

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3100 OF 2014

Babu Kadaji Salunke,
Age: 63 years, Occu: Nil,
R/o Choudhari Nagar, Latur,
District Latur

..PETITIONER
(Original Applicant)

VERSUS

- 1) The Latur Zilla Madhyavarti
Sahakari Bank Ltd., Main Branch,
Latur, Through its Chairman
- 2) The General Manager,
Latur Zilla Madhyavarti Sahakari
Bank Ltd., Main Branch, Latur

..RESPONDENTS

Mr A. V. Patil, Advocate holding for Mr S. B. Madde, Advocate for
petitioner;
Mr V. D. Hon, Senior Advocate for respondent Nos. 1 and 2

WITH
WRIT PETITION NO. 1431 OF 2014

- 1) Latur Zilla Madhyavarti Sahakari
Bank Limited, Mukhya Karyalaya,
Latur, District Latur,
Through its Chairman
- 2) The General Manager,
Latur Zilla Madhyavarti Sahakari
Bank Limited, Mukhya Karyalaya,
Latur, District Latur

..PETITIONERS
(Ori. Respondents)

VERSUS

- 1) The State of Maharashtra,
Through the Secretary for
Co-operation Department,
Mantralaya, Mumbai
- 2) Babu Kadaji Salunke,
Age: 63 years, Occu: Nil,
R/o Choudhari Naga, Latur,
District Latur
(Ori. Appellant)
..RESPONDENTS

Mr A. V. Hon, Advocate for petitioners;
Mr D. R. Korde, Asstt. Govt. Pleader for respondent no.1;
Mr A. V. Patil, Advocate for respondent No. 2

CORAM : N.W. SAMBRE, J.

**Date of reserving
the order : 20th April, 2015**
**Date of pronouncing
the order : 6th May, 2015**

ORDER :

Since both the petitions question the same orders passed by the Judge, Labour Court, Latur, in BIR No.36 of 2014 and by the Member, Industrial Court, Latur, in Appeal (BIR) No.2 of 2012, they are heard together and being decided by this common order.

2. The proceedings involve a routine dispute between employer and employee.

3. The employee filed an application before the Labour Court at Latur under sections 78-A and 78-D of the Bombay Industrial Relations Act,

1946 (for short "BIR Act"), wherein it was prayed that the domestic inquiry initiated against him, pursuant to charge-sheet dated 13th October, 1992 as well as proceedings of alleged inquiry and the report thereof, be quashed. The quashing was sought on the ground of *mala fides* and illegality.

4. Pursuant to the proposed inquiry, the employee was suspended in 1982 and till 2002, no disciplinary inquiry was initiated against him. After completing the disciplinary inquiry, the Inquiry Officer submitted report on 28th December, 2001 and on 12th November, 2003 the employee came to be dismissed resulting into filing of BIR Complaint No.36 of 2008. The said complaint came to be dismissed by the Labour Court on 5th December, 2012, which was subject-matter of Appeal No.2 of 2010, which came to be decided on 21st January, 2014, whereby the order passed by the Labour Court came to be set aside with direction to the employer to reinstate the employee with continuity of service, but without back wages. As such, the present petitions by the employee questioning the refusal of back wages, whereas by the employer questioning the reinstatement.

5. Mr Hon, learned Senior Counsel appearing on behalf of the employer would urge that the issue of reinstatement no more survives, since as per the Model Standing Bye-Laws, the age of retirement is 58 years and the employee has crossed the same. According to him, the

employer has already paid Rs.6 Lacs as subsistence allowance and has invited attention of this Court to the findings recorded by the Industrial Court, so as to canvass that the misconduct against the employee was proved. In addition to above, he would urge that the complaint was barred by limitation as the same was filed after statutory period of three months. He would further urge that the employer being a financial institution, the nature of charge against the employee speaks of his dishonesty. According to him, the employee while working as Paying Cashier at one of the Branches on 6th February, 1982, while acting dishonestly has caused loss to the Bank and as such criminal case was initiated against him. He would further urge that the guidelines of the Banking Institution were violated as is apparent from the finding of the Industrial Court and as such, prayed for setting aside the order of reinstatement.

6. While countering the above referred submissions, learned Counsel appearing on behalf of the employee has invited attention of this Court to the various facts which are necessary for adjudication of the issue involved. According to him, the employee was suspended on 1st May, 1982 and was served with charge-sheet on 13th October, 1982. No inquiry was conducted pursuant to the above till 1998, so also no subsistence allowance was paid to him. He would further urge that on 11th November, 2003 he was served with the order of dismissal from service and after issuing notice under section 42 (4) of the BIR Act, the employer has

initiated the proceedings in question.

7. Learned Counsel would further urge that the nature of allegations reflects that the beneficiary of the transaction was one Mr Kumbhare, whose dismissal was already set aside, which was confirmed up to the Apex Court. He would further urge that the case of the present employee is on better footing than that of Kumbhare and, therefore, sought setting aside of the order of denial of back wages. He would further urge that the inquiry was in violation of the principles of natural justice as non-initiation of inquiry for years together itself vitiates the proceedings. In support of his contention, he has placed reliance upon the judgment of the Apex Court in the matter of **Cooper Engineering Limited vs. P.P. Mundhe**, reported in **1975 AIR (SC) 1900**, so as to claim that once a preliminary issue is framed by the Labour Court so as to give finding on the compliance of principles of natural justice in the domestic inquiry and if the employer decided not to adduce any evidence before the Labour Court, then it will not be open for the employer to adduce the evidence before the Labour Court after pronouncing a finding on the said preliminary issue. He has sought support from paragraph 22 of the judgment, which reads thus :-

“We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has

violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue.. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.”

8. Learned Counsel has also placed reliance upon the judgment of this Court in the matter of **Taranjitsingh I. Bagga vs. Maharashtra State Road Transport Corporation**, reported in **2008 (4) Bom. C.R. 330**, so as to canvass that no straight jacket formula can be made for ordering the payment of back wages. According to him, claim for back wages before the Labour Court was not framed as he remained under suspension till the date of dismissal.

9. Upon considering rival contentions of the parties and after going through the findings recorded by the Industrial Court, it is required to be

noted that the Industrial Court, by judgment dated 21st January, 2014 has set aside the order of learned Labour Court by granting reinstatement without back wages. This Court is required to consider the issue, whether grant of reinstatement was justified and whether the employee was entitled for back wages.

10. This Court has to consider the contention of the employee that once the employer has failed to adduce any evidence on the preliminary issue before the Labour Court and if the order is pronounced on the preliminary issue, it will not be open for the employer to re-agitate the said issue again by adducing fresh evidence. The learned Labour Court, by an order dated 31st March, 2010 has given finding that the inquiry is not proper, legal and is in violation of the principles of natural justice. It has also recorded a finding that the findings of the Inquiry Officer are perverse. The said findings were recorded after giving both the parties an opportunity to adduce evidence. The Labour Court has framed the following preliminary issues and recorded findings thereon :-

Sr. No.	Preliminary Issues	Findings
1	Whether the enquiry is fair & proper in accordance with principles of natural justice	In negative
2	Whether the findings recorded by enquiry officer are perverse ?	In affirmative
3	Order ?	As per final order

11. The Labour Court noticed that the employee himself, by way of filing affidavit of his examination-in-chief, has adduced evidence at Exh.U-

13. The Labour Court then noticed that the said employee was cross-examined by the employer wherein an admission was taken out from the employee that he was paid only 50% of the total wages towards subsistence allowance as per the Model Standing Orders. The fact remains that the employer has not adduced any evidence in support of the said preliminary issue and has rather chosen to prefer an appeal before the Industrial Court, which came to be dismissed on 20th December, 2011. Once the said preliminary issue was answered in favour of the employee, the Labour Court, while passing an order of dismissal of the complaint on 5th December, 2012, in paragraph 15, has proceeded to observe that the employer has not adduced any evidence, however, considered the admission given by the employee in cross-examination and read the said evidence and noticed certain violations on the part of the employee. The fact remains that the employee, while working as a Cashier, was required to pass on the cash against a cheque which was cleared by the competent Officer and he has done so. The only irregularity that was noticed was that of making payment after the prescribed period of 7.30 p.m. As the payment was made at 9.05 p.m. It is required to be noted that the cheque was passed by the Officer Kumbhare, whose dismissal was admittedly set aside and upheld up to the Apex Court, in view thereof and in absence of any finding in the other matter *qua* the default or indiscipline at the behest

of the present employee, in my opinion, the dismissal of the employee is not sustainable. It is required to be noted that once it is held that the dismissal of the present employee was not justified, then to what relief such an employee is entitled to. The fact remains that on the date of this judgment, the employee has already stood superannuated. From 1982 till his dismissal he remained under suspension and he was paid 50% of the subsistence allowance.

12. In view of the finding that the employee was entitled for reinstatement, particularly rightly so ordered by the Industrial Court on the basis of the facts and evidence recorded therefor, it is required to be ordered that the petitioner – employee will be entitled to reinstatement along with back wages from the date of his suspension till the date of his dismissal from service, i.e. from 1st March, 1982 to 11th November, 2003, in view of quashing of his termination.

13. The back wages for the subsequent period are not granted by this Court as the petitioner – employee has not adduced any evidence for establishing his claim for back wages though he was duty bound to do so. However, in the facts and circumstances of this case, it would be proper to order continuity of service till the date of retirement of the employee along with all consequential retiral benefits.

14. So far as resistance to the reinstatement at the behest of the employer is concerned, the fact about reinstatement of Kumbhare, who had passed the cheque, was not in dispute. It is also required to be noted that once it is held that the inquiry was in violation of the principles of natural justice, the order of reinstatement is required to be followed.

15. Thus, Writ Petition No.1431 of 2014 preferred by the employer stands dismissed and Writ Petition No.3100 of 2014 preferred by the employee stands allowed to the above extent. In the circumstances, there shall be no order as to costs.

(N.W. SAMBRE, J.)

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