

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

WRIT PETITION NO. 1194 OF 2016
WITH
CIVIL APPLICATION NO.13753 OF 2016

Nanded District Central Cooperative Bank.
Through Authorized Officer.

...PETITIONER

-VERSUS-

Shankar Deorao Chavan,
Age : 52 years, Occupation : Nil,
R/o Deola Naik Tanda, Panshevadi,
Tq.Kandhar, District Nanded.

...RESPONDENT

WITH
WRIT PETITION NO.1220 OF 2016
WITH
CIVIL APPLICATION NO.13749 OF 2016

Nanded District Central Cooperative Bank.
Through Authorized Officer.

...PETITIONER

-VERSUS-

Ranba s/o Mariba Padade,
Age : 56 years, Occupation : Nil,
R/o Sidhartha Nagar, Kandhar,
Tq.Kandhar, District Nanded.

...RESPONDENT

...
Advocate for Petitioner : Shri Suryawanshi Kamlakar J.
Advocate for Respondents : Shri Shinde Prakash M. and Shri P B Jadhav.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 14th October, 2016

Oral Judgment:

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 In both these petitions, the Petitioner/ Bank has challenged the judgment and order dated 02.09.2013 delivered by the Labour Court in Complaint (ULP) Nos.37/2011 and 42/2011 by which the complaints have been partly allowed. The Petitioner is also aggrieved by the judgment of the Industrial Court dated 26.10.2015 by which Revision (ULP) Nos.181/2013 and 184/2013 filed by the Petitioner have been dismissed.

3 I have considered the strenuous submissions of Shri Suryawanshi, the learned Advocate for the Petitioner/ Bank and Shri Shinde, learned Advocate for the Respondents/ Employees. Since the Petitioner/ Bank is the same and the Respondents/ Employees are identically situated and facing the same charges, I have taken up both these petitions together for a hearing.

4 It is not in dispute that the Labour Court, by it's part-1

judgments on the fairness of the enquiry and the fairness of the findings of the Enquiry Officer, has concluded that the enquiry is vitiated and the findings of the Enquiry Officer are perverse. It is also not disputed that the Labour Court, upon considering that the Petitioner has reserved its right to conduct a de-novo enquiry, specifically permitted the Petitioner to proceed to lead evidence before the Court. The part-1 judgments delivered by the Labour Court dated 12.02.2013 in both the complaints were not challenged by the Petitioner before the Industrial Court.

5 Shri Suryawanshi has strenuously submitted that after the enquiries in both these cases were held to be vitiated, the Petitioner led evidence through Mr. Maruti Chavan, General Manager of the Petitioner Bank, who filed his evidence by way of affidavits below Exhibits C/19 and C/17 respectively in both the complaints. Despite having led evidence before the Labour Court, it has erroneously concluded that the charges are not proved. Based on such erroneous conclusions, the Labour Court has granted reinstatement with continuity of service to the Respondents/ Employees. The back wages were denied to both of them.

6 He further submits that the Industrial Court has mechanically rejected both the revision petitions. The errors committed by the Labour Court were lost sight of by the Industrial Court. Any act of

misappropriation needs to be dealt with seriously and neither the Labour Court nor the Industrial Court have considered the serious charges levelled upon the Respondents/ Employees.

7 Shri Suryawanshi has taken me through the entire petition paper books as well as the Civil Applications in both these matters with regard to the past service record of both these Respondents. It is, therefore, prayed that the impugned judgments be quashed and set aside and the matter may be remitted back to the Labour Court for adducing fresh evidence.

8 Shri Shinde, learned Advocate appearing on behalf of both the Respondents/ Employees, has supported the impugned judgments.

9 I find that the part-1 judgments on the fairness of the enquiry delivered by the Labour Court were not called in question by the Petitioner inasmuch as the said part-1 judgments have not been assailed before the Industrial Court as well as this Court. Notwithstanding the same, the fact remains that the Petitioner availed of an opportunity of conducting a de-novo enquiry before the Labour Court.

10 It is trite law that in the matters of such nature, even if the

enquiry is vitiated, the documents which are foundation of the charge sheet, do not lose their relevance. It is only that evidence adduced by the witness and the findings delivered by the Enquiry Officer are to be ignored and lose their significance after the enquiry is vitiated. By conducting a de-novo enquiry, the Management is at liberty to adduce fresh evidence and prove all the documents on which the charges have been based/founded.

11 I find from the record of these cases that after the enquiry was vitiated, the General Manager of the Petitioner Bank stepped into the witness box and repeated the charges set out in the charge sheets. The affidavits filed in lieu of examination in chief at Exhibits C/19 and C/17 respectively, were purely reproduction of the charge sheets served upon the Respondents/ Employees. Besides repeating the contents of the charge sheets, neither were the original documents produced before the Labour Court to substantiate each and every misconduct of misappropriation, nor were the documents appearing in the enquiry proved before the Labour Court. Consequentially, practically there was no documentary evidence before the Labour Court except the charge sheets and reproduction of the charge sheets in the examination in chief of the General Manager of the Petitioner Bank.

12 The Labour Court has rightly concluded that when a de-novo enquiry is to be conducted, every charge of misappropriation has to be founded on the basis of the documentary evidence and such documents have to be proved so as to be exhibited with the aid of oral evidence. The payment slips or cheques or documents pertaining to disbursement of money, ledger books, cash books, audit reports, etc. were not produced before the Labour Court. It appears that xerox copies of some documents were filed on record, which the Labour Court has rightly ignored considering the provisions of the Evidence Act.

13 I also find that the Government audit was not performed with regard to the Petitioner Bank for three years. Internal audit which is required to be performed every six months, was also not done. Neither was the original audit report placed before the Labour Court, nor was the Auditor examined.

14 In the light of the above, in my view, the Petitioner by the manner in which it has conducted the proceedings virtually left the Labour Court with no option but to conclude that the charges levelled against the Respondents were not proved.

15 The Industrial Court has revisited the entire proceedings

while dealing with the revision petitions filed by the Petitioner Bank. It also came to the conclusion that the Auditor has raised audit objections and had observed that the Manager, Cashier, Clerk, Inspector and Peon were involved in misappropriation. It is not in dispute that these persons have not been punished on the pretext that two of them had returned the misappropriated amounts and hence, were reinstated in service and the Manager was exonerated by the Enquiry Officer.

16 Be that as it may, the Industrial Court noticed that not a single charge levelled upon these Respondents was proved with the aid of documentary and oral evidence. Even the charge of purported entries made by these Respondents, was not proved by establishing their handwriting or by referring the matter to the Handwriting Expert so as to conclude that the handwriting on incriminating documents matches with the handwriting of these Respondents.

17 Notwithstanding the above, the Labour Court has deprived both the Respondents of entire back wages. The said conclusion is affirmed by the Industrial Court. Both the Respondents attained the age of superannuation during the pendency of the revision petitions and as such, have been deprived of the entire back wages. Both of them have not challenged the said conclusion before this Court.

18 It is pointed out by Shri Shinde that after the judgment of the Labour Court dated 02.09.2013, the first Respondent retired on 30.11.2014 and his back wages till superannuation from the date of the judgment of the Labour Court would be Rs.4,54,6650/-. In the second petition, the Respondent retired on 05.07.2015 and his back wages from the date of the judgment of the Labour Court till his superannuation would be Rs.7,54,792/-. It is informed that the Industrial Court had stayed the judgment of the Labour Court during the pendency of the revision petitions. Shri Shinde prays for 100% back wages for the said period and Shri Suryawanshi submits that they should not be paid back wages.

19 In the light of the above, I do not find that the impugned judgments of the Labour Court and the Industrial Court could be termed as being perverse or erroneous. Both these Writ Petitions being devoid of merits are, therefore, dismissed. Rule is discharged.

20 The Honourable Supreme Court in the matter of *Nicholas Piramal India Limited v/s Hari Singh*, **2015 (2) CLR 468**, has concluded that where the termination is bad in law and there is evidence to establish that the employees were not in employment, 50% back wages would be

appropriate for reducing rigours of the litigation. As such, these Respondents/ Employees would be entitled to 50% of the back wages calculated on the basis of their last drawn monthly wages (average drawn wages for the last three months) from the date of the judgment of the Labour Court till their dates of superannuation. The Respondents/ Employees may, therefore, withdraw the amounts deposited by the Petitioner in this Court and the said amounts may be adjusted towards their retiral benefits including gratuity after the Petitioner/ Bank calculates the same.

21 The pending Civil Applications do not survive and are, therefore, disposed of.

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(RAVINDRA V. GHUGE, J.)