

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9649 OF 2015

Chief Executive Officer,
Parner Taluka Sainik Sahakari
Bank Limited, Shivaji Road,
Parner, Dist. Ahmednagar.

..Petitioner

Versus

Anil Namdeo Mapari,
At Post Ralegan Siddhi,
Tq. Parner, Dist. Ahmednagar.

..Respondent

...
Advocate for Petitioner : Shri Tarde Vivek V.
Advocate for Respondent : Shri Barde Parag Vijay
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WITH
WRIT PETITION NO. 10572 OF 2015

Anil Namdeo Mapari,
Age 37 Years, Occ. Service,
At Post Ralegan Siddhi,
Tq. Parner, Dist. Ahmednagar.

..Petitioner

Versus

Parner Taluka Sainik Sahakari
Bank Limited, Shivaji Nagar Road,
Parner, Dist. Ahmednagar,
through its Chief Executive Officer.

..Respondents

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Advocate for Petitioner : Shri Barde Parag Vijay
Advocate for Respondent : Shri Tarde Vivek V.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 14, 2016
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ORAL JUDGMENT :-

1. Heard.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioner in the first petition is a Cooperative Bank. The respondent is an employee. The same respondent has filed the second petition in which the Bank is the respondent. The Bank, as well as the employee are aggrieved by the impugned judgment and order dated 19.3.2015. The claim of the employee in his petition is restricted to the grievance that he has not been granted consequential benefits, after the Industrial Court has quashed and set aside the order of reversion dated 30.9.2011.
5. The crux of the matter is that the Bank has alleged against the employee that he has misused a password and has transferred an amount of Rs.5,50,000/- to the account of Shri Jaising Sukhadeo Mapari, who has withdrawn the said amount on the same date. The employee, who is a senior officer has therefore, been reverted by a resolution passed by the Bank.

6. The contention of the employee is that before passing the punitive order of reversion, which is a major punishment, an enquiry was not conducted as per Rule 20(4) of the Service Rules, made applicable.

7. I find that the Bank has raised an issue of status of the employee in Complaint (ULP) No.1 of 2012 filed by the employee for challenging his reversion. It has been averred in the written statement that the employee is a senior officer and who discharges administrative and supervisory functions. He would recommend and sanction leave of his under staff. Shri Barde, learned Advocate submits that he has filed his complaint in his capacity as a Junior Officer after his reversion and therefore, the complaint was maintainable.

8. I do not find that the Industrial Court has framed an issue in the light of the contentions of the Bank set out in the Written Statement so as to adjudicate as to whether the employee is a “workman” under Section 2(s) of the Industrial Disputes Act, 1947 and is an “employee” under Section 3(5) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“the said Act ”). As has been concluded by this Court in the case of Dalal Engineering Pvt. Ltd. vs Ramrao Bhaurao Sawant And Others [1991 (4) Bom.CR 571 = (1992) ILLJ 384 Bom. = 1991 (2) Mh.L.J. 1534], that the Court cannot exercise jurisdiction without coming to a conclusion that it will have jurisdiction to deal with the complaint.

9. The contention of Shri Barde that the complaint was filed in his capacity as a Jr. Officer and hence the issue as to whether he is a workman or not need not be gone into, is a fallacious submission. The relief that was sought by the employee was to the extent of setting aside the order of reversion and posting him to the original position as a Sr. Officer.

10. In the light of the above, the Industrial Court shall have to frame an issue as to whether the employee is a workman, going by his designation of Sr. Officer and not as a Jr. Officer pursuant to the impugned order.

11. As such, the petition filed by the Bank is partly allowed. Complaint (ULP) No.1 of 2012 is remitted back to the Industrial Court for framing of an issue as to whether the complainant is a “workman” or not. Both the litigating sides are at liberty to lead oral and documentary evidence in support of their respective contentions.

12. Similarly, in the event, the employee is held to be a “workman” going by his designation of Sr. Officer and his nature of duties, the Industrial Court shall then deal with the issue as to whether the order of reversion was passed after following the due procedure and the service Rules applicable. The Industrial Court shall, thereafter, decide the complaint on its own merits.

13. Rule is therefore, made partly absolute in the first petition filed by the Bank.

Consequently, the second petition filed by the employee is dismissed and Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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