



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2683 OF 2019
WITH
CIVIL APPLICATION NO.808 OF 2026

Mahatma Gandhi Mission Hospital
N-6 CIDCO Aurangabad
Through its Dean -
Dr. Rajendra Brijmohan Bohra,
Age: 50 years, Occu: Service,
R/o. 11, Samarth Nagar, Aurangabad
Tq. & Dist. Aurangabad.

... Petitioner

Versus

Jiwan Chaganrao Kulkarni,
Age: 47 years, Occu: Nil,
R/o. New Mukundwadi,
N-4 CIDCO, Aurangabad.

... Respondent

....
Mr. V. S. Kadam, Advocate for the Petitioner
Mr. Y. I. Thole, Advocate for the Respondent

.....
CORAM : SIDDHESHWAR S. THOMBRE, J.
DATE : 13.03.2026

JUDGMENT :

1. Heard. **RULE.** Rule made returnable forthwith. Heard the petition with the consent of parties at the stage of admission.

2. The petitioner has assailed the order dated 01.09.2018 passed by learned Industrial Court, Aurangabad in Revision (ULP) No. 9/2014 thereby confirming the order dated 11.10.2013 passed by learned Labour Court, Aurangabad in Complaint (ULP) No. 9/2008.

3. The learned counsel, Mr. Kadam, for the petitioner submits that the petitioner is a Medical College and Hospital run by the Mahatma Gandhi Mission, which is a Charitable Trust registered under the Bombay Public Trust Act, 1950 (for short, 'the Act of 1950'). The respondent was appointed in the petitioner - hospital as a ward boy and worked in various departments. It is contended that from the date of appointment, his work was not found satisfactory and several complaints were received against him. On 24.10.2006, a complaint was received alleging that the respondent committed theft of a pair of chappals while on duty in the Surgical Ward. Consequently, a notice was issued under Rule 24-C and 24-D of the Bombay Industrial Employment (Standing Orders) Rules, 1959 and the respondent was suspended on 27.10.2006. The petitioner decided to conduct a domestic inquiry and issued a show-cause notice. Thereafter, a charge-sheet was served, and the respondent was called upon to submit his explanation. An Inquiry Officer was appointed, and during the inquiry, the respondent was afforded an opportunity to defend himself.

4. On behalf of the petitioner, witnesses were examined. After completion of the inquiry, a show-cause notice was issued asking why appropriate disciplinary action should not be taken under the Industrial Employment (Standing Orders) Act of 1946. The respondent challenged the show-cause notice by filing Complaint (ULP) No.72/2007 before the Labour Court, Aurangabad, which was rejected. Against that order, the respondent filed a Revision (ULP) No.38/2007 before the Industrial Court, Aurangabad, which was also dismissed. Thereafter, the respondent submitted his reply to the show-cause notice dated 23.07.2007. After considering the findings recorded by the Inquiry Officer and the reply, the services of the

respondent was terminated vide order dated 15.12.2007. Being aggrieved thereby, the respondent filed Complaint (ULP) No.09/2008. The Labour Court, Aurangabad framed preliminary issues as to whether the complaint was maintainable, whether the inquiry was fair and proper, and whether the findings of the Inquiry Officer were perverse. Liberty was granted to the petitioner to lead evidence, but as the petitioner failed to do so, the Labour Court allowed Complaint (ULP) No.09/2008 vide order dated 11.10.2013 and directed reinstatement of the respondent with continuity of service along with back wages from the date of dismissal. The said order was challenged by the petitioner by filing Revision (ULP) No.09/2014. The Industrial Court dismissed the revision vide order dated 01.09.2018. Hence, the present petition is filed.

5. The learned counsel, Mr. Kadam, for the petitioner invited my attention to the inquiry report as well as the statements of the witnesses. He invited my attention to the Issue No.2 framed by the learned Labour Court and submitted that once the issue that whether the enquiry was fair and proper was answered in negative, the learned Labour Court ought not to have allowed the complaint.

6. In support of his contentions, he relied upon the following Judgments:

[a] ***Kurukshetra University Vs. Prithvi Singh***, reported in (2018) 4 SCC 483 ;

[b] ***A.P SRTC Vs. Raghuda Siva Sankar Prasad*** reported in (2007) 1 SCC 222 ;

[c] ***M/s J.W. Marriott Juhu Vs. Nilesh Kanojia and Anr.*** passed by the Bombay High Court in Writ Petition No.8460/2024 dated 16.10.2024;

6.1 *In Kurukshetra University Vs. Prithvi Singh (Supra)*, the Apex Court has observed in Paragraph nos. 14 to 17, which read thus:

“14. The legal position, in our view, is succinctly explained by this Court (two-Judge Bench) in the case of Delhi Cloth & General Mills Co. v. Ludh Budh Singh, in Propositions 4, 5 and 6 in the following words:

(4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite suo motu the employer to adduce evidence before it to justify the action taken by it.

15. The aforesaid principle of law was quoted with approval in Shankar's case (*supra*) by a Bench of three Judges in Para 23 observing:

.....After an exhaustive review of the decisions bearing on the question and affirming the ratio in R.K. Jain's case, this Court extracted the emerging principles from the review of decisions. Propositions 4, 5 and 6 would be relevant for the present discussion.

16. The aforementioned decisions were extensively discussed by the Constitution Bench in the case of Karnataka State Road Transport Corporation v. Lakshmiddevamma (Smt.) and Anr., wherein the law laid down in the aforementioned two cases was approved.

17. When we examine the facts of this case in the light of the aforementioned principles of law, we find that the termination of the Respondent was by way of punishment because it was based on the adverse findings recorded against the Respondent in the domestic enquiry. So the question, which the Labour Court was expected to decide in the first instance as a "preliminary issue", was whether the domestic enquiry held by the Appellant (employer) was legal and proper. In other words, the question to be decided by the Labour Court was whether the domestic enquiry held by the Appellant was conducted following the principles of natural justice or not. If the domestic enquiry was held legal and proper then the next question which arose for consideration was whether the punishment imposed on the Respondent (delinquent employee) was proportionate to the gravity of the charge leveled against him or it called for any interference to award any lesser punishment by exercising the powers Under Section 11-A of the ID Act."

6.2 In **A. P. SRTC Vs. Raghuda Siva Sankar Prasad** (*Supra*), the Hon'ble Apex Court has observed in Paragraph Nos.21 to 23, which read thus :

"21. In our view, the theft committed by the respondent amounts to misconduct and, therefore, we have no hesitation to set aside the orders passed by the learned Single Judge and also of the Division Bench and restore the order of removal of the respondent from service. When the

Labour Court has proved the charges, no interference by the learned Single Judge or by the Division Bench of the High Court was called for. In the instant case, the jurisdiction vested with the Labour Court has been exercised judiciously and fairly. In our opinion, the conclusion arrived at by the High Court in ordering reinstatement; continuity of service was shockingly disproportionate to the nature of charges already proved which is in the nature of theft.

22. It is also not open to the Tribunal and Courts to substitute their subjective opinion in place of the one arrived at the domestic Tribunal. In the instant case, the opinion arrived at by the Corporation was rightly accepted by the Tribunal but not by the Court. We, therefore, hold that the order of reinstatement passed by the Single Judge and the Division Bench of the High Court is contrary to the law on the basis of a catena of decisions of this Court. In such cases, there is no place for generosity or sympathy on the part of the judicial forums for interfering with the quantum of punishment of removal which cannot be justified. Similarly, the High Court can modify the punishment in exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charges proved.

23. Interfering therefore with the quantum of punishment of the respondent herein, is not called for. In our opinion, the respondent has no legal right to continue in the Corporation. As held by this Court, in a catena of judgments that the loss of confidence occupies the primary factor and not the amount of money and that sympathy and generosity cannot be a factor which is permissible in law in such matters. When the employee is found guilty of theft, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of removal. In such cases, there is no place of generosity or place of sympathy on the part of the judicial forums and interfering with the quantum of the punishment.”

6.3 In M/s J.W. Marriott Juhu Vs. Nilesh Kanojia and Anr.
(Supra), this Court has observed in Paragraph Nos. 15 to 18 and 21, which read thus :

“15. Thus, merely because the stolen property is an edible item of value of Rs. 1000-2000/-, the Labour Court held that the punishment was harsh and shockingly disproportionate. Invocation of provisions of Probation of Offenders Act by the labour Court is clearly unwarranted. The learned judge was dealing with a case of maintenance of discipline in an organization and not reformation of a convicted person.

16. So far as the charges in the second chargesheet is concerned, the Labour Court has recorded following findings:

35) *It is pertinent to note that chargesheet of the incident of theft etc. dtd. 27/04/2017 was issued to applicant in the month of May 2017. Then till December 2017 no enquiry was commenced. Actually enquiry ought to have commenced immediately. As per the Maharashtra Industrial Employment Rules 1959, enquiry shall have to be completed within 3 months. Here in the matter, till December 2017 neither enquiry was commenced nor suspension of the complainant was withdrawn. So, there must be restless situation for complainant. One has to understand the feeling, restlessness, fear, tension which complainant was suffering due to non- commencement of enquiry on the basis of chargesheet of the incident dtd. 27/04/2017. So, one must have to accept the case that due to restlessness, fear and constant pressure of the enquiry like hanging sword, complainant approached to the union representative of Maharashtra Navnirman Kamgar Sena. In my view, there is no wrong on the part of the complainant, if he approached to union representative for redressal of his grievances. In my candid opinion, if union representatives approached to the management of the respondent No. 1 hotel for enquiry regarding the chargesheet/notice of the incident dtd. 27/04/2017, they have not committed any wrong. One has to understand that as management has not initiated the enquiry immediately after issuing the chargesheet, second incident of entering in the lobby with the members of MNKS occurred. If management would have immediately initiated enquiry, and it would have completed within time, second incident would not have occurred. So, management of the respondent No. 1 hotel is responsible for the incident for which second chargesheet was issued.*

(emphasis added)

17. *This is how the Labour Court has virtually absolved Respondent in respect of the charge in the second chargesheet. The learned Judge has totally ignored the manner in which Respondent and union leaders were demanding the discussions. They repeatedly entered lobby of the hotel in presence of hotel guests and demanded meeting with Hotel's General Manager. Thus an employee who was facing the charge of stealing hotel's property was found to be virtually threatening the management by bringing in outside elements in the lobby of the hotel. The Labour Court has thus grossly erred in totally ignoring the misconduct in the second chargesheet.*

18. *I am not in agreement with the findings recorded by the Labour Court that the punishment of dismissal is shockingly disproportionate to the charges proved against the Respondent so as to direct reinstatement with continuity and other consequential benefits. Serious charge of misappropriation of Hotel's property is held to be proved. The staff of the hotel is not supposed to carry goods kept for sale at their homes without paying for the same. Respondent was working in the security*

department and was entrusted with duty of protecting hotel's property and his indulgence in the act of stealing employer's property is clearly subversive of discipline, warranting imposition of major penalty. The objective behind punishing the employee is mainly to maintain discipline in the establishment and the expectation of the learned Judge of labour Court that the Petitioner-Hotel ought to have simply ignored the act of stealing by security staff is clearly unacceptable.

21. Though this Court would have been justified in setting aside the orders passed by the Labour and the Industrial Court and dismissing Complaint (ULP) No. 168/2018. As observed earlier, Respondent cannot be reinstated in service considering the misconduct committed by him. If at all any leniency is to be shown towards him, on account of nature of items (cakes) taken away by him, which were possibly not being capable of being sold outside (and there is no charge of sale of cakes outside), award of some lumpsum compensation to him would meet ends of justice. It appears that Petitioners have deposited Respondent's monthly wages during pendency of the Revision Application. Mr. Paranjape has submitted that the total amount deposited in the Industrial Court towards wages of Respondent would be in the range of Rs. 4,00,000/-. He has already been paid an amount of Rs. 1,82,275/- on 9 July 2018 at the time of his dismissal. Considering the facts and circumstances of the case, further lumpsum compensation of Rs. 5,00,000/- would meet the ends of justice as the total amount receivable by the Respondent would be about Rs. 6,82,275/-."

7. Relying on the aforesaid Judgments, he submits that the Labour Court and Industrial Court ought to have dismissed the complaints.

8. Per contra, learned counsel Mr. Thole for the respondent supports the orders passed by the Labour Court and the Industrial Court and submits that all the witnesses examined were employees of the petitioner. He contends that some of those employees had a personal grudge against the respondent, and even the allegation of theft of the said chappals is wholly unbelievable. The contention that the respondent carried the chappals in a tiffin box is also highly improbable, particularly when the entire hospital is monitored through CCTV footage. More particularly, the incident dated 24.10.2006, which formed the basis of the inquiry, clearly reveals that

the allegation was that the respondent committed theft while he was on duty in the Surgical Ward. Therefore, he submits that the Labour Court rightly recorded that the findings of the Inquiry Officer were perverse, and since the petitioner failed to prove otherwise by leading evidence before the Labour Court, both the Labour Court and the Industrial Court have correctly passed the impugned orders. He further submits that the petitioner has failed to establish that any unfair labour practice was committed by the respondent.

9. Having heard the learned counsel for the respective parties and after going through the entire evidence placed before this Court, I have also examined the order passed on preliminary issues by the Labour Court on 14.02.2013, wherein the Labour Court recorded its findings in Paragraph Nos.24 to 28 on the point of inquiry, which read thus:

“24. The delinquent employee has examined a witness namely Subhash Babasaheb Wadekar (Exh. U-38/1). Wadekar has stated before the Enquiry Officer that on 24/10/2006 his duty hours were 7.00a.m. upto 12.00 p.m. and from 5.00 p.m. upto 7.00p.m. He has also stated that, his reliever did not attend his duty upto 8.30 p.m. So he was working upto 8.30 p.m. He has also stated that, while he was on duty he did not heard any incident of theft. In the cross-examination he has stated that, on 25/10/2006 he heard that, incident of theft of a pair of chappal is occurred.

25. The Enquiry Officer while arriving to his conclusion that, the incident of theft is occurred has relied upon the oral evidence of Subhash Wadekar. The Enquiry Officer found that, Subhash Wadekar has admitted that, the incident of theft occurred on 24/10/2006. According to me this finding of the Enquiry Officer is not based on the evidence placed before him. According to me Subhash Wadekar has not admitted in his oral evidence the incident of theft dt 24/10/2006 as alleged by the management. Subhash Wadekar has simply stated in the cross-examination that on 25/10/2006 he heard about the incident of theft of a pair of chappal. Subhash Wadekar has not uttered a single word about the delinquent employee in his cross-examination. Further the oral evidence of Subhash Wadekar is not a direct evidence. The oral evidence of Subhash Wadekar about the alleged incident is hearsay evidence. So while arriving to the conclusion of the incident the

Enquiry Officer has much relied upon the oral evidence of Subhash Wadekar.

26. The Enquiry Officer has also placed reliance upon the oral evidence of Pushpa Mundhe and Gayabai while arriving to his conclusion. The Enquiry Officer has not taken into consideration the fact that, Dr. Chako has denied the ownership over a pair of chappal, allegedly stolen by the delinquent employee, while arriving to his conclusion. The Enquiry Officer has also not considered the fact that, Pushpa Mundhe and Pushpa Sonwane is not the same person.

27. The Enquiry Officer has also not considered the fact that, there was no any complaint of theft against the delinquent employee. Even Dr. Chako has not made a complaint of theft of his chappal. No any other employee of the respondent has filed a written complaint or oral complaint about the theft of a chappal. So under such circumstances first question which was required to be posed by the Enquiry Officer was that, who is owner of the chappal allegedly stolen by the delinquent employee?.

28. The charge of a theft is a serious misconduct. An offence of theft is considered as a serious offence by a criminal jurisdiction. An offence of theft is also an offence of moral turpitude. So while arriving to a conclusion that, a particular person has committed the theft sufficient evidence must be required to be placed before the Competent Authority. Direct evidence if available required to be placed before the authority.

10. The learned Labour Court came to the conclusion that the findings recorded by the Inquiry Officer were perverse and required to be set aside. This order dated 14.02.2013 attained finality as the petitioner did not challenge the same. Upon perusal of the order dated 11.10.2013 passed by the Labour Court, it is evident that while considering the oral evidence of the respondent – complainant, the Court noted that he was actively involved in placing the demands of the workmen / employees before the petitioner. The respondent successfully demonstrated that the alleged misconduct was not proved, and the dismissal order was passed by way of victimization.

11. After considering the entire record, I find that all the witnesses examined were employees of the petitioner and their testimony was aligned with the petitioner's case. However, the fact remains that once the Labour Court had already recorded a finding that the Inquiry Officer's conclusions were perverse, and that finding had attained finality, the Labour Court was justified in allowing the complaint. Before the Industrial Court, the same contentions as raised in the present petition were urged, but the Industrial Court confirmed the findings recorded by the Labour Court.

12. Therefore, I find that both the Labour Court and the Industrial Court have rightly considered the matter and allowed the complaints filed by the respondent. Accordingly, I do not find any perversity in the orders passed by the Labour Court and the Industrial Court. Hence, I proceed to pass following order:

ORDER

- i) The Writ Petition is dismissed.
- ii) No order as to costs.
- iii) Rule is discharged.
- iv) Pending civil applications, if any, stand disposed of.
- v) The respondent – employee is permitted to withdraw the amount deposited in this Court along with interest accrued thereon.

[SIDDHESHWAR S. THOMBRE, J.]