IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1709 OF 2015

Kolhapur Urban Co-operative Bank Ltd. .... Petitioner
Vs.
Rajendra Shankarrao Patil .... Respondent

Mr. Kiran Bapat i/by Mr. Avinash Fatangare, Advocate for the Petitioner.

Mr. M.S. Topkar, Advocate for the respondent.

WITH
WRIT PETITION NO.9580 OF 2014

Mr. Rajendra Shankarrao Patil .... Petitioner
Vs.
The Kolhapur Urban Co-operative Bank Ltd. .... Respondent

Mr. M.S. Topkar, Advocate for the Petitioner.
Mr. Kiran Bapat i/by Mr. Avinash Fatangare, Advocate for the Respondent.

Coram : Smt. R.P. SondurBaldota, J.
Date : 27th July, 2015

P.C.

1 This is a common order on the above two petitions that challenge the same order i.e. the order dtd. 8th August, 2014 passed by the Industrial Court, Kolhapur in Appeal (IC) No. 5 of 2013. The

first petition is by the employer-bank and the second petition is by the employee.

2 The brief statement of facts leading to the petitions are as follows:

The employee was working with the bank as a Cashier and at the relevant time, transferred to Shahupuri branch as Paying Cashier. On 3rd March, 1997, when he was discharging his regular work, at about 11 am., he was called by the Branch Manager to his cabin and was ordered to count the currency notes of different denominations, brought by one Mr. Manohar Jadhav for the deposit. The currency notes had been brought in a khaki bag. The employee started counting the cash in the presence of the Branch Manager and had noticed that it was short by Rs.1,250/-. Manohar Jadhav was to then arrange for the short amount. Therefore, the Manager asked the employee to keep the khaki bag containing bundles of currency in the Cashier's cabin. Accordingly the employee carried khaki bag with the currency of Rs.7,54,150/- to his cabin. Within 15 minutes thereafter the bag went missing. The employee reported the incident to the Branch Manager after which the complaint of theft was made to the Police.

3. The employee was issued notice dated 29th March, 1997 for showing cause for the following four charges:

(i) 23(i) wilful insubordination or disobedience of any lawful and reasonable order of a superior.

(ii) 23(xiii) Doing any act, or engaging in any business prejudicial to the interest of the bank.

(iii) 23(xix) wilful damage to any property of the bank or of its customers.

(iv) 23(xvii) habitual neglect of work, or habitual or gross negligence, or negligence involving or likely to involve the bank in serious loss.

On conclusion of the enquiry, the Enquiry Officer reported that all the charges were established against the employee. The Bank accepted the report, dismissed the employee from service.

4 The employee then preferred application under Sections 42(4), 78(1)A(a)(i), 78(1)(C), 78(1)(D) (i),(ii),(iii) read with Section 79 of B.I.R ACT, 1946 challenging his dismissal from service. The Labour Court, by it's order dtd. 19th November, 2013 held that all the findings of the Enquiry Officer were perverse, in as much as the same are not based upon the evidence on record. Being aggrieved by the order of the Labour Court, the employer-bank preferred the Appeal (IC)No.5 of 2013 before the Industrial Court, Kolhapur. By the impugned order, the Industrial Court confirmed the order of the Labour Court in respect of three of the charges and set aside the order in respect of the charge under Clause 23(xvii).

5 In the above circumstance, the only misconduct required to be considered here is under Clause 23(xvii). The reasons stated therefor at paragraph 14 of the order of the Labour Court read as follows:

> "14. After perusal of the charge in Clause 23(xvii)- Habitual neglect of work or habitual or gross negligence or negligence involving or likely to involve the bank in serious loss. It has come on record that the applicant initially joined as a Clerk on 16-12-1981 and he was working as a Cashier from 4-3-1999. No evidence has been brought on record by the opponent bank that while working as a Cashier in the bank, he had committed gross negligence in his service tenure and due to that serious loss had been caused to the bank before 3-3-1997. Therefore, I find that the findings of the enquiry officer on Clause 23(xvii) is not found to be correct."

6. The Industrial Court disapproved the view of the Labour Court by setting out following reasons:

> "From the above evidence which was before the enquiry officer, it is clear that the Applicant did not show as to what positive steps he had taken at the time of incidence for the safe custody of an amount of Rs.7,54,150/-. The evidence before the enquiry officer shows that the applicant was gross negligent and careless in his duty of paying cashier as he did not lock his cabin from inside. The applicant had grossly neglected to lock his cabin from inside which form part of his duty when he had kept a khakhi bag containing an amount of Rs.7,54,150/- alongwith him in his cabin. Apart from the amount of Rs.7,54,150/-, the applicant was in the custody of bank cash amounting to Rs.12 lakhs. In this background, it was for the applicant to act and

> discharge more cautiously to safeguard the amount of Rs.12 lakhs. It can be said that to some extent the fortune of the applicant was good so the bank cash amounting to Rs.12 lakhs was not lost alongwith the amount of Rs.7,54,150/- which was in khakhi bag. Nothing is on record to show that everyday the applicant was in habit to lock his cabin from inside when he was in cabin and he used to lock the cabin from outside when he used to come out of his cabin and due to oversight on the day of incidence, the applicant failed to lock his cabin from inside. The applicant being a cashier so it was his duty and responsibility to take care of all cash which was in his possession and inside his cabin with high degree and to take all careful steps in protecting the cash which was in his custody. In this background, it can safely be said that the findings of enquiry officer with respect gross negligence of the applicant are based on material evidence before him. The findings of enquiry officer are not perverse with respect to charge no.23 (xvii)."

With these reasons, the Industrial Court partly allowed the appeal and set aside the order of the Labour Tribunal to the extent of the charge no.23(xvii).

7 Both, the Bank as well as the employee felt aggrieved by the order and have approached this court against the same. According to the Bank, the Industrial Tribunal ought to have set aside the order relating to the remaining three charges also, whereas according to the employee, the Industrial Court ought to have confirmed the entire order of the Labour Court.

8 Mr. Topkar, the learned advocate for the employee submits relying upon the judgment of this Court in case Babanrao Budhajirao Nanekar vs. Adinath Sahakari Bank Ltd. and Others, reported in 1995(2), Bombay Cases Reporter, page 260 that it was not open for the Industrial Tribunal to dissect the evidence led before the Enquiry Officer to find out whether the charges under Clause 23(xvii) should be established. According to him, once it was held that inference as regards above three charges was perverse, the entire finding of the Enquiry Officer ought to have been treated as perverse. He next submits that the allegations relevant for charge under Clause 23(xix) and that under 23(xvii) are mutually exclusive and therefore could not have been put together. The decision cited, however does not support the contention because by the very decision, it has been held that if there is any uncertainty for the employer to make out, in the given set of circumstances, whether the employee is guilty of misconduct of dishonesty in connection with the employers property or causing loss by gross negligence, the employer may choose to level both the allegations in the alternative and once evidence is led, the evidence would clearly indicate and bring to light the necessary mental ingredients or the lack of them, which would clearly indicate whether the circumstance proved would amount to dishonesty in connection with the property or business or only gross negligence. This was precisely were done by the Bank. Therefore, I find no merit in the submission that the charges under Clause 23(xix) and 23(xvii) could not have been levelled against the employee at the same time.

9 The other submission that if the inference of the Enquiry Officer is held to be perverse in respect of some of the charges, the same must be extended to the other charges also is in my opinion meritless. The charges being independent charges, it is possible to hold that the evidence brought on record establishes only some of them.

10 Mr. Bapat, the learned advocate for the Bank challenges the order with submission that after holding that the findings in respect of all the four charges are perverse, the Bank would have been given an opportunity to lead evidence. The argument would be valid only if the charges are not independent. If there are several charges, it is open initially for the Labour Court and later the Industrial Tribunal to find out whether the inference of the Enquiry Officer in respect of each charge is supported by the evidence on record. It can to that extent definitely look into the evidence and give independent finding for each charge. Thus, in my opinion, there is no infirmity whatsoever in the order passed by the Industrial Tribunal. It is obvious from the evidence before the Enquiry Officer that the other three charges are not established at all. In fact, there was no need for the Bank to challenge the impugned order. Apparently, the Bank just wanted to be abundantly cautious.

11 For the above reasons, both the petitions are dismissed.

(Smt. R.P. SondurBaldota, J.)