

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.242 OF 2002
WITH
CIVIL APPLICATION NO.800 OF 2009**

The Kurundwad Urban Co.op. Bank Ltd. ..Petitioner

Vs.

Mr. Sardar Gulamdastagir Momin & ors. ..Respondents

Ms. Pavitra Manesh h/f Mr. M. S. Topkar, Advocate for the petitioner.

Mr. S. A. Rajeshirke, Advocate for the respondent No.1.

Coram : Smt. R. P. SondurBaldota, J.

Date : 27th August, 2015.

P.C. :

The petition is placed on the board for speaking to minutes of the order dated 6th August, 2015 in order to correct the number of civil application, which was disposed off by the order along with writ petition. The correct number of the civil application pending in the petition was Civil Application No.800 of 2009. The correction in the order be carried out and the order be read accordingly.

[Smt. R. P. SondurBaldota, J.]

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with
CIVIL APPLICATION NO.800 OF 2009**

The Kurundwad Urban Co-operative Petitioner
Bank Limited, Kurundwad.

Vs.

Mr.Sardar Gulamdastagir Momin & Ors. Respondents

Mr. M.S. Topkar alongwith Ms. Pavitra Manesh, Advocate for the
Petitioner.

Mr. S.A. Rajeshirke, Advocate for Respondent no.1.

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1. The petitioner-bank challenges the orders dtd.5th February, 2001 passed by the Labour Court, Kolhapur on the application filed by respondent no.1-workman under Sections 78 and 79 of the Bombay Industrial Relations Act, challenging the order of his dismissal from service and the order dtd.22nd October, 2001, by which the Industrial Court dismissed the appeal preferred by the petitioner from the order of the Labour Court. The Labour Court has partly allowed the application of respondent no.1 and gave directions to the petitioner-bank to reinstate with continuity of service, but without back-wages.

2. The petitioner is alleged to have mis-conducted himself by assaulting his superior officer, Shri. Anil Karade. The Labour Court, by it's impugned order observed that the misconduct of actual assault on the superior officer is not established and what

was established was only an attempt to assault the senior officer. It, thereafter considered misconduct of as many as six other employees and the action taken by the petitioner against them to find that the punishment of dismissal from service was issued because of the union activities of the respondent and with intention to get rid of him. The Court opined that the petitioner had committed legal and factual victimisation by issuing order of dismissal of the respondent. The Labour Court also observed that just punishment to the respondent would be of refusing back-wages to him. The order of the Labour Court was challenged by both the sides. The Industrial Court dismissed the appeals of both sides holding that the interference by the Labour Court in the punishment awarded to the respondent was proper interference and the punishment of denial of back-wages was a proper punishment. As regards the appeal of the respondent, it held that since the misconduct on the part of the respondent of attempting to assault a senior officer was established some punishment was certainly due to him.

3. Mr. Topkar, the learned advocate for the petitioner submits, relying upon the decision of the Apex Court, in Bharat Forge Co. Ltd., vs. Uttam Manohar Nakate, reported in (2005) 1 C.L.R., page 533 (SC) that a proved misconduct is antithesis of victimization as understood in industrial relations. Therefore, according to him, once it is established that the respondent had misconducted himself, the courts below could not have interfered with the punishment awarded to him by the employer. He relies upon the following two more decisions of the Apex Court for the same purpose, wherein it has been held that ordinarily Court or Tribunal would not substitute it's opinion on reappraisal of the facts and imposition of punishment unless the discretion exercised

by the employer suffers from illegality or material procedural irregularity or it would shock the conscience of the Court.

i) Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. Lad, reported in 2010 II CLR, page 501 (SC);

ii) Lucknow K. Gramin Bank (now Allahabad, U.P. Gramin Bank) and Anr. Vs. Rajendra Singh, reported in 2013 III CLR, page 298 (SC)

4. As already mentioned above, misconduct established against the respondent was an attempt of assault upon a senior officer. Perusal of the record shows that the concerned senior officer Anil Karade had in fact indulged in the criminal acts of forgery and mis-appropriation of the amount of the bank. He had also remained absent for as many as three years. He was subsequently served with charge-sheet dtd. 24th July, 1995. Mr. Anil Karade has filed complaint in the Labour Court relating to the action against him, which is pending. Thus the extreme punishment of dismissal from service awarded to one of the employees was for indulging in criminal acts. The other instances of various misconducts that were taken into consideration by the courts below for which virtually there is no punishment awarded are (i) Clerk, Shri. Kusnale, son of Manager of the petitioner, who had failed to send cheques worth Rs.63.00 lacs for clearance, thereby causing financial loss to the petitioner, (ii) one Shri. Alase, worked as Manager on deputation, a nephew of Chairman of the bank, who had withdrawn an amount of Rs.63,000/- from the funds of the bank. Police complaint had been made against him for mis-appropriation of money. On recovery of the amount of mis-appropriation from him, he was merely repatriated to the bank from where he was brought on deputation, (iii) Clerk, Vidyadhar Kusnale, who remained absent for one year and there was a complaint from

the brother of the Clerk that he had withdrawn certain amounts by forging signature of the brother, (iv) one Bapu Khurpe, who was working as a driver, who was addicted to liquor and had remained absent without permission for a long time, (v) one Smt. Vaijanti Sajane, niece of the Chairman, who had not reported on duty for six years and who had been paid wages for the absence.

5. The courts below noted that the misconducts of far more serious nature has been almost condoned by the petitioner, whereas the respondent, who had only attempted to assault Anil Karade against whom charge-sheet for mis-appropriation of amount of the bank is filed was dismissed from service. There is no dispute that the respondent is active in the affairs of the union. Therefore, the courts below opined that the petitioner had taken advantage of the situation to get rid of the respondent. In my opinion, considering the misconduct established against the respondent and the manner in which all other employees, who had committed misconduct of grave nature, the view taken by the courts below is correct and proper and no interference with the order is called for. Hence, the petition is dismissed.

6. In view of dismissal of the Writ Petition, the Civil Application does not survive, the same is accordingly disposed off.

7. The learned advocate for the Petitioner requests for continuation of the interim order dtd. 4th July, 2002. The request is rejected.

[Smt. R.P. SondurBaldota, J.]

Corrected pursuant to speaking to the minutes on 27th August, 2015.