

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3576 OF 2013
WITH
CIVIL APPLICATION NO. 9251 OF 2013
AND
CIVIL APPLICATION NO. 3037 OF 2014

Chandrakant Tukaram Shinde
Age 52 years, Occ. Clerk in the
Maharashtra Gramin Bank,
Branch at Shivaji Chowk,
Latur, at present Nil,
R/o C/o Shri Kulbhushan Jain,
Shahupuri Colony,
Akshaynagar, Old Ausa Road,
Latur.

..Petitioner

Versus

1. The Chairman,
Maharashtra Gramin Bank,
Head Office at Shivajinagar,
Nanded, Dist. Nanded.

2. The General Manager,
Maharashtra Gramin Bank,
Head Office at Shivajinagar,
Nanded, Dist. Nanded.

..Respondent

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Advocate for Petitioners : Shri Joshi Sujeet
Advocate for Respondents 1 & 2 : Shri Bhanage D.J. &
Shri Joglekar Mayur h/f Shri Patel Shaikh Ashpak Taher
Advocates for interveners : Shri Dabhadkar M.M.
and Shri Undre V.S.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: July 29, 2015

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ORAL JUDGMENT :- :-

1. This matter was admitted on 13.1.2014 on the aspects of perversity in the findings of the Enquiry Officer and the proportionality of the punishment. The issue of an alternate remedy was taken up. However, the

petitioner had requested this Court that the said issue be put to rest as the petitioner insists on going on with this matter before this Court. It is in this backdrop that the petition was admitted.

2. I have heard learned Advocates for the respective parties for sometime.

3. It is trite law that an enquiry can be set aside and can be termed as being vitiated, either if the enquiry suffers from non-observance of the principles of natural justice to be tested on the touchstone of prejudice and/or the findings of the Enquiry Officer are branded as perverse. In either of these eventualities, the enquiry will stand vitiated and would be rendered a nullity. Consequentially, the employer will have to justify the order of punishment by conducting a de novo enquiry.

4. Since this Court cannot permit the parties to conduct a de novo enquiry by recording oral evidence in its writ jurisdiction, Shri Joshi learned Advocate submits on instructions that the petitioner would prefer to question his order of punishment dated 30.5.2012 and the enquiry, before the Labour Court / Tribunal. He, therefore, submits that a time frame may be ordered within which such proceedings can be decided.

5. Shri Bhanage learned Advocate for the respondents submits that the appropriate procedure to be followed by the petitioner would be to raise an industrial dispute under Section 2A and have the matter referred to the

Labour Court / Tribunal under the Central Act so as to invoke the jurisdiction of the competent Court under Section 11A concerning the punishment imposed upon the petitioner. He, therefore, has no objection if the petitioner follows the due procedure and takes out a proceeding which is permissible in law.

6. In the light of the above, this petition is disposed off as withdrawn on instructions by permitting the petitioner to resort to a statutory remedy available and permissible in law. In the event, such a remedy is opted for by the petitioner within a period of six weeks from today, the competent Court, before which the proceedings would be maintained, shall decide the first two issues pertaining to the fairness of the enquiry and the fairness of the findings of the Enquiry Officer as expeditiously as possible and preferably on/or before the 31st day of March, 2016.

7. Rule is, therefore, discharged with the above observations.

8. Pending Civil Applications stand disposed off.

(RAVINDRA V. GHUGE, J.)

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