

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6479 OF 2015

Vijay Balu Navarkar,
Age 34 years, Occ. Nil,
R/o 73B, Mohan Nagar,
Mohadi Road, Jalgaon.

..Petitioner

Versus

1. Jalgaon Janata Sahakari
Bank Limited, Head office -
117/119, Navi Peth,
Jalgaon, through the
Chief Executive Officer.

2. Chairman,
Jalgaon Janata Sahakari
Bank Limited, Head office -
117/119, Navi Peth,
Jalgaon.

..Respondents

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Advocate for Petitioner : Shri Barde Parag Vijay
Advocate for Respondents : Shri Dixit V.J. Sr. Advocate
i/b Shri Nagargoje Ankush N.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: April 11, 2016

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner / employee is aggrieved by the judgment dated 4.3.2015, delivered by the Industrial Court, by which Revision (ULP) No.12 of 2013, preferred by the respondent / Bank has been allowed and the Part I judgment of the Labour Court, dated 23.11.2012, with regard to the two preliminary issues has been set aside.

5. Shri Barde submits that the petitioner was suspended pending the disciplinary proceedings on 17.8.2006. He received a charge sheet dated 31.10.2006 on 17.11.2006. He denied all the charges. The Enquiry Officer on completion of the enquiry, submitted his report dated 28.6.2007. After hearing the petitioner on the enquiry report, the respondent terminated his services, by way of punishment, on 13.9.2007.

6. The petitioner filed Complaint (ULP) No.43 of 2007 before the Labour Court for challenging his termination. By the Part I judgment, dated 23.11.2012, the Labour Court concluded that enquiry is vitiated for non-compliance of the principles of natural justice and the findings of the Enquiry Officer are perverse, as there is no evidence before him to conclude that the petitioner is guilty of the charges levelled upon him. By Revision (ULP) No.12 of 2013, the respondent challenged the Part I judgment of the Labour Court. By the impugned judgment dated 4.3.2015, the Industrial Court has allowed the Revision Petition and by quashing the Part I judgment of the Labour Court, has concluded that the enquiry was conducted in a fair manner and the findings of the Enquiry Officer are not perverse.

7. Shri Barde, learned Advocate for the petitioner / employee has strenuously criticized the impugned judgment. He draws my attention to the charge sheet, dated 31.10.2006, based on which the domestic enquiry was conducted against the petitioner and he was found guilty of all the charges except one charge with regard to the purchasing of diesel for the diesel generator utilized by the Bank at its Onkareshwar Branch.

8. Shri Barde has taken me through paragraph Nos.2 to 8 of the charge sheet, which are basically the details of the mis-conducts alleged to have been committed by the petitioner. His contention is that the charges are vague and ambiguous. Details of alleged incidences constituting a mis-conduct have not been mentioned. The charges are based purely on suspicion and presumptions.

9. He further submits that the petitioner had sought the appointment of an Advocate as his defence representative, which request was turned down on the ground that the Standing Orders do not permit for engaging of an Advocate. He was granted the liberty of appointing any co-employee working in the Bank, though subsequently, he chose to participate in the enquiry by himself.

10. Shri Barde has referred to the order passed by the Labour Court, dated 23.11.2012 in Complaint (ULP) No.43 of 2007, which was filed by the petitioner after the order of dismissal dated 13.9.2007 was issued to him. Since he had challenged the enquiry as well as the findings of the enquiry

officer, the Labour Court framed the two issues as required by law and has considered the submissions of the litigating sides on the basis of the enquiry report and the record and proceedings of the enquiry.

11. Shri Barde has taken me through the various paragraphs of the Part I judgment of the Labour Court dated 23.11.2012, by which the Labour Court has concluded on the following issues:-

- (a) The suspension order is issued more than two months prior to the issuance of the charge sheet and the said Act is illegal.
- (b) The Bank could not have issued the suspension order prior to the issuance of the charge sheet.
- (c) The Complaints made by the Assistant Accountant and the Cashier do not bear Outward Numbers and hence they are bogus and fabricated documents.
- (d) Charges levelled upon the petitioner are not proved in the enquiry.
- (e) He was never caught red handed while allegedly stealing currency notes from the packs of currency notes which he was counting.
- (f) There was no evidence before the enquiry officer apart from suspicion being voiced and hence the charges could not have been held to be proved.
- (g) On the basis of the statement made by Assistant Accountant Shri Pethkar, it is apparent that the charges are not proved against

the petitioner.

12. Shri Barde has strenuously submitted that the petitioner was a helper, who used to assist a particular Assistant Accountant or a Cashier as per the duty allotted to him on a particular date. He used to assist the concerned superior in counting the notes and used to prepare packs of currency notes to be moved from one counter to the another counter. Once the currency notes were counted and packed, he would lose control over the said packs / bundles after they were moved to another counter. It had never so happened that any Cashier or Assistant Accountant or any other employee has ever noticed the petitioner withdrawing notes from any pack / bundle.

13. He further submits that in the enquiry, Shri Pethkar has admitted that some times the notes used to be missing even when the petitioner was not assisting him. This statement has been rightly appreciated by the Labour Court and has, therefore, concluded that the findings of the enquiry officer are based merely on suspicion and not on any direct evidence.

14. He further submits that mere suspicion cannot take place of proof and as such, the findings of the enquiry officer were rightly held to be perverse.

15. He relies upon the following judgments of the Honourable Apex Court as well as of this Court:-

- (i) Sawai Singh Versus State of Rajasthan - AIR 1986 SC 995,
- (ii) Anant R. Kulkarni Vs. Y.P.Education Society -
AIR 2013 SC 2098,
- (iii) Shriram Vishwanath Deshpande Vs. Presiding Officer -
2010 (1) ALL MR 65,
- (iv) Nand Kishore Prasad Vs. The State of Bihar and others -
AIR 1978 SC 1277,
- (v) Narinder Mohan Arya Vs. United India Insurance Co. Ltd. -
AIR 2006 SC 1748
- (vi) Shridhar Sakham Omle Vs. Yeshwantrao Chawan Academy
of Development Administration - 2006 (5) Bom. C.R. 456 and
- (vii) Bapu Parati Urmude Vs. Premier Industries -
Writ Petition No.4568 of 2011, dated 29.11.2013.

16. He further submits that if the charge sheet is vague and ambiguous, no charge can be said to be proved against an employee. The charges have to be specific and must pointedly indicate to the delinquent as regards the charges which are being levelled upon him. He, therefore, submits that the Labour Court has correctly arrived at a conclusion in the Part I judgment that the findings are perverse and the enquiry is vitiated including on the ground that it was conducted beyond three months.

17. While assailing the impugned judgment of the Industrial Court, Shri

Barde submits that all the grounds on which the enquiry was vitiated, including the perversity in the findings of the enquiry officer, has not been considered by the Industrial Court. It has merely proceeded on the legal principle that strict Rules of Evidence Act are not applicable to the departmental enquiry and has held that on the preponderance on the principles of probabilities, the charges can be held to be proved.

18. He further criticized the impugned judgment for the reason that the Industrial Court has failed to apply its mind to the record and proceedings of the enquiry and has not considered all the issues dealt with by the Labour Court. He further submits that merely because a second view is possible, the Industrial Court was not justified in setting aside the impugned Part I judgment of the Labour Court. Unless the findings are found to be perverse, the Industrial Court could not have exceeded its limited jurisdiction under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said Act"). He, therefore, prays for setting aside the impugned judgment.

19. Shri Dixit, learned Sr. Advocate appearing on behalf of the respondent Bank submits that the petitioner was the Helper in the Bank and was assisting several Cashiers and Assistant Accountants. The Bank runs on the trust and confidence of the customers / account holders. Whenever any amount is found to be short in any pack of currency notes, the Cashier or the Assistant Accountant is normally made to pay that amount. Since the frequency of notes going missing was noticed by certain Cashiers and

Accountants, internal reports were generated. Based on the same, the charge sheet was issued, as the petitioner was found to be a common element in the said instances of notes going missing. On each occasion, the Cashiers and Assistant Accountants had made good the short fall by paying from their own pocket and therefore, it has become a serious issue with the Bank.

20. He refers to the charge sheet dated 31.10.2006 and submits that barring Clause 7 in the charge sheet, (the date on which the petitioner brought less amount of diesel despite having been given money to purchase 50 liters of diesel), specific details and the short fall of money, including the dates on which the incidents have occurred, have been mentioned in all the charges. In so far as the only solitary vague charge of purchase of 30-35 liters of diesel, instead of 50 liters of diesel, the enquiry officer has exonerated the petitioner of the said charge and as such, the same is given up by the management.

21. He then draws the attention of the Court to the list of witnesses mentioned in the charge sheet itself, to make the petitioner aware as to who would be deposing in enquiry. The reports in the form of documentary evidence were placed on record in the enquiry. Six witnesses, including one Peon / Sepoy have deposed in the enquiry.

22. He submits that circumstantially, based on the chain of events, the charges levelled upon the petitioner, barring one charge, have been proved

through oral and documentary evidence. The enquiry officer has considered the entire evidence and has submitted a detailed report. The Labour Court had picked up a solitary statement made by Shri Pethkar that some times the cash have gone missing, even when another helper was assisting him and based on the said statements, the findings are held to be perverse.

23. He further submits that the enquiry has been held to be vitiated for the reason that the suspension order was issued two months prior to the issuance of the charge sheet and since the enquiry was conducted beyond three months. He has relied upon the judgment delivered by this Court in the matter of Bapu Parati Urmude (supra) to contend that merely because the enquiry is conducted beyond the stipulated period, would not be fatal to the enquiry and would not vitiate the enquiry.

24. I have considered the submissions of the learned Advocates.

25. The law is trite on the manner in which enquiries are to be conducted in service jurisprudence. The law is equally trite that there must be some evidence available to support the findings of the enquiry officer. If there is some evidence on record and if the chain of events would indicate even circumstantially, or on the basis of hearsay evidence, charges can be held to be proved against an employee.

26. I have considered the judgments relied upon by Shri Barde in the matter of Sawai Singh (supra), Anant R. Kulkarni (supra), Shriram

Vishwanath (supra), Nand Kishore (supra) and Narinder (supra). In these judgments, vague charge sheets have been held to be no basis for conducting an enquiry and a delinquent is not expected to raise any defence against vague charges. So also, a conclusion of the enquiry officer, based purely on suspicion and in the absence of evidential material, has also been held to be unsustainable. I am in respectful agreement with the view taken by the Honourable Supreme Court in the above said cases.

27. However, in the case in hand, after having considered the charges levelled upon the petitioner by the charge sheet dated 31.10.2006, I find that only clause 7 is vague and ambiguous as the date on which the diesel was purchased, the receipt of the diesel purchased, the money allocated to the petitioner for purchasing the diesel have not been mentioned and as such the enquiry officer has rightly exonerated the petitioner of the said charge. However, in so far as the paragraphs 1 to 6 and 8 are concerned, I find that the dates and events are narrated. The assistance rendered by the petitioner to a particular Cashier or an Assistant Accountant on a particular date and in particular Branch has also been mentioned. The details of the amounts which fell short have also been mentioned. I do not find that these charges could be termed as being so vague and ambiguous that the petitioner could not have set up a defence against the same.

28. In so far as the suspension order issued to the petitioner, two months prior to the charge sheet is concerned, it is trite law that the obligation cast upon the employer is to ensure that the suspension allowance, strictly

in accordance with the Rules is paid to the employee, the moment he is placed under suspension. It is also trite law that the employer can place an employee under suspension pending disciplinary proceedings and pay him the suspension allowance until suspension is revoked or till the disciplinary proceedings are concluded in the nature of passing of an order on such proceedings by the disciplinary authority. On this count, the Labour Court could not have vitiated the enquiry.

29. The Labour Court has considered that the enquiry was conducted beyond three months and has concluded that it was an illegality. This issue is no longer *res integra*. The enquiry is not expected to be conducted in undue haste, merely to ensure that the time frame is not violated. The intent and object of law is to ensure that the enquiry is conducted in a fair and proper manner and a reasonable opportunity of defence is given to the employee. This Court, in the *Bapu Parvati's* judgment (*supra*) has dealt with the said issue and after considering the provisions of the Standing Order, has concluded that the enquiry cannot be vitiated merely on the ground that it was conducted beyond the prescribed time frame.

30. In so far as the grievance of the petitioner that an Advocate was not permitted to defend him is concerned, it has come on record that since there was no provision for engaging an Advocate, this liberty was refused and he was permitted to engage a co-employee to defend himself in the enquiry. It emerges from the enquiry proceedings that the petitioner did not appoint a co-employee and proceeded to participate in the enquiry by

defending himself. Unless grave prejudice is not demonstrated, an enquiry cannot be vitiated on this count.

31. The thrust of Shri Barde's argument is that there was no evidence before the enquiry officer and no prudent enquiry officer could have arrived at a conclusion as has been arrived at in the instant case. He has placed reliance upon the judgment of the Honourable Supreme Court in the matter of Narinder (supra) and especially paragraph No.26, which reads as under:-

"26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the Enquiry Officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it should keep in mind the following: (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. [See State of Assam and Anr. v. Mahendra Kumar Das and Ors.[1971] 1 SCR 87 (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice [See Khem Chand v. Union of India and Ors. (1959) ILLJ 167 SC and State of Uttar Pradesh v. Om Prakash Gupta : AIR 1970 SC 679]. (3) Exercise of discretionary power involve two elements (i) Objective and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. [See K.L. Tripathi v. State Bank of India and Others : (1984) ILLJ 2 SC . (4) It is not possible to lay down any rigid rules of the principles of natural justice which depends on the facts and circumstances of

each case but the concept of fair play in action is the basis. [See Sawai Singh v. State of Rajasthan : (1986) IILLJ 390 SC (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject matter of the charges is wholly illegal. [See Director (Inspection & quality Control) Export Inspection Council of India and Ors. v. Kalyan Kumar Mitra and Ors. . (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. [See Central Bank of India Ltd. v. Prakash Chand Jain : (1969) IILLJ 377 SC , Kuldeep Singh v. Commissioner of Police and Ors. : (1999) ILLJ 604 SC].”

32. He has also placed reliance on the judgment delivered by the learned Division Bench of this Court in the matter of Shridhar Sakharam (supra), wherein, this Court has concluded that mere suspicion would not be enough. There was neither any direct nor circumstantial evidence to prove the charge against the delinquent. In those circumstances, the learned Division Bench interfered with the findings of the enquiry officer.

33. In the instant case, six witnesses have deposed against the petitioner. Though the labour Court has culled out one minor portion of the testimony of witness Shri Pethkar to conclude that there were other instances of short fall in money when other helpers were assisting Shri Pethkar. The Labour Court could not have branded the findings of the enquiry officer as perverse, without considering the entire evidence of Shri Pethkar. Similarly, the Labour Court could not have discarded / disregarded the testimony of five other witnesses, who have also led

evidence to support the charges that on the occasion mentioned in the charge sheet, currency notes were missing from the bundles / packs which were already counted and handled by the petitioner.

34. It is settled law that the findings of the enquiry officer cannot be branded as being perverse on trivial grounds. Unless the findings of holding the delinquent guilty are based on no evidence at all and purely on the basis of suspicion, such findings would not be sustained. As like in this case, when the findings of the enquiry officer are based on the testimony of six witnesses and on the basis of the documentary evidence, the Labour Court could not have termed the findings as perverse.

35. Another contention put forth by the petitioner is that the reports made by the Cashier or the Assistant Accountant do not carry inward / outward numbers. In my view, this being an internal matter within the concerned Bank and since a report with regard to the conduct of an employee is made by the concerned Cashier or the Assistant Accountant, unless the rules mandatorily prescribe the transmission of these documents through the inward / outward register, posting of the outward number on such internal documents is not required. So long as the author of the documents as a witness, does not state that the documents were never issued by the said person, these internal communications have to be believed since the presumption is that the documents are generated by the concerned employee to his superior in the establishment.

36. In the light of the above, though I find that the Industrial Court has not gone into much details in considering the above issues, as has been done by this Court and having considered the same in these proceedings, I do not find that the conclusion arrived at by the Industrial Court could therefore, be termed as perverse.

37. In the light of the above, this petition being devoid of merits is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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