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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7062 OF 2012
WITH
CIVIL APPLICATION NO.5197/2014
IN WP/7062/2012

Ahmednagar Zilla Sahakari Krushi
Gramin Bahuuddeshiya Vikas Bank Ltd.,
Ahmednagar, Bhuvikas Bhavan,
Court Galli, Ahmednagar.
Through it's Manager.

..PETITIONER

-VERSUS-

Khanderao s/o Punjaji Dhatrak,
Age : 62 years, Occ : Nil,
R/o Mangesh Niwas,
Vidhyanagar, Mehar Mala,
Tq.Sangamner, District Ahmednagar.

..RESPONDENT

...

Mr.Badakh Vishal S., Advocate for the Petitioner.
Mr.PV. Barde, Advocate for the Respondent.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 24th June, 2015

Oral Judgment:

1 Rule.

2 Rule made returnable forthwith and heard finally by the

consent of the parties.

3 The Petitioner, which is a cooperative bank, has assailed the judgment and order dated 15.11.2011 delivered by the Industrial Court in Complaint (ULP) No.61/2004 filed by the Respondent.

4 The contention of the Petitioner is that the Respondent was an Accountant with the Branch at Shrirampur of the Petitioner Bank. He was said to have committed certain acts/ omissions, which according to the Petitioner, amount to misconduct.

5 The document dated 14.07.2003 is a communication issued by the Assistant Manager to the Manager of the Petitioner Bank at its main office stating therein that he has conducted a preliminary enquiry and found that the present Respondent has committed misappropriation by granting more concessions beyond the permissible limits to three persons, namely, Smt.Ratanbai Venunath Abhale, Smt.Alkabai Sopanrao Deshmukh and Shri Keru Bhima Pagare. It is not in dispute that this letter is based on a preliminary enquiry and was issued without hearing the Respondent.

6 On 15.07.2003, the Managing Committee of the Petitioner

Bank passed a resolution directing the suspension of the Respondent pending disciplinary action. In the same meeting, another resolution was passed forming a three members committee as an Enquiry Committee to enquire into the charges levelled upon the Respondent. The Petitioner is unable to explain as to what is the source of power of the Petitioner Bank to form a three members Enquiry Committee.

7 The communication dated 31.07.2003 is stated to be the chargesheet- cum- show cause notice issued to the Respondent. It is conceded that the subject of the said communication is purely “notice”. It is evident from the said communication that though certain acts are alleged to have been committed by the Respondent, no clauses under any Standing Order or certified Standing Orders or the Service Rules of the Petitioner Bank have been mentioned in the said communication/ notice to indicate that the acts committed by the Respondent amount to misconducts under certain clauses. Learned Advocate for the Petitioner Bank insists that this notice is to be construed as a charge-sheet cum show cause notice.

8 It is further submitted by the Petitioner that the Respondent had applied vide letter dated 04.08.2003 to take inspection of the record available with the Petitioner. By reply dated 13.08.2003, the Respondent

was granted permission.

9 The communication dated 09.09.2003 is said to be the order of punishment issued to the Respondent, thereby withholding his leave encashment dues lying with the Petitioner.

10 The Respondent assailed the action taken by the Petitioner vide the order dated 09.09.2003, by filing Complaint (ULP) No.61/2004 before the Industrial Court. By the impugned judgment and order dated 15.11.2011, the complaint was allowed.

11 The grievance of the Petitioner is that the Industrial Court has not considered the above referred documents and the preliminary enquiry report as well as the action taken, in proper perspective. The Industrial Court has adopted a hyper technical approach. The misconducts committed by the Respondent cannot be condoned. The impugned judgment and order has resulted in the Respondent being exonerated from the charges levelled upon him. It is, therefore, prayed that the impugned judgment and order be quashed and set aside.

12 Mr.Barde, learned Advocate for the sole Respondent, has vehemently supported the impugned judgment. He contends that the

procedure adopted by the Petitioner is a farce. The resolutions have been passed and the orders have been issued without following the due procedure. There is no charge sheet and no enquiry was conducted. The grave and serious charge of misappropriation has been levelled upon the Respondent, which has not been enquired into. Mr.Barde, therefore, prays that the petition be dismissed with costs.

13 I have considered the submissions of the learned Advocates and have gone through the petition paper book with their assistance.

14 The communication dated 14.07.2003 issued by the Assistant Manager is said to be the preliminary enquiry report. The said document nowhere reveals that the Respondent was even called upon to state/explain his conduct. Nevertheless, such an enquiry conducted surreptitiously by the Assistant Manager would not stand in the eyes of law.

15 By resolution No.41 dated 15.07.2003, the Respondent was placed under suspension pending enquiry. By resolution No.43 dated 15.07.2003, a three members committee was formed to function as an enquiry committee. The Petitioner has not established before the Industrial Court and is also unable to state before this Court as to under

what provisions has such an enquiry committee been constituted. In short, the source of power of the Managing Committee to form such an enquiry committee is not revealed.

16 It is an irony that the document dated 31.07.2003, which is termed to be the charge sheet cum show cause notice, has been issued after the formation of the Enquiry Committee. The Petitioner contends that the said charge sheet has been prepared under the directions of the Enquiry Committee. Though I do not find the said document dated 31.07.2003 to have any semblance of a charge sheet cum show cause notice, even if it is assumed to be such a document, the clauses under which the acts alleged to have been committed by the Respondent could be defined as misconducts, are also not mentioned.

17 The document dated 09.09.2003 is said to be the order of punishment issued by the Petitioner. It is stated that the reply of the Respondent dated 27.08.2003 in response to the purported charge sheet dated 31.07.2003 has been considered and the Management has arrived at a conclusion that the Respondent has caused huge financial loss to the Petitioner Bank. As such, it is ordered that the leave encashment to the credit of the Respondent will be forfeited as punishment and by way of recovery of losses caused. In the said document, the Petitioner Bank has

arrived at three figures stated to be the loss caused to the Bank due to the misconduct committed by the Respondent.

18 The Petitioner has been unable to explain as to why a departmental/ domestic enquiry in accordance with the Rules applicable has not been conducted against the Respondent so as to arrive at a definite amount of loss caused by the Respondent. It is submitted that the Enquiry Committee by issuing the charge sheet dated 31.07.2003 has caused the enquiry.

19 I am unable to accept the contentions of the Petitioner stated above. If the contention of the Petitioner is considered to mean a proper domestic enquiry having been conducted against the Respondent, it could only be termed as being an aberration on the part of the Petitioner. In fact an absurd procedure has been followed by the Petitioner, which is unknown to law.

20 The Industrial Court has concluded that no charge sheet under any specific rule has been issued. A serious charge of misappropriation is levelled upon the Respondent. A large amount is sought to be recovered from the Respondent and yet, no enquiry has been conducted. In a slip shod manner, the Petitioner has passed the order of

forfeiting the entire leave encashment to the credit of the Respondent which was unpaid at the time of his retirement.

21 I have considered the conclusions drawn by the Industrial Court. The Petitioner has strenuously tried to assail the conclusions arrived at by the Industrial Court. I find no reason to accept the submissions of the Petitioner. The conclusions of the Industrial Court in paragraphs 11, 12, 13 and 14 of its judgment are legally correct and do not call for any interference.

22 In the light of the above, the impugned judgment and order of the Industrial Court is neither perverse nor erroneous. The Writ Petition is devoid of merit and is, therefore, dismissed. I am inclined to impose costs computed at Rs.10,000/- to be paid by the Petitioner to the Respondent within a period of four weeks from today.

23 At this juncture, learned Advocate for the Petitioner submits that the costs may not be awarded since the Petitioner genuinely believed that it has followed the correct procedure. Since the judgment of the Industrial Court was against the Petitioner, it has no option, but to approach this Court. He further submits that the entire amount forfeited by the Petitioner has been deposited in this Court vide Demand Draft

No.736284 dated 19.10.2012 for an amount of Rs.1,11,399/-.

24 Mr.Barde, learned Advocate for the Respondent, submits that the said deposited amount along with accrued interest deserves to be paid to the Respondent and in this situation, an appropriate order may be passed on the request made by the Petitioner.

25 In the light of the said submissions, no costs are awarded against the Petitioner. However, the amount of Rs.1,11,399/- along with accrued interest shall be withdrawn by the Respondent from this Court without any conditions by furnishing a valid proof of identity.

26 Rule is, accordingly, discharged.

27 In the light of the disposal of the Writ Petition, nothing survives in the pending Civil Application and it is also disposed of.

(RAVINDRA V. GHUGE, J.)