

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10962 OF 2014

Mahendra Manohar Gardi,
Aged 38 years, residing at
Shivaji Nagar, Koliwada,
Tal. Murud-Janjira, Dist. Raigad

.....Petitioner

: V/S :

1. M/s. Merchant Co-operative Credit
Society Ltd., Tal. Murud-Janjira
District- Raigad

2. Presiding Officer,
Labour Court, Mahad,
Dist- Raigad

.....Defendant

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Mr. R.K. Mendadkar, Advocate for the petitioner.

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

27th August, 2015.

P.C. :-

1). This petition filed under Article 227 of the Constitution of India, challenges the order dated 30th July, 2014 passed by the Labour Court, Mumbai dismissing Reference (I.D.) No.5 of 2011.

2). The petitioner was working as Accountant/Clerk with the respondent, Society since 16th November, 1998. He was removed from

service for misconduct on 9th February, 2011. No departmental enquiry had been conducted prior to his termination from service. Therefore, at his instance Reference was made under Section 10(1) read with Section 12(5) of the Industrial Disputes Act.

2). The five misconducts alleged against the petitioner are (i)involvement in a criminal offence occurred at Murud, Koliwada on 18th January, 2011 and being accused in C.R. No.2 of 2011 in Murud Police Station for the offences punishable under Sections 307, 324, 336, 147, 148 and 149 Indian Penal Code. The petitioner was in custody from 20th January, 2011 to 4th February, 2011, (ii)unauthorised absence from service, (iii)incompetence in discharge of his duties, (iv)contesting election to the post of Director of Jaibhavani Macchimar Co-operative Society without prior permission as required under Rule 26 of Service, Conduct & Discipline Regulations of the respondent, and (v)bringing bad name to the respondent, Society by his conduct.

3). The misconduct at Items no.-(i), (ii) and (iv) are not disputed. The only contention of the petitioner before the Labour Court thereon was that, the misconduct alleged against him is not of such a serious nature as to remove him from service. The other contention was that the respondent ought to have conducted domestic enquiry into the alleged misconduct before termination from service. Failure to hold departmental enquiry, vitiates the termination.

4). In addition to the undisputed misconduct, the Labour Court firstly noted that termination from service without holding domestic enquiry does not vitiate the order of termination, because it is always open for the respondent, in the event of challenge to the termination, to lead evidence before the Court. In addition to the undisputed misconducts, the Labour Court noted from the evidence produced before it, that while working as Accountant/Clerk, the petitioner had not disclosed details of the deposits of the Society and as such had not performed his duties properly. The explanation offered by the petitioner to the Labour Court was that he was ignorant of the manner in which the balance sheet is to be maintained and at the relevant time, he was in the process of learning. The Labour Court noted that the explanation given was for the year 2009. Thereafter, despite having granted opportunity to improve, no improvement had been shown by the petitioner. It opined that the conduct of the petitioner was certainly prejudicial to the discipline and good behaviour of a workman. Consequently, the respondent has lost faith in him. For these reasons, the Labour Court held that the act of termination of service taken by the respondent against the petitioner was proper and dismissed the Reference.

5). The undisputed misconducts on the part of the petitioner are serious enough to bring him punishment of termination of service. Further, the observations of the Labour Court as regards the other two

misconducts, are fully justified on perusal of the record. The very fact of commission of the acts of undisputed misconduct is sufficient to hold that the conduct of the petitioner is prejudicial to the discipline and good behaviour and as such bringing bad name to the respondent, Society. In the circumstances, there is no infirmity in the impugned order. The petition is therefore dismissed.

(SMT. R.P. SONDURBALDOTA, J)