

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

**WRIT PETITION NO.4614 OF 2005
WITH
CIVIL APPLICATION NO. 2348 OF 2008
CIVIL APPLICATION NO. 9960 OF 2012**

Dagadu Nilkantha Patil .. Petitioner
Age-61 years, Occu- Service After
Retirement,
R/o. 22-A, GTP Colony,
Deopur, Dhule-424005.

Versus

1. The Dhule District Co-operative .. Respondent
Agriculture & Rural Multipurpose
Development Bank Ltd, Dhule,
Through its Liquidator
2. Maharashtra State Co-operative
Agriculture, Rural Multipurpose
Development Bank Ltd, Mumbai
3. The District Deputy Registrar,
Co-operative Societies, Dhule.
4. The State of Maharashtra
Through the Secretary,
Co-operative & Textile Department,
Mantralaya, Mumbai-400 032.

Mr.A.S.Deshpande, Advocate for the petitioner.
Mr.A.A.More, Advocate for the respondent Nos. 1 & 2.
Mr.S.S.Tope, AGP for the respondent/ State.

**CORAM : A.V. NIRGUDE &
A.M. BADAR, JJ.
DATED : 09.07.2015**

ORAL JUDGMENT : [PER: A.V. NIRGUDE, J.]

1. Heard. The facts leading to this petition, in short, can be stated as under:-

2. The petitioner joined service of respondent No.1-bank as a "Clerk". Before the petitioner could reach the age of superannuation, the respondent-bank issued a show cause notice to the petitioner asking him to show cause as to why action should not be taken against him for certain misconduct. Before any decision on the show cause notice could be taken the petitioner reached the age of superannuation on 31st March, 2003. On 9th May, 2003, the respondent-bank served a charge sheet on the petitioner. They also took up a stand that unless the enquiry is over, the petitioner would not get any retiral benefits. Aggrieved by this action, the petitioner filed this petition. His contention is that after retirement, no domestic enquiry is permissible against him and consequently bank cannot withhold his retiral benefits.

3. The respondents opposed this petition by filing reply. They asserted that even after retirement of the petitioner, the respondent-bank could have continued with the disciplinary action which is initiated on 17.02.2003, by issuing show cause notice. Secondly, they asserted that the respondent-bank is not a State or its instrumentality and therefore the writ petition is not maintainable.

4. Two questions therefore arose for our consideration i.e. (i) Whether the writ petition is maintainable; and (ii) Whether in absence of rule, permitting continuance of disciplinary action after retirement of a delinquent employee, is permissible.

5. It is common knowledge that respondent No.1-bank was established in 1935 as Land Mortgage Bank. It was established under the provisions of the Co-operative Societies Act, 1925. The entire capital of the bank is owned and subscribed by the State Government. Number of changes thereafter took place such as Maharashtra Cooperative Societies Act, 1960 came into force under the provisions of this Act. Number of changes were made like amalgamation and separation of Land Mortgage Banks that were established in every district of the State. All

banks independently established in each district were amalgamated with Apex Bank which were established at State level. The State Government amalgamated into Maharashtra State Co-operative Agriculture and Rural Development Bank Ltd, Mumbai. The respondent No. 1 bank thus became a branch of this Apex Bank. Since, the entire capital was subscribed by the State of Maharashtra the bank became an instrumental of the State. The establishment of the bank was made with laudable objective. The poor farmers earlier were dependent on local money-lenders and were getting exploited. In order to remove this defect the State in exercise of its socialistic policy, not only supplied funds to the bank but even gave guarantee for recovery of loan. In such situation it cannot be said that the bank is not an instrumental of the State.

6. Learned counsel for the bank placed reliance on the following judgments :

1. Shamrao Vitthal Cooperative Bank Ltd and Anr **Vs** Padubidri Pattabhiram Bhat and Anr 1993 Mh.L.J.1.
2. Dnyandeo Dattatraya Kale and Ors. **Vs** State of Maharashtra and Ors 1995(2) Mh.L.J.930.
3. Pralhad Vitthalrao Pawar **Vs** Managing Director Kannaded Sahakari Sakhar Karkhana Ltd. And Anr. 1998(3)Mh.L.J.2014.

7. In the aforesaid judgments it was held that Cooperative Banks are not instrumental of the State. Those banks were privately established by people coming together with their funds. There was no financial or functional or administrative control of the State over the said bank. The bank in question is virtually controlled financially and administratively by the State of Maharashtra. Even the recruitment of the Bank is made with prior permission of the Commissioner of Cooperation and Registrar of Cooperative Societies.

8. There are number of judgments of the Supreme Court which lay down the law that when an employee retires from service, the master and servant relationship between them comes to an end. Thereafter the employer ceases to have authority to take disciplinary action against the retired employee. This rule has exception when specific service conditions are laid down in rules made for the purpose of governing service conditions in an establishment. The State of Maharashtra has formulated Civil Services Rules in which there are rules which permit in certain conditions to continue with disciplinary action or even initiate disciplinary action against a retired employee. But, respondent No.1-bank has adopted independent service rules for their employees.

These rules do not provide exception to the above mentioned rules. In view this, the petition should succeed. The petition is allowed with costs in terms of following order.

i. The departmental enquiry initiated by respondent-bank after retirement of the petitioner is quashed and set aside.

ii. Respondent No. 1 bank shall disburse retiral benefits to the petitioner alongwith interest at the rate of 6% p.a. from the date of retirement till its actual realization.

9. In view of disposal of the writ petition, connected Civil Applications do not survive and stand disposed of accordingly.

[A.M. BADAR,J.]

[A.V. NIRGUDE,J.]