

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

WRIT PETITION NO. 4478 OF 1995

Beed District Central Cooperative
Bank Limited, Beed.
Through its General Manager.

...PETITIONER

-VERSUS-

- 1 Jagannath s/o Sitaram Shahane,
Age : 51 years,
R/o Ganesh Nagar, Near S.P. Office,
Beed, District Beed.
- 2 Judge, Labour Court and
Authority under MRTU &
PULP Act, Aurangabad.
- 3 Member, Industrial Court,
Aurangabad, District Aurangabad.

...RESPONDENTS

...
Advocate for Petitioner : Shri Vinayak Upadhye.
Advocate for Respondent 1 : Shri S.S.Thombre a/w Shri Shrikrishna
Solanke.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 14th December, 2016

Oral Judgment :

- 1 Both the learned Advocates for the respective sides submit, on
instructions, that they have no objection if this Court decides this petition.

2 Respondent Nos.2 and 3 being the Labour Court and Industrial Court, stand deleted from these proceedings.

3 The Petitioner / Bank is aggrieved by the judgment and order dated 11.11.1994 delivered by the Labour Court by which Complaint (ULP) No.100/1983 filed by Respondent/ Employee has been allowed and he has been granted reinstatement with continuity and back wages for the period from 14.09.1983 till 17.12.1983. The Petitioner is also aggrieved by the judgment of the Industrial Court dated 21.06.1995 by which Revision (ULP) No.84/1994 filed by the Respondent / Employee has been allowed and he has been granted full back wages, whereas Revision (ULP) No.7/1995 filed by the Petitioner/ Bank has been dismissed.

4 This Writ Petition was admitted on 19.10.1995 and the following order was passed:-

- "1. *Heard Shri A.H.Joshi, learned Advocate for the Petitioner and Shri Babu Marlapalle with Shri R.M.Borde, learned Advocates for the Respondent No.1. Respondent Nos.2 and 3 are only formal parties. The learned Advocates for the Respondent No.1 waive notice.*
2. *Rule.*
3. *The Respondent No.1 is hereby directed to remain present in the office of the Petitioner tomorrow i.e. on 20th October, 1995 at 12:00 noon and shall see*

Mr.K.S.Sirsath, who is the General Manager. Immediately, Mr.Sirsath shall handover the order of posting to the Respondent and Respondent shall accept the same and shall join the post on the next day i.e. on 21st October, 1995.

4. *It is not open for Respondent to make any grievance in respect of the appointment even today.*
5. *In respect of the payment of back wages, this point be kept open at this stage. Respondent is directed to file an affidavit in detail as to whether, he was in service at any time during the period of his unemployment. He shall file the affidavit within one month from today and a copy of the same shall be given to the learned Advocate for the Petitioner, who in turn will give reply to the same within two weeks. S.O. to 07th December, 1995."*

5 I have considered the strenuous submissions of the learned Advocates at length.

6 The undisputed factors can be summarized as under:-

- (a) The Respondent was working as a Sub-Accountant in the Petitioner Bank.
- (b) He was absent due to sickness for the periods 14.12.1981 to 28.12.1981, 11.01.1982 to 25.01.1982 and 27.01.1982 to 31.01.1982.
- (c) He was again absent on the ground of sickness from 19.06.1982 till 28.07.1982.
- (d) The charge sheet was issued on 15.09.1982 for habitual

absenteeism.

- (e) The departmental enquiry was conducted.
- (f) By Enquiry Officer's report dated 03.08.1983 he was held guilty of the misconduct of unauthorized absenteeism.
- (g) The order of dismissal dated 14.09.1983 by way of punishment on the basis of the Staff Committee Resolution dated 30.08.1983, was issued.
- (h) The Respondent preferred Complaint (ULP) No.100/1983.
- (i) By the judgment dated 11.11.1994, the Labour Court allowed the complaint and directed the reinstatement of the Respondent with continuity and back wages only for the period from 14.09.1983 till 17.12.1983.
- (j) By judgment dated 21.06.1995, the Industrial Court allowed Revision (ULP) No.84/1994 filed by the Respondent and granted full back wages and dismissed Revision (ULP) No.7/1995 filed by the Petitioner/ Bank.

7 It is apparent that the Respondent had challenged the fairness of the enquiry and the findings of the Enquiry Officer. By judgment dated 11.11.1994, the Labour Court concluded that the findings of the Enquiry Officer are perverse and the enquiry stands vitiated. It is undisputed that the following two issues are required to be dealt with peremptorily in the

light of the judgment of the Honourable Supreme Court in the matter of *Workmen of the Motipur Sugar Factory Pvt.Ltd. Vs. The Motipur Sugar Factory*, **AIR 1965 SC 1803** :-

- (a) Whether, the Complainant proves that the enquiry is vitiated on account of non observance of the principles of natural justice?
- (b) Whether, the Complainant proves that the findings of the Enquiry Officer are perverse?

8 It is settled law, in the light of the judgments delivered by the Honourable Supreme Court in the matters of (i) *Delhi Cloth and General Mills Company Limited v/s Ludh Budh Singh*, **1972 (1) SCC 595**, (ii) *Workmen of M/s Firestone Tyre & Rubber Company of India v/s Management*, **AIR 1973 SC 1227 : 1973 SCR (3) 587**, (iii) *Shambhu Nath Goyal v/s Bank of Baroda*, **1984(4) SCC 491** and (iv) *Workmen of Firestone, Bharat Forge Company Ltd. v/s A.B.Zodge*, **1996 (73) FLR 1754 : AIR 1996 SC 1556**, that if the enquiry is held to be vitiated for any reason whatsoever, the Employer needs to be granted an opportunity to lead fresh evidence and prove the charges before the Labour Court.

9 There is no dispute in between the parties that the enquiry

papers were produced before the Labour Court and the enquiry was sought to be vitiated only on the ground of perversity in the findings of the Enquiry Officer. Since the Labour Court noticed that the Respondent/Employee was assailing the findings of the Enquiry Officer, it concluded in paragraph 11 that the findings of the Enquiry Officer are perverse and hence, the enquiry stands vitiated. In the same paragraph, the Labour Court concluded that the Respondent was liable to be reinstated in service.

10 There is no dispute that the Respondent was reinstated as an Accountant by order of reinstatement dated 21.10.1995. Thereafter, he started remaining absent and it is submitted that he was subsequently disengaged on account of continued absenteeism.

11 This case has taken a curious turn. The Petitioner filed the additional affidavit dated 04.12.1995 bringing on record the documents indicating that the Respondent had submitted the application form to the Maharashtra State Cooperative Sugar Factories Federation for being empaneled as a Managing Director. The said application was submitted by the Respondent by affixing his photograph and by signing upon the said form dated 25.10.1990. On page 3 of the form, he has stated that he was working as an Accountant, Agent, Inspector, Senior Inspector and Deputy

Chief Officer with the Petitioner Bank from 1962 to 1982. He had left the services of the Petitioner Bank for better prospectus and better future. It is also stated that he is working with Shri Gajanan Cooperative Sugar Factory Limited as an Administrative Officer from 1983 onwards till the date of the filing of the application form. This application was supported by the certificate issued by the Managing Director of Shri Gajanan Cooperative Sugar Factory Limited dated 20.10.1990 indicating that the Respondent was in their employment from 27.12.1983 as an Administrative Officer, Head of the Department of General Administration.

12 There is no dispute that after this affidavit was filed by the Petitioner on 04.12.1995, the Respondent did not file any affidavit challenging or controverting the said submissions.

13 There are even further developments in this matter. The Respondent submits that he was paid back wages pursuant to the directions of the Labour Court/ Industrial Court. He was also reinstated. After he left employment, he has been paid his gratuity by the Petitioner.

14 At this juncture, the learned Advocate for the Respondent/ Employee submits that considering his age and failing health, no purpose would be served by remanding the matter back to the Labour Court for

conducting a de-novo enquiry pursuant to the charge sheet dated 15.09.1982. It is further requested that as the back wages have already been paid by the Petitioner and the gratuity has also been paid by the Petitioner, this Court may refrain from directing the recovery of back wages and gratuity.

15 In the light of the above, though the Labour Court has committed a serious procedural error in setting aside the enquiry by branding the findings of the Enquiry Officer as perverse and allowing the complaint in the same judgment, I do not find any purpose would be served by remitting the matter back to the Labour Court keeping in view the subsequent events as recorded above and the fact that the Respondent is now about 72 years old and in failing health. Even if a de-novo enquiry is to be ordered, the matter will have to be relegated back to the charge sheet of a long unauthorized absenteeism of 1982, which is practically 34 years ago.

16 Considering the peculiar facts as recorded above and the fact that no purpose would be served by remitting the matter to the Labour Court for following the lawful procedure in the light of the judgments of the Honourable Supreme Court, I deem it proper to dispose of this Writ Petition by observing that since the Respondent was engaged in another

factory from December, 1983 onwards and has retired from employment after becoming the Managing Director, he shall not be entitled for any other benefits pursuant to the impugned judgments. So also, the back wages paid and gratuity paid to him, shall not be recovered from him by the Petitioner.

17 In the light of the above, this Writ Petition is partly allowed. The impugned judgments of the Labour Court and the Industrial Court stand modified by observing that the back wages paid to the Respondent/ Employee and the gratuity amount paid to him shall not be recovered from him. Since the Respondent has been in employment with another factory from 27.12.1983, having also been appointed as Managing Director of the said factory and having retired from the same, he shall not be entitled to claim any benefits of service from the Petitioner after 27.12.1983.

18 Rule is made partly absolute in the above terms.