IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3056 OF 2003
WITH
CIVIL APPLICATIOIN NO. 5917 OF 2009

Mohd. Zuber Allam s/o Mohd. Hasibur Rahman, Age : 31 years, Occu. : Service, R/o : C/o Azaz Bhai Fakruddin Biriwala, Main Road Taloda, Taluka : Taloda, District : Nandurbar. …Petitioner

VERSUS

1. Bank of Baroda, having it's Registered Office at Mandavi, Baroda.

2. The Regional Manager, Disciplinary Authority, Bank of Baroda, Subhagya Chambers, Near Point, Nasik Road, Nasik.

3. The Deputy General Manager, Maharashtra and Goa Appellate Authority, Bank of Baroda, Zonal Office, Sharda Centre, 11/1 Khilare Path, Erandawana, Pune – 411 004.

4. The Assistant General Manager, Regional Office, Nagpur Region, Bank of Baroda, West High Court Road, Dharampeth, Nagpur – 440 010. …Respondents

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Advocate for petitioner : Mr. R. R. Mantri
Advocate for respondent Nos. 1 to 4 : Mr. P. K. Joshi
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CORAM : A. V. NIRGUDE AND V. K. JADHAV, JJ.

DATED : 6th FEBRUARY, 2015

JUDGMENT (PER A. V. NIRGUDE, J.) :-

1. This petition filed under Articles 226, 227, 14, 16 and 19 of the Constitution of India, challenges the orders passed by the respondent's officers holding the petitioner guilty of misconduct and imposing punishment of dismissal. The facts leading to this litigation are quite peculiar and can be stated as under :

2. The petitioner joined respondent Bank as Clerk-cum-Cashier in 1995 and was appointed as such at respondent's Somaval Rural Branch in Dhule District. The petitioner was given work of Clerk-cum-Cashier. At the relevant time, There were only two other employees working in the Branch. One was Branch Manager and the other was a Peon. It is an admitted fact that the petitioner used to carry cash with him collected from Taloda Branch of the Bank which was about 30 kms. away from Somaval Branch. In similar situation, the petitioner collected cash of Rs.1,00,000/- on 13.11.1997, as directed to him by the Branch Manager. He was using Bank's motorcycle to come back to Somaval. The petitioner was found unconscious on road at about 3 p.m. He was taken to hospital and was treated. The cash, which the petitioner carried probably in the dicky of motorcycle, was found missing. On 14.11.1997, the Branch Manager filed criminal complaint against the petitioner alleging that he has misappropriated the amount. The offence under Section 409 and 407 of I.P.C. was registered against the

petitioner. Thereafter, the petitioner was arrested and subsequently charge sheet was also filed against him. On the other hand, on 09.07.1999, a copy of charge sheet was served on the petitioner for departmental action. Inquiry Officer conducted enquiry and submitted his report on 19.04.2000. There were following charges levelled against the petitioner:

1. Doing acts prejudicial to the interest of the Bank.
2. Doing acts of lack of integrity and honesty.
3. Doing acts of gross negligence in performance of duty.

3. After recording evidence and after hearing submissions from both the sides, the Inquiry Officer found that all the above charges were proved. It was his finding that the petitioner was negligent in handling cash. Even the Branch Manager was found guilty of negligence. The Inquiry Officer, however, did not held that the petitioner was guilty of misappropriation of the amount. The petitioner was dismissed from service. Thereafter, on 08.09.2000, the disciplinary authority-Regional Manager, Nashik, passed the order of dismissal without notice to the petitioner. The petitioner then went before the appellate authority of the Bank but, as said above, even the appeal was dismissed.

4. The learned council for the petitioner asserted that the very finding, holding the petitioner dishonest, appears to be perverse. In

view of this submission, we perused the report of Inquiry Officer carefully. The petitioner's defence to the charges was denial to the charges of lack of integrity. He asserted, since beginning, that while he was carrying the cash in the dicky of motorcycle, he fell down, became unconscious and regained consciousness only after the Branch Manager found him lying unconscious on the road and took him to the hospital. The Presenting Officer was challenging the veracity and truthfulness of this story. He was suggesting that the petitioner was feigning unconsciousness etc. The Inquiry Officer, after recording evidence, held that, “while there are no eye witnesses to the occurrence of the accident, the fact that CSE (the petitioner) was found lying unconscious by the side of the road is established from the evidence and circumstances of the case”. He even came to the conclusion that it was difficult for him to give a finding as to whether the petitioner was really unconscious or otherwise. Thereafter, he placed reliance on the depositions of certain witnesses and tried to set aside his own finding which is quoted above. This vacillation in the mind of the Inquiry Officer would lead us to record our finding that the finding of the Inquiry Officer is really perverse. If the integrity of the petitioner is not doubted, his punishment of dismissal without notice cannot be said to be justifiable. The appellate authority, unfortunately, did not examine this aspect of the case carefully. There is one more difficulty in the Inquiry proceedings. As said above, the Branch Manager was the first person to find the petitioner lying on the road. It is he, who filed a criminal complaint on the next day disclosing all these facts in the complaint made before the Police authorities. He therefore, was the first material witness in this case. Despite all this, the Inquiry Officer did not record the deposition of Branch Manager. This failure would really vitiate the entire Inquiry. Even the petitioner's request to call the Branch Manager as defence witness was rejected. The learned counsel for the respondent asserted that even if there are apparent deficiencies in the proceedings before the Inquiry Officer, we must go by the finding recorded by the Inquiry Officer in respect of integrity of the petitioner. He suggested that the Inquiry Officer is not a regular Judicial Officer and therefore, he might commit mistakes while recording reasons. He said that the Inquiry Officer went by his gut feelings and since it was he, who recorded evidence, his finding should not be easily disturbed.

5. None the less we hold that the findings recorded by the authorities below that the petitioner's integrity is doubtful, is not acceptable. During the enquiry, the petitioner also recorded his statement in which he stated that since due to his negligence, the amount of the Bank was lost, he was ready and willing to repay the same through his salary by installments. Even this would go to prove that the petitioner was not guilty of dishonesty and misappropriation.

6. The learned counsel for the respondent opposed the grant of back-wages on the ground that the litigation remained pending for last

more than 15 years, and if back-wages are ordered, the respondent Bank would be put to huge monetary loss.

7. We are therefore, inclined to set aside the order of dismissal. However, we are not inclined to give benefit of back-wages to the petitioner.

O R D E R

I) The respondents shall reinstate the petitioner within a period of four weeks from today with continuity in service, however, without giving any back-wages to him.

II) The writ petition is disposed of. Rule made absolute in the above terms.

8. In view of disposal of writ petition, Civil application No. 5917 of 2009 is also disposed of.

(V. K. JADHAV, J.) **(A. V. NIRGUDE, J.)**

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