

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 550 OF 2025

1. The Indian Express (P) Ltd
2. Ms. Vaidehi Thakar
3. Nitin Jumde

....*Petitioners*
(*Org. Respondents*)

: *Versus* :

1. Prashant Ambekar
2. Arun P Samant

....*Respondents*

Dr. Abhinav Chandrachud with Mr. Pranit Kulkarni, Ms. Tejasvi Ghag and Mr. Shivam Singh i/b Ms. Poorvi Kamani, for the Petitioner.

Mr. Mihir Desai, Senior Advocate i/b Ms. Sanskruti Yagnik, for the Respondent No.1.

CORAM : SANDEEP V. MARNE, J.

Reserved on : 24 January 2025.

Pronounced on : 3 February 2025.

JUDGMENT :

1) **Rule.** Rule is made returnable forthwith. With the consent of the learned counsel appearing for rival parties, petition is taken up for final hearing and disposal.

2) Order passed by the Industrial Court permitting Respondent-workman to be represented by an Advocate as his defence representative in the domestic enquiry has been challenged by the employer in the present petition.

3) Respondent No.1 has filed a Complaint of unfair labour practice being Complaint (ULP) No.99/20124 in Industrial Court,

Thane alleging victimisation and harassment on account of initiation of domestic enquiry against him. In that complaint, he filed application at Exhibit U-2 for grant of interim relief for engagement of Advocate to act as his defence representative. By order dated 9 December 2024, the Industrial Court has allowed the application and has permitted engagement of an Advocate to act as the workman's defence representative with further direction to the Petitioners to provide proper opportunity of raising defence to him. Accordingly, the Petitioner-employer has filed the present petition challenging the order dated 9 December 2024.

4) Petitioner No.1 is a private limited company engaged in printing and publishing of multi-edition newspapers under various titles as Indian Express, Loksatta, Financial Express, Jansatta etc. Petitioner No.2 is the director and Petitioner No.3 is the General Manager (Administration) of the Petitioner No.1-Company. Respondent No.1 was appointed as Apprentice Rotary Assistant vide letter of appointment of dated 1 November 1990. He was given designation of Rotary Assistant w.e.f 1 May 1991 in the Rotary Department of the Press. On 29 November 2023, show-cause notice was issued to Respondent No.1 alleging refusal to discharge duties by him as a Supervisor in the Production Department at Mahape Printing Press, Navi Mumbai. It was alleged that mistakes committed by him during the course of printing of newspaper-Loksatta Edition on 24 November 2023 resulted in wastage of 3863 copies in addition to deliberate slowing down of the speed of printing machinery resulting in delay of printing of the daily newspaper. Another show cause notice dated 18 December 2023 was issued in respect of the conduct on 27 November 2023. Petitioner No.1 thereafter issued chargesheet and

notice dated 22 December 2023 to the first Respondent alleging misconduct and willful absenteeism of duties from work.

5) To conduct the inquiry, one Mr. Arun P. Samant a practicing Advocate was appointed as enquiry officer. Respondent No.1 requested nomination of one Mr. Shishir Dhavale as his defence representative vide letter dated 16 January 2024. The request was rejected on the ground that Mr. Shishir Dhavale was neither a co-worker of the First Respondent nor he was office bearer of the trade union. Thereafter, Respondent No.1 requested engagement of Advocate Revan Nimbalkar as his defence representative vide letter dated 26 February 2024. Petitioners opposed the request for appointment of Advocate as his defence representative of the first Respondent on the ground that the Management Representative was neither an Advocate nor a legally trained mind and was merely working as General Manager in the Human Resource Management Department. The Enquiry Officer rejected the request of Respondent No.1 for appointment of Advocate as his defence representative. Aggrieved by the decision of the Enquiry Officer, Respondent No.1 filed complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**) in the Industrial Court alleging unfair labour practices and prayed for appointment of either Shishir Dhavale or Advocate Revan Nimbalkar as his defence representative. By an interim order dated 9 February 2024, the Industrial Court has allowed the application for interim relief filed by Respondent No.2 at Exhibit U-2 and has permitted the Advocate to act as his defence representative of Respondent No.1. Petitioners are aggrieved by the interim order dated 9 December 2024 and have accordingly filed the present petition.

6) Dr. Chandrachud, the learned counsel appearing for the Petitioner would submit that Respondent No.1 cannot be permitted to engage Advocate to act as his defence representative. He would submit that it is well settled position of law that an Advocate can be permitted to act as defence representative only in a case where the management representative is legally trained mind. That in the present case, the management representative is neither a practicing lawyer nor holds a degree in law and is not a legally trained mind. He would rely upon judgment of this Court in Ajit Bhagwan Sawant Versus. Parveen Industries Pvt. Ltd., through its Managing Director/C.E.O. and Others¹ contending that this Court has already held that it is impermissible to engage an Advocate to act as defence representative even if Enquiry Officer is a practicing advocate so long as the management representative is not a legally trained mind. He would also rely upon judgment of the Apex Court in Board of Trustees of the Port of Bombay Versus. Dilipkumar Raghavendranath Nadkarni and others² and J.K. Aggarwal Versus. Haryana Seeds Development Corporation Ltd. and others³.

7) Dr. Chandrachud would further submit that even if it is hypothetically assumed that an officer of the employer who is well versed and experienced in handling large number of domestic enquiries can be treated as legally trained mind, there are no pleadings in the application preferred by Respondent No.1 to suggest that the management representative in the present case is a legally trained mind. He would take me through the complaint preferred by Respondent No.1 in support of his contention that there is no pleading about the management representative being an experienced person in handling large number of domestic enquiries. That mere possession of

¹ 2024 SCC Online Bom 544

² (1983) 1 SCC 124

³ (1999) 2 SCC 283

Post Graduate degree in H.R. Management would not make the management representative a legally trained mind. Dr. Chandrachud would therefore submit that since the issue is concluded by the judgment of this Court in *Ajit Bhagwan Sawant* which is rendered after following the ratio of the judgment of Apex Court in the *Board of Trustees of the Port of Bombay* and *J.K. Aggarwal*, the impugned order passed by the Industrial Court permitting engagement of private Advocate to represent Respondent No.1 deserves to be set aside.

8) Mr. Mihir Desai, the learned senior advocate would appear on behalf of Respondent No.1 and submit that the management representative in the present case is indeed a legally trained mind. He would submit that while undergoing a post graduate degree in Human Resource Management, the management representative has studied labour laws. He would rely upon syllabus of Mumbai University in support of his contention that the P.G. course in Human Resource Management, *inter-alia* includes study of labour laws. That the management representative not only holds substantial higher position of General Manager, but is also well versed with labour laws. He would submit that additionally he has handled multiple domestic enquiries as management representative. He would submit that so far Respondent No.1 has been able to get details of three domestic enquiries in which he has acted as management representative and that there is possibility of more enquiries being handled by him. He would submit that the expression 'legally trained mind' has a wider connotation and cannot be restricted only to a person possessing a law degree. That every person who possesses experience and expertise in handling domestic enquiries would necessarily become a legally trained mind and cannot be pitted against an ordinary workman having no expertise in defending himself in a domestic enquiry.

9) Mr. Desai would rely upon judgment of Division Bench of this Court in *Venkatraman Sambamurthy Versus. Union of India and Another*⁴ in support of his contention that very person who has handled innumerable domestic enquiries becomes a trained prosecutor. He would rely upon judgment of Division Bench of this Court in *Ghatge Patil Transport (Private) Ltd Versus. B.K. Etale & Others*⁵ in support of his contention that a Personnel Officer not holding a law degree can be considered as a legally trained mind, thereby warranting grant of position for engagement of Advocate to act as defence representative. He would also rely upon judgment of the Apex Court in *Ramesh Chandra Versus. Delhi University and others*⁶ in support of his contention that the Apex Court has held that in every case where Enquiry Officer is a practicing Advocate, permission for engagement of Advocate as defence representative is warranted. He would submit that attention of this Court was not brought to the judgment of the Apex Court in *Ramesh Chandra* (supra) while rendering the judgment in *Ajit Bhagwan Sawant*. He would submit that even the Apex Court in its judgment in *Board of Trustees of the Port of Bombay* recognises the principle that inhouse experts can be treated as 'trained prosecutors' warranting engagement of private advocate as defence representative.

10) Mr. Desai would contend that in the present case the Management has pitted a trained legal mind in the form of General Manager working in H.R. Department having experience of handling large number of domestic enquiries and that denial of opportunity to defend himself through an Advocate would amount to breach of principles of natural justice as the Petitioner would not get a fair opportunity to defend. He would pray for dismissal of the petition.

⁴ 1986 II LLN 349

⁵ 1984 II LLN 294

⁶ (2015) 5 SCC 549

11) In rejoinder, Dr. Chandrachud would contend that the oral submissions made on behalf of Respondent No.1 about the management representative handling over large number of domestic enquiries or the syllabus of P.G. degree in H.R. Management covering study of labour laws are not backed by any pleadings and cannot therefore be considered. That since Respondent No.1 did not plead that the Management Representative has handled large number of domestic enquiries, he cannot be permitted to now improve upon his case through oral submissions with a view to fit a non-expert management representative into the ambit of the term 'legally trained mind'. He would submit that in *Venkatraman Sambamurthy* (supra), the Division Bench of this Court has interpreted the expression 'legal practitioner' appearing in Regulation 26(5) applicable to the employees therein and noticed presence of specific pleadings in para-14 of the judgment that Inspector Ghosh conducted innumerable domestic enquiries as a Prosecutor and was a trained prosecutor within the meaning of Regulation 26(5). He would submit the judgment cannot be read like a statute and interpretation of the expression appearing in one statute cannot be applied to interpret the same word appearing in another statute. In support, he would rely upon judgment of the Apex Court in *Tata Consultancy Services Versus. State of A.P.*⁷ and *Bangalore Turf Club Limited Versus. Regional Director, Employees' State Insurance Corporation*⁸. He would submit that the judgment of the Apex Court in *Ramesh Chandra* (supra) is rendered after considering the ratio of the judgment in *Board of Trustees of the Port of Bombay* (supra) in which the Apex Court has held that nomination of Advocate as Enquiry Officer does not *ipso-facto* entitle a delinquent employee to engage an Advocate. That therefore the judgment in *Ramesh Chandra* cannot be read in support of an absolute proposition in every case where an

⁷ (2005) 1 SCC 308

⁸ (2014) 9 SCC 657

Enquiry Officer is a legal practitioner, permission must be granted for engagement of Advocate as defence representative. He would further submit that the judgment in *Ramesh Chandra* is rendered in the unique facts of that case when the retired judge of the Delhi High Court, who used to represent the University prior to his elevation as a Judge, was appointed as the Enquiry Officer. The Apex Court has therefore held that there was likelihood of bias in the mind of the Enquiry Officer who used to represent the University before his elevation as a Judge. That therefore reliance by Respondent No.1 on the judgment of the Apex Court in *Ramesh Chandra* is misplaced.

12) Rival contentions of the parties now fall for my consideration.

13) The short issue that arises for consideration in the present petition is about the right of Respondent No.1 to be represented by an Advocate to act as his defence representative. Clause-25 of the Model Standing Orders formulated under the provisions of the Industrial Employment (Standing Orders) Act, 1946 deals with the procedure for holding enquiry and punishing the workman. Sub-clause (4) of Clause-25 of the Model Standing Orders provides thus :

(4) A workman against whom an inquiry is proposed to be held shall be given a charge-sheet clearly setting forth the circumstances appearing against him and requiring his explanation. He shall be permitted to appear himself for defending him or shall be permitted to be defended by a workman working in the same department as himself or by any office-bearer of a trade union of which he is a member. Except for reasons to be recorded in writing by the officer holding the inquiry, the workman shall be permitted to produce witness in his defence and cross-examine any witness on whose evidence the charges rests. A concise summary of the evidence led on either side and the workman's plea shall be recorded.

14) Thus, Clause-25(4) of the Model Standing Orders does not contain any provision for engagement of an Advocate to act as defence representative. This Court noticed absence of any provision in the Model Standing Orders for engagement of an Advocate as a defence representative in *Ajit Bhagwan Sawant* (supra). However, this Court took stock of various judicial pronouncements holding that a delinquent employee can be permitted to avail services of a legal practitioner as defence representative even in absence of a specific provision under the Rules governing conduct of enquiries. This Court accordingly held in paras-16 and 17 as under:

16. Thus, the law by now is well-settled that in absence of any specific provision in the Standing Orders or Service Rules, wherever Management Representative/Presenting Officer is a legally trained person, the workman is entitled to seek assistance of legal practitioner to defend himself. Therefore, mere absence of provisions in the Rules or Standing Order does not come in the way of seeking assistance of legal professional where the employer is represented by a legally trained mind.

17. The issue in the present case is however slightly different. The management representative in the present case is not legally trained. The Inquiry Officer is a practicing Advocate. The issue, therefore, is whether the legal background of the Inquiry Officer would entitle the Petitioner to seek assistance of a legal professional. In none of the Judgments discussed above, which are in fact relied upon by Mr. Lakdawala, the Inquiry Officer was legally trained mind. The Inquiry Officer merely conducts the inquiry. He is supposed to be neutral who permits both the sides to lead evidence and makes his recommendations to the employer, who ultimately takes a final decision in the inquiry. The recommendations of the inquiry officer are not even binding on the employer, who is entitled to differ from such recommendations. The Inquiry Officer thus does not prosecute the case on behalf of the employer and he is not expected to take side of the management. In that view of the matter, legal background of the Inquiry Officer would not necessarily entitle the delinquent - workman to seek assistance of legal practitioner in every case.

15) Thus, in *Ajit Bhagwan Sawant*, this Court has concluded that in absence of any specific provision in the Model Standing Orders or Services Rules, a delinquent employee can be permitted to engage services of legal practitioner when the management representative

/presenting officer is a legally trained person. This Court has further held mere legal background of Enquiry Officer is irrelevant and even if the Enquiry Officer is a law graduate, the same would not *ipso-facto* entitle a delinquent employee to avail services of legal practitioner to act as defence representative.

16) While ordinarily, the judgment delivered by me in *Ajit Bhagwan Sawant* would have concluded the present case and it would have been unnecessary to render this detailed judgment since the law on the issue appears to be fairly settled by my judgment in *Ajit Bhagwan Sawant*. However, a twist is sought to be created by Mr. Desai by relying on the judgment of Apex Court in *Ramesh Chandra* (supra) by contending that the said judgment was not brought to my knowledge while rendering the judgment in *Ajit Bhagwan Sawant*. It would therefore be necessary to consider the law expounded by the Apex Court in *Ramesh Chandra*. In the case before the Apex Court, Appellant therein was a Professor in the University of Delhi and domestic enquiry was initiated against him. The University decided to appoint a retired judge of Delhi High Court to act as enquiry officer to conduct enquiry against the Appellant. It transpired that the Retired Judge appointed as Enquiry Officer used to represent Delhi University prior to his elevation as a Judge of High Court. In the facts of that case, the Apex Court held that the Disciplinary Authority ought not have engaged such Retired Judge as Enquiry Officer to obviate the allegation of bias against him in addition to putting the reputation of the Judge at stake. The Apex Court thereafter considered the issue as to whether the background of the Presenting Officer having sufficient experience in presenting the case before the Enquiry Officer would entail grant of opportunity to the Appellant to engage a legal practitioner as his defence representative. The Apex Court held in para-65 to 70 as under :

65. Further one "note" given by the Registrar and approved by the Vice-Chancellor in regard to the departmental enquiry being relevant, it is desirable to refer and discuss the same. The original "note" relating to engagement of a retired Judge of the High Court for conducting inquiry was given by the Registrar of the University on 3-4-2007. From the said note dated 3-4-2007 as approved by the Vice-Chancellor, we find that Justice X, a retired Judge of the Delhi High Court was appointed as the enquiry officer to conduct the departmental enquiry against the appellant as prior to his elevation to the High Court as a Judge, he was the counsel for Delhi University. The relevant portion of the note reads as follows:

"Justice X (name changed), retired Judge of the Delhi High Court had, prior to the elevation to the High Court as a Judge, handled Delhi University cases. He is well-versed with Delhi University Acts, statutes and Ordinances."

It was in this background the University decided to engage him as enquiry officer.

66. We are of the opinion that if an Hon'ble retired Judge of a court before his appointment as a Judge was a lawyer of any of the party (Delhi University herein), the disciplinary authority should not engage such retired Judge as an enquiry officer, as the other party may allege bias against the enquiry officer and the reputation of the Hon'ble Judge may be at stake. The University is directed not to engage any Hon'ble retired Judge of any court, who was earlier a counsel of the University as an enquiry officer to hold an inquiry against any of its employees.

67. The enquiry officer herein being a retired Judge of the High Court is a person of vast legal acumen and experience. The presenting officer also would be a person who had sufficient experience in presenting case before the enquiry officer. In this background, it is also required to consider whether an application of a delinquent employee seeking permission to be represented through a legally trained and qualified lawyer should be allowed or not.

68. In *Port of Bombay v. Dilipkumar Raghavendranath Nadkarni* [(1983) 1 SCC 124 : 1983 SCC (L&S) 61] , this Court observed : (SCC pp. 129-30 & 132, paras 10 & 12)

"10. ... Now if the rules prescribed for such an enquiry did not place an embargo on the right of the delinquent employee to be represented by a legal practitioner, the matter would be in the discretion of the enquiry officer whether looking to the nature of charges, the type of evidence and complex or simple issues that may arise in the course of enquiry, the delinquent employee in order to afford a reasonable opportunity to defend himself should be permitted to appear through a legal practitioner.

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12. ... In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to

defend himself and the essential principles of natural justice would be violated.”

69. In *J.K. Aggarwal v. Haryana Seeds Development Corpn. Ltd.* [(1991) 2 SCC 283 : 1991 SCC (L&S) 483 : (1991) 16 ATC 480] , this Court held that the denial of the assistance of a legal practitioner in inquiry proceedings would be unfair. This Court held as follows : (SCC pp. 286-87, para 8)

“8. It would appear that in the inquiry, the respondent Corporation was represented by its Personnel and Administration Manager who is stated to be a man of law. The rule itself recognises that where the charges are so serious as to entail a dismissal from service the inquiry authority may permit the services of a lawyer. This rule vests a discretion. In the matter of exercise of this discretion one of the relevant factors is whether there is likelihood of the combat being unequal entailing a miscarriage or failure of justice and a denial of a real and reasonable opportunity for defence by reasons of the appellant being pitted against a presenting officer who is trained in law. Legal Adviser and a lawyer are for this purpose somewhat liberally construed and must include ‘whoever assists or advises on facts and in law must be deemed to be in the position of a legal adviser’. In the last analysis, a decision has to be reached on a case-to-case basis on the situational particularities and the special requirements of justice of the case. It is unnecessary, therefore, to go into the larger question ‘whether as a sequel to an adverse verdict in a domestic enquiry serious civil and pecuniary consequences are likely to ensue, in order to enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself, on his request, should be permitted to appear through a legal practitioner’ which was kept open in *Port of Bombay v. Dilipkumar Raghavendranath Nadkarni* [(1983) 1 SCC 124 : 1983 SCC (L&S) 61] . However, it was held in that case : (SCC p. 132, para 12)

‘12. ... In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated.’”

70. In view of the law laid down by this Court, we are of the view that if any person who is or was a legal practitioner, including a retired Hon'ble Judge is appointed as an enquiry officer in an inquiry initiated against an employee, the denial of assistance of a legal practitioner to the charged employee would be unfair.

17) The Apex Court thus relied upon the judgments of *Board of Trustees of the Port of Bombay* and *J.K. Aggarwal* which dealt with the issue of need for grant of opportunity to engage legal practitioner if Presenting Officer is a legally trained mind. However, in para-70 of the

judgment, the Apex Court held that if a legal practitioner including a retired honourable judge is appointed as Enquiry Officer, denial of assistance of legal practitioner to the charged employee would be unfair. As a matter of fact, neither in *Board of Trustees of the Port of Bombay* nor in *J.K. Aggarwal*, the Apex Court has expounded the law that Enquiry Officer with a legal background would entail grant of opportunity to engage legal practitioner to defend. Both the judgments deal with the aspect of background and expertise of presenting officer for deciding the issue of grant of opportunity to engage legal practitioner as defence representative. Therefore, the observations of the Apex Court in para-70 of the judgment in *Ramesh Chandra* cannot be read in isolation for concluding that in every case, where the enquiry officer is a legally trained mind, grant of opportunity to engage an Advocate as defence representative is mandatory. Furthermore, the Apex Court made observations in para-70 of the judgment in the light of peculiar facts of the case where the Enquiry Officer was a retired judge of Delhi High Court, who had represented the University prior to his elevation and there was likelihood of inviting the allegations of bias. In my view, therefore the judgment in *Ramesh Chandra* cannot be cited by Respondent No.1 to seek engagement of an Advocate to act as defence representative merely because the enquiry officer in the present case happens to be a legal practitioner.

18) Another facet of argument sought to be raised by Mr. Desai in the present case for urging me to take a view different than the one taken in *Ajit Bhagwan Sawant* is that the management representative/presenting officer need not be a legal practitioner for grant of opportunity of his engagement of an Advocate by the delinquent employee. He has submitted that what is needed is the expertise and experience by the management representative to handle

large number of domestic enquiries. He has therefore submitted that despite non-possession of law degree by the management representative in the present case, his expertise in labour laws coupled with the experience of handling several domestic enquiries in the past would make him a 'legally trained mind' thereby making Respondent No.1 entitled to engage an advocate to act as defence representative.

19) In *Venkatraman Sambamurthy* (supra), the Division Bench of this Court dealt with the issue of validity of order of demotion of the Petitioner therein, which was under challenge before the Division Bench in Appeal arising out of order passed by the learned Single Judge. One of the grounds of challenge to the demotion order was debridement of legal assistance to the Petitioner under Regulation 26(5) of the Khadi and Village Industries Commission Employees (Conduct, Discipline and Appeal) Regulations, 1961. Regulation 26(5) has been reproduced by the Division Bench in para-8 of the order as under :

"The disciplinary authority may nominate any person to present the case in support of the charges before the authority enquiring into the charges (hereinafter referred to as the enquiry authority). The Commission's employee may present his/her case with the assistance of any other Commission's employee approved by the disciplinary authority, but may not engage a legal practitioner for the purpose unless the person nominated by the disciplinary authority as aforesaid is a legal practitioner or unless the disciplinary authority having regard to the circumstances of the case, so permits."

20) The Division Bench noticed that the Disciplinary Authority had nominated Inspector Ghosh of Central Bureau of Investigation as a prosecution officer in the departmental enquiry, who was not a qualified lawyer, but had experience of handling innumerable domestic enquiries. In the above factual background, the Division Bench had in paras-12 to 16 held as under :

12. What disturbs us is that the appellant, who had never taken part in an enquiry before, was pitted against an adversary, viz. the prosecuting officer Inspector Ghosh of the C.B.I., who was far more than the appellant's match. It is true Inspector Ghosh was not a legal practitioner as commonly understood, or was even a qualified lawyer. We are informed by the respondents' learned Counsel Mr. Shah, that when in 1974 the matter was referred to the C.B.I. for investigation, the investigation was done by Inspector Ghosh. Therefore it was but right that the prosecution before the enquiry officer should have been put into the hands of Inspector Ghosh whose ability even Mr. Shah does not rightly question. To that end no fault can be found with the Authority. But then, Inspector Ghosh was not only a high ranking officer. He was more than that, by way of his expertise in conducting prosecutions in domestic enquiries. In para 15 of the petition it is stated in terms that Inspector Ghosh had conducted innumerable domestic enquiries as prosecutor and was thus a "trained prosecutor" within the meaning of Regulation 26(5). To that the only answer in the affidavit-in-reply is –

".....I deny that A.S. Ghosh was 'trained prosecutor' for the reasons alleged."

meaning thereby that Inspector Ghosh was not a "legal practitioner" as provided in Regulation 26(5). Not a word by way of denial to the appellant's categorical assertion that Inspector Ghosh had conducted innumerable departmental enquiries as prosecutor. We repeatedly asked Mr. Shah to take instructions and let us know whether this presenting officer had in the past conducted departmental enquiries and if so approximately the number of times. Mr. Shah did take instructions but for the statement that Inspector Ghosh had not acted for the Commission in any other enquiry, he was unable to throw any other light in response to our queries. For that no blame can be attached to Mr. Shah because the affidavit-in-reply itself is found woefully wanting on this score.

13. This brings to the forefront that the prosecuting officer, Inspector Ghosh of the C.B.I., though not a legal practitioner, as commonly understood, was an experienced (and presumably able) officer with a number of domestic enquiries to his credit where he had acted as prosecutor. His, with experience, was a legally trained mind, pitted against the innocence abroad of the appellant in the conduct of domestic enquiries. Thus in the conduct of this long and complicated enquiry, the prosecuting officer would naturally have more than a mere edge over the appellant. The balance in favour of the prosecutor would indeed be considerable to the extent of tilting the enquiry against the appellant contrary to the principles of natural justice. The department would have the benefit, as indeed entitled to, of having on its side, a mind trained by experience in prosecuting delinquents, while at the same time refusing the delinquent like opportunity of defending himself. Such an enquiry would be a one-sided enquiry in which the scales would be heavily weighed against the delinquent. We do not seek to pamper delinquents. Or look lightly upon their alleged delinquency. All that we say is: Give the man a fair opportunity to defend himself and if thereafter found guilty, punish him by all means. It was such fair opportunity that the appellant was denied.

14. The words "legal practitioner" need not be taken in their literal sense. Legal qualifications are of little import. A layman, or for that matter a C.B.I. Inspector like Inspector Ghosh, would, through sheer experience as acting as

prosecutor in departmental enquiries, indeed garner vast legal experience and ability without being a “legal practitioner”, as commonly understood. One of us (Lentin J.) recalls the instance of the late P.D. Shamdasani who some 35 and odd years ago, in his own way chartered a course for himself in the Bombay High Court. He never acquired a law degree. Never even appeared for a law examination. Yet he acquired the experience and knowledge of Company Law to enable him to deftly argue his own cases with ability from Court to Court, right up to the Privy Council. And more often than not, with success. If Shamdasani fell foul of you, you scurried to the most expensive solicitor and buttressed yourself with an array of the most expensive legal practitioners, often to the discomfiture of both expensive solicitor and expensive legal practitioners. And much to the delight of one fledgling briefless barrister.

15. We digressed. Not in a moment of nostalgic luxury, but to emphasise that ability born out of vast practical experience in the law and conduct of cases (including departmental enquiries) is not confined to “legal practitioners” as the words are commonly understood. These qualifications possessed by a non-professional (we prefer that description to the condescending word “layman” patronisingly used by the learned in the law) would, to an unwary opponent be as dangerous as his having a “legal practitioner” pitted against him.

16. We do not seek, much less mean, to belittle the experience and undoubted efficiency of the prosecuting officer Inspector Ghosh of the C.B.I. as prosecutor in departmental enquiries. We merely draw stark contrast, on the one hand between his vast experience and undisputed ability as a prosecutor in domestic enquiries, and on the other hand, the inexperience of the appellant pitted against him in a grave enquiry involving as many as 9 charges of a serious nature, sufficient, if found guilty, to ruin his reputation and career after 35 years of unblemished service. The words “legal practitioner” in Regulation 26(5) cannot thus be read in their narrow sense as commonly understood. It is enough if the prosecuting officer, without being a “legal practitioner”, is a legally trained mind, as indeed was Inspector Ghosh, with his ability and vast experience as a prosecutor in domestic matters. Yet, pitted against him, the appellant was denied legal assistance and was told to shift for himself. Of course the department was correct and indeed justified in placing the prosecution of this complicated matter in the hands of such an indisputably experienced officer. The department could have done no less. At the same time, the department could have done more than refusing like opportunity to the appellant by denying him legal assistance. A most uneven match.

21) According to Dr. Chandrachud, the judgment of the Division Bench in *Venkatraman Sambamurthy* is based on interpretation of the term ‘legal practitioner’ used in Regulation 26(5). He would submit that in the present case, the Model Standing Orders are silent about provision of assistance of legal practitioner to the delinquent employee and that such assistance is recognised mainly through judicial

precedents. He has therefore submitted that the judgment of Division Bench based on interpretation of a particular term in the Regulation would not constitute a precedent for being used in other cases which are not governed by the provisions of Regulation 26(5). He has relied upon the judgment of the Apex Court in *Tata Consultancy Services* (supra) in support of his contention that it is impermissible to interpret the word in accordance with its definition in other statute, particularly when the same does not deal with any cognate subject. In support of the same contention, he has relied upon another judgment in *Bangalore Turf Club Limited* (supra). However, in my view, it would not be possible to ignore the ratio enunciated by the Division Bench in *Venkatraman Sambamurthy* only on the ground that it interprets the word 'legal practitioner' appearing in Regulation 26(5). The Division Bench has expounded the law that even if the prosecuting officer is not a legal practitioner, his experience of conducting innumerable domestic enquiries would make him a 'legally trained mind'. However, what distinguishes the present case from that of *Venkatraman Sambamurthy* is the fact that there was a specific pleading in the petition in *Venkatraman Sambamurthy* that Inspector Ghosh had conducted innumerable domestic enquiries as a prosecutor and was thus a trained prosecutor within the meaning of Regulation 26(5). In the present case, there is total absence of pleadings either in the application preferred before the Enquiry Officer, in the complaint filed before the Industrial Court or even in the present petition. The application preferred by the Petitioner for engagement of advocate reads thus :

माझी चौकशी घाईघाईने आटोपण्याचे आपण चालविल्या मुळे मला, मी दिलेला बचाव प्रतिनिधी श्री शिशीर ढवळे यांना आपण नाकारले. माझ्याकडे नवीन बचाव प्रतिनिधी नियुक्त करण्यास वेळ नसल्यामुळे मी आता तात्पुरता तत्वावर अॅडव्होकेट श्री. रेवण निंबाळकर यांची बचाव प्रतिनिधी म्हणून नियुक्ती करत आहे. ते वकिल असल्याने आज त्यांची कोर्टांमध्ये केस आहे, त्यामुळे आज ते हजर राहू शकणार नाहीत, त्यामुळे चौकशीचे कामकाज चालवू नये व त्यांच्या मोबाईल नंबरवर त्यांच्याशी संपर्क साधून त्यांच्या सोयीनुसार पुढील चौकशीची तारीख व वेळ ठरवावी हि नम्र विनंती.

22) In his complaint filed before the Industrial Court, Petitioner raised following pleadings:

4.9. Shri Arun P Sawant a very senior advocate who mainly work as enquiry officer in many private companies is appointed as enquiry officer. The record of enquiries conducted by said Shri Samant as enquiry officer shows that he conducts enquiry on instructions of the concerned management and create record to enable management to take action on the charge sheeted employee as desired and decided by the management.

23) Thus, there is no pleading that the management representative has experience of handling innumerable domestic enquiries and that therefore he is a legally trained mind. Mr. Desai did attempt to improve upon the case during the course of his submissions by contending that the management representative has dealt with three enquiries in the past. However, his oral submissions are not backed by any pleadings. In my view, therefore the judgment in *Venkatraman Sambamurthy* would not assist Respondent No.1 in the facts and circumstances of the present case.

24) Mr. Desai has relied upon Division Bench judgment of this Court in *Ghatge Patil Transport (Private) Ltd.* (supra) in which this Court relied upon the judgment of the Apex Court in *Board of Trustees of the Port of Bombay* (supra) and held in para-6 as under:

6. As held by the Supreme Court in the latest case, i.e., *Board of Trustees of Port of Bombay v. Dilipkumar Raghavendranath*, [1983—1 L.L.N. 314] (vide supra), apart from the provisions of law, it is one of the basic principles of natural justice that the inquiry should be fair and impartial. Even if there is no provision in the standing order or in law, where in an inquiry before the domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated. In the present case, apart from the request to be represented by a legal practitioner, the employee has also prayed for being represented by

some well-wisher from outside or by some union representative from outside, this request was also not granted. While dealing with this contention, in Para, 16 of his order, the Presiding Officer of the Labour Court has come to the conclusion that the person who appeared as a representative of the employers was the Personnel Officer and from the way in which he handled the case of the first party in the inquiry, it would have to be said that he had considerable experience and acumen in the matter of handling such cases. Such experience was lacking on the part of the employee. He ultimately came to the conclusion that the inquiry officer was not justified in refusing permission in the circumstances of the case. We have gone through the evidence of the inquiry officer adduced before the Labour Court and from it also it is quite clear that the inquiry officer was also of the view that the bailiff's evidence would be quite helpful in the matter. However, according to him, it was the duty of the employee to produce the witness in the domestic inquiry. The inquiry officer was of this view obviously for the reason that the charge referred to a document with which the bailiff was ultimately concerned. Irrespective of the fact on whom the burden lay for examining the bailiff, the fact remains that in the absence of assistance from an expert the employee was handicapped in this respect. Therefore, though we generally agree with the reasons given by the Presiding Officer for holding the inquiry as vitiated on that count, we do not agree with the Presiding Officer when he says that it was only a technical defect. In the matters of domestic inquiries, if the employee is refused a fair opportunity of putting forward his case. *i.e.*, his request for being represented by an outsider or a union representative or a legal practitioner, then it cannot be termed only as a technical defect. However, this will depend on facts and circumstances of each case. Having regard to the facts and circumstances of this case, in our opinion, prejudice was considerable and is writ large. In any case, by this finding the employer's case is not prejudiced in any way. Before the Labour Court, he is entitled to lead evidence and prove the guilt of the employee. His case is not shut out. On the other hand, if the parties are permitted to adduce evidence before the Labour Court, it will help the course of justice since in the trial before the Labour Court, the bailiff also could be examined. Therefore, taking a cumulative view of the whole matter, in our opinion, this is not a fit case in which we should exercise the extraordinary jurisdiction under Art. 226 of the Constitution of India at this stage.

25) Perusal of the findings of the Division Bench in *Ghatge Patil Transport (Private) Ltd.* would indicate that though the Division Bench has reproduced the findings of the Presiding Officer of the Labour Court, but has not itself recorded any specific finding on the issue of entitlement of delinquent employee to engage an advocate to defend himself in a domestic enquiry. Even if the findings of the Labour Court

are taken into consideration, the case involved 'Personnel Officer' of the employer acting as management representative who had considerable experience in the matter of handling domestic enquiries. However, the demand of the workmen in *Ghatge Patil Transport (Private) Ltd.* was for engagement of either legal practitioner or well-wisher from outside or some union representative from outside. The Labour Court held that the request of the employee ought to have been granted. It therefore becomes difficult to deduce from the findings recorded in *Ghatge Patil Transport (Private) Ltd.* as to whether the right of the workman to engage legal practitioner was upheld or not. Also, there are no pleadings to record a finding that the management representative has experience of handling large number of domestic inquiries. Therefore, the judgment of Division Bench in *Ghatge Patil Transport (Private) Ltd.* again does not assist the case of Respondent No.1.

26) In my judgment in *Ajit Bhagwan Sawant*, I have already dealt with judgments of the Apex Court in *Board of Trustees of the Port of Bombay* and *J.K. Aggarwal*. It would be apposite to have a quick relook to the said decisions. In *Board of Trustees of the Port of Bombay*, the workman therein had submitted a request for engagement of a legal practitioner for his defence in the domestic enquiry. The employer had engaged Legal Advisor and Junior Assistant to the Legal Advisor as presenting officers in the enquiry. Regulation-12(8) of the Bombay Port Trust Employees Regulation, 1976 provided for assistance of any other employee or office bearer of the Union to present his case but barred engagement of a legal practitioner unless the Presenting Officer appointed by the Disciplinary Authority was a legal practitioner. Regulation 12(8) reads thus :

“The employee may take the assistance of any other employee or, if the employee is a Class III or a Class IV employee, of an ‘Office Bearer’ as defined in clause (d) of Section 2 of the Trade Unions Act, 1926 (16 of 1926) of the union to which he belongs, to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the said Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits.”

27) After the employee was dismissed from service and the order of dismissal was challenged before this Court, the Single Judge of this Court set aside the dismissal order on the ground that both the Presenting Officers were legally trained minds. The employer’s Appeal was dismissed by the Division Bench and this is how the matter travelled before the Apex Court in Appeal filed by the employer. In the light of the above factual background, the Apex Court rightly held as under :

9. We concern ourselves in this case with a narrow question whether where in such a disciplinary enquiry by a domestic tribunal, the employer appoints Presenting-cum-Prosecuting Officer to represent the employer by persons who are legally trained, the delinquent employee, if he seeks permission to appear and defend himself by a legal practitioner, a denial of such a request would vitiate the enquiry on the ground that the delinquent employee had not been afforded a reasonable opportunity to defend himself, thereby vitiating one of the essential principles of natural justice.

10. Even in a domestic enquiry there can be very serious charges, and an adverse verdict may completely destroy the future of the delinquent employee. The adverse verdict may so stigmatize him that his future would be bleak and his reputation and livelihood would be at stake. Such an enquiry is generally treated as a managerial function and the Enquiry Officer is more often a man of the establishment. Ordinarily he combines the role of a Presenting-cum-Prosecuting Officer and an Enquiry Officer a Judge and a prosecutor rolled into one. In the past it could be said that there was an informal atmosphere before such a domestic tribunal and that strict rules of evidence and pitfalls of procedural law did not hamstring the enquiry by such a domestic tribunal. We have moved far away from this stage. The situation is where the employer has on his *pay rolls* labour officers, legal advisers – lawyers in the garb of employees – and they are appointed Presenting-cum-Prosecuting Officers and the delinquent

employee pitted against such legally trained personnel has to defend himself. Now if the rules prescribed for such an enquiry did not place an embargo on the right of the delinquent employee to be represented by a legal practitioner, the matter would be in the discretion of the Enquiry Officer whether looking to the nature of charges, the type of evidence and complex or simple issues that may arise in the course of enquiry, the delinquent employee in order to afford a reasonable opportunity to defend himself should be permitted to appear through a legal practitioner. Why do we say so? Let us recall the nature of enquiry, who held it, where it is held and what is the atmosphere? Domestic enquiry is claimed to be a managerial function. A man of the establishment dons the robe of a Judge. It is held in the establishment office or a part of it. Can it even be compared to the adjudication by an impartial arbitrator or a court presided over by an unbiased Judge?. The Enquiry Officer combines the judge and prosecutor rolled into one. Witnesses are generally employees of the employer who directs an enquiry into misconduct. This is sufficient to raise serious apprehensions. Add to these uneven scales, the weight of legally trained minds on behalf of employer simultaneously denying that opportunity to delinquent employee. The weighted scales and tilted balance can only be partly restored if the delinquent is given the same legal assistance as the employer enjoys. Justice must not only be done but must seem to be done is not a euphemism for courts alone, it applies with equal vigour and rigour to all those who must be responsible for fair play in action. And a quasi-judicial tribunal cannot view the matter with equanimity on inequality of representation. This Court in *M.H. Hoskot v. State of Maharashtra* [(1978) 3 SCC 544 : 1978 SCC (Cri) 468 : AIR 1978 SC 1548 : 1978 Cri LJ 1678] clearly ruled that in criminal trial where prosecution is in the hands of public prosecutor, accused, for adequate representation, must have legal aid at State cost. This will apply mutatis mutandis to the present situation.

11. We are faced with the situation where when the enquiry commenced, the rules neither provided for permitting the delinquent employee to be represented by an advocate nor an embargo was placed on such appearance. The rules were silent on this point. But the Chairman of the appellant while rejecting the request of the 1st respondent seeking permission to appear through a legal practitioner simultaneously appointed M/s R.K. Shetty and A.B. Chaudhary, Legal Adviser and Junior Assistant Legal Adviser respectively, in the employment of the appellant as Presenting-cum-Prosecuting Officers. What does this signify? The normal inference is that according to the Chairman of the appellant the issues that would arise in the enquiry were such complex issues involving intricate legal propositions that the Enquiry Officer would need the assistance of Presenting-cum-Prosecuting Officers. And look at the array of law officers of the appellant appointed for this purpose. Now examine the approach of the Chairman. While he directed two of his law officers to conduct the enquiry as prosecutor, he simultaneously proceeds to deny such legal representation to the delinquent employee, when he declined the permission to the 1st respondent to appear through a legal practitioner. Does this disclose a fair attitude or fair play in action? Can one imagine how the scales were weighted and thereby tilted in

favour of the prosecuting officer. In this enquiry the employer would be represented by two legally trained minds at the cost of the Port Trust while the 1st respondent was asked either to fend for himself in person or have the assistance of another employee such as Nadkarni who is not shown to be a legally trained person, but the delinquent employee cannot engage a legal practitioner at his cost. Can this ensure a fair enquiry? The answer is not far to seek. Apart from any legal proposition or formulation we would consider this approach as utterly unfair and unjust. More so in absence of rules, the Chairman of the appellant was not precluded from granting a request because the rules did not enact an inhibition. Therefore, apart from general propositions, in the facts of this case, this enquiry would be a one-sided enquiry weighted against the delinquent officer and would result in denial of reasonable opportunity to defend himself. He was pitted against the two legally trained minds and one has to just view the situation where a person not admitted to the benefits of niceties of law is pitted against two legally trained minds and then asked to fend for himself. In such a situation, it does not require a long argument to convince that the delinquent employee was denied a reasonable opportunity to defend himself and the conclusion arrived at would be in violation of one of the essential principles of natural justice, namely, that a person against whom enquiry is held must be afforded a reasonable opportunity to defend himself.

28) The Apex Court thus held that where the employer has on its payroll Labour Officers, Legal Advisors-Lawyers under the garb of employees and were appointed presenting-cum-prosecuting officers and the delinquent employee is pitted against such legally trained personnel, he must be provided assistance of legal practitioner, even if the Rules are silent on such a right. In *Board of Trustees of the Port of Bombay*, two law officers were nominated as presenting officers and in the light of that fact, the Apex Court held that denial of opportunity to engage legal practitioner by the delinquent employee was improper.

29) In *J. K. Aggarwal* (supra), request was made by the Appellant therein for engaging services of legal practitioner in a domestic enquiry which was rejected. The Apex Court held in paras-8 and 9 as under :

8. It would appear that in the inquiry, the respondent-Corporation was represented by its Personnel and Administration Manager who is stated to be a man of law. The rule itself recognises that where the charges are so serious as to entail a dismissal from service the inquiry authority may permit the services of a lawyer. This rule vests a discretion. In the matter of exercise of this discretion one of the relevant factors is whether there is likelihood of the combat being unequal entailing a miscarriage or failure of justice and a denial of a real and reasonable opportunity for defence by reasons of the appellant being pitted against a presenting officer who is trained in law. Legal Adviser and a lawyer are for this purpose somewhat liberally construed and must include "whoever assists or advises on facts and in law must be deemed to be in the position of a legal adviser". In the last analysis, a decision has to be reached on a case to case basis on the situational particularities and the special requirements of justice of the case. It is unnecessary, therefore, to go into the larger question "whether as a sequel to an adverse verdict in a domestic enquiry serious civil and pecuniary consequences are likely to ensue, in order to enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself, on his request, should be permitted to appear through a legal practitioner" which was kept open in *Board of Trustees of the Port of Bombay v. Dilipkumar* [(1983) 1 SCC 124 : (1983) 1 SCR 828] . However, it was held in that case (SCC p. 132, para 12)

"... In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated...."

9. On a consideration of the matter, we are persuaded to the view that the refusal to sanction the service of a lawyer in the inquiry was not a proper exercise of the discretion under the rule resulting in a failure of natural justice; particularly, in view of the fact that the Presenting Officer was a person with legal attainments and experience. It was said that the appellant was no less adept having been in the position of a Senior Executive and could have defended, and did defend, himself competently; but as was observed by the learned Master of Rolls in *Pett case* [See *Pett v. Greyhound Racing Association Ltd.*, (1969) 1 QBD 125 : (1968) 2 All ER 545, 549 (CA)] that in defending himself one may tend to become "nervous" or "tongue-tied". Moreover, appellant, it is claimed, has had no legal background. The refusal of the service of a lawyer, in the facts of this case, results in denial of natural justice.

30) In *J. K. Aggarwal*, the employer was represented by its Personnel Administration Manager was held to be a 'man of law'. The Apex Court held that the terms 'legal advisor' and 'lawyer' are required to be liberally construed and must include everyone who assists or

advises on facts and in law and such person must be deemed to be in the position of legal adviser.

31) The conspectus of the above discussion is that even if the Rules governing domestic enquiry are silent on the right of employee/workman to be represented by legal practitioner, such assistance must be provided where the employee/workman is pitted against a legally trained mind. The expression 'legally trained mind' is not restricted to practicing advocates or law degree holders. In a given case where the presenting officer/management representative is not a law degree holder but has immense experience and is well versed with conducting domestic enquiries, assistance of legal practitioner can be provided to the delinquent employee. The key is to examine whether the presenting officer/management representative has an upper hand in presenting the case of the management on account of either his legal qualification or experience.

32) In the present case, there is no denial to the fact that the management representative is not a law graduate. He is posted with the Petitioner as General Manager, Human Resources Department and accordingly to Respondent No.1 he holds the qualification of post-graduation in H.R. Management. Though, it is vaguely pleaded in the complaint that '*he is well versed in Labour laws and labour jurisprudence*', no material is produced in support of the said contention. Though, Mr. Desai has attempted to suggest during the course of his oral submissions that the syllabus for post-graduation degree in H.R. Management in Mumbai University has the subject of labour laws, no material is produced on record in support of the said contention. Dr. Chandrachud has clarified that management representative has undergone post-graduation in H.R. Management from Pune University

several years ago and that therefore the current syllabus of Mumbai University is irrelevant for deciding the issue of knowledge of labour laws on the part of the management representative.

33) As observed above, there is absolutely no pleading anywhere to the effect that the management representative has vast experience of conducting domestic enquiries or has conducted any specific number of enquiries in the past. In *Venkatraman Sambamurthy* the employer had borrowed the services of an Inspector from CBI who had conducted innumerable domestic enquiries. In *Board of Trustees of the Port of Bombay*, the employer had nominated legal advisor and junior assistant to the legal advisor (both law graduates) as management representatives. In *J. K. Aggarwal*, the management representative therein was Personnel and Administration Manager who was held to be 'a man of law' by the Apex Court and was also a person with legal attainments and experience. In the present case, there is no material on record to hold that the management representative can be treated as legally trained mind for enabling an outsider practicing Advocate to defend Respondent No.1 in the domestic enquiry. In the facts of the present case, where the management representative is an officer from H.R. Department, permitting a practicing advocate to act as defence representative would upset the balance. Respondent No.1, on the other hand, can nominate a person fitting into the parameters prescribed in Clause-25(4) of the Model Standing Orders. Petitioner is a large establishment which has employed several employees and has presence of a recognised trade union. Therefore, there is no dearth of persons who can assist Respondent No.1 in the departmental enquiry. Therefore, in the facts and circumstances of the present case, provision of assistance of a legal practitioner for defending Respondent No.1 is clearly unwarranted. The Industrial Court has grossly erred in passing

the impugned order dated 9 December 2024. The findings of the Industrial Court that management representative is a qualified person having knowledge of relevant legal procedure is not supported by any pleadings or material. The Industrial Court has proceeded to permit engagement of legal practitioner by going into the nature of the charges, which in my view, is totally irrelevant criteria. The impugned order of the Industrial Court is thus indefensible and liable to be set aside.

34) The petition accordingly succeeds. The order dated 9 December 2024 passed by the Member, Industrial Court, Thane is set aside. Respondent No.1 shall however be entitled to nominate a defence representative fitting into the parameters of Clause-24 of the Model Standing Orders within a period of 2 weeks.

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

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[SANDEEP V. MARNE, J.]