..As per order. |
| 3. Does the complainant prove that the respondent by indulging in unfair labour practices under item 1 of Sch. IV of the MRTU & PULP Act dismissed the complainant from services ? | ..Partly proved. |
| 4. Does the complainant prove that he is entitled to reinstatement with full back wages and continuity of service ? | ..As per order. |
| 5. What order ? | .. As per final order." |

31. The Labour Court held that the Petitioner had indulged in unfair labour practice under Item 1(g) of Schedule IV of the MRTU and PULP Act and that from evidence on record charge of negligence is proved. The findings of Inquiry Officer was held to be perverse as regards the charge of absenteeism. The Labour Court further held that it is not the case of the Petitioner that the Respondent has misappropriated the amount of funds and as such the charges were partly proved against the respondent. The Labour Court interfered with the quantum of punishment and found it disproportionate for the reason that there was nothing on record before the Court to show that the petitioner-federation had sustained actual financial loss due to the act of the complainant.

32. Perused the findings of the Labour Court in detail. In support of the complaint, the Respondent has examined himself. He has deposed that he was called at Nagpur on 23.04.1991 in office of Shri Kate Vigilance Officer and his statement was recorded by the Vigilance Officer. It was deposed that the statement was recorded by the Vigilance Officer by dictating to his

clerk and the signature was taken on the said statement. The said statement is annexed at page 71 of the petition. Perusal of the statement shows that the Respondent has admitted that he has not taken appropriate care while grading the cotton and has accepted that he has carried out liberal (loose) grading. He has blamed the local political scenario for the said grading. It is further admitted in the statement that apart from the villages which were associated with the Centre at Bodwad, he has counted the vehicles of the other villages not associated with the Centre. He has stated that, upon contacting the local market committee, he was informed verbally that the tokens were given to the vehicles which were not associated with the Bodwad Centre. He has further admitted that he committed mistake of not informing the Zonal Office. The statement further accepts that the scoring on the folders were not as per anybody's instructions but due to the pressure created at the Bodwad Centre. He has further admitted that he is responsible for the deficiency occurring in the material count for the season 1991.

33. By this statement of 23.04.1991, the Respondent has

admitted the charge of accepting cotton from villages not associated with his centre, the charge of scoring on the folders and the loose grading of the cotton. This statement will have to be read alongwith the evidence produced during the Inquiry officer. The Petitioner has admitted the charge of purchasing cotton from the agriculturist not attached to his collection centre and the scoring on the Form No 1 not only in the statement dated 23.04.1991 but also during the Inquiry. The decision in the case of ***Chairman & Managing Director, V.S.P.*** (supra) squarely applies to the facts of the present case. The Apex Court had held that in terms of Section 58 of the Indian Evidence Act, charges having been admitted were not required to be proved.

34. At this stage, let us have a relook at the service rules of the Federation. Rule 12 deals with restraint of employees from unfair or corrupt practices, Rule 30 deals with liability and accountability of the employee for his acts and omissions causing damage or prejudicial to the interest of Federation, Rule 31 deals with misconduct by reason of indulging in criminal activities such as theft, fraud, mis-appropriation or dishonest in connection with the

Federation's business or property, Rule 31(g) deals with wilful insubordination or disobedience, Rule 33(1) deals with act done in contravention of the rules or regulations, Rule 33 (d) deals with wilful damage to the work, business, property or documents of the Federation and Rule 33 (f) deals with absenteeism without proper sanction.

35. The report of the Enquiry Officer specifically records that on 11.01.1992, the Respondent had admitted that he has purchased the cotton of agriculturists of the village, which were not attached to his Centre and has made scoring on the folders of the agriculturists i.e. Form No.1. Considering the admission given by the Respondent in respect of these two charges, the Petitioner-management had withdrawn the witnesses in that regard. The only charges as such, which remain to be proved is as regards the purchase of cotton of inferior quality and grading them of a higher quality and thereby causing loss to the Petitioner. In that respect the Petitioner had examined Shri Mustaaf and Shri Korpe, who have stated in their evidence that they had visited the Centre at Bodwad and had collected samples, which were sent for analysis to the

chemical laboratory. The chemical report and the inspection committee report was produced and exhibited in the Inquiry proceedings. The witnesses have specifically deposed that by grading the inferior quality cotton of a higher grade, loss has been caused to the Petitioner Federation. Pertinently, Shri Mustaaf who had carried out the inspection was not cross-examined by the Respondent during the enquiry. Similarly, Shri Korpe, the Joint Director, who had deposed that he along with other officials have visited the Centre and inspected the cotton and cotton seeds and found seeds to be an inferior quality, was not cross-examined. Shri Korpe has narrated the details of the chemical report and inspection report, that there was upgrading of cotton and also the Respondent had purchased the cotton from 54 agriculturists of village which were not attached to his Centre. He further deposed that the Respondent has made scoring regarding grade, heap number and rate of the folders, which is against the rules. The report was tendered by Shri Korpe which was marked as Exh.2/36. These two witnesses have categorically deposed as regards the charge of purchase of cotton of inferior quality and grading the same of a higher quality and thereby causing loss to the federation.

The failure on the part of the Respondent to cross-examine the crucial witnesses means that the Respondent had accepted the deposition and the evidence in that respect stood uncontroverted. Considering the evidence on record, I have no hesitation in holding that all charges except the charge of absenteeism without prior permission was proved.

36. Before proceeding further, I deem it appropriate to set out the nature of duties of the Respondent as is culled out from the material on record. The Petitioner Federation is the Chief Agent appointed for implementation of the cotton monopoly procurement scheme. The Respondent was, at the relevant time, a Senior Grader and incharge of the collection centre. It is not disputed that the rules provide that the collection centre has to accept the cotton from the villages associated with the centre. This rule was breached by the Respondent. As a senior grader it was the responsibility of the Respondent to grade the cotton as per its quality in accordance with the rules and regulations of the Federation. For that purpose Form-1 is prescribed in which the grade etc of cotton is required to be filled in. The purchase rate of

cotton is linked with the grading and as such the Respondent, being the centre incharge, was entrusted with a responsible duty and heavy burden lay upon the Respondent to perform his duty with utmost honesty. The manipulation in the grading of cotton has far reaching consequences as the end consumer is prejudiced by the upgradation of lower cotton quality.

37. Such being the nature of duties, it will have to be examined whether the acts of the Respondent amounts to negligence as held by the Labour Court. The Labour Court has observed that Shri Mustaaf had not taken samples of cotton and cotton seeds in presence of the complainant; and the panchanama does not bear the signature of the complainant. It also held that the as regards the purchase of the cotton from outsiders, who are not attached to the centre, it was the defence of the complainant that the market committee has given token folders to the farmers and this fact is not challenged by the Respondent. It needs to be noted that this defence was not taken by the Respondent during the inquiry. The Respondent has failed to cross examine Shri Mustaaf and Shri Korpe and their evidence stood uncontroverted.

However, it cannot be ignored that the samples were taken from the Centre by Shri Mustaaf, the Sales Officer of the Inspection and Vigilance Department. After taking the samples, panchanama was drawn, which was signed by the season employee and was accepted in the inquiry proceedings. The samples were sealed and sent to the chemical laboratory and the report was also tendered during the enquiry. The Respondent has not cross-examined the witnesses on any of these aspects and therefore, even if this inspection was not conducted in the presence of the Respondent, the same does not assist the case of the Respondent. It would be worthwhile to note that Shri Mustaaf was from the Vigilance Department, and as such it is not uncommon that surprise inspection are carried out in order to ascertain the factual position. The whole purpose of surprise inspection would be defeated, if advance notice is given to the employees while visiting the centre for inspection. Perusal of the judgment of the Labour Court does not reveal any discussion on the issue of the collection of the sample and drawing of panchnama in the absence of the Respondent.

38. The admitted position is that from 26.02.1991, for a period of 2½ months, the Respondent was absent from the collection centre. In such circumstances, the collection of the samples in the absence of the Respondent cannot be faulted with in as much as, it was not expected of the officials of the Vigilance Department to wait for the Respondent to resume work before the samples could be taken. As indicated earlier, the statement dated 23.04.1991, which is annexed at page 71 of the petition, assumes importance, which admits the charges of liberal grading. Considering the admission, even if the inspection report and panchnama is not considered, the charge of upgradation of inferior quality cotton stood proved. In the complaint filed, the Respondent has sought to withdraw from the statement on the ground that the said statement was obtained by giving an assurance that upon giving the statement he would be permitted to resume his duties. This complaint has been filed in the month of September, 1993 and the statement was given on 23.04.1991. There is no explanation given as to why the statement which was given in the year 1991 was not withdrawn by the Respondent earlier. It is also important to note that during the enquiry, the

Respondent has admitted the charge as regards the scoring on the folders as well as the purchase of cotton of the agriculturists from the villages not associated with the centre.

39. As regards the charge of buying cotton from the agriculturists of the villages not associated with the centre, the Labour Court has observed that it is the defence of the Respondent that the market committee had given token to the folders of the farmers and this fact was not challenged by the Respondent. This aspect as regards the purchase of the cotton from the agriculturists, who are not attached to the Centre was admitted by the Respondent before the Enquiry Officer on 11.01.1992, which led to the withdrawal of witnesses in that regard by the management. Having once admitted the said charge, it was thereafter not open for the Respondent to submit any defence before the Labour Court not taken during the inquiry.

40. As regards the fourth charge of remaining absent unauthorisedly and leaving headquarters without permission. Shri Bhende, Sub-Zonal Officer has deposed that the Respondent was

habitual in remaining absent and leaving headquarters without permission and that respect the Respondent was cautioned many times in writing. Shri Bhende has produced the letters on record. He has further deposed that there was heavy shortage at the Bodwad Centre, where the Respondent was Centre Incharge. This statement was also supported by Shri R.D. More, the Sub-Zonal Manager. The Labour Court on the issue of absenteeism of the Respondent, has held that the Respondent was not well and, therefore, he was on medical leave and on 26.02.1991, he had informed Sub-Zonal Officer about his illness. In that respect, he has submitted the medical leave application along with doctor's certificate. The Labour Court observed that the medical leave application indicates the counter signature of the Sub-Divisional Manager, Jalgaon and after getting his permission, he proceeded on leave. The Labour Court has held that as medical emergency is sudden cause, the findings of the Enquiry Officer to that extent is perverse. Considering the material brought on record, inasmuch as the medical leave application bears counter signature of Sub-Divisional Manager, the findings of the enquiry officer that the Respondent was remaining absent unauthorisedly and leaving the

headquarters without permission, cannot be upheld.

41. In my view, the act of the Respondent is accepting the cotton from the villagers not associated with his centre amounts to acting in contravention of the rules and regulations of the Federation; the act of interpolation in Form-1 for upgrading lower quality cotton amounts to an unfair practice. The upgrading of inferior quality cotton resulting in payment of higher rate amounts to fraud and indulging in dishonest activities in connection with the Federation's business and causing wilful damage to the business and property of the Federation. The Labour Court appears to have been swayed by the words "activities of criminal nature" appearing in Service Rule 31 and has held that there is no police complaint or any criminal case against the Respondent, and, also that it is not the case of the Petitioner that the Respondent has not misappropriated the amount of funds of the Respondent.

42. In my opinion, the Labour Court, has not appreciated the consequence of upgradation of cotton inasmuch as by doing so, there is wrongful financial loss caused to the Federation. The

Inquiry Officer has come to a finding on the basis of the evidence on record that loss is caused to the Federation to the tune of Rs.35,32,661.63. The charge of causing wrongful loss by a dishonest act is a serious charge which is proved against the Respondent. It is not necessary that there should be misappropriation of funds or financial gain by the Respondent to constitute misconduct.

43. In this context, it will be apposite to refer to the decision of the Apex Court in the case of ***State of Punjab Vs. Ram Singh Ex-Constable, [1992 AIR 2188]*** referring the definition of misconduct in Black's Law Dictionary as under :

"Misconduct has been defined in Black's Law Dictionary, Sixth Edition at page 999, thus:

'A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.

.....

....."

44. In this regard, it will be beneficial to refer to the

decision of the Apex Court in the case of *Union of India & Ors vs J. Ahmed* [1979 AIR 1022] in paragraph 11 as under:

"Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct [see *Pierce v. Foster* (1886) 17 QBD 536 at p. 543]. A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle (Indicator Newspapers)* (1959) 1 WLR 698. This view was adopted in [Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division](#), Nagpur, 61 Bom LR 1596, and [Satubha K. Vaghela v. Moosa Raza](#) (1969) 10 Guj LR 23. The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct".

In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in [Management, Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik](#) (1966) 2 SCR 434, in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In *S. Govinda Menon v. Union of India* (1967) 2 SCR 566, the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for

initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in [P. H. Kalyani v. Air France, Calcutta](#) (1964) 2 SCR 104, wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would *ipso facto* constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar (examples) instances of which (are) a railway cabinman signaling in a train on the same track where there is a stationary train causing headlong collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil [see Navinchandra Shakerchand Shah v. Manager, Ahmedabad Co- op. Department Stores Ltd.(1978) 19 Guj LR 108 at p.120]. But in any case, failure to attain the highest

standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty.”

45. The Petitioner Federation is the chief agent appointed for implementation of statutory scheme. The object of the Act is to supply unadulterated cotton to consumers at a reasonable price, and to guarantee the purity of cotton and honest trade practices at processing centres. The act of the Respondent has not only resulted in financial loss to the Federation but has also resulted in defeating the object of the Raw Cotton Act.

46. Misconduct implies wrongful intention and not mere error of judgment. An error of judgment is indicative of negligence. In the present case, the Respondent has admitted in the statement dated 23.04.1991 that the loose grading has taken place due to the existing political scenario. In such an event, it cannot be said that the wrongful grading was an error of judgment. The evidence on record points that there were 39 number of folders in which the in-

terpolation had taken place and grading was changed. Considering the numbers involved it cannot be said that it was not a wilful and deliberate act.

47. The inferior cotton higher quality is thereafter sold in the market as cotton of higher grade resulting in committing fraud upon the end consumers who pays a higher price for lower grade quality. Such malpractice cannot be countenanced. The respondent as a Senior Grader was assigned a responsible duty of grading of cotton. Taking into consideration the statutory scheme for the implementation of which the Federation employed as Chief Agent, the act of the respondent amounts to grave misconduct. It cannot be expected of the Federation to continue the services of such an employee, who has indulged in an dishonest practice.

48. In my opinion, the finding of the Labour Court that the charge of negligence and not misconduct is proved against the Respondent cannot be sustained. As such the provisions of Item 1(g) of Schedule IV of the MRTU and PULP Act dealing with misconduct of minor or technical nature, is inapplicable in the facts

of present case.

49. As regards the decision in the case of *Shankar M. Gowekar (supra)* relied upon by the learned counsel for Respondent, the facts of the said case are distinguishable inasmuch as the Petitioner therein who was employed with M.S.R.T.C as a driver, who was dismissed from service, abused and assaulted his superior. In the facts of that case this Court held that the denial of backwages is adequate punishment. In the present case, the charges against the Respondent are grave and serious in nature.

50. In light of the discussion above, it will have to be examined whether the Labour Court was right in interfering with the punishment of termination of services. It will be profitable to refer to the decision of the Apex Court in the case of ***B.C. Chaturvedi v. Union of India, [1995 SCC (6) 749]***, where a Bench of three learned Judges of the Supreme Court formulated the principles of law in the following terms:

“Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual

receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of

evidence cannot be permitted to be canvassed before the Court/Tribunal.”

51. The decision of the Labour Court will have to be assessed in light of the decision of the Apex Court. In my opinion, the findings of the Labour Court cannot be sustained. The inquiry officer has taken into consideration the evidence on record and has arrived at a conclusion that the misconduct has been proved. The Labour Court while interfering with the quantum of punishment has held that there is nothing on record brought to show that the Petitioner has sustained actual financial loss due to the act of the Respondent. The evidence on record conclusively proves that the inferior quality cotton was graded as higher quality and the resultant consequence is payment of higher rate. That being so, the inevitable conclusion is financial loss caused to the Federation. It is not the quantum of loss which is relevant but the factum of carrying out interpolation in folders-39 in numbers and upgrading inferior quality cotton amounting to dishonest and unfair practice, which is grave and serious misconduct. In my opinion, the Labour Court erred in substituting its own finding for the finding of

misconduct arrived at during the inquiry.

52. When considering whether punishment of termination is shockingly disproportionate to gravity of misconduct, it will have to be borne in mind that the Federation has contended that the continuation of services of Respondent is detrimental to the interest of Federation.

53. The decision of the Apex Court, in the case of ***State of U.P. and others (supra)***, which has been relied upon by the learned counsel for the Petitioner is squarely applicable to the facts of this case. The Apex Court in the said decision has held in para 7, as under:

"7. It is settled law that the court is not a court of appeal to go into the question of imposition of the punishment. It is for the disciplinary authority to consider what would be the nature of the punishment to be imposed on a Government servant based upon the proved misconduct against the Government servant. Its proportionality also cannot be gone into by the Court. The only question is whether the disciplinary authority would have passed such an order. It is settled law that even one of the charges, if held proved and sufficient for imposition of penalty by the disciplinary authority or by the appellate authority, the Court would be loath to interfere with that part of the

order. The order of removal does not cast stigma on the respondent to disable him from seeking any appointment elsewhere. Under these circumstances, we think that the High Court was wholly wrong in setting aside the order."

54. The Industrial Court in the Revision Application ULP No.516 of 1998, has by a cryptic order rejected the revision application. There is no reasoning given by the Industrial Court while rejecting the revision application. This Court is mindful of the parameters of exercise of writ jurisdiction, however, in the present case, the perversity in the approach of the Labour Court and affirmation by the Industrial Court compels this Court to interfere in its writ jurisdiction.

55. Considering the above, the impugned judgment of the Labour Court dated 07.10.1998 and of the Industrial Court dated 18.12.1998 are clearly unsustainable and hereby quashed and set aside. In light of the above, petition succeeds and is hereby allowed.

56. In view of the above order, nothing survives for

consideration in the Civil Application No.11752 of 2011 and the civil application stands disposed of.

(SHARMILA U. DESHMUKH, J.)