

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8747 OF 2012
WITH
CIVIL APPLICATION NO. 10732 OF 2016

1. The Chief Executive Officer,
The Ahmednagar District Central
Cooperative Bank Limited,
Ahmednagar Station Road,
Aurangabad.

2. The Ahmednagar District
Central Cooperative Bank Ltd.,
Manoli Branch Tq. Sangamner,
District Ahmednagar through
its Branch Manager.

..Petitioners

Versus

Prakash Ramchandra Waghmare,
Age major, Occupation Service,
R/o Savargaon, Tq. Sangamner,
District Ahmednagar.

..Respondent

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Advocate for Petitioners : Shri Gaware N.V.
Advocate for Respondent : Shri Shermale K. N.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 02, 2016

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ORAL JUDGMENT :-

1. The respondent / employee has filed Civil Application No.10732 of 2016 for seeking leave to withdraw the entire amount of Rs. 7,88,569/-, which has been deposited by the petitioner / management in this Court.

2. Considering the conspectus of the matter, I called upon the learned Advocates to address the Court on the petition itself. I have thus heard the learned Advocates on 29.7.2016 and again today.

3. The petitioner / management is aggrieved by the judgment of the Industrial Court, dated 23.8.2012, by which, Revision (ULP) No.90 of 2012 filed by the respondent was allowed and, by setting aside the judgment of the Labour Court dated 7.9.2011, the Industrial Court awarded 75% backwages from the date of termination till the date of superannuation of the respondent on 30.4.2011.

4. The respondent herein was an employee of the petitioner, having joined services on 27.2.1982 as a Bank Clerk. He was served with a charge sheet dated 22.3.2005 listing out ten misconducts against him. Out of the ten charges, the most serious charge is with regard to manipulating the date of birth in the Employees Pension Scheme form and supporting the said date of birth with a true copy of the purported document, issued by the School.

5. It is not in dispute that the respondent had entered his date of birth as 3.4.1953 in the service book while joining duties with the petitioner. After having worked with the Bank for several years, when it came to filling in the Pension Scheme form, the respondent

mentioned his date of birth as 3.4.1957, thereby, attempting to reduce his age by four years, which would eventually extend his service tenure by four years. He supported the said entry with a freshly acquired true copy of a school document, dated 10.1.2005, thereby, indicating to the management that he was younger by four years. It was on noticing the said act, that the management initiated a departmental enquiry against the respondent for forgery.

6. The contentions of the learned Advocate for the respondent, who has strenuously supported the impugned judgment, can be summarized as under:-

- (a) Though he attempted to reduce his age by four years, it was on the basis of a corrected document, which he obtained from the School.
- (b) The enquiry was conducted in non-observance of the principles of natural justice.
- (c) It was an ex-parte enquiry.
- (d) Since he did not actually derive benefits from his act, no offence is proved.
- (e) Leniency deserves to be shown in the light of the judgment of the Honourable Supreme Court in the matter of Colour Chem Versus A.L.Alaspurkar [(1998) 3 SCC 192] and a judgment of the Division Bench of the Allahabad High Court in

the matter of State of U.P. Vs. Sharda Prasad (Special Appeal No.559 of 1998), decided on 28.4.2000].

(f) Leniency shown by the Industrial Court need not be interfered with.

7. While dealing with the submissions of the respondent, it needs mention that the contentions as against the fairness of the enquiry and the findings of the Enquiry Officer no longer need to be entertained for the reason that the Labour Court, by its Part I judgment on the issue of the fairness of the enquiry and the findings of the enquiry officer, concluded that the enquiry was conducted in a fair and proper manner and the findings of the enquiry officer are not perverse.

8. This Part I judgment, admittedly, has not been challenged by the respondent before the Industrial Court under Section 44 of the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "the said Act"). He has simply challenged the dismissal of his complaint by the final judgment of the Labour Court dated 7.9.2011, thereby concluding that the punishment awarded was proportionate. The challenge of the respondent on the basis that the punishment is shockingly disproportionate was entertained by the Industrial Court by the impugned judgment and 75% of the backwages from his dismissal

dated 20.4.2006 till his superannuation dated 30.4.2011 was granted.

9. It is trite law that if the enquiry / findings of the enquiry officer are not challenged or if they are challenged and the said challenge is negated, the enquiry stands sustained and the findings of the enquiry officer, upon being upheld, lead to the conclusion that the charges against the employee are proved.

10. In the above backdrop, despite the strenuous submissions of the learned Advocate for the respondent, I cannot entertain any of his submissions, relating to the issue of the enquiry and the findings of the enquiry officer.

11. This, therefore, renders only one submission to be entertained and that is with regard to the proportionality of the punishment awarded.

12. In the case of Colour Chem Vs. A.L.Alaspurkar [1998 I CLR 638] [Bombay], this Court was required to deal with the issue of proportionality of the punishment under item 1(g) of the Act of 1971. Item 1(g) reads as under:-

“1(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular

misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment.”

13. This Court concluded that item 1(g) would be attracted only if the misconduct appears to be of a minor or technical character. In my view, an act of forgery, notwithstanding the fact that the concerned employee, could not derive advantage of his act upon being apprehended by the employer, does not render the act to be of a minor or technical character. It is immaterial whether the employee succeeded in getting the advantage of an act of forgery. Had he not been apprehended, he would have succeeded in reducing his age by four years and thereby, would have increased his service age / tenure by four years.

14. The reliance placed upon the judgment of the Honourable Supreme Court in the case of Colour Chem (supra) would not be of any assistance to the respondent for the reason that in the said case, the employee went to sleep while on duty. His act of sleeping on duty in the night shift, by keeping the machine in running condition but without inserting any raw material, was considered by the Honourable Apex Court to be a misconduct which would not attract the punishment of dismissal from service.

15. In the case of State of U.P. Vs. Sharda Prasad (supra), the

concerned employee had got his date of birth corrected / altered on the basis of a Janma Kundali. He, therefore, continued in employment beyond the tenure of his actual service going by the corrected date of birth. The Allahabad High Court, however, concluded that the employee shall return the entire salary for the period of excess service that he put in, on the basis of the corrected date of birth. In the said facts of the case, the Allahabad High Court permitted the employee to retire from service.

16. The Honourable Supreme Court in the case of Ram Saran Vs. I.G. of Police CRPF [AIR 2006 Bom. 386], has concluded in the said case that though the employee has increased his age and altered his date of birth for seeking employment, he deserves no leniency as it would amount to giving a premium to him upon committing forgery. In the case of Ram Saran (supra), since he was not eligible for appointment, he increased his age by correcting his date of birth so as to indicate that he was 18 years old and on the basis of the same, he succeeded in getting employment with the Police Department. He was removed from service after the misdeed was noticed at the time when he opted for voluntary retirement. The Honourable Apex Court concluded that he does not deserve any leniency and a person committing forgery deserves to be dismissed from service.

17. Strenuous contention of the respondent is that because he did

not derive any advantage of the purported act of forgery, he should not be punished for a misconduct, which he actually did not commit. I am unable to agree with the submissions of the learned Advocate for the reason that an act of forgery does not lose its trappings and effect merely because it did not lead to any impact or it did not earn undue advantage to the concerned employee. An act of forgery can never be countenanced and showing leniency towards an employee on the basis that because he was apprehended, he could not derive an advantage, would amount to showing misplaced sympathy.

18. The Industrial Court, in the impugned judgment, has concluded that the misconduct of forgery is indeed proved against the employee. However, in paragraph No.8 of the judgment, the Industrial Court concludes that it is, in its opinion, a harsh punishment awarded to the employee and hence it would be proper to award him 75% backwages. In my view, this act of misplaced sympathy by the Industrial Court has virtually rewarded the respondent with 75% backwages for committing forgery.

19. For the above reasons, the impugned judgment is rendered perverse and erroneous.

20. This Court (Coram : Smt. Mridula Bhakar, J.) by order dated 21.9.2013, passed after the admission of the writ petition, permitted

the respondent to withdraw quarterly interest on the amount of Rs.7,88,569/-, deposited in this Court and invested with the State Bank of Hyderabad. Since then, the respondent is withdrawing the said amount from this Court. Considering the conclusions drawn in this judgment, I am not inclined to grant any further quarterly interest to the respondent. Nevertheless, the Respondent employee need not refund / return the amount of quarterly interest, he has already received.

21. As such, this petition is allowed. The impugned judgment of the Industrial Court dated 23.8.2012, is quashed and set aside and Revision (ULP) No. 990 of 2011 stands dismissed.

22. The petitioner will be at liberty to withdraw the amount presently lying in this Court, along with accrued interest, upon being invested with the State Bank of Hyderabad.

23. Rule is made absolute in the above terms.

24. Pending Civil Application does not survive and is, therefore, disposed off.

25. Learned Advocate for the respondent prays for a stay to this judgment for eight weeks. The petitioner has opposed.

26. Considering the conclusions drawn by this Court and having sustained the judgment of the Labour Court, I do not find that the request needs to be entertained. Same is, therefore, rejected.

(RAVINDRA V. GHUGE, J.)

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