

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7445 OF 2004

Bel-Air Sanatorium & Hospital

Dalkeith, Panchgani

Satara – 412 805

....Petitioner

V/S

1. Sarva Mazdoor Sangh

C/o Sassoon Hospital,

Pune – 411 001

2. The Presiding Officer

Labour Court, Satara

3. Member, Industrial Court,

Satara.

....Respondents

Mr. Anand Pai with Mr. Pratik Kothari and Mr. Sahil Sayed *for the Petitioner.*

Mr. Nitin Kulkarni with Mr. Avinash Belge *for Respondents.*

CORAM : SANDEEP V. MARNE, J.

RESERVED ON : 28 NOVEMBER 2024.

PRONOUNCED ON : 04 DECEMBER 2024.

J U D G M E N T:

1. Petitioner-Hospital has filed the present Petition challenging the judgment and order dated 5 August 2004 passed by Industrial Court, Satara dismissing its Revision Application (ULP) No.21 of 2004 and allowing Revision Application (ULP)

No.32 of 2004 filed by Respondent No.1-Union. The Revision Applications were preferred by rival parties challenging judgment and order dated 7 April 2004 passed by Judge, Labour Court, Satara in Complaint (ULP) No.66 of 1998. The Labour Court partly allowed Complaint by directing Petitioner-Hospital to reinstate six members of Respondent No.1-Union with continuity of service and 40% backwages. By allowing Revision preferred by Respondent No.1-Union, the Industrial Court has modified the order passed by the Labour Court by directing the Petitioner to pay full back-wages to the said six members of the Respondent No.1-Union with effect from the date of termination till the date of reinstatement.

2. Petitioner is a Hospital established in the year 1912 and was a public charitable hospital till the year 1964. Since 1964, ownership of the Hospital is vested with Indian Red Cross Society. According to Petitioner-Hospital, Indian Red Cross Society runs the Petitioner-Hospital at Panchgani, District Satara for providing medical treatment for poor Tuberculosis (TB) and HIV/Aids patients. In the year 1994 Petitioner-Hospital had employed about 64 employees, of whom 45 employees were in workmen category. According to it, a group of 8 workmen viz., Mr. Kisan Bajirao Ghadge, Mr. Satish Mohan Sapkal, Mr. Rajeshwar Shankar Kamble, Mr. Sandip Vishnu Gaikwad, Mr. Rajendra Yeshwant Vanne, Mr. Kailas Ananda Jadhav, Mr. Ashok Dagdu Ghadge and Mr. Arun Tukaram Kamble had joined Respondent No.1-Union and were displaying indiscipline and

derelection of duty as well as indulging in threats and assaults towards the other staff members and employees. The said eight workmen were restrained of an order of injunction dated 6 January 1998 by Industrial Court, Kolhapur in Complaint (ULP) No. 2 of 1998 filed by the Petitioner from using abusive language, acts of force and violence against the loyal workmen, managerial staff and doctors in the Hospital.

3. On 19 June 1998, the Administrator of the Hospital Father Tommy Kariyilakulam (**Fr. Tommy**) was called in Panchgani police station and was informed that a Complaint was lodged against him alleging that he had beaten up a child who had sustained injuries. According to Fr. Tommy, the child had fallen down from the step and was administered treatment by him in the Hospital. Fr. Tommy promised to visit the police station on the following day for recording his statement. According to Petitioner-Hospital, on 20 June 1998 at about 9 a.m. the Secretary of the Fr Tommy, Ms. Litty came to his house and informed him that group of villagers and employees were approaching his house for assaulting him. She accordingly locked the front door of the house and a group of persons assembled at the house and started pelting stones, hurling abuses and shouting slogans. At 10.30 a.m. Police Sub Inspector of Panchgani police station approached the Fr. Tommy's house and telephonically gave information about the incident to Deputy Superintendent of Police, Satara. The mob allegedly continued abusing and shouting outside the house. The Police Sub

Inspector again visited the house at 1 p.m. and took away the Fr. Tommy to the Police Station. It is alleged that the mob comprised of hospital employees Mr. Rajendra Yeshwant Vanne, Mr. Satish Mohan Sapkal, Mr. Kailash Jadhav, Mr. Arun Tukaram Kamble, Mr. Rajeshwar Shankar Kamble, Mr. Sandeep Gaikwad and Mr. Kishan Bajirao Ghadge. It is alleged that when Mr. Radhakrishnan C (X-ray Technician), Mr. Jimmy Sebastian (Pharmacist), Ms. Mercy Mathew (Lab Technician), Mr. Bhausahab More (Ward Hamal) and Mr. Jojan Skaria went at the house of the Father to make inquiries, they were abused and assaulted by the mob comprising of the said eight hospital employees. It appears that Sister Maria Teresa lodged police complaint in respect of the incident and some of the accused were arrested.

4. The Petitioner-Hospital issued charge-sheets dated 20 July 1998 to the said eight workmen alleging that on 20 June 1998, the charge-sheeted employees approached Administrator's house alongwith outsiders and attempted to beat him out and at that time they actually assaulted some of the senior staff members. It was further alleged that the said charge-sheeted employees collected mob of 150 persons and assaulted Ms. Mercy Mathew, Mr. Radhakrishnan, Mr. Jimmy Sebastian, Mr. Bhausahab More and Mr. Jojan Skaria resulting immediate lockout at the hospital and procurement of police protection.

5. Domestic enquiry was conducted into the charges and Mr. S.K. Soman, Advocate was appointed as Enquiry Officer. The

date of enquiry was fixed as 23 July 1998 calling upon the employees to participate in the enquiry. It appears that the enquiry was conducted on seven different dates between 23 July 1998 to 4 August 1998. According to the Petitioner-Hospital, Respondent No.1-Union failed to remain present for the enquiry on 30 July 1998 but the Respondent-Union approached with belated adjournment application submitted at 3.25 p.m. by which time deposition of Petitioner-Management witnesses was already complete. It appears that three Management witnesses were examined in the enquiry namely, Sister Maria Teresa, Mr. Jimmy Sebastian and Mr. Radhakrishnan. It appears that during pendency of the enquiry, one of the charge-sheeted employees Mr. Ashok Dagdu Ghadge resigned from services accordingly enquiry *qua* him was dropped. Similarly, enquiry against Mr. Rajeshwar Shankar Kamble was also dropped apparently because he was terminated in some other proceedings. The enquiry was conducted *ex-parte* and the Enquiry Officer gave report dated 7 August 1998 holding the charges to be proved against the balance six charge-sheeted employees. On the same day, it appears that show-cause notices were issued to the said six employees proposing to dismiss them from service. Respondent-Union filed Complaint (ULP) No.66 of 1998 in Labour Court, Satara challenging the show-cause notice dated 7 August 1998. The Complaint was filed on 13 August 1998. However, the Petitioner-Hospital dismissed the said six employees from service with effect from 14 August 1998.

6. The Complaint was resisted by the Petitioner-Hospital by filing a Written Statement. The Labour Court delivered order of preliminary issue of fairness of enquiry on 19 September 2002 and held that the domestic enquiry conducted against the employees was not legal and valid and that the same was vitiated.

7. Petitioner-Hospital thereafter led evidence before the Labour Court by examining five witnesses viz. Fr. Tommy, Sister Maria Teresa, Mr. Jimmy Sebastian, Mr. Radhakrishnan and Dr. Sumit Tukaram Pise. Respondent-Union examined the dismissed employees Mr. Satish Mohan Sapkal, Mr. Kishan Bajirao Ghadge, Mr. Arun Tukaram Kamble and Mr. Rajendra Yeshwant Vanne. It appears that based on the police Complaint lodged by Sister Maria Teresa on 30 June 1998, Regular Criminal Case No.28 of 1998 was registered against seven employees and by judgment and order dated 4 May 2001 passed by Judicial Magistrate First Class, Wai, all the seven accused were acquitted. The Labour Court thereafter proceeded to deliver final judgment and order dated 7 April 2004 partly allowing Complaint holding that Petitioner-Hospital engaged in unfair labour practices under Item No.1, Clauses (a), (b), (d), (f) and (g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**). The Labour Court directed reinstatement of the six dismissed employees with continuity of service but with 40% backwages.

8. Petitioner-Hospital as well as Respondent-Union filed cross Revision Applications before Industrial Court, Satara. Industrial Court has dismissed Petitioner-Hospital's Revision Application No.21 of 2004 and has allowed Revision Application (ULP) No.32 of 2004 filed by Respondent-Union by directing payment of full backwages to the six dismissed employees. Aggrieved by the orders passed by the Labour and the Industrial Courts, the Petitioner-Hospital has filed the present Petition.

9. By order dated 29 September 2004, the Petition came to be admitted and the orders passed by the Industrial and the Labour Courts were stayed. The Petition is called out for final hearing.

10. Mr. Pai, the learned counsel appearing for Petitioner-Hospital would submit that Labour and Industrial Courts have erred in interfering with the punishment of dismissal imposed on the six employees. He would submit that the Petitioner-Management has conducted the Departmental Enquiry with due adherence to the principles of natural justice and the dismissed employees did not avail an opportunity of defending themselves despite hearing of the enquiry being conducted on seven different dates. He would submit that without prejudice to the Petitioner-Management's right to challenge order on preliminary issue, the Petitioner-Management led evidence of as many as five witnesses to prove the charges levelled against the employees. That Fr. Tommy gave evidence about the attack by the employees alongwith the mob at his house and the acts of stone pelting,

abusing and threatening him. That the Petitioner-Management also led evidence of Sister Maria Teresa, who personally witnessed the act of assault committed on other employees. That two witnesses who were actually assaulted viz. Mr. Jimmy Sebastian, Mr. Radhakrishnan C, were also examined before the Labour Court, who gave account of the assault committed by the dismissed employees. That additionally the Petitioner-Management also examined the Doctor, who gave treatment to the assaulted employees. He would thus submit that the charges levelled against the delinquent employees were duly proved before the Labour Court by leading direct evidence by the Petitioner-Management.

11. Mr. Pai would therefore submit that the Labour Court has erred in ignoring direct evidence led by the Petitioner-Management and discarded the same by recording unsustainable findings. He would submit that after considering evidence of Dr. Sunil T. Pise the Labour Court in fact accepted the position of assault being committed on Mr. Jojan Skaria, Mr. Jimmy Sebastian, Mr. Radhakrishana C., but erroneously held that there was lack of evidence about the injured persons being assaulted by any of the six employees.

12. Mr. Pai would submit that instead of correcting the blatant errors committed by the Labour Court in directing reinstatement, the Industrial Court has put a premium on errors committed by the Labour Court by recording unsustainable

findings that the version given by Petitioner-Management witnesses is dramatic as if they were video-shooters. That the Industrial Court erred in questioning photographic memory of the witnesses and holding that the witnesses had grudge in their mind and animosity towards the delinquent employees. He would submit that such erroneous findings recorded by the Industrial Court has resulted in enhancing the amount of back-wages from 40% to 100%. He would submit that the test of domestic enquiries preponderance of probabilities and in the light of direct evidence of five witnesses produced by the Petitioner-Management, the action of the Petitioner-Management is clearly sustainable. He would rely upon judgment of the Apex Court in ***Neeta Kaplish vs. Presiding Officer, Labour Court and another***¹ in support of his contention that the Petitioner-Management can always justify its action by leading evidence before the Labour Court in the event of the enquiry being found defective. He would also rely upon judgment of this Court in ***Maruti Krishana Naik and Others vs. M/s. Advani Oerlikon Ltd. and Another***² in support of his contention that where no enquiry is made, the employer still has right to justify termination by leading evidence for the first time before the Labour Court. He would therefore submit that the Labour and the Industrial Courts have erred in not appreciating the fact that sufficient evidence was produced by the Petitioner-Management to justify its action. He would therefore pray for setting aside the orders passed by Labour and Industrial Courts.

1 (1999) 1 SCC 517

2 WP No.2052/2006 decided on 22.10.2024

13. The Petition is opposed by Mr. Kulkarni, the learned counsel appearing for Respondent-Union. He would submit that concurrent findings arrived at by Labour and Industrial Courts after appreciating evidence on record do not warrant any interference in exercise of writ jurisdiction by this Court. He would submit that both the Courts have analyzed the entire evidence on record in greater details and have thereafter disbelieved the version of Petitioner-Management witnesses. That in absence of any perversity, finding recorded by Labour and Industrial Court cannot be disturbed in exercise of writ jurisdiction under Article 227 of the Constitution of India. He would submit that the six employees have been deliberately implicated in false charges merely because they showed audacity to join the Respondent-Union. That they are selectively dismissed from service with a view to ensure breaking of the Union. That there was absolutely no motive for the delinquent employees to attack the house of Fr. Tommy. That the mob comprising of local villagers had gathered at the house of Fr. Tommy to question him about the village child being beaten up on previous day. That there was no reason for any of the Hospital employees to associate themselves with the attack on the Father's house. That the incident of mob attack is deliberately used by the Petitioner-Management for the purpose of implicating the delinquent employees in false charges merely because they happened to be in the compound of the Hospital at the relevant time. He would submit that there was substantial delay in issuance of the charge-sheet as the same was issued on 20 July 1998 in respect of incident which allegedly occurred a

month before on 20 June 1998. That the charges levelled against the employees were vague and despite having 30 days for proper drafting of charge-sheet, no details of allegations of misconduct were enumerated in the charge-sheet. That the Petitioner-Management hurriedly dismissed the employees by deliberately conducting *exparte* enquiry. That the entire enquiry was hushed up within a month's time by conducting the same behind the back of the employees. That with a view to frustrate any chances of interim relief in Complaint (ULP) No.66 of 1998 filed on 13 August 1998 and the Petitioner-Management deliberately dismissed the six employees on 14 August 1998. That the Labour Court rightly passed order on preliminary issues holding the enquiry to be vitiated.

14. Mr. Kulkarni would further submit that the order on preliminary issue passed by the Labour Court has been misused by the Petitioner-Hospital by setting up false witnesses for the purpose of ensuring that the employees are not reinstated in service. That two witnesses, who never found part of domestic enquiry, were additionally examined before the Labour Court. That the depositions given by the Petitioner-Management witnesses have been sufficiently demolished in their cross-examination. That the evidence of the five Petitioner-Management witnesses has rightly been discarded by the Labour and Industrial Courts as having been orchestrated for the purpose of ensuring victimization to the delinquent employees. He would submit that all the delinquent employees have been

acquitted in the criminal case involving similar allegations. That in fact criminal case was only in respect of unlawful assembly and did not contain any allegations of assault.

15. Mr. Kulkarni would accordingly submit that no interference is warranted in well-reasoned decisions of the Labour and the Industrial Courts in absence of any perversity in the same. He would submit that the dismissed employees have suffered immensely on account of their victimization by the Petitioner-Management and despite succeeding thumpingly before the Industrial Court, they are still awaiting their reinstatement in service. He would therefore pray for dismissal of the Petition.

16. Rival contentions of the parties now fall for my consideration.

17. The members of Respondent-Union faced very serious charges of assembling at the house of Administrator and attempting to assault him on 20 June 1998. It was further alleged that while approaching the house of Administrator the employees assaulted Ms. Mercy Mathew, Lab Technician, Mr. Radhakrishnan, X-ray Technician, Mr. Jimmy Sebastian, Pharmacist, Mr. Mahesh Babu More, Ward Hamal and Mr. Jojan Skaria alongwith the Gundas brought by them in the premises of Hospital and created atmosphere of terror by pelting stones on

the residence of the Administrator leading to closure of various Departments of the Hospital. It was further alleged in the charge-sheet that on account of lack of protection to the employees and patients, lock-down was required to be declared in respect of the Hospital. Petitioner-Hospital has relied upon notice of lock-down dated 26 June 1998 and the statement of reasons accompanying the said notice also refers to the acts of the delinquent employees' attack on the house of Administrator, pelting stones and beating Ms. Mercy Mathew, Mr. Radhakrishnan C, Mr. Mahesh More, Mr. Jimmy Sebastian and Mr. Jojan Skaria. It appears that all the Departments of the Hospital were locked down by notice dated 28 June 1998 and the lock down is attributed the acts of the delinquent employees.

18. The charge-sheet was issued with slight delay after one month on 20 July 1998. Though Mr. Kulkarni sought to highlight the issue of delay, I am not impressed by the objection of delay. Deposition of the Administrator-Fr. Tommy would indicate that he was required to take shelter at Satara for 5 to 6 days after the incident. The Hospital itself was locked down on account of notice issued by Head Office at Mumbai from 26 June 1998 onwards. Therefore, some delay in issuance of the charge-sheet cannot be viewed seriously in the facts and circumstances of the present case.

19. In the domestic enquiry conducted by the Petitioner-Hospital against eight employees, the charges were dropped in

respect of Mr. Rajeshwar Shankar Kamble and Mr. Ashok Dagdu Ghadge and the enquiry was continued only in respect of six delinquent employees. The enquiry was assigned to an outside practicing advocate, who fixed the first date of hearing on 23 August 1998 i.e. within three days of issuance of the charge-sheet. First couple of dates of enquiry spent on deciding the venue of enquiry and finally the Enquiry Officer decided to conduct the enquiry without changing the venue by fixing 30 July 1998 the date for production of Petitioner-Management evidence. It appears that the enquiry was conducted ex-parte on 30 July 1998, before the employees submitted application for adjournment, by recording deposition of three Petitioner-Management witnesses viz. Sister Maria Teresa, Mr. Jimmy Sebastian and Mr. Radhakrishnan C. The Enquiry Officer immediately submitted his report on 7 August 1998 leading to passing of dismissal order on 14 August 1998. No doubt, the Petitioner-Management displayed undue haste in conducting and concluding the enquiry in less than one month from the date of issuance of the charge-sheet. Thus, in respect of charge-sheets dated 20 July 1998, dismissal orders were passed on 14 August 1998. Thus, while Petitioner-Management took one month in issuing a charge-sheet, it acted in haste in passing dismissal order within 24 days of issuance of the charge-sheet. The Labour Court rightly held that the enquiry was not fair and proper granting liberty to the Petitioner-Management to lead evidence before it.

20. Accordingly, Petitioner-Management decided to justify its action by leading evidence before the Labour Court. As against three witnesses examined in the domestic enquiry, this time Petitioner-Management examined five witnesses before the Labour Court. In addition to Sister Maria Teresa, Mr. Jimmy Sebastian and Mr. Radhakrishnan C, it additionally examined Fr. Tommy and Dr. Sunil Tukaram Pise to substantiate the charges. Labour and Industrial Courts have made in depth analysis of the evidence of the said five Petitioner-Management witnesses. In exercise of writ jurisdiction under Article 227 of the Constitution of India this Court cannot enter into the arena of re-appreciation of evidence. However, for examining whether there is any perversity in the findings recorded by Labour and Industrial Courts, I have gone into the depositions of all the five Petitioner-Management witnesses.

21. The first objectionable part about Petitioner-management leading evidence of Fr. Tommy is that he has issued the dismissal orders. Thus, he acted as a judge in his own cause becoming part of decision-making process. Later, he has justified his action by deposing before the inquiry officer. If Fr. Tommy was to act as a witness in the case, he ought to have recused himself from decision making process in the disciplinary proceedings.

22. After perusal of the evidence of Petitioner-Management witnesses, it cannot be disputed that the acts of the assembly, rioting, attacking the house of Administrator shouting slogans,

abusing, threatening and assaulting some of the employees of the Petitioner-Hospital has indeed taken place. The Petitioner-Management has produced evidence of Dr. Sunil Tukaram Pise, employed in the Hospital as Orthopedic Surgeon, who produced case papers/sheets of 28 June 1998 about medical treatment of Mr. Jimmy Sebastian, Mr. Jojan Skaria and Mr. Radhakrishnan C. The evidence of Dr. Sunil Pise proves injuries suffered by the three employees, but his deposition is not useful for recording a finding that any of the delinquent employees actually assaulted them. Fr. Tommy did not personally witness the act of assault and his deposition is mainly with regard to the attack made on his residence. Petitioner-Management has examined Sister Maria Teresa who filed Affidavit-of-Evidence before the Labour Court and in which she stated that the left eye of Mr. Jojan Skaria was swollen and that he was bleeding from his teeth. She also gave evidence about Mr. Jimmy Sebastian informing her about assault committed on him. She thereafter gave evidence about mob *inter alia* comprising of Mr. Rajendra Yashwant Vanne, Mr. Satish Mohan Sapkal, Mr. Sandip Vishnu Gaikwad and Mr. Kisan Bajirao Ghadge, Mr. Rajeshwar Shankar Kamble and others shouting slogans. She further stated that at that time Mr. Jimmy Sebastian, Mr. Radhakrishnan C., Ms. Mercy Mathew, Litty Mathew and Mr. Jojan Skaria stood by her side in the veranda of Fr. Tommy's residence and at that time, Mr. Radhakrishnan was assaulted by Mr. Uttam Sapkal. Admittedly Mr. Uttam Sapkal is not the employee of the Petitioner-Hospital. She further gave evidence about delinquent employee Mr. Satish Mohan Sapkal kicking Mr. Radhakrishnan

and the mob throwing stones at him when he fled the spot. She then gave evidence about breaking of windowpanes of Fr. Tommy's residence on account of stone pelting. She thereafter stated that Mr. Satish Mohan Sapkal grabbed Ms. Mercy Mathew by both hands and some unknown women pulled her hair. Thus, evidence of Sister Maria Teresa is mainly against the delinquent employee Mr. Satish Mohan Sapkal kicking Mr. Radhakrishnan and holding Ms. Mercy Mathew. The rest of the acts are apparently committed by villagers forming part of the mob.

23. The evidence of witness Mr. Jimmy Sebastian does not contain any allegation of assault in the examination-in-chief. He only gave evidence of mob abusing Fr. Tommy and pelting stones. He made vague allegation that "the mob started beating us" and the mob comprised of some of the employees of the Petitioner-Hospital, including the delinquent employees. The evidence of Mr. Radhakrishnan C. indicates that he was beaten by Mr. Uttam Sapkal, who is admittedly not employee of the Petitioner-Hospital. He thereafter deposed that he was also beaten by Mr. Satish Mohan Sapkal, the employee of the Petitioner-Hospital. Beyond this, there is not much to be seen in the evidence of Mr. Radhakrishnan C. so far as the allegation of assault is concerned.

24. The depositions of the five witnesses thus seek to name only one of the delinquent employees Mr. Satish Mohan Sapkal and none of the witnesses gave deposition about the other five

delinquent employees assaulting anyone. I am therefore of the view that there is no evidence about commission of assault by Mr. Rajendra Yashwant Vanne, Mr. Sandip Vishnu Gaikwad, Mr. Kisan Bajirao Ghadge, Mr. Arun Tukaram Kamble and Mr. Kailas Ananda Jadhav. At the highest said five employees can be associated with the allegations of being a part of violent mob.

25. It appears that after 10 days of the incident, Sister Maria Teresa filed a police complaint. Copy of the complaint is not available on record, however the Police Inspector issued letter dated 4 July 1998 to the Manager of the Petitioner-Hospital, English translation of which has been reproduced in the Written Statement of Petitioner-Hospital and which reads thus:

J. No. 893/98
Panchgani Police Station
Date: 4.7.1998

To
The Manager
Dalketh Hospital, Panchgani
Taluka Mahabaleshwar
Dist. Satara

Sub: Reg. non-cognizable offence committed by the employees of the hospital.

Sir,

Sister Maria Teresa made a complaint on 30.6.1998 that the belowmentioned workmen on 20.6.1998 at 9.15 to 10 p.m. assembled unlawfully in the premises of the Hospital and started shouting "where is Fr. Tomy" and marched over to his residence. They also kicked the door of Fr. Tomy's residence and pelted stones on the glass window panes. Accordingly complaint no.10/98 was lodged under Sections 143, 147, 148, 452, 427, 323, 504 and 506 of IPC.

1. Raju alias Rajendra Yeshwant Wanne
2. Kailash Anand Jadhav
3. Satish Mohan Sapkal
4. Sandip Vishnu Gaikwad
5. Arun Tukaram Kamble
6. Rajeshwar Shankar Kamble

The above mentioned employees have been arrested on 30.6.1998 at 13.00 hours for further investigation.

The above information is given for your reference.

Sd/-

S.R.Lahigude, Police Inspector.”

26. The said letter dated 4 July 1998 talks only of the mob comprising of six delinquent employees kicking door of Fr. Tommy’s residence, pelting stones at glass windowpanes etc. It is silent about any assault on any of the employees. It appears that based on the said police complaint dated 30 June 1998, Regular Criminal Case No.28 of 1998 was registered against seven accused including six delinquent employees. The prosecution case is captured in paragraph 3 of the judgment dated 4 May 2001 delivered by Judicial Magistrate First Class, Wai, which reads thus:

“3 Sister Maria Tress, R/o Dalkeitch Hospital, Panchgani filed report with the police on 30-6-1998. She alleged the present incident took place on 20-6-97 at 9.00 a.m. to 10.00 a.m. within the premises of Dalkeitch Hospital. She alleged that she was present at the time of incident. Raju and other persons came and formed an unlawful assembly and started giving dirty abuses. She further alleged that they pushed up the members of the staff and therefore, she was constrained to file complaint with the police. At the same time, the members of unlawful assembly hurled the stones upon the property of the Hospital and damaged the windows and doors. Etc.”

27. Again there is no allegation of assault being committed by any member of staff except the act of pushing. It appears that

rival parties compromised the matter, which was considered as an additional factor by the learned Magistrate for acquitting the accused in addition to the findings on merits.

28. The conspectus of the above discussion is that there is absolutely no evidence on record to suggest that the five delinquent employees namely, Mr. Rajendra Yashwant Vanne, Mr. Sandip Vishnu Gaikwad, Mr. Kisan Bajirao Ghadge, Mr. Arun Tukaram Kamble and Mr. Kailas Ananda Jahav committed any act of assault on anyone. The act of assault is reflected only against Mr. Satish Mohan Sapkal from depositions. So far as the other five delinquent employees are concerned, the first charge of assembling at the house of Fr. Tommy, shouting slogans and pelting stones could at the highest can be held to be proved against them.

29. Considering the overall circumstances of the case, in my view, the punishment of dismissal from services was clearly unwarranted atleast against the above five delinquent employees, against whom there is no evidence on commission of assault. It is not to suggest that their act of indulging riotous behavior at the residence of Fr. Tommy is condonable. It appears that in the present case, the assault is mainly committed by local villagers who were possibly angry at Fr. Tommy on account of their belief that Fr. Tommy had beaten up a local child on 19 June 1998. The very motive of the mob of local villagers to barge at the residence of Fr. Tommy was to question him about he beating up a village child on 19 June 1998. It may be that the six

delinquent employees, being also local villagers in addition to their capacity as employees, got carried out with the mob frenzy and associated themselves with the riotous behavior of the mob. Therefore, though punishment of dismissal from service is not warranted in the present case in respect of five delinquent employees, award of reinstatement and backwages granted by Labour and Industrial Courts is equally unwarranted. Even those five employees must face the consequences of riotous behavior at the hospital premises. The issue that remains is about the treatment to be given to Mr. Satish Mohan Sapkal, against whom there is evidence led by witnesses about kicking Mr. Radhakrishnan C. Though in ordinary course, this Court would be justified in setting aside the Orders passed by the Labour and Industrial Courts *qua* Mr. Satish Sapkal in entirety by upholding his dismissal, considering the long passage of time and the fact that he has also been a part of long legal battle with his cohorts, grant of different treatment to him may not be warranted in the light of unique facts and circumstances of the case. Mr. Satish Mohan Sapkal was also a part of the entire mob, comprising of other 5 delinquent employees. Since this Court is contemplating award of some lump sum compensation, to all the delinquent employees, in lieu of reinstatement and backwages, therefore there is no reason to give a different treatment to Mr. Satish Sapkal than the one that is being accorded to the rest of the five delinquent employees.

30. It is not necessary to discuss judgment of the Apex Court in **Neeta Kaplish** (supra) and of this Court in ***Maruti Krishna***

Naik and others (supra) relied upon by Mr. Pai in the light of the fact that this Court has taken into consideration the evidence produced by the Petitioner-Management before the Labour Court for deciding the issue whether the Petitioner-Management was able to justify its action before the Labour Court. Even otherwise it is well settled law that if Part-I award goes against the management, it can always justify its action by leading evidence before the Labour Court. In fact the Labour Court, in the present case, has granted the said opportunity to the Petitioner-management, which it has availed. I am therefore not burdening this judgment by reproducing the findings recorded by the Apex Court and by this Court in the said judgments.

31. Therefore, though this Court is not in agreement with some of the findings recorded by the Labour and the Industrial Courts, I am not inclined to hold that the punishment of dismissal from service imposed on the employees, and the manner in which the same was imposed, is justified in the facts of the present case. By now, long period of 26 years has elapsed from the date of the incident. The six delinquent employees are out of job for the last 26 long years. Though many of them have fairly young at the time of the incident (except Mr. Kisan Bajirao Ghadge) and they would still not have crossed the age of retirement, in my view, grant of reinstatement to them at such distant point of time would not be appropriate. Instead, award some lumpsum compensation to the six delinquent employees would meet the ends of justice. Except Mr. Kisan Bajirao Ghadge, the rest of the employees had not rendered long tenure of service.

The last drawn wages drawn by them were in the range of Rs.1,700/- to Rs.1,800/-. Considering the overall circumstances of the case, award of lumpsum compensation of Rs. 2,00,000/- each of the six delinquent employees would meet the ends of justice.

32. Accordingly, I proceed to pass the following order:

- i) Judgment and order dated 7 April 2004 passed by the Labour Court, Satara in Complaint (ULP) No.66 of 1998 as well as judgment and order dated 5 August 2004 passed by Industrial Court, Satara in Revision Application (ULP) Nos.21 of 2004 and 32 of 20024 are set aside.
- ii) Petitioner-Hospital shall pay to each of six delinquent employees, a lumpsum compensation of Rs. 2,00,000/- in lieu of reinstatement and backwages.
- iii) Beyond the lumpsum compensation so awarded, none of the six delinquent employees shall be entitled to any further benefits from the Petitioner-Hospital in respect of services rendered by them.

33. With the above directions, the Writ Petition is **partly allowed**. Rule is made partly absolute. There shall be no order as to costs.

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(SANDEEP V. MARNE, J.)