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

WRIT PETITION NO.1192 OF 2012

Ashok S/o Pitambar Khare,
Age : 49 years, Occ : Nil,
R/o Saraswati Nagar, Navapur Road,
Tq.Sakri, District Dhule.

...PETITIONER

-VERSUS-

Dhule District Central Cooperative
Bank Limited, Dhule.
Head Office : Shivaji Road, Dhule.
Through it's Managing Director.

...RESPONDENT

WITH
WRIT PETITION NO.6381 OF 2012

Dhule District Central Cooperative
Bank Limited, Dhule.
Head Office : Shivaji Road, Dhule.
Through it's Chief Executive Officer.

...PETITIONER

-VERSUS-

Ashok Pitambar Khare,
Age : Major, Occ : Service,
R/o Saraswati Nagar,
Navapur Road, Sakri,
Tal.Sakri, Dist.Dhule.

...RESPONDENT

....

Mr.S.S.Suvarna h/f Mr.N.L.Chaudhari, Advocate for the Employee.

Mr.Shrikant S. Patil, Advocate for the Employer.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th August, 2015

Oral Judgment:

1 These petitions have been admitted by the orders dated 13.12.2012. It was observed by this Court that both these matters would be heard together.

2 The Petitioner in the first petition is the Employee and the Respondent is the Employer, who is the Petitioner in the second petition. The issue involved is with regard to the judgment of the Industrial Court dated 30.07.2011 delivered in Revision (ULP) No.13/2008.

3 I have considered the submissions of the learned Advocates for the respective sides for quite sometime.

4 It is not in dispute that the Labour Court by its judgment dated 21.05.2008 has allowed Complaint (ULP) No.2/2006 filed by the Employee for challenging the order of his dismissal by way of punishment dated 27.09.2005. The order of termination dated 27.09.2005, received by the Employee on 06.10.2005, has been quashed and set aside. The Employee has been granted reinstatement in service with continuity and

full back-wages.

5 The Employer preferred Revision (ULP) No.13/2008 before the Industrial Court. By the judgment and order dated 30.07.2011, the revision filed by the Employer was partly allowed. The judgment of the Labour Court was modified by directing the Employer to reinstate the Employee with continuity. The direction of full back-wages with compensation of Rs.20,000/- was quashed and set aside.

6 The Employer is aggrieved by the impugned judgment as also the judgment of the Labour Court. The Employee is aggrieved by the impugned judgment of the Industrial Court to the extent of refusal of back-wages and compensation.

7 It is stated that the Employee has already been reinstated in service.

8 After considering the submissions of the learned Advocates, it appears that the Labour Court has decided the entire complaint in one single judgment by deciding the preliminary issues pertaining to the enquiry and the findings of the Enquiry Officer along with all other issues. The Industrial Court by its judgment dated 19.03.2010 delivered earlier in

the Revision (ULP) No.13/2008 had remitted the matter to the Labour Court for a fresh decision.

9 The Employee approached this Court in Writ Petition No.6297/2010 challenging the order of remand. By the order dated 29.09.2010, this Court quashed and set aside the order of the Industrial Court remitting the complaint to the Labour Court and directed the Industrial Court to decide the revision petition on the basis of the material placed on record. Paragraphs 3 to 9 of the said oral judgment dated 29.09.2010 read as under:-

- “3. *Petitioner-employee was working with Respondent-Bank as an Assistant, which is the post included in clerical cadre. It is the allegation of the employer that petitioner remained absent on several occasions without securing proper permission/leave from the employer. As such, charge sheet was issued to the employee and he was proceeded in departmental enquiry conducted at the instance of employer. The only charge against the employee was in respect of continued absence from duty. After conducting enquiry, the employer, on the basis of report tendered by the Inquiry Officer, directed dismissal of employee from service in view of the order issued on 27.09.2005.*
4. *The order issued by Respondent-Bank was subjected to challenge in the Complaint presented at the instance of employee to the Labour Court, being Complaint (ULP) No.2/2006. After considering rival contentions raised by respective parties, learned Judge of the Labour Court found that the order passed by employer dismissing the employee from employment*

is illegal and as such, Labour Court directed reinstatement of the employee with continuity of service and back wages. The Bank was also directed to pay damages to the tune of Rs.20,000/- to the employee. The damages were directed to be recovered from the officers of the bank. The learned Judge of the Labour Court, while dealing with the matter, found that the inquiry conducted by the bank against the employee was not in accordance with principles of natural justice. It was also found that the employer has not proved that the employee is guilty of misconduct. The Labour Court also recorded a finding that the employer, in directing dismissal of services of the employee, has committed unfair labour practice. The order passed by the Labour Court was subjected to challenge in Revision Application tendered by the Bank, being Revision (ULP) No.13/2008.

5. *The learned Member of the Industrial Court, on considering averments raised by the parties, was of the opinion that once the Labour Court holds that inquiry is vitiated on account of non observance of natural principles of justice, it was in fact necessary to extend an opportunity to lead evidence to the Respondent-Bank/ employer. It is only after considering the evidence, that may be placed by the bank before the Court, the Labour Court should have proceeded to decide the Complaint. The learned Member of the Industrial Court, as such, was pleased to remit the matter back to the Labour Court with a direction to decide the Complaint afresh after extending opportunity of hearing to both the sides.*
6. *I have perused the orders passed by both the Courts below. It transpires from perusal of the order that the employee is being charged mainly with the allegation of absentism. Respondent-bank examined one witness to support their contentions and placed on record several documents. The charge of illegal absentism could be well considered on the basis of documentary evidence coupled with explanation submitted by the employee / petitioner herein. The Court can very well*

take into consideration evidence led by the bank, documentary as well as oral, to consider the question posed before it.

7. *Another question, that also falls for consideration, is as to whether order of dismissal based on the allegation of absentism is shockingly disproportionate to the alleged misconduct. In the facts & circumstances of this case, there was no propriety in remitting the matter back to the Labour Court. The observations of the Apex Court in the matter of Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, reported in AIR 1972 SC 1031, can be taken into account as guiding principles.*
8. *In similar circumstances, in the case relating to another employee of the Respondent-bank wherein charge was levelled by the employer in respect of absentism of the employee and the employee was awarded punishment of dismissal from service, this Court, on consideration of identical order, was pleased to quash and set aside the order of remitting the matter back to the Labour Court for reconsideration. The facts of the decided matter i.e. Writ Petition No.209 of 2010 are identical with the facts of the instant case. The mode adopted in the decided matter, therefore, can be a best guide and can be adopted in the instant matter.*
9. *In this view of the matter, I am of the view that the order passed by the learned Member of Industrial Court remitting the matter back to the Labour Court needs to be quashed and set aside and same is accordingly quashed and set aside. The learned Member of the Industrial Court is directed to decide the Revision Application on the basis of material placed on record by the respective parties. Learned Member of the Industrial Court shall decide the matter expeditiously. The ad interim order passed by the Industrial Court in respect of recovery of costs shall remain operative till the final disposal of the matter before Industrial Court.”*

10 It is in these peculiar facts and in the light of the oral judgment of this Court dated 29.09.2010, that the issue whether, the Labour Court complied with the procedure laid down in law in disciplinary cases, does not survive. I find from the judgment of the Industrial Court that it has considered the charge of absenteeism proved against the Employee. It arrived at a conclusion that the punishment of dismissal from service with reference to the charge of absenteeism for a short duration would be a disproportionate punishment.

11 However, the Industrial Court considered that there was no evidence led before the Labour Court by the Employee on the aspect of unemployment, efforts to find an alternate employment and not being gainfully employed. It is trite law that the back wages cannot be granted in a routine manner. The Employee has to lead evidence to establish that he had made every effort for searching an alternate employment and since he was not offered work, he remained unemployed. There was no source of earning and hence, the prayer for back-wages.

12 I have considered the conclusions of the Labour Court on the issue of back-wages. The Labour Court has held that because the termination is being held to be illegal, the Employee shall be entitled for

back-wages.

13 In my view, the Industrial Court has rightly set aside those conclusions as the back-wages cannot be granted as a natural outcome of the reinstatement. Since there was no evidence adduced by the Employee on the issue of back-wages, the Industrial Court rightly set aside the direction to pay full back-wages and compensation.

14 I, therefore, do not find any error or perversity in the impugned judgments.

15 In the light of the above, both these Writ Petitions are dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)