



AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2035 OF 2012

1. **Shri Siddhivinayak Ganpati Temple**
Trust, Prabhadevi, Mumbai 400 038
through it's Executive Officer

2. **Nitin Vishnu Kadam**,
C/0. Shri Shddhivinayak Ganpati
Temple Trust, Prabhadevi,
Mumbai 400 028

... Petitioners

Vs.

Shailesh Dhondu Sakpal,
2/10, Vaishali CHS Limited,
Abhyudaya Nagar,
Kalachowki, Mumbai 400 033

... Respondent

ATUL
GANESH
KULKARNI

Digitally signed by
ATUL GANESH
KULKARNI
Date: 2026.04.23
11:39:36 +0530

WITH
CIVIL APPLICATION NO.2531 OF 2018
IN
WRIT PETITION NO.2035 OF 2012

Shailesh Dhondu Sakpal

... Applicant

In the matter between

Shri Siddhivinayak Ganpati Temple
Trust, Mumbai & Another

... Petitioners

Vs.

Shailesh Dhondu Sakpal

... Respondent

Ms. Pavitra Manesh i/by Mr. M.S. Topkar for the
petitioners.

Mr. A.V. Hardas i/by Mr. S.S. Patwardhan for the
respondent.



CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 17, 2026.

PRONOUNCED ON : APRIL 23, 2026

JUDGMENT:

1. By the present writ petition instituted under Articles 226 and 227 of the Constitution of India, the petitioners have called in question the legality, correctness, and propriety of the judgment and order dated 13 February 2012 passed by the Industrial Court at Mumbai in Revision Application (ULP) No.120 of 2011, whereby the revision preferred by the respondent came to be allowed and the judgment and order dated 13 May 2011 rendered by the Labour Court, Mumbai in Complaint (ULP) No.103 of 2010, dismissing the original complaint of the respondent, came to be set aside.

2. The facts giving rise to the present proceedings, as pleaded by the petitioners, may be stated thus. The respondent was initially engaged in the service of the petitioners on 6 April 2006 on contractual basis on the post styled as “Sarva Samanya Kamgar”. Thereafter, by order dated 13 November 2009, the State Government sanctioned the staffing pattern and created various posts in petitioner Trust. Consequent thereto, the respondent came to be appointed on the post of Sarva Samanya Kamgar, namely General Worker, on probation for a period of one year commencing from 13 November 2009. It is the case of the petitioners that on 21 December 2009, during the process of counting, the respondent was assigned the duty of sorting soiled currency notes by one Mr.



Kiran Chorge, representative of the Internal Auditor. At about 1.00 p.m., when the counting process was nearing completion and the respondent approached the receiving staff for handing over the tray of soiled notes after completion of sorting work, Mr. Chorge noticed that one currency note of Rs.500/-, which according to him was present in the tray at the inception, was missing. This fact was immediately reported to Mr. Jadhav, OSD, and Mr. P.T. Sandim, Accountant. Thereafter, the respondent was called to the cabin of Mr. Jadhav and was questioned in the presence of the aforesaid persons regarding the missing currency note. Initially, the respondent denied knowledge of the matter. However, upon Mr. Chorge asserting that he had personally seen the said note in the tray while handing it over to the respondent, the respondent allegedly admitted the misconduct and disclosed that he had concealed the note behind the table where he was carrying out the sorting work. It is further alleged that the respondent thereafter led Mr. Chorge and Mr. Sandim to the medical aid room, moved the table where he had been working, and produced the said Rs.500/- note from behind the table. The note was thereafter deposited in the Trust fund by Mr. Sandim. According to the petitioners, the respondent orally apologised for his conduct and also tendered a written apology of his own accord.

3. It is further the case of the petitioners that subsequently the respondent submitted two additional letters of apology on 24 December 2009, one addressed to the Committee of the Trust and another to the Executive Officer. Thereafter, petitioner No.1 directed the Accountant, Mr. P.T. Sandim, to submit a report



regarding the incident. In pursuance thereof, Mr. Sandim submitted his written report dated 28 December 2009 narrating the entire occurrence.

4. The petitioners further state that an urgent special meeting was thereafter convened. In the said meeting, the conduct attributed to the respondent, having occurred within the temple premises and relating to the property of the deity, was treated as grave in nature, destructive of discipline, causing loss of confidence and constituting breach of trust. On such consideration, it was resolved that the services of the respondent ought not to be continued. According to the petitioners, since the respondent had already admitted the misconduct in writing by three separate letters, the holding of a formal departmental enquiry was considered an empty formality. It was also taken into account that the respondent was merely a probationer. A decision was therefore taken to discontinue his services. Accordingly, by order dated 8 February 2010, the services of the respondent came to be terminated upon payment of one month's notice pay.

5. Being aggrieved thereby, the respondent instituted Complaint (ULP) No.103 of 2010 under Section 28 read with Items 1(a), (b), (c) and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, alleging commission of unfair labour practices by the petitioners. The respondent contended that the apology letters relied upon by the management had been obtained by force and coercion. He further alleged that his services were terminated without issuance of show cause notice, without service of charge



sheet and without conducting any enquiry. On such basis, the respondent asserted that the termination was illegal, arbitrary and amounted to unfair labour practice. He accordingly sought reinstatement with continuity of service and back wages.

6. The petitioners filed their written statement and denied all allegations of unfair labour practice. It was specifically contended that the complaint under Item 10 of Schedule IV of the MRTU and PULP Act was not maintainable. The petitioners reiterated that the respondent had voluntarily admitted the act of theft of Rs.500/- on more than one occasion and had sought pardon. It was further contended that the misconduct was serious and, having regard to the nature of duties and the confidence required in such employment, the petitioners had completely lost trust in the respondent. Since the respondent was on probation from 13 November 2009, it was considered neither desirable nor safe to continue him in service. On such grounds, the probation came to be discontinued and his services were terminated by order dated 8 February 2010 after payment of one month's wages. In the alternative, the petitioners also pleaded in paragraph 24 of the written statement that if the Labour Court were to hold that a domestic enquiry was necessary before termination, liberty be granted to the petitioners to adduce evidence before the Court so as to justify their action on merits.

7. In support of his complaint, the respondent filed an affidavit in lieu of examination in chief and was subjected to cross-examination. According to the petitioners, he failed to establish that the apology letters were procured by force or coercion and, in



the course of cross-examination, admitted the acts constituting misconduct. The respondent also examined Mr. Shankar Jadhav, former OSD. According to the petitioners, such evidence did not materially advance the case of the respondent. On the other hand, the petitioners examined three witnesses, namely Mr. M. Pandurang Sandim, serving as Accountant, Mr. Nitin Kadam, a member of petitioner Trust, and Mr. Kiran Chorge, representative of Internal Auditor M/s Sawant and Co. The petitioners rely upon the oral evidence recorded before the Labour Court.

8. Upon appreciation of the evidence and material placed before it, the Labour Court, by judgment and order dated 13 May 2011, dismissed the respondent's complaint. The Labour Court held that the activities of the petitioner Trust would fall within the definition of "industry" under the Industrial Disputes Act. It further recorded a finding that the apology letters tendered by the respondent could not be said to have been obtained under coercion or force. The Labour Court also held that the disciplinary authority had rightly assessed the matter and terminated the respondent on account of loss of confidence. On such reasoning, the Labour Court found no case for interference and concluded that the complainant had failed to prove the allegations raised by him. The complaint was accordingly dismissed with costs.

9. Aggrieved by the said decision, the respondent preferred Revision Application (ULP) No.120 of 2011 under Section 44 of the MRTU and PULP Act, 1971 before the Industrial Court, Mumbai, assailing the judgment of the Labour Court. The respondent contended that the Labour Court had failed to properly



appreciate the evidence on record as well as the submissions advanced on his behalf. It was further urged that the findings recorded by the Labour Court were perverse and unsustainable in law.

10. The Industrial Court, after hearing the parties, allowed the revision application and by judgment and order dated 13 February 2012 set aside the order passed by the Labour Court. The Industrial Court held that the services of the respondent had been terminated without issuance of any charge sheet and without conducting any enquiry, thereby reflecting undue haste on the part of the employer. It further held that under the applicable service regulations, the petitioner Trust had no authority to dismiss an employee without serving a charge sheet, without holding departmental enquiry and without affording a reasonable opportunity to defend himself.

11. Ms. Pavitra Manesh, learned Advocate appearing for the petitioners, submits that settled principles of industrial jurisprudence recognise the right of an employer to discontinue the services of an employee, whether permanent, temporary or on probation, subject to such action being tested on legal parameters when challenged before a competent forum. She contends that once an order of termination is assailed before the Labour Court, the employer is both entitled and obliged to justify the action by leading cogent, reliable and convincing evidence. According to her, a case of termination founded upon a defective enquiry and a case where no enquiry has been conducted stand substantially on the same footing, inasmuch as in both situations the employer is



permitted to sustain the action by adducing evidence before the Labour Court. It is submitted that the petitioners accordingly led evidence before the Labour Court, and upon appreciation of the material placed on record, the Labour Court upheld the action of the management. It is further contended that the Industrial Court, while exercising revisional powers under Section 44 of the MRTU and PULP Act, 1971, was exercising limited jurisdiction and could not have interfered with findings of fact duly recorded by the Labour Court, particularly when such findings were neither perverse nor irrational.

12. Learned counsel further submits that the Labour Court, after taking into account the three letters containing admissions and apologies tendered by the respondent, recorded a categorical finding that the respondent had failed to establish that the said letters were procured by force, threat or coercion. Having so held, the Labour Court further concluded that considering the admitted misconduct and the fact that the respondent was serving as a probationer, the order terminating his services did not call for interference. It is urged that such findings, being findings based upon evidence, could not have been displaced by the Industrial Court, more so on what is described as an erroneous and unsustainable ground that the service rules did not confer authority upon the management to terminate the respondent without holding an enquiry.

13. It is next submitted that there existed overwhelming material evidencing admission of guilt on the part of the respondent in the form of three separate apology letters. According to the



petitioners, if the documentary evidence together with the oral testimony led before the Labour Court is considered in its proper perspective, the only conclusion possible was that the termination of the respondent was justified and necessary. Emphasis is laid on the circumstance that the respondent was employed in a public charitable trust connected with a temple and deity, where financial dealings and handling of offerings required a high degree of trustworthiness, honesty and integrity. It is urged that in positions of such nature, confidence is the foundation of service, and once that confidence is shaken by proved acts of dishonesty, continuance of such employee becomes unsafe. It is further contended that there is no express prohibition in the applicable service regulations restraining the management from terminating the services of a probationer without conducting a formal enquiry, and that the Industrial Court committed an error in construing the regulations otherwise.

14. Learned counsel for the petitioners further submits that the Industrial Court proceeded on wholly misplaced considerations while granting relief to the respondent. According to her, the Industrial Court observed that the respondent had committed the act on account of mental disturbance caused by the ill health of his mother. It also noticed that the respondent had assured the management that he would not repeat such conduct in future and that no previous misconduct was attributed to him. On the basis of such considerations, the Industrial Court interfered with the termination order and granted relief in favour of the respondent. It is submitted that such approach is legally unsustainable, inasmuch



as admitted dishonesty in employment cannot be condoned merely on sympathetic grounds. The findings, observations, and reasoning adopted by the Industrial Court, according to the petitioners, are contrary to settled principles governing misconduct involving moral turpitude and loss of confidence.

15. It is also submitted that the Industrial Court committed further error in directing reinstatement of the respondent with full back wages. Learned counsel contends that having regard to the serious nature of misconduct alleged and the complete loss of confidence of the petitioners in the respondent, reinstatement was wholly inappropriate. It is further urged that there were no proper pleadings nor any satisfactory evidence on record to establish that the respondent remained unemployed during the relevant period so as to justify grant of full back wages. According to the petitioners, the Industrial Court ignored the short tenure of service rendered by the respondent, the probationary nature of his appointment and the surrounding facts while moulding relief.

16. In support of the aforesaid submissions, learned Advocate for the petitioners has placed reliance upon the judgment of this Court in *D.D. Shah & Co. vs. Vajidali T. Kadri*, 2007 I CLR 913 and judgment of the Supreme Court in the case of *State Bank of India vs. Hemant Kumar*, 2011 II CLR 1.

17. Per contra, Mr. Hardas, learned Advocate appearing for the respondent, submits that under Part IV of the applicable Service Regulations, the procedure for imposing punishment is clearly prescribed, and before inflicting any major penalty the petitioner



Trust was bound to issue a charge sheet, hold a departmental enquiry and grant adequate opportunity to the delinquent employee to defend himself in consonance with the principles of natural justice. It is contended that the petitioners have been unable to indicate any provision in the Service Regulations conferring power upon the Trust to dismiss an employee straightway without issuance of charge sheet, without enquiry and without affording an opportunity of defence. According to him, the action of the petitioners is therefore de hors the governing rules and unsustainable in law.

18. Learned counsel further submits that unless the disciplinary authority derives express authority under the applicable rules to dispense with the normal procedure, no employee can be terminated or dismissed in violation of the mandatory safeguards of charge sheet, enquiry and opportunity of hearing. According to the respondent, the impugned action amounts to victimisation and false implication in a charge of criminal complexion. It is urged that as no charge sheet was ever served alleging any definite misconduct, no charge can be said to have been lawfully framed or proved in any disciplinary proceeding. He submits that the respondent had explained the circumstances under which he removed one soiled currency note of Rs.500/- from the temple donation box, namely that he was mentally disturbed due to the serious ill health of his mother, and that the incident occurred in that background. It is further submitted that the respondent had expressed remorse and assured the authorities that if continued in service he would not repeat such conduct in future. Stress is laid



on the fact that prior thereto no misconduct had been attributed to him and his past service record was stated to be clean and satisfactory. According to the respondent, this being the first incident in his service career, the management ought to have considered his past record and imposed a lesser measure rather than dismissing him outright. Such action, it is submitted, constitutes unfair labour practice under Item 1(g) of Schedule IV of the Act.

19. In support of the above submissions, learned Advocate for the respondent has relied upon the judgment of the Supreme Court in *The Manager, S.M.U.P School & Others vs. M. Noushad & Others*, Civil Appeal No.3788 of 2017 decided on 27 February 2025.

REASONS AND ANALYSIS:

20. I have given anxious consideration to the rival submissions made across the bar and to the material which was placed before the Labour Court as also before the Industrial Court.

21. From the record it becomes clear that the respondent had entered the petitioner Trust on contractual basis and pursuant to the Government order dated 13 November 2009 approving staffing pattern and creation of posts, he came to be placed on probation. A probationer does not stand on the same footing as a confirmed employee. In case of probation, the employer is expected to assess suitability, reliability, conduct, and capacity during the probation period. Therefore, when the incident dated 21 December 2009 occurred, the respondent was still under scrutiny. The petitioners



have placed reliance upon the said incident. Their case is that while the respondent was engaged in sorting soiled currency notes, one note of Rs.500/- was found missing. It is further their case that upon questioning the respondent denied involvement, but later admitted that the note had been hidden behind the table where he was working. It is then stated that he himself took the concerned officers to the spot and produced the note. Thereafter, oral apology was allegedly made, followed by written apology, and thereafter two apology letters dated 24 December 2009. Such conduct constitutes connected circumstances. The petitioners examined the accountant, the representative of the internal auditor, and a member of the Trust. Their evidence was available for cross-examination. The Labour Court, which had advantage of seeing witnesses and appreciating demeanor, accepted the same. It also recorded a finding that the apology letters were not proved to have been obtained by force or coercion. Once a court records that admissions were voluntary, the defence that the same were extracted under pressure becomes materially weak unless contrary evidence is shown. The respondent has asserted pressure, but no circumstance of such serious nature has been shown from record to demonstrate that the Labour Court's conclusion was arbitrary. Therefore, the evidentiary value of the apology letters operates against the respondent.

22. The nature of employment cannot be kept aside. The respondent was serving in a temple trust. Such institution deals with offerings, donations, property, and funds. Even if the amount in question was Rs.500/-, the issue is conduct attached to it. In



employments where handling of money and trust property forms part of functioning, honesty is a basic condition. The petitioners are justified in contending that service in such institution rests on confidence. If a person employed in such premises is found removing a currency note and later admits concealment of the same, the management cannot be compelled to behave as though the matter is capable of warning only. Confidence does not return by assurance. In labour matters, where financial integrity is involved, the employer need not continue an employee because apology is tendered or promise of good conduct is made. Such assurances may persuade leniency where lapse is doubtful. But where the act goes to honesty, the employer is entitled to ask whether continuance is in institutional interest. The Court must also remember that management of a public trust carries obligation towards devotees and public confidence. Therefore, the petitioners have shown that their action was taken after considering seriousness of misconduct and the fact that the respondent was still under probation.

23. It is also necessary to examine carefully the legal submission that issuance of charge sheet and holding of departmental enquiry are mandatory. Such proposition stated in absolute form cannot be accepted without qualification. Law requires fairness, but fairness may take different shapes depending upon nature of appointment, nature of order, surrounding facts and subsequent justification before competent forum. The real issue here is whether the impugned action was punitive requiring domestic enquiry, or whether the employer could sustain the action by leading evidence



before the Labour Court. The petitioners did in fact lead evidence. Witnesses were examined. Documents including apology letters were produced. The respondent had opportunity to contest the same. The Labour Court thereafter examined the matter and reached conclusion that termination was justified on account of loss of confidence arising from proved conduct. Thus, even if the original order was questioned for want of enquiry, the petitioners were not rendered remediless. Industrial jurisprudence recognises that an employer may justify action by adducing evidence. Courts are required to see whether prejudice is shown and whether misconduct stands established on evidence. The Industrial Court, while exercising powers under Section 44, ought to have remained conscious that revisional jurisdiction is narrower than appellate re-hearing. Here the Labour Court's conclusions rested upon oral testimony and documentary admissions. Such findings could not have been discarded.

24. The authorities cited on behalf of the petitioners support the principle that where confidence is destroyed, and the employer justifies its action by evidence, the Court should be slow in interference if findings are supported by record. Therefore, the Industrial Court was not justified in unsettling the same on inadequate grounds.

25. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

- (i) The writ petition is allowed;
- (ii) The judgment and order dated 13 February 2012



passed by the Industrial Court, Mumbai in Revision Application (ULP) No.120 of 2011 is quashed and set aside;

(iii) The judgment and order dated 13 May 2011 passed by the Labour Court, Mumbai in Complaint (ULP) No.103 of 2010 is restored;

(iv) Complaint (ULP) No.103 of 2010 filed by the respondent shall stand dismissed;

(v) Consequently, the direction of reinstatement, continuity of service and payment of back wages granted in favour of the respondent stands vacated;

(vi) Rule is made absolute in the above terms;

(vii) In the facts and circumstances of the case, there shall be no order as to costs;

(viii) Pending interim applications, if any, do not survive and stand disposed of.

(AMIT BORKAR, J.)