

HARSHADA SAWANT
(P.A.)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13192 OF 2023**

Hitachi Astemo Fie Pvt. Ltd.

B-3, MIDC Chakan, Chakan Talegaon Road,
Taluka – Khed, District – Pune, 410 501.

... Petitioner

Versus

Nirajkumar Prabhakar Rao Kadu

C/o. S. No. 72/3, Adarsha Nagar,
Samata Colony, Near Bharati English Medium
School, Dighi, Pune – 411 015.

... Respondent

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- Mr. K.S. Bapat, Senior Advocate a/w. Mr. T.R. Yadav, Advocate for Petitioner.
- Mr. Nitin Kulkarni, Advocate for Respondent.

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CORAM	: MILIND N. JADHAV, J.
RESERVED ON	: DECEMBER 05, 2023
PRONOUNCED ON	: DECEMBER 12, 2023

JUDGMENT:

1. This Writ Petition is filed by the Petitioner – Company under the provisions of Article 226 and 227 of Constitution of India taking exception to the order dated 31.05.2023 passed on preliminary issues in Reference (IDA) No.106 of 2019 by the 1st Labour Court, Pune. Reference (IDA) No.106 of 2019 is pending adjudication on the remaining issues.

2. By consent of parties, Writ Petition is taken up for final hearing.

3. The facts necessary for adjudication of the present Writ Petition are outlined here under:-

3.1. Respondent - Workman was appointed to work in the assembly section by Petitioner – Company in the year 2003 and his services were terminated on 02.05.2018.

3.2. Respondent - Workman was one of the office bearers of the recognized Union in the Petitioner – Company. In 2017, there was a dispute over wage settlement and negotiations were not concluded and the atmosphere in the company became tensed. At that time, the office bearers of the recognized Union resorted to various agitations including hunger strike, etc. to pressurize the Petitioner – Company. Ultimately a settlement was arrived at between the parties regarding revision of wages and other service conditions after almost 20 months.

3.3. During the interregnum on 20.02.2017, the Respondent - Workman posted two posts on his Facebook account which according to the Petitioner – Company were defamatory, were intended to tarnish the image and reputation of the Petitioner – Company and its management in the eyes of the public at large and were made with an intention to instigate and incite the workmen during the pendency of the wage settlement. According to Petitioner – Company, several likes and comments were received in response to the said Facebook posts which had by that time become viral. One such comment posted in

response to the first Facebook post read that, “the workmen should adopt a militant approach with weapons and assault the officials of the Company / Management and only then the settlement would be concluded”. It is stated that all Facebook posts and comments thereof were in Marathi language.

3.4. A charge-sheet dated 25.02.2017 was issued to the Respondent – Workman for posting the two Facebook posts alleging act of ‘misconduct’ against him under clauses 24(d), 24(k) and 24(l) the Model Standing Orders.

3.5. Respondent – workman participated in the domestic enquiry and was represented by Advocate Deepak Pillai as his defence representative and also adduced evidence of himself and one another workman in his support. The Enquiry Officer considered the evidence and submitted his Report dated 26.04.2018 holding the Respondent - workman guilty of misconduct by concluding that the misconduct alleged was proved to his satisfaction. The Enquiry Report was offered to the Respondent – workman for his comments. His say was considered and held to be not satisfactory resultantly leading to termination of his services by issuing dismissal order dated 02.05.2018.

3.6. Respondent – workman raised an industrial dispute to challenge his termination and dismissal which was referred to the 1st

Labour Court, Pune as Reference (IDA) No. 106 of 2019. The 1st Labour Court, Pune framed five (5) issues for adjudication of the Reference, out of which Issue No.1 regarding fairness of enquiry and Issue No.2 regarding findings of the Enquiry Officer were decided to be framed as preliminary issues.

3.7. The Labour Court after hearing the parties to the dispute on the two preliminary issues, by order dated 31.05.2023 concluded that the charge-sheet issued to the Respondent – workman and the Enquiry conducted was illegal and not proper and the findings of the Enquiry Officer were perverse.

3.8. Being aggrieved by the order dated 31.05.2023 passed by the 1st Labour Court on the aforementioned two preliminary issues, the Petitioner - Company challenged the same in the present Writ Petition.

4. Mr. Bapat, learned Senior Advocate appearing for the Petitioner - Company would submit that, it was incorrect on the part of the Labour Court to hold that the enquiry was illegal and not fair and proper when the Respondent – workman had fully participated in the entire domestic enquiry with the assistance of an advocate, without raising any grievance regarding the procedural part of the enquiry. He would submit that findings returned by the Labour Court to hold that misconduct committed by the Respondent – workman by posting the Facebook posts on his account was not connected with the affairs of

the Petitioner – Company is erroneous and that the said misconduct happened outside the Company's premises is a completely perverse finding in the facts and circumstances of the present case. He would submit that the Labour Court committed gross error while holding that the two Facebook posts posted by Respondent – workman on his Facebook account were not of a violent nature and did not amount to indecent behaviour in view of the denial by Respondent – workman that he had not posted the same.

4.1. He would submit that the Labour Court committed an error while holding that the misconduct committed by the Respondent – workman had no remote connection with the working of the Company, when admittedly at the then time hectic negotiations for arriving at a wage settlement and change in service conditions were actively deliberated and discussed for some months between the Petitioner - Company and the recognized Union. He would submit that Respondent – workman was admittedly an office bearer of the recognized Union which was actively involved in the settlement negotiations . He would submit that the two Facebook posts posted by the Respondent – workman during the tense period of negotiations between the parties, if read *verbatim* incited and invoked hatred and passion for committing offensive acts against the management / directors of the Petitioner - Company. He would submit that at the

then time when the wage settlement negotiations were being actively discussed by the Union, workmen had resorted to hunger strike and it is at that time when the two Facebook posts were posted by the Respondent – workman to incite hatred, defame and tarnish the image of the Petitioner - Company which could have led to an eventuality. He would submit that no workman much less an office bearer of the recognized trade Union enjoys immunity from committing an act which is offensive and goes beyond reasonableness and therefore the findings returned by the Labour Court that the two Facebook posts posted by the Respondent – workman were in the realm of freedom of speech is a perverse finding.

4.2. He would submit that though initially Respondent – workman denied having posted the two Facebook posts and took the defence that his Facebook account may have been hacked by somebody, he later on admitted that the Facebook account on which the posts were posted belonged to him but failed to produce any evidence of his Facebook account having been hacked so as to disown the posting of the two Facebook posts. He would submit that defence adopted by the Respondent – workman that despite posting the two Facebook posts, there were no acts of violence or riotous behaviour which happened and therefore no misconduct can be construed, is a completely erroneous finding returned by the Labour Court while

exonerating the Respondent – workman.

4.3. He would next submit that findings returned by the Labour Court that the act committed by Respondent – workman was not committed on the premises of the Company or in its vicinity and therefore charges levelled in the chargesheet could not be applied to the Respondent – workman's act is a completely erroneous finding in the facts and circumstances of the present case in as much as by virtue of the said act the Respondent – workman had incited and invoked hatred which could have led to disastrous consequences against the management/ directors of the Petitioner - Company which would have been irreversible in nature. He would therefore submit that the act committed by the Respondent – workman squarely fell within the provisions and four corners of 'commission of misconduct' under clauses 24(d), 24(k) and 24(l) of the Model Standing Orders. He therefore submitted that the impugned order passed by the Labour Court on the two preliminary issues deserves to be quashed, set aside and the enquiry held needs to be upheld as also the findings returned by the Enquiry Officer.

5. *PER CONTRA* Mr. Kulkarni, learned Advocate appearing for the Respondent – workman would submit that the Petitioner - Company issued the charge-sheet to Respondent – workman on 25.02.2017 for posting two defamatory posts on his Facebook account

on 20.02.2017 at about 1.27 pm and 3.55 pm. He would submit that, various news / articles were published in the newspaper / print media / television media and Facebook through the workmen's Union against the Petitioner - Company but due to the adamant nature of the Company in not settling the demands, there were several agitations, demonstrations, marches and hunger strikes which were resorted to at the then time. He would submit that the Petitioner - Company in order to pressurize and harass the active members of the recognized Union, has issued the charge-sheet and suspension letter to the Respondent – workman.

5.1. He would submit that assuming for the sake of argument that the two Facebook posts were posted by the Respondent – workman, however it led to no disorderly act or violent atmosphere or any other act which could be classified as an imminent result of the two Facebook posts thereby disturbing the peace in the Company or for that matter commission of any criminal offence. He would submit that assuming that the two Facebook posts were posted by Respondent – workman, the same were admittedly posted from outside the premises of the Petitioner - Company and therefore by no stretch of imagination it can be construed that Respondent – workman committed an act subversive of discipline or good behaviour on the premises of the establishment of the Petitioner - Company for

applicability of clauses 24(d), 24(k) and 24(l) of the Model Standing Orders. He would submit that in that view of the matter, the enquiry conducted by the Enquiry Officer came to illegal findings which were totally wrong and perverse and were rightly set aside by the Labour Court, Pune. He would submit that in the facts and circumstances of the present case, the expression “misconduct” in Standing Order No.25 must refer to those acts of commission and omission which constitute “misconduct” as enumerated in Standing Order No.24 and none else.

5.2. He would submit that penalty is required to be imposed for commission of an act constituted as “misconduct”. He would submit that the charge imputed as “misconduct” in the present case cannot be covered by the provisions of clauses 24(d), 24(k) and 24(l), when the two Facebook posts were posted on social media by the Respondent – workman from outside the premises of the establishment of Petitioner - Company. He would submit that the Facebook posts posted by Respondent – workman was in light of his fundamental right guaranteed to him under the Constitution of India as his basic Freedom of Speech and Expression. In that view of the matter, he would submit that merely because after reading the Facebook posts, it may incite passion for violence, however it cannot be equated with any violent act or any riotous or disorderly behaviour when in fact no such act or incident has occurred which is admitted by the witness of the

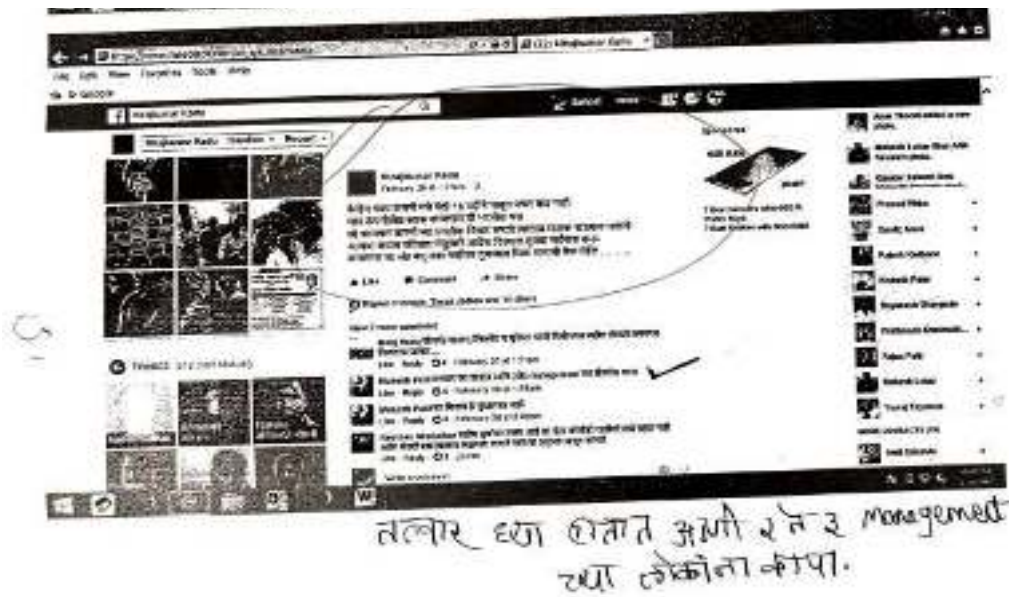
management of Petitioner – Company. He would therefore urge the Court to consider the posting of the two Facebook posts by Respondent – workman as a form of demonstration or agitation and therefore uphold and confirm the impugned order dated 31.05.2023 on both the preliminary issues.

6. I have heard Mr. Bapat. Learned Senior Advocate appearing for the Petitioner - Company and Mr. Kulkarni, learned Advocate appearing for Respondent – workman and with their able assistance perused the pleadings of the present case as also the evidence produced on record. The submissions of the learned Advocates have received due consideration of the Court.

7. In the present case, it is seen that the Petitioner - Company is an international Company employing about 1000 workers on different posts engaged in manufacture of carburetors for two-wheelers. Though it is an admitted position that the Respondent – workman had worked continuously for more than 15 years, the focus and dimension of the present Writ Petition concerns the two Facebook posts which were posted by Respondent – workman on his Facebook account on 20.02.2017. Before I analyze the two Facebook posts, it is an admitted position that at the then time hectic negotiations were taking place between the Petitioner – Company and the recognized Union for arriving at a wage settlement agreement and with respect to

the conditions of service. That apart admittedly Respondent – workman was an active office bearer of the recognized Union. It has also come on record and admitted in evidence by both parties that at the then time the entire atmosphere in the Petitioner - Company was extremely sensitive as settlement agreement negotiations were stretched and in progress and Respondent – workman in his evidence has admitted that several articles and news items were published against the Petitioner - Company in the newspapers, print media, Facebook through the worker's Union and even on television. The Respondent – workman has also admitted the fact that at the then time, several agitations such as distribution of pamphlets in the MIDC area where the Petitioner – Company's factory was situated, various demonstrations, conducting marches and resorting to hunger strike were undertaken by the recognized Union and its members. In this scenario, Respondent – workman posted the two Facebook posts.

8. There are two contentious Facebook posts posted by Respondent – workman on 20.02.2023. The post posted at 1.27 pm is at page No.85 of the Petition. It is in marathi language and is scanned and reproduced below:

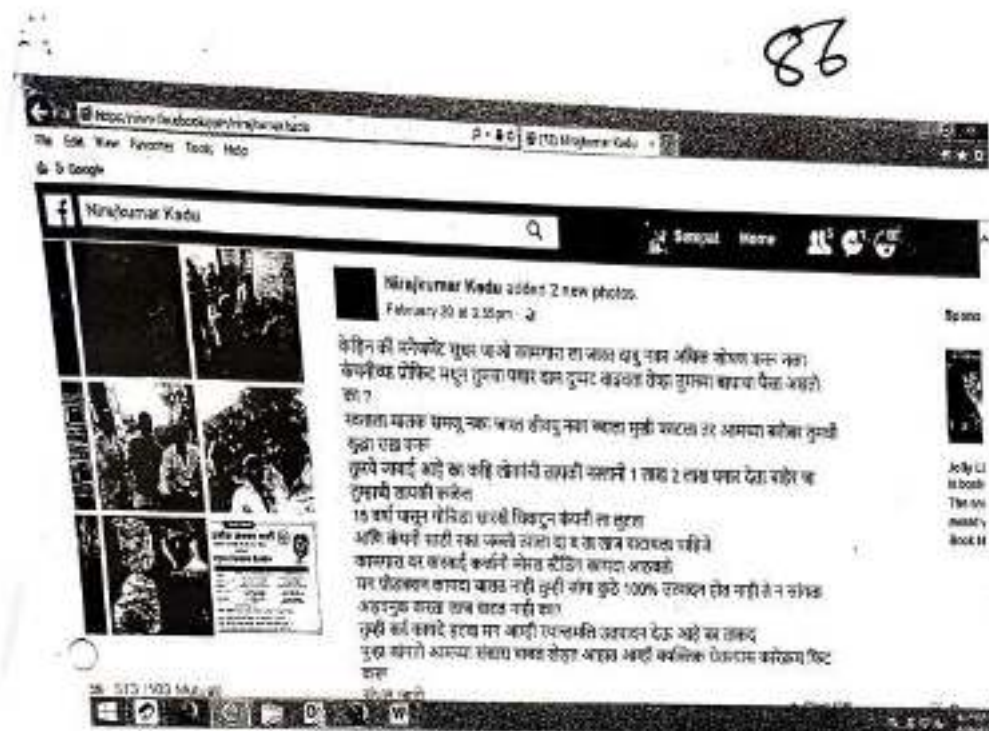


9. From the above it is seen that the Respondent – workman has posted that, “from the past 18 months there is no increase in salary by the Company and the staff members have increased. He has further posted that the management is not thinking about the workmen and despite the workmen thinking about the progress of the company, the management is putting the workmen in the ditch. It further reads that the management should not play with the patience of the workers or else on the command given by the leadership, the management shall be destroyed and lastly, it states that the management should not see the end of the workmen otherwise the management will be required to beg.”

10. For the above post, two responses / comments were received at 1.51 pm and 1.59 pm. The first comment received at 1.51

pm states that, “until the government, management and the union are hand in glove with each other, till that time the workmen will be exploited”. The second comment received at 1.59 pm states that, “workmen should take swords in their hands and cut (assault) 2 to 3 management persons”. The person who has posted the above response / comment at 1.59 pm has followed with another comment at 2.00 pm stating that, “unless the above is done, the management will not improve.

11. The next Facebook post posted by the Respondent – workman on the same date is a somewhat detailed post posted at 3.55 pm which is page No. 86 of the Petition. The same is scanned and reproduced below for reference:



12. When translated in plain english, the above post states that the management is warned to improve and not pressurize the workmen and exploit them since the management increases their own salary two-fold from the profits earned by the Company. It calls upon the management not to consider them as owners of the Company and exploit the workmen, since if the workmen erupt then they shall destroy the management alongwith themselves. That, certain management persons who were drawing salary of Rs.1 to 2 lakhs were incompetent and for the past 15 years they were looting the Company like leeches and the workmen who were working for the company were given a raw deal . It questions the management about the Model Standing Orders and warns the management that they should not mess with the life of the workmen failing which the workmen shall take it personally and shall teach the management a lesson.

13. It is clearly seen that posting of such posts on the Facebook account and the comments received thereto are clearly an act of inciting hatred and passion against the management. At the outset, it needs to be stated that the Respondent – workman initially refused to accept that he had infact posted the two Facebook posts. However, in the evidence that was produced before the Labour Court, Respondent – workman failed to produce evidence to the effect that they were not posted by him. The Respondent – workman failed to produce any

evidence to the effect that his Facebook account was hacked and that he was not the author of the two Facebook posts. In that background, it was an admitted position that the aforesaid two Facebook posts were indeed posted by the Respondent – workman and he therefore could not escape the liability of having posted these two Facebook posts.

14. Next, it is seen that on the basis of the two Facebook posts posted by Respondent – workman, hatred and passion was clearly incited clearly amongst those who have given the likes and comments and one such comment incited the passion to such an extent that it stated that, “atleast 2-3 persons from the management should be assaulted with swords”. Though it has been argued vehemently by Mr. Kulkarni that despite the two Facebook posts and the provocative comments received, no untoward incident had occurred and no violent incident took place resulting in a riotous or disorderly behaviour and therefore benefit of doubt has to be given to the Respondent – workman, however evidence on record clearly shows that at the time when the said Facebook posts were posted the entire situation in the Petitioner - Company was extremely tense as settlement for wage negotiations were under progress between the Company and the recognized Union. Evidence clearly points out to the fact that the entire atmosphere in the Petitioner - Company was sensitive and

agitations were being held against the Company in different forms because the wage negotiations / settlement could not be concluded. That there was complete restlessness amongst the workmen. In such a scenario and background, the aforesaid two Facebook posts were posted and therefore considering their natural meaning and the effect of such posts it can be clearly deduced that it could have led to any disorderly act. As noted earlier, both the Facebook posts were in Marathi language and clearly invoked hatred and passion to commit an overt act.

15. In the present case it is seen that, the act committed by Respondent – workman cannot be dismissed lightly especially in view of the fact that during the then time the atmosphere in the Petitioner - Company was extremely sensitive. In fact record indicates that for as many as 20 to 22 months the issue relating to wage revision and settlement with the recognized Union was pending and under negotiation. Substantial material has been appended to the Petition beginning from page No.117 onwards to show and prove this fact. Fast until death was planned by the President of the recognized Union from 02.04.2017 and the pamphlet published in that respect is at page No.117 of the Petition. On page No.119 of the Petition is a post presumably on Facebook itself, calling upon the employees of the Petitioner - Company to carry out a two-wheeler rally from the

Company's gate to Mahalunge. Photographs with respect to the said rally are also placed on record. Photographs of the *morcha* carried out by the workmen of the Petitioner - Company are at page No.122 of Petition. Newspaper items, articles and publications with respect to the agitations carried out by the Union are highlighted in the Petition from page Nos.132 onwards.

16. In view of the above, what is important to be noted, is the fact that all actions of the workmen of Petitioner – Company during these times have to be within the realm of reasonableness and any such action on their behalf cannot cross the limits of reasonableness. In the present case, it is seen that misconduct as stated to have been committed by the Respondent – workman is covered under clauses 24(d), 24(k) and 24(l) of the Model Standing Orders. Mr. Kulkarni has vehemently objected to the chargesheet issued to Respondent – workman and contended that on a plain reading of clauses 24(d), 24(k) and 24(l), it cannot be established that the alleged act of “misconduct” was committed by the Respondent – workman within the premises of the Company. For the sake reference and convenience, clauses 24(d), 24(k) and 24(l) of the Model Standing Orders are reproduced herein below :

“24(d):- theft, fraud or dishonesty in connection with the employer's business or property or the theft of property of another workman within the premises of the establishment;

24(k):- drunkenness, riotous, disorderly or indecent behaviour on the

premises of the establishment;

24(1):- commissions of any act subversive of discipline or good behaviour on the premises of the establishment.”

17. In support of the impugned order, Mr. Kulkarni has drawn my attention to the words “within / on the premises of the establishment” in the above clauses and would submit that by no stretch of imagination it can be construed that the two Facebook posts posted by the Respondent – workman were posted on the premises of the establishment of the Petitioner - Company. He would submit that admittedly in the present case the procedure of enquiry that was followed was appropriate, the charge and subsequent action by management on the basis of the above clauses was incorrect and therefore rightly set aside by the Labour Court. However in the facts and circumstances of the present case, submissions made by Mr. Kulkarni cannot be accepted at all. Discipline is the hallmark of any employee / workman when he is required to conduct himself as a workman. Regulation of behaviour of workman is essential for peaceful conduct of industrial activity in the vicinity of the establishment as also within the premises of the establishment. In today’s technologically advanced world mobile phone is carried 24X7 by every person. Access to Facebook account is more conveniently accessed through the mobile phone. In that view of the matter, submissions made by the Respondent – workman that for posting the

Facebook posts, Respondent – workman did not have a computer nor he was on the premises of the establishment is not proved and therefore the contention that Respondent – workman ought to be exonerated cannot be accepted.

18. That apart, what is crucial to be noted is the fact that once it has been proved that the two Facebook posts were posted by the Respondent – workman, the contents and effect of the two Facebook posts would be required to be deciphered for arriving at a proper conclusion. *Prima facie*, it has been seen that a serious comment of taking resort to weapons and assaulting the management personnel was commented upon in reply to the first Facebook post. Language used by the Respondent – workman in the two Facebook posts clearly amounts to commission of an act which is subversive of discipline or good behaviour on the premises of the establishment when the aforementioned clauses of the Model Standing Order are broadly interpreted. To a certain extent, commission of an act which may lead to a disorderly or riotous incident is covered by clause 24(k). Though I may partly agree with Mr. Kulkarni's submissions that clause 24(d) may not apply to the act committed by Respondent – workman, it is required to be seen that the word 'dishonesty' appearing in clause 24(d) has been stated therein with having a wide connotation with respect to the employer's business / property. In so far as clause 24(k)

is concerned, the act and the aftermath of the said act, which is alluded to herein above could have led to riotous and / or disorderly and / or indecent behaviour. Similarly, clause 24(l) clearly covers the act of Respondent – workman for having posted the two Facebook posts. Freedom of speech and expression cannot be allowed to be transgressed beyond reasonableness. If that is allowed, it could lead to disastrous consequences. In a given case, one cannot and should not wait for the consequences to occur. Such acts itself are required to be nipped in the bud. Otherwise it would convey a wrong signal to the society at large. In the present case, though it has been vehemently argued that no untoward incident had taken place, merely because no incident has taken place cannot be a ground for discharging the act of posting the defamatory and provocative posts made by the Respondent – workman at the then time when any disgruntled workman could have committed an act by getting incited by the two Facebook posts and the comments received thereto. In fact, a clear nexus is made out between the two Facebook posts posted by the Respondent – workman and the misconduct levelled against him. It is seen that, the two posts were in fact directed against the Petitioner - Company with a clear intent to incite hatred and were provocative. This clearly stands proven.

19. Further the provocation to the two Facebook posts was

immediately seen since the comment made on the first post incited hatred to such an extent that the person who commented called upon the workmen of the Petitioner - Company to take law into their hands and commit a criminal offence / act of assault to teach the management a lesson. Therefore the seriousness of the two Facebook posts clearly incited and provoked the reader against the Petitioner - Company. Considering the fact that the Petitioner - Company employed thousands of workmen, such posts and the comments thereof when read by any disgruntled workman could have led to any disorderly act. When it was an admitted position that wage settlement talks were going on for several months, a much greater degree of restraint is called upon to be exercised by the office bearers of the recognized Union who hold active parleys with the Petitioner – Company. However if the same office bearers of the recognized Union themselves do not practice restraint and have faith in the statutory provisions of law and commit such an act by posting posts which invoke hatred and are by itself provocative, such acts cannot / should not be pardoned. A strong message needs to be sent out against such acts.

20. Though it has also been vehemently argued on behalf of the Respondent – workman that the two Facebook posts were not posted by him, but the evidence on record is to the contrary. A detailed

enquiry has taken place not only before the Enquiry Officer but also before the Labour Court wherein evidence has been led by both sides. Therefore adjudication on the two preliminary issues as concluded by the Labour Court, Pune cannot be accepted merely because the act of misconduct has not had any adverse effect on the peaceful working of the Company. The Labour Court has in fact returned a finding that though the misconduct is committed by the Respondent – workman, but since it has had no adverse effect, it should be deemed to have been committed and therefore the response to the two Facebook posts was likely to be violent cannot be accepted. I do not agree with these findings due to the reasons alluded to herein above.

21. The impugned order dated 31.05.2023 is therefore not sustainable at all. It cannot be construed that the charge-sheet issued to the Respondent - workman is illegal and the enquiry is unsustainable or illegally conducted in view of the above observations and findings. The act committed by the Respondent - workman stands squarely covered by clauses 24(d), 24(k) and 24(l) of the Model Standing Orders in the facts and circumstances of the present case and are clearly proven against the Respondent - workman on the basis of the evidence placed on record.

22. The impugned order dated 31.05.2023 is therefore quashed

and set aside. Findings on both the preliminary issues are dismissed and overturned. As a consequence it is held that, the enquiry conducted against Respondent - workman was absolutely fair and proper and the findings returned by the Enquiry Officer are upheld as being proper. The Writ petition succeeds. It stands allowed in terms of prayer clause (a) and (b) only which read thus:

“(a) That This Hon’ble High Court in exercise of its powers under Article 226 of the Constitution of India be pleased to issue a Writ of Certiorari or mandamus or any other like Writ or Direction and upon calling the Record and Proceedings from the Presiding Officer, First Labour Court, Pune in Reference (IDA) No. 106 of 2019 and on, going into the legality and propriety of the Order Impugned, be pleased to quashed and set aside the Order on the preliminary issue in Reference (IDA) No. 106 of 2019 dated 31/05/2023 passed by a Presiding Officer, First Labour Court, Pune.

(b) That this Hon’ble High Court be further pleased to hold and declare that the enquiry conducted against the workman was fair and proper and that the Findings of the Enquiry Officer are proper.”

23. In view of the above, the 1st Labour Court, Pune is directed to complete hearing in Reference (IDA) No. 106 of 2019 on the remaining three issues within a period of 8 months from today, strictly in accordance with law.

24. With the above directions, Writ Petition stands allowed.

[MILIND N. JADHAV, J.]