

BEFORE THE JUDGE LABOUR COURT, CHANDRAPUR

(Presided over by Smt. R.V. Mete)

Complaint(ULP) No.08/2015

(CNR.No.MHLC340000192015)

Exh.O- 4

Waman s/o Uddhaoji Ataram,

Aged about 36 years, Occu : Service (Dismissed)

R/o Shantinagar Ward No.1 Jiwati,

Post. & Tah. Jiwati, Dist. Chandrapur.

... **Complainant.**

-:- VERSUS -:-

1. The Chief Executive Officer,

Chandrapur District Supervision

Cooperative Society Ltd. Chandrapur,

Tah. & Dist. Chandrapur.

2. Adiwasi Vividh Karyakari Sahakari

Sanstha Maryadit, Bhendavi,

Regn. No.906, Tah. Rajura,

Dist. Chandrapur – Through its

Chairman.

... **Respondents.**

CORAM :- Smt. R.V. Mete, Judge.

Appearance :

Shri. J.M. Patil, Ld. Counsel for the complainant.

Smt. S. S. Waghale, Ld. Counsel for the respondent no.1.

Smt. Ekta Rahate, learned Counsel for the respondent no.2.

**In complaint U/Sec. 28 read with Item-I of Schedule-IV -
of Maharashtra Recognition of Trade Unions and
Prevention of Unfair Labour Practices Act (for short
“MRTU & PULP” Act)**

ORDER ON PRELIMINARY ISSUES

(Delivered on this 30th July, 2022)

The case of the complainant in brief can be described as follows :-

02. The complainant was in the employment of the respondent no.1 and he was posted with the respondent no.2 since 24.11.2009 for the post of Manager of the Co-operative society. Since joining with the respondent no.2 society, the complainant has discharged his routine duties as clerical in nature as per the direction of the respondent no.2. While discharging duties with the respondent there was no complaint in respect of his duties. Neither any show cause notice nor any chargesheet was issued to him. His service record was clean and unblemished. The complainant was discharging the work for providing agricultural loan to the members of the respondent no.2 society. He was also used to recover loan amount from such members and also used to deposit it with the respective co-operative bank. He was not empowered to granting leave or issuing any show cause/memo to the employees of the respondent no.2 society not he was taken any part in the policy decision of the said society and no any supervisory/administrative power was vested with him but all these powers are vested to the Chairman of the respondent no.2 society and as such complainant is a workmen

though he was designated as Manager of the respondent no.2 society as a contemplated u/s. 2(s) of the I.D. Act, 1947 and the respondent are carrying the business activities for providing services as per their bye laws for granting and distributing and recovering it and thereby getting by employing the workers in their society with their cooperation including the complainant also as such the respondent society is an 'industry'.

03. It is submitted that complainant was not feeling well since July 2010 thus he was applied for leave to the respondent no.1 on 29.07.2010 along with medical certificate from Rural Hospital, Gadchandur. Thereafter, the respondent no.1 was issued their letter dated 27.07.2010 to the complainant along with a letter dated 24.07.2010 of CDCC Bank, Chandrapur which was alleged to be issued to DDR Chandrapur and thereby directed for handed over his charge of respondent no.2 society forthwithly to one Mr. Gonahadi, the Manager of Mandawa Adivasi V.K. Society. Since the complainant was ill he was not in a position to comply aforesaid order of respondent no.1 and on failure to do so, the respondent no.1 was issued suspension order dated 03.08.2010 by RPAD and thereby falsely alleged against him regarding irregularities and misconduct. Thereafter the respondent no.1 was issued a chargesheet vide no.499/2010 dated 30.11.2010 to him on 03.12.2010 along with some documents and thereby alleged that the complainant was committed misconduct as to misappropriation and irregularities on the basis of preliminary enquiry conducted by member secretary Shri Tupat as per their report dated 16.11.2010 and thereby explanation was called from him. The complainant was replied the charge sheet on 15.12.2010. but without considering it, respon-

dents conducted the departmental enquiry. The enquiry officer was issued a letter dated 03.02.2011 addressing to complainant at the very first time and thereby directed to appear him in the alleged enquiry on 11.02.2011 at 2.00 noon at the place of Taluka Supervision Co-operative Society, Rajura but the said letter dated 03.02.2011 was issued to him belatedly by the enquiry officer by RPAD on 17.02.2011 after lapse of enquiry proceeding dated 11.02.2011 and thus the complainant was failed to attend the enquiry proceeding on 11.02.2022. In view of the enquiry report, it was alleged that the presenting officer and management representative was present in the alleged enquiry and they are awaited till 03.00 PM and thus thus enquiry proceeding was extended on 24.02.2011.

04. The alleged enquiry was alleged to be kept on 24.02.2011 but its information was also given to him belatedly at once on 25.02.2011 by RPAD and under certificate of posting after lapse of such enquiry proceeding dated 24.02.2022. In view of enquiry report, it was also alleged that the presenting officer and management representative was present in the alleged enquiry and thereby awaited till 3.00 PM but the complainant was failed to appear therein and thus enquiry proceeding was extended on 09.03.2011. In the enquiry report that on 09.03.2011 the management witnesses Mr. Tupat was examined in such alleged enquiry but it was uncompleted. Thereafter enquiry was kept on 18.03.2011 and on that day it was alleged to be adjourned as per the request of presenting officer Mr. Pachkhede but it was alleged by vague contention of the enquiry report that the incomplete examination of said witnesses Mr. Tupat was thereafter recorded later on and the statement of the

other witnesses was recorded on 13.04.2011 and deliberately alleged that the complainant was remained absent in the whole despite of service of its notice/information and due to it in his absence the statement of management witnesses was alleged to be recorded and by considering the statement of the witnesses as well as documents on record that alleged enquiry proceeding was alleged to be closed for finding.

05. It is submitted that the aforesaid alleged enquiry is held and conducted ex-parte which is itself illegal, unfair and improper one as the enquiry officer was himself denied him fair, reasonable and proper opportunity for defending it by violating the obvious principles of natural justice and utter disregard of the provisions of law and rules framed there under regarding quasi-judicial proceeding. That, in view of the finding as to charge no.1 regarding avoidance to provide agricultural loan to the members of the respondent no.2 society in the year 2010-11 by committing irregularities was alleged to be proved. In fact the said finding is obviously erroneous and perverse one as the complainant was himself providing crop loan to the 57, 39 and 2 members of the respondent no.2 society for amounting of Rs.20,38,000/-, Rs. 12,30,300/- and Rs.63,800/- respectively in the year 2010-11 as per the information given to him by the administrator of the respondent no.2 society in view of their letter vide no.08/2011 dated 17.11.2011 under the RTI, Act, 2005 and as such the charge no.1 was falsely alleged by the respondent no.1 against the complainant and the enquiry officer was wrongly accepted it as it is deliberately as per the direction of the respondent no.1 with a bias mind and therefore the finding whichever recorded as charge no.1 are absolutely erroneous and

perverse one and the same is liable to be declared so by this Court.

06. It is submitted that in view of the allegation of the enquiry report, Mr Satish Tupat was made alleged statement regarding written instruction for working progress of the complainant but no any document to that effect was provided to him at any point of time and nothing has been brought and produced on the record of the alleged enquiry proceeding. That said witness was also alleged to be made statement in the enquiry that the agricultural member of the respondent no.2 society was made complaint to the CDCC Bank, Gadchandur branch, Gadchandur regarding non providing crop loan to them but no any copies of alleged complaint was provided to him at any point of time and nothing was alleged to be placed on record of the alleged enquiry proceeding as per the alleged enquiry report.

07. It is submitted that in the said enquiry report, it was also alleged that the said witness was directed the complainant for made submission of NCS and accordingly on 06.07.2010 the complainant was submitted loan demand application for 63 members to the Gadchandur branch. That said Tupat was also alleged in his statement during course of alleged enquiry stating that the bank inspector Mr. Jogi was verified the whole record of the respondent no.2 society and alleged to be found that there was no noting under the loan ledger of the members of the said society and also alleged to be found that the complainant was not taken the entries of loan recovery with the cash book of the respondent no.2 society but their loan was alleged to be shown

to be nil at the loan ledger record and also alleged that there was the difference between loan recovery receipt posses by the members and loan recovery receipt which are available with the office of the respondent no.2 society.

08. It is submitted that the said witness was also alleged to be made his statement in the enquiry alleging that the said Jogi was directed the complainant for resubmission of upto date cash book and record to the said Gadchandur branch and accordingly the complainant was submitted it along with ledger, cash book by updating it as alleged and on its verification on 27.07.2010 the amount of Rs.33,477/- was alleged to be balance against him and on directing to deposit it, the complainant was alleged to be agreed to do so on the same day but it was alleged that thereafter he was never turned up in the bank as well as in the society and thereafter on the said allegation he was suspended and Mr Durge was directed to take up his charge but due to absence of the complainant no charge was taken by said Durge but the open record was alleged to be taken in his custody from the bank on preparing panchnama to that effect.

09. It is submitted that in the enquiry report as per the statement of the said witness that the complainant was fulfilled the required requirement of the record and used receipt book no.1244 with receipt no.124301 to 124398 and used receipt book no.1568 with receipt no.156701 to 156741 was made available but it was falsely alleged that 31 receipt was not matched out of 98 original used receipts of receipt book no.1244 as there was variation in the name of the members and its amount and

was also alleged that due to not matching such 31 receipts the amount of Rs.5,91,340/- was alleged to be misappropriated by the complainant.

10. It is further submitted that in the enquiry report that 22 receipt of receipt book no.496 from the members of the respondent no.2 society was received by the said witnesses but its copy was never provided to him at any point of time. It was also alleged therein that the receipt book no.496 was never provided to the respondent no.2 society. The list of said receipt was also never provided to him but was alleged that such 22 receipt was for amounting of Rs.3,59,171/-. It was also alleged in the said enquiry report that on verification of cash book the amount of Rs.7,09,185/- was showing balance and that was never credited to the loan account of the respondent no.2 society with the bank and thus it was alleged that it was recoverable from him. It was also alleged that the complainant recovered Kisan Credit card loan and interest on 28.07.2010 but its entries was not taken into the cash book and on the basis of such alleged receipt that cash book was entered by said Durge and alleged that the amount of Rs.3,68,508/- of receipt of 12 receipts was not deposited in the bank by him and falsely alleged that such amount was misappropriated by the complainant but such receipt was never provided along with chargesheet to him and it was relied on in the finding as to charge no.2 in the enquiry report of the enquiry officer.

11. It is submitted that on 24.12.2005 the complainant was submitted bogus bill of alleged dead stock of Rs.31,453/-

and that amount was alleged to be misappropriated without obtaining permission of the department but the copies of such alleged bogus bills was never provided to him at any point of time even though the same was also relied on by the enquiry officer in his enquiry report alleging that the same was misappropriated by him and thereby erroneous and perverse finding was recorded as to charge no.2 and the same is required to be declared so by this Court. That, in the enquiry report, it was also falsely alleged that the complainant has not been provided crop loan to the five members of the respondent no.2 society and thereby committed irregularities in his schedule work.

12. It is submitted that when the complainant was received charge from his reliever Mr. Meshram, the record of the respondent no.2 society was not up to date and for making it upto date by him the required vouchers and material was not available with the said respondent no.2 society and therefore the complainant was requested for the same from time to time to the Manager of CDCC Bank Ltd., Chandrapur, branch Gadchandur and was also requested the Rajura Taluka Secretary but there was no response from the said authorities and thus the record of such society was not made up to date by him within specified time and thus there was no any deliberate intention for alleged irregularity on the part of complainant but for the same afore-said position was compelled him which was beyond the own control of the complainant.

13. It is submitted that on verification of record by bank inspector, the amount of Rs.3,33,477/- was shown outstanding against him on 27.07.2010 and thus complainant was under-

taken to deposit it on very next day on 28.07.2010 and accordingly he was approached for the same by the said bank Inspector was not present in his bank office and thus the complainant was awaited there but he was caused surprising unbearable gas trouble and due to it he was collapsed therein and became unconscious immediately and thus he was taken to hospital some person.

14. It is submitted that complainant was also deposited the cash with the Gadchandur Branch from time to time which ever recovered and received from the concerned members of the respondent no.2 society and thus there was no any outstanding against him and for showing its defaulter by the respondent no concerned document was provided to him though the complainant was requested from time to time to that effect. That in fact on the allegation of misappropriation one Mr Sunil Chitade, Dy. Accountant of Rajura Co-operative Society was reported the matter to the Police Station, Rajura and on such report FIR no.22/2011 dated 29.01.2011 was registered for the offence punishable u/s 420, 406 and 477(a) of IPC and thus he was approached with the Session Court, Chandrapur on 03.02.2011 for anticipatory bail but it was lastly rejected on 18.02.2011 and the respondent was kept the alleged departmental enquiry in the meantime knowingly and deliberately to harass him unnecessarily. The alleged enquiry was made against him illegally and improperly and findings recorded by enquiry officer and on the basis of such finding the second show cause notice dated 18.05.2011 was issued on 18.05.2011.

On the basis of above said grounds the complainant has sought the relief of declaration, quashing and setting aside the impugned punishment order dated 03.10.2011. At present he prayed for determining the issue no. 1, 2 and 4 in his favour.

15. The respondent no.1 and 2 filed their written statement vide (Exh.C-5) & (Exh.C-9). It is denied that the dismissal order issued by respondent no.1 dated 03.10.2011 is on the basis of erroneous and perverse finding of alleged domestic enquiry recorded by enquiry officer and thereby indulged him in unfair labour practices on their own part of employer. It is denied that since joining with the respondent no.2 society, the complainant has discharged his routine duties as clerical in nature as per the direction of the respondent no.2. That he was discharging the work for providing agricultural loan to the members of the respondent no.2 society. He was also used to recover loan amount from such members and also used to deposit it with the respective co-operative bank. He was done and discharged all the works attached to the said post as per sub rules of society. It is further denied that he was not empowered to grant leave or issuing any show cause notice/memo to the employee of the respondent no.2 society nor he was taken any part in the policy decision of the said society and no any supervisory/administrative power was vested with him.

16. It is denied that while discharging with the respondent there was no any complaint in respect in his duties as he was never gave an opportunity of any grudge regarding his duties. It is further denied that neither any show cause notice nor

any chargesheet was issued to him and no any explanation was called thereby from the complainant by the respondent as he was discharged his duties very sincerely, honestly and faithfully with the respondent and thus his past service record was clean and unblemished one.

17. It is denied that since July 2010, the complainant was not felling well and thus he was applied for leave to the respondent no.1 on 29.07.2010 along with medical certificate from Rural Hospital, Gadchandur. It is denied that since the complainant was ill he was not in a position to comply aforesaid order of respondent no.1 and on failure to do so, the respondent no.1 was issued suspension order dated 03.08.2010 by RPAD and thereby falsely alleged against him regarding irregularities and misconduct. It is not disputed that the respondent no.1 was issued a chargesheet vide no.400/2010 dated 30.11.2010 to him on 03.12.2010 along with some documents and thereby stated that the complainant has committed misconduct as to misappropriation and irregularities on the basis of preliminary enquiry conducted by member secretary Shri Tupat as per their report dated 16.11.2010 and thereby explanation was called from him. The said charge sheet was replied by the complainant on 15.12.2010 along with documents addressing to respondent no.1 and thereby denied the charges totally and also narrated some material facts, however it is denied that without considering it satisfactory the respondent no.1 was decided to hold departmental enquiry in view of their letter dated 07.01.2011 as per their own Discipline and Appeal (Service rule).

18. It is further denied that the respondent was not asked the complainant about any problem regarding appointment of said enquiry officer. It is denied that in the letter dated 07.1.2011 the respondent no.1 was never narrated that Sau. Smita Waghade advocate was representing to the management and nothing was alleged therein regarding appointment of presenting officer Shri Pachkhede for the management while conducting the alleged enquiry. It is denied that letter dated 03.02.2011 was issued to him belatedly by the enquiry officer by RPAD on 17.02.2011 after lapse of enquiry proceeding dated 11.02.2011 and thus the complainant was failed to attend the enquiry proceeding on 11.02.2011. It is correct to say that in view of enquiry report, it was clear that the presenting officer and management representative was present in the enquiry and they are awaited till 03.00 P.M. and thus that enquiry proceeding was extended on 24.02.2011.

19, The respondent no.2 has taken preliminary objection that complainant was working as a Manager of the respondent no.2. The nature of duties of the complainant is managerial one and he was discharging all functions and powers of the post of manager. Therefore, complainant is not a workman within the definition of Section 2(s) of I.D. Act. Therefore, the complaint filed by the complainant is not tenable.

20. It is submitted that in the special pleading, complainant was working with the respondents as a Manager, looking to the nature of work and designation of complainant he is not a workman. Hence on this ground the instant complaint is

not tenable before the Court and liable to be dismissed with cost. While working with the respondent no.2 the complainant made some irregularities in his work and misappropriated the amount of respondent no.2 society. Therefore, the complaints were received to respondent no.2 by respondent no.1 and branch officer of district central co-operative Bank, Gadchandur. The respondent no.1 being controlling and head authority inspected all the record of respondent no.2 society and found that the complainant made fraud in the society. The cash book of the society was not written properly and it was incomplete. The crop loan were not distributed to the farmers, bogus bill book were found in the custody of complainant. Therefore, respondent no.1 issued show cause notice to the complainant in respect of his irregularities and misappropriation of huge amount of society on 08.06.2010 calling explanation, however no satisfactory explanation was given by complainant. To control the financial position of society, the complainant was asked to hand over the charge of society to the Chairman Manda Aadhivasi Vivi Karyakari Sanstha vide order dated 23.07.2010. However, the complainant have not handed over the charge stating the reason of ill health. Therefore the respondent no.1 issued a letter on 30.07.2010 to member/Secretary Taluka Supervision Society, Rajura for initiating primary enquiry of complainant. Accordingly, Shri Tupat member/Secretary Taluka Supervision Society made primary enquiry of the complainant and inspected all the record of the society and submitted his report to the respondent no.1. Thereafter, complainant was suspended from service by respondent no.1 vide order dated 03.08.2010. Thereafter, respondent no.1 issued a show cause notice on 30.11.2010 along with charge sheet and all other relevant documents calling ex-

planation to the complainant for misappropriation of amount of Rs.16,83,913/- committed by him. The complainant replied the show cause notice/charge sheet denying all the charges leveled against him vide his letter dated 15.12.2010. Thereafter, the respondent no.1 asked to Shri W.M. Khelkar and as an enquiry officer to conduct the enquiry against complainant for charges leveled against him vide order dated 29.1.2.2010, and as per letter dated 30.10.2010 Shri Khelkar Adv. had given his consent to conduct departmental enquiry against complainant. Thereafter vide order dated 07.01.2011 the respondent no.1 appointed W.M. Khelkar as an enquiry officer to conduct enquiry of complainant.

21. Thereafter, a departmental enquiry against the complainant was started by enquiry officer, all the concerned papers and documents were supplied to the complainant. On 03.02.2011 the first setting of enquiry was held in the office of Taluka Supervision Society, Rajura and enquiry officer directed to complainant and respondent to appoint their respective representative and filing of documents if necessary. The next date was fixed for 11.02.2011. On 11.02.2011 the management and their representative was present before enquiry officer, however the complainant was absent, next date was 24.02.2011. However, the complainant was remain absent on 24.02.2011, thereafter dates for enquiry were fixed on 27.02.2011, 09.03.2011, 11.03.2011, 13.04.2011. However the complainant never appeared before enquiry officer for a single date to defend himself. The management examined 5 witness before enquiry officer and all relevant documents were exhibited. Neither complainant present nor he cross examined witness of management. All the

charges were duly proved in the enquiry and the enquiry officer submitted his enquiry report to the respondent on 27.04.2011. Thereafter, the respondent no.1 issued second show cause notice on 10.05.2011 to the complainant along with enquiry report calling explanation from complainant. However no satisfactory explanation was found from complainant. Mean while the offence was also registered against the complainant before J.M.F.C., Rajura and the complainant was in the jail for 6 months looking to the gravity of misappropriation of offence committed by complainant and huge amount of Rs.16,83,913/- of respondent no.2 society, which is a public money. The complainant lost the confidence of respondent no.1 dismissed the services of complainant. Remaining all adverse allegations made by the complainant are denied.

For the above mentioned reasons, they have prayed to give findings on issue nos.1, 2 and 4 in their favour.

22. In view of the rival pleadings of parties, my learned Predecessor has framed issues vide (Exh.O-3), out of which issue nos.1, 2 and 4 are treated as preliminary issues. Those are reproduced below with my findings thereon for the reasons stated thereunder.

ISSUES

FINDINGS

- 1) Whether the enquiry conducted by the respondents is fair and proper and in accordance with the principles of natural justice ? : In the negative.
- 2) Whether the findings recorded by inquiry officer are perverse ? : In the affirmative.

- 4) Whether complainant is a : In the affirmative.
'workman' and respondents are
'industry' ?

REASONS

23. Heard Shri J. M. Patil, learned Counsel for the complainant and Smt. S. S. Waghale, learned Counsel appearing on behalf of the respondent no.1 and learned Counsel Smt. Rahate appearing on behalf of the respondent no.2. also the learned Counsel of the respondent no.1 filed written notes of argument at (Exh.C-41).

24. To demonstrate that the enquiry is unfair and illegal, the complainant has examined herself as Waman (Exh. U-16) and filed evidence closure pursis at (Exh. U-70). On the other hand, respondent no.1 & 2 have not examined any witness and filed evidence closure pursis at (Exh. C-39 and Exh. C-40).

25. The learned Counsel of complainant has relied upon the documents - Copy of chargesheet – (Exh.U-17), letter dated 11.01.2010 (Exh.U-19) along with Exh.U-14. Copy of letter dated 04.11.2009 (Exh.U-20), letter dated 14.11.2009 (Exh.U-21), letter dated 18.11.2009 (Exh.U-22), copy of order dated 24.11.2009 (Exh.U-23), Copy order dated 30.01.2010 (Exh.U-24), Copy of chargesheet dated 15.1.2010 (Exh.U-26), postal receipt (Exh. U-27), Copy of panchnama (Exh.U-28), copy of letter dated 03.02.2011 (Exh.U-29), copy of letter dated 03.02.2011 (Exh.U-30), copy of letter dated 14.02.2011 (Exh.U-31), copy of letter dated 14.02.2011 (Exh.U-32), copy of letter dated 14.02.2011 (Exh.U-33), copy of letter dated 26.02.2011 (Exh.U-34), copy of

letter dated 18.06.2011 (Exh.U-36), Copy of letter dated 15.11.2011 (Exh.U-37), copy of letter dated 17.11.2011 (Exh.U-38), receipt dated 09.02.2012 (Exh.U-39), List of loan – Exh.U-40), receipt dated 01.02.2010 (Exh.U-41), copy of letter dated 04.03.2013 (Exh.U-42), Copy of letter dated 20.02.2013 (Exh.U-43), Copy of letter dated 02.07.2015 (Exh.U-44), Appeal (Exh.U-45), letter (Exh.U-46), letter (Exh.U-47), Loan receipt (Exh.U-48), loan receipt (Exh.U-49), letter dated 09.01.2015 (Exh.U-56), letter dated 17.01.2015 (Exh.U-58), Appeal (Exh.U-59), Envelope (Exh.U-61), Title Sheet (Exh.U-62), book of receipt (Exh.U-63),

26. On the contrary, the learned Counsel of respondents has filed documents along with list (Exh.C-10). Those documents are at (Exh.C-15) to (Exh.C-31).

AS TO ISSUE NO.4 :-

27. This issue pertains to whether complainant is “workman” as per Section 2(s) *and respondents are “industry” as per Section 2(j)* of Industrial Disputes Act (for short – I.D. Act). First and foremost contention raised by learned Counsel of respondent no.2 is that considering the nature of work, complainant does not fall in the category of “workman”. Per contra, learned Counsel of complainant urged that nomenclature of post of complainant is not decisive factor. Considering the nature of work done by complainant, he certainly falls in the category of “workman”.

28. Respondents did not choose to examine any witness on the point of preliminary issues. However, complainant has examined himself at (Exh.U-16) stated that he was discharging

the work for providing agricultural loan to the members of the respondent no. 2 society. He was also used to recover loan amount from such members and also used to deposit it with the respective co-operative bank. He was not empowered to granting leave or issuing any show cause/memo to the employees of the respondent no. 2 society not he was taken any part in the policy decision of the said society and no any supervisory/administrative power was vested with him but all these powers are vested to the Chairman of the respondent no.2 society and as such he is a workmen though he was designated as Manager of the respondent no.2 society as a contemplated u/s. 2(s) of the I. D. Act, 1947 and the respondent are carrying the business activities for providing services as per their bye laws for granting and distributing and recovering it and thereby getting by employing the workers in their society with their cooperation including the complainant also as such the respondent society is an 'industry'. True it is that respondents have denied that complainant is a workman and he has no decision making power. However, in my opinion, mere denial in that regard before the Court is not at all sufficient. Therefore, whatever the complainant has deposed before the Court in this regard is not shattered because of mere denial by respondents. Therefore, in absence of any evidence in rebuttal, it can not be inferred that complainant is not 'workman' and respondent is not an industry. Consequently, I hold that issue no.4 is proved. Hence, it is answered in the affirmative.

AS TO ISSUE NOS.1 & 2

29. Both these issues being interlinked, they are being discussed together for the sake of convenient discussion.

30. While determining whether the enquiry is fair and proper, the Court has to see whether the enquiry was conducted adhering to the principles of natural justice, service conditions rules, whether proper opportunity of defending the enquiry was given to the applicant or not, whether the enquiry was impartial, transparent or not. Keeping in mind this legal position, the evidence needs to be discussed.

31. At the outset, it is also necessary to mention here that the enquiry officer must follow the minimum of fair procedure. This minimum procedure refers the principles of natural justice. Natural justice implies fairness, reasonableness, equity and equality. It is pertinent to note here that the fate of the delinquent depends upon the report of the enquiry. The enquiry officer in a departmental enquiry is having a pious role as ultimately he is required to find out the truth and while doing so, the evidence produced by the delinquent during the enquiry is required to be considered and gone into. The enquiry officer has to objectively record the evidence, analyze the evidence and submit the report to the disciplinary authority giving his findings as to whether the charges against the delinquent are proved or not.

32. Therefore, the enquiry officer owes an important duty though his findings can be based even on circumstances or preponderance of probabilities but at least relevant part of the evidence is required to be discussed by him in his report. The findings should be arrived at on the basis of some evidence or even on the basis of preponderance of probabilities. For my opinion, I am guided by the observations in the case of :- **P.A. Karkhanis**

-V/s- UCO Bank & Ors., reported in 2009 (4) ALL MR 511. In view of the above guidelines, it is to be seen whether in this case the enquiry officer has followed the minimum of fair procedure, or not.

33. Waman (Exh.U-16) has deposed as per his complaint. It is nothing but reproduction of material facts as mentioned in his complaint. At the outset, it is also necessary to mention here that it is one of the fundamental principles of natural justice that when the delinquent does not admit the misconduct, the enquiry officer shall proceed to record evidence in support of the charges as is available and necessary to support the charge. As far as possible, the witnesses shall be examined direct and in presence of the delinquent who shall given an opportunity to cross examine them.

34. Perusal of the enquiry proceeding, it appears that after appointment of enquiry officer, the letter of enquiry was issued to the complainant dated 03-02-2011 addressing to the complainant to appear in the enquiry on 11-2-2011 at 2 p.m. but, the said letter was served to the complainant belatedly on 17.02.2011 which is at Exh.U-30 I. .e after lapse of enquiry. Similarly, the letter dated 14.02.2011 of enquiry fixed on 24.02.2011 was served to the complainant belated on 25.02.2022. Also the letter of enquiry dated 09.03.2011 also received to the complainant belatedly. Therefore, complainant was not appeared in the enquiry but in the enquiry report and roznma of the enquiry it is mentioned that enquiry officer that presenting officer and management representative was present

in the alleged enquiry and they are awaited till 3 p.m. and thus that enquiry was extended on next dated. It also appears from the enquiry papers that complainant has given letter to the enquiry officer to serve the letter of enquiry to him before 8 days before the date of enquiry as the letter of enquiry served to him belatedly. But the enquiry officer without considering the said request letter issued the public notice in the news paper Mahavidarbha on 27.12.2011, when respondents, enquiry officer and management representative was well known that said paper was never distributed in that area. And conducted the enquiry on 09.03.2011 by showing the complainant absent and recorded the statement of management witness Shri Tupat. But it was not completed on the said date and the enquiry was postponed on next date.

35. From this it appears that the enquiry officer not considered the fact that the letter of enquiry was not served and received to the complainant within a time in order to remain present in the enquiry. Also, the enquiry officer not the considered the letter of complainant dated 26.02.2011 which was received to the enquiry officer that the letter of enquiry dated 11.02.2011, 24.02.2011 and 09.03.20211 received to him belatedly and to served him the letter of enquiry before 7 days of date of enquiry in order to the complainant to remain present in the enquiry. And without considering the same enquiry officer proceeded the ex-parte enquiry against the complainant. Which is itself illegal and against the principles of natural justice. Therefore, on that ground the enquiry conducted against the complainant is not fair and proper.

36. It is argued by the complainant that he has not served the documents attached with the charge sheet therefore, he is unable to defend in the enquiry. But the learned counsel for the respondent denied that they have not served documents annexed with the charge sheet to the complainant. Therefore, the learned Counsel for the complainant pointed out the envelop in which the respondent served the chargesheet to the complainant which is at Exh.U-18. Perusal of the said envelop, it appears that it is very small packet and it was not possible to serve the charge sheet along with 59 documents in it. Therefore, whatever the contention of the complainant that respondents have not served all the documents along with the charge sheet is true. Therefore, complainant failed to defend in the enquiry due to unavailability of the documents. Therefore, on that ground also enquiry conducted against the complainant is not fair and proper.

37. Perusal of the enquiry papers, it appears that while drawing the findings the enquiry officer has not taken into consideration that the letters of enquiry was received to the complainant belatedly. Therefore, complainant unable to remain present in the enquiry. Also the enquiry officer has not considered the fact that the complainant given the letter to the enquiry officer to served the letter of enquiry before 8 days before the date of enquiry but the said request is also not considered by the enquiry officer and conducted the ex-parte enquiry against the complainant by showing absent to the complainant which is against the principles of natural justice. Therefore, there is no fairness in the enquiry conducted against the complainant. For

this reason, it can be said that the enquiry conducted against the complainant is not fair and proper.

38. It is argued by the learned counsel for the complainant that, in view of the finding as to charge no.1 regarding avoidance to provide agricultural loan to the members of the respondent no.2 society in the year 2010-11 by committing irregularities was alleged to be proved. In fact the said finding is obviously erroneous and perverse one as the complainant was himself providing crop loan to the 57, 39 and 2 members of the respondent no.2 society for amounting of Rs.20,38,000/-, Rs. 12,30,300/- and Rs.63,800/- respectively in the year 2010-11 as per the information given to him by the administrator of the respondent no.2 society (Exh.U-40) received under the RTI, Act, 2005. Therefore, perusal of the record it appears that as per (Exh.U-40) i.e. the letter no.08/2011 dated 17.11.2011 received to the complainant under the RTI, Act, 2005. The complainant was himself providing crop loan to the 57, 39 and 2 members of the respondent no.2 society for amounting of Rs.20,38,000/-, Rs. 12,30,300/- and Rs.63,800/- respectively in the year 2010-11. From this it appears that enquiry officer without considering the material before him drawn the finding that charge no. 1 is proved against the complainant. Therefore, the finding whichever recorded as charge no.1 is proved is absolutely erroneous and perverse one.

39. Thus, it appears that while conducting enquiry, the Enquiry Officer has violated the principles of natural justice. So also, the finding given by him was not based on the material

placed before him. He had also not considered the defense of the complainant and the circumstances brought to his notice in the enquiry. As such, the finding of the enquiry officer is perverse.

40. The aforesaid irregularities, lacunae and discrepancies in the enquiry leads the Court to come to the conclusion that the tenor of the report of enquiry officer shows that right from beginning he had made up his mind to find the complainant guilty and therefore only he did not sit in the enquiry with open mind, as a result the enquiry does not appear fair, transparent, impartial, adhering to the principle of natural justice. Consequently, findings drawn on the basis of such defective enquiry are perverse. The aforesaid discussion leads the Court to come to the conclusion that the complainant has proved that the enquiry conducted against him is not fair and proper and the findings drawn by the enquiry officer are also perverse. Hence, I answer to issue no. 1 in negative and 2 in affirmative. Thus, in view of my findings to issue no. 1, 2 and 4, I proceed to pass the following order.

ORDER

- 1) It is hereby declared that complainant is a 'workman' and respondents are 'industry'.
- 2) It is held that the enquiry conducted against the complainant is not fair and proper.
- 3) The findings of the enquiry officer are held as perverse.

CHANDRAPUR.
Date :- 30.07.2022.

Sd/-
(Smt. R. V. Mete)
Judge
Labour Court, Chandrapur.