

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6162 OF 2015

Parshuram Sharad Deshpande,
Age 42 years, Occ. Nil,
R/o C/o Suresh Kathar,
Near Vishwa Shankar Mangal
Karyalaya, Vishnu Nagar,
Jawahar Colony, Aurangabad.

..Petitioner

Versus

1. The Managing Director,
The Akola Janta Commercial
Cooperative Bank Limited,
Janvaibhav, Old Cotton Market,
Post Box No.90, Akola,
Tq. and Dist. Akola 444 001.

2. The Branch Manager,
The Akola Janta Commercial
Cooperative Bank Limited, Akola
Branch Near Akashwani,
Jalna Road, Aurangabad.

..Respondents

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Advocate for Petitioners : Shri Garud V.B.
Advocate for Respondents : Shri Bajaj Anil S.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: August 10, 2015

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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner assails the order dated 12.3.2015, by which an application for amendment Exhibit U-9, dated 28.1.2015 has been rejected in its totality.

5. Grievance is that the petitioner / employee, who has been dismissed on 11.6.2010 for proved misconducts, succeeded in getting the delay of 490 days condoned in filing of a complaint challenging the dismissal order. After the delay was condoned on 10.10.2013 and the Complaint was registered, Written Statement was filed by the respondents on 15.3.2014. Issues were cast.

6. The petitioner has contended in his application Exhibit U-9 that the respondent has produced the enquiry proceedings and has supplied the said documents to the petitioner after the Labour Court allowed his application Exhibit U-8 by order dated 23.7.2014. After going through the enquiry report, he has proposed paragraph Nos. (I) to (W) below paragraph No.2H of his complaint. The said application has been rejected by the impugned order.

7. Shri Bajaj, learned Advocate has strenuously opposed this petition by relying on the affidavit in reply dated 10.8.2015. He has taken this Court through the proposed amendments and submits that all of them are argumentative in nature and cannot be said to be pleadings in a complaint. He submits that many of the proposed paragraphs are repetition of the

paragraphs in the complaint and hence the application has been rightly rejected. He further submits that merely because a different view is possible, would not render the impugned order unsustainable.

8. Having considered the submissions of the learned Advocates, I have gone through the petition paper book. I have considered the proposed amendments in paragraph Nos. (I) to (W). I find that the proposed paragraphs (I), (J), (K), (N), (O), (R), (T), (U) and (W) cannot be said to be the pleadings that could be required in the complaint preferred by the petitioner. They are more in the nature of arguments and inferences to be drawn on the basis of the enquiry proceedings and the report of the enquiry officer.

9. The proposed paragraphs (L), (M), (P), (Q), (S) and (V) are in the nature of pleadings, which would assist the Labour Court to frame appropriate issues.

10. It is not in dispute that the issues have already been cast and if Order VI Rule 17 of the Code of Civil Procedure with the proviso thereunder is to be strictly construed, the trial has commenced.

11. Nevertheless, by virtue of the order dated 23.7.2014 below Exhibit U-8, the respondents produced documents on 13.1.2015. By that time, the issues were cast. After considering the documents supplied on 13.1.2015, the petitioner moved his application Exhibit U-9 on 28.1.2015, which is

within 15 days. He has taken up the proposed paragraphs by way of an amendment after going through the enquiry proceedings, with promptitude.

12. I do not find that the petitioner would gain any advantage by not setting out proper pleadings since it could be prejudicial to his own interest. He also would not benefit by causing any delay in his own matter since he has been dismissed on 11.6.2010 and is facing permanent loss of employment. Delaying the matter, therefore, would not give him any advantage over the respondents.

13. Considering the above and to ensure that the ends of justice are met, the impugned order dated 12.3.2015 deserves to be modified by partly allowing application Exhibit U-9.

14. In the light of the above, this petition is partly allowed. Application Exhibit U-9 is partly granted.

15. The petitioner shall add paragraph Nos. (L), (M), (P), (Q), (S) and (V) in his complaint, within a period of fifteen days from today. The respondents are at liberty to file an additional Written Statement.

16. Since the petitioner has questioned the fairness of the enquiry and the findings of the enquiry officer, the Labour Court shall follow the law as is laid down in the matters of Permanent Magnets Vs. Vinod Vishnu Wani and others, reported at 2002 (93) FLR, 32, Maharashtra State Co-operative

Cotton Grovers Marketing Federation Ltd. & another Vs. Vasant Ambadas Deshpande, [2014 MLJ, 339 : 2014 I CLR 878] and Maharashtra State Roadways Transport Corporation Vs. Syed Saheblal Syed Nijam [2014 III CLR 547 = 2014 (4) Mah.L.J.687], while deciding the preliminary issues.

17. Rule is accordingly, made partly absolute in the above terms. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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akl/d