

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

WRIT PETITION NO. 11621 OF 2014

The Jalna People's Co-operative Bank Ltd.,
Jalna and Others ..PETITIONERS

VERSUS

Dhirendra Purushottam Joshi ..RESPONDENT

**WITH
WRIT PETITION NO. 843 OF 2015**

Dhirendra Purushottam Joshi ..PETITIONER

VERSUS

The Jalna People's Co-operative Bank Ltd.,
Jalna and Others ..RESPONDENTS

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Mr.Anand Chawre, Advocate for petitioners in 11621/14 and for
respondents in 843/15.

Mr. Hemant Surve, Advocate for respondent in 11621/14 and for
petitioners in 843/15.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 22nd FEBRUARY, 2016**

ORAL JUDGMENT:

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

2. The petitioner in the first petition is the same respondent-bank in the second petition. The respondent-employee in the first petition is the same petitioner-employee in the second petition. Both these petitions arise out of the same proceedings before the Labour Court in Complaint ULP No. 2/2012 and Revision ULP Nos. 14/2013 and 3/2014. I have therefore taken up both these petitions together for a common hearing. For the sake of clarity, the employer in these petitions would be referred to as the 'management' and the worker in these petitions would be referred to as 'employee'.

3. The management is aggrieved by the Part-I judgment delivered by the Labour Court dated 30.12.2013 in Complaint ULP No. 2/2012 filed by the employee. By the said Part-I judgment, the following two issues have been held against the management:-

(a) Whether the complainant proves that the enquiry is not fair and proper?

(b) Whether the complainant proves that findings of the enquiry officer are perverse?

4. Mr. Chawre, learned Counsel for the management has strenuously criticized the Part-I judgment of the Labour Court dated 30.12.2013 as well as the judgment of the Industrial Court dated 10.10.2014 by which the revision petition filed by the management has been dismissed.

5. Mr. Chawre has taken me through the entire petition paper book and the enquiry officer's report. His contention is that the audit report of an earlier year apparently will not demonstrate any fraud committed by the employee. It is after the initiation of the disciplinary proceedings that in the subsequent relevant year, the auditor has noticed the said fraud.

6. He further submits that there was no necessity for the management to examine the account holders from whose accounts the employee has withdrawn/siphoned off money thereby amounting to a fraudulent act. The accounts themselves would speak about the fraud.

7. He further submits that the evidence adduced before the enquiry officer was in the form of notarized documents. They were made available to the employee and who had cross examined the witnesses. In the light of the said oral evidence coupled with the documents placed before the enquiry officer, it was rightly concluded by the enquiry officer that the charges levelled upon the employee are proved.

8. Mr. Chawre further submits that the petition filed by the employee deserves to be dismissed since the amounts that have been misappropriated, are rightly sought to be recovered from him pursuant to the conclusions of the enquiry officer. Moreover, no other relief can be granted to the employee since in the matters of disciplinary proceedings, interim relief is an anathema. He further submits that the Labour Court as well as the Industrial Court have rightly declined interim relief to the employee and hence this Court should be slow in interfering with the findings within its writ and/or supervisory jurisdiction.

9. He therefore submits that the petition filed by the management be allowed and by setting aside the Part-I judgment of the Labour Court and the Industrial Court, the enquiry conducted by the management be sustained.

10. Mr. Surve, learned Counsel for the employee has strenuously criticized the conclusions of the Industrial Court only to the extent of the rejection of Revision ULP No. 14/2013 filed by the employee.

11. Grievance is that once the findings of the enquiry officer or for that reason the entire enquiry is set aside by the Part-I judgment of the Labour Court, the conclusion drawn by the enquiry officer that the charges are proved against the employee, have to fall. Once these conclusions are watered down by the judgment of the Court, the case of the management stands on a footing as if there has been no enquiry in the eyes of law. As such, the charges levelled upon the employee cannot be said to be proved until they

are so established in a de novo enquiry before the Labour Court. Until then, the management cannot cause any recovery of money from the employee on the pretext that he is held guilty of misappropriation.

12. Mr. Survey strenuously supports the impugned Part-I judgment of the Labour Court by which the enquiry has been set aside. He therefore prays that the petition filed by the management be dismissed and the petition filed by the employee be allowed.

13. I have considered the submissions of the learned Counsel as recorded above.

14. The Labour Court while delivering the Part-I judgment was required to look into the aspect of the adherence to the principles of natural justice in conducting the domestic enquiry. It was also entitled to consider the evidence recorded in the enquiry and assess whether the conclusions of the enquiry office could be said to be supported by the evidence especially in the light of the

fact that the enquiry officer has concluded that the charges are proved against the employee.

15. From the record I find that the Labour Court permitted both the litigating sides to lead evidence on the first two issues. This Court in the matter of *Maharashtra State Cotton Growers Federation Ltd. and Another Vs. Vasant Ambadas Deshpande, 2014 MLJ 339 2014 (I) CLR 878* has held that when it comes to scrutinizing as to whether the principles of natural justice were adhered to in conducting the enquiry and whether the findings of the enquiry officer can be sustained on the basis of the evidence recorded in the enquiry, no further evidence is required to be recorded before the Labour Court. The Labour Court is obliged to consider the first two issues only on the basis of the record and proceedings of the enquiry and scrutinize the same to draw a conclusion whether the enquiry was conducted in observance of the principles of natural justice and whether the evidence on record supports the conclusions drawn by the enquiry officer. Notwithstanding the above, I also find that the Labour Court has

scrutinized the enquiry, record and proceedings while delivering the impugned Part-I judgment.

16. With the assistance of the learned Counsels, I have gone through the conclusions of the Labour Court as well as the documents placed on record. I find that on the one hand, the auditor whose report is placed before the enquiry officer, for the year under audit, does not notice any misappropriation. Mr. Chawre, may be right in his contention that the said audit was with regard to the year not at issue in relation to the charges of misappropriation. Mr. Chawre may be right in contending that the auditor has submitted his audit report for the year at issue and the misappropriation can be seen from the said report. However it is undisputed that the said report which is said to be relevant to the period during which the misappropriation is said to have occurred, was neither before the enquiry officer, nor before the Labour Court.

17. Mr. Chawre submits that amounts were withdrawn from the accounts of the account holders by the employee. These account holders had raised a grievance before the establishment.

The management-bank has satisfied the grievance of the account holders by depositing all such amounts in their accounts which are said to have been misappropriated by the employee.

18. I however cannot comprehend as to what were the reasons that prevented the management from examining some of the account holders when it was contended that the employee was guilty of withdrawing money from 58 accounts. In my view, the said account holders could be a strong evidence to support the charge of misappropriation since the business of the bank runs on the trust and faith of the depositors as has been concluded by the learned Apex Court in the case of *Janatha Bazar (Sourth Kanara Central Co-operative Whole Sale Stores Ltd.) etc. Vs. The Secretary, Sahakari Noukarana Sangha etc., (2000) 7 SCC 517*. The Labour Court has therefore concluded that on the one hand the auditor's report does not indicate any misappropriation and on the other hand there was no evidence before the enquiry officer apart from oral statements to substantiate the misappropriation said to have been committed in relation to the 58 account holders.

19. It is also revealed that the employee had filed an application requesting for calling the account holders as witnesses. It appears that the said request was not entertained. The fact remains that not a single account holder was before the enquiry officer to complain that the amount from their accounts have been surreptitiously withdrawn by the employee.

20. In the light of the above, I find that the Labour Court has rightly arrived at a conclusion in relation to the enquiry that there was no sufficient evidence before the enquiry officer to conclude that the charges are proved against the employee.

21. The apprehension which has been voiced by Mr. Chawre that considerable time of the Court is likely to be consumed for conducting a de novo enquiry, in as much as, the management will have to once again conduct a de novo enquiry causing grave hardship, is misplaced. It is trite law that an enquiry can be set aside for any defect, be it in relation to the non-observance of the principles of natural justice or on the touch stone of prejudice or the

findings of the enquiry officer not being supported by oral and documentary evidence on record in the enquiry.

22. The learned Apex Court in the case of ***Bharat Forge Co. Ltd. Vs. A.B. Zodge, AIR 1996 SC 1556*** has laid down the law that once an enquiry is set aside, the case stands on a footing of there being no enquiry. The oral statements made by witnesses in such an enquiry which is set aside, is not to be considered or referred to any further. The employer has liberty to conduct a de novo enquiry by leading fresh evidence as well as examining the same witnesses which were earlier examined in the enquiry. Documents which were before the enquiry officer could be established/proved through evidence in as much as further evidence in oral and documentary form can also be brought on record before the Labour Court. In short, the employer is at liberty to conduct a de novo enquiry as if the employer is conducting such an enquiry for the first time.

23. In so far as the contentions of Mr. Surve with regard to the proposed recovery of amounts from the employee on the basis

of the enquiry officer having held him guilty is concerned, I find that the management-bank has not proceeded in furtherance to the recovery notice at issue. In my view, the management-bank cannot now proceed to cause any recovery from the employee taking into account the fact that the enquiry has been set aside and the management is at liberty to conduct a de novo enquiry. The apprehension of Mr. Surve is therefore not misplaced.

24. In the light of the above, the petition filed by the management is dismissed. Rule is discharged. The petition filed by the employee is disposed off in the light of the fact that the management has not proceeded in furtherance of the recovery notice and in view of the conclusion of this Court that once the enquiry has been set aside, the charges as levelled on the employee cannot be said to be proved. Apparently, there can be no recovery. Rule is therefore discharged.

25. The Labour Court however shall note that the management can record its oral and documentary evidence before

the Court to be followed by the recording of oral and documentary evidence of the employee. The Labour Court shall consider the case on its own merits.

26. The litigating sides are at liberty to request the Labour Court for the expeditious disposal of the complaint, in as much as, they would fully cooperate with the Labour Court in refraining from seeking adjournments on unreasonable or trivial grounds.

(RAVINDRA V. GHUGE, J.)